

**ACEEEO 25 –**

**DEVELOPMENT OF ELECTORAL SYSTEMS  
IN CENTRAL AND EASTERN EUROPE SINCE 1991**

EDITOR-IN-CHIEF

Zsolt Szolnoki

EDITORS

Márta Dezső

Zoltán Pozsár-Szentmiklósy

PUBLISHER

Association of European Election Officials (ACEEEO)

H-1088 Budapest

Vas u. 6. I.em 7/a

ISBN 978-963-12-6408-1

PRODUCTION

ANY Security Printing Company PLC

**ACEEEO 25 -**  
**DEVELOPMENT OF ELECTORAL SYSTEMS IN**  
**CENTRAL AND EASTERN EUROPE SINCE 1991**



**Association of European Election Officials**  
**Budapest 2016**

# Contents

Foreword .....	6
The First 25 Years – The ACEEEO’s History <i>Zsolt Szolnoki</i> .....	7
The most important ACEEEO projects 1991-2016 .....	24
<b>Comprehensive study</b>	
Developments and trends of the electoral systems in the last 25 years in ACEEEO members’ states <i>Zoltán Pozsár-Szentmiklósy</i> .....	29
<b>Case studies</b>	
Albania <i>Lefterije Luzi</i> .....	44
Armenia <i>Lilia Hakobyan</i> .....	60
Azerbaijan <i>Secretariat of the Central Election Commission of the Republic of Azerbaijan</i> ....	73
Belarus <i>Stepan Ahiy</i> .....	82
Bosnia and Herzegovina <i>Suad Arnautović - Irena Hadžiabdić - Ahmet Šantić</i> .....	90
Bulgaria <i>Jordanka Gancheva - Maria Musorlieva - Kameliya Neykova - Alexander Andreev</i> .	100
Croatia <i>Maja Koić</i> .....	113
Georgia <i>Eszter Bodnár</i> .....	126
Hungary <i>János Mécs</i> .....	134
Kazakhstan <i>Marat Sarsembayev</i> .....	144
Kyrgyzstan <i>Abdyzhapar Bekmatov</i> .....	154
Latvia <i>Arnīs Cimdars</i> .....	162

Lithuania	
<i>Kristina Ivanauskaitė-Pettinari</i>	174
Macedonia	
<i>Ljupka Guguchevska</i>	190
Moldova	
<i>Corneliu Pasat</i>	203
Montenegro	
<i>Helga Lieszkovszky</i>	215
Poland	
<i>Legal Department, National Electoral Office of the Republic of Poland</i>	224
Romania	
<i>Luiza Nedelcu</i>	233
Russian Federation	
<i>Central Election Commission of the Russian Federation</i>	240
Serbia	
<i>Helga Lieszkovszky</i>	250
Slovakia	
<i>Eva Chmelová et al.</i>	257
Slovenia	
<i>Dragana Kopčić</i>	266
Turkey	
<i>Eszter Balogh</i>	273
Ukraine	
<i>Central Election Commission of Ukraine</i>	283

**DEAR READERS,**

This year marks the 25<sup>th</sup> anniversary of the establishment of the Association of the European Election Officials (ACEEEO). Following our tradition, as 5 and 10 years ago, the Association has considered it appropriate to celebrate this anniversary with a publication. The aim of this volume is to offer an overview of the general trends which were present in the electoral legislation and practice of ACEEEO member's states in the last 25 years.

The basement of the overview is the 24 case studies, which has been prepared by our colleagues working in the respected election commission, or office.

We have updated the chapter about the history of the Association as well. We are proud to see how many projects supported the election administrations and the election officials. The wide range of cooperation with other election stakeholder institutions and the experiences gathered during the observation missions have also created a valuable professional experiences for the election officials.

By the occasion of the anniversary, let me thank to all our colleagues for their contribution to the work of the Association and my special thanks to those who wrote the case studies of this book and prepared and edited the summary of the global trends.

***Zsolt Szolnoki***  
*Secretary General*

# THE FIRST 25 YEARS

## The ACEEEEO's history



*Zsolt Szolnoki\**

### **The first five years – establishment 1991-1995**

With the collapse of communism and socialism, the nations of Central and Eastern Europe suffered from a lack of knowledge of administration. One of the greatest threats to the newly established democracies of the region was the lack of permanent election structures. The Association was created to combat the above mentioned threats by strengthening the democratic election institutions. The purpose of ACEEEEO was to raise the consciousness of decision makers in all of the countries of the region with regard to the critical need to institutionalize the election process.

In the years 1989 and 1990 the multi-party elections became institutionalized in Central and Eastern Europe as a result of the democratization process. In the countries within this region the one-party elections ceased to exist at different rates and the elections themselves have gained real content. The administrators concerned with the preparatory activities and the performance of the elections, as their mission in life, were all witnesses of this historical process. As a consequence of the above mentioned facts, election administrators gathered in Budapest, Hungary in a Symposium of the Central European Electoral Systems, organized by the International Foundation for Electoral Systems (IFES) and the Hungarian National Election Office at the end of July of 1991. The participants discussed their experiences gathered in connection with the political and legal issues of the first democratic elections, as well as the necessity of those technical and technological conditions, which are essential for the holding of free elections. This historical meeting led to the establishment of the Association of Central and Eastern European Election Officials (ACEEEEO) in 1991.

Participants of the conference - directed by their resolve for the future institutionalisation of the co-operation of countries within the region in the interest of free, fair and democratic elections - founded ACEEEEO as a non-governmental and non-profit organisation that is independent of political parties and governments. The founding protocol was signed by the election officials from Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and Yugoslavia, and in the next 5 years, elections experts from Croatia, Latvia, Lithuania, Macedonia, Moldova, Russia, and Ukraine joined their circle.

The Founding Fathers of the ACEEEEO determined the Association's mission as follows: providing a non-partisan forum, independent of national governments, for the exchange of information among election officials and experts throughout the region covered by the Association to discuss and act upon ways to promote open and transparent elections with the objective of supporting good governance and democracy. One of the main agreements was to hold a yearly conference about theoretical and practical issues relating to elections, providing opportunity to discuss and exchange experiences and methods.

The Association gathered in Hungary in 1992 and in 1993. The main topic of the 1992 meeting was to discuss election laws of different countries and to collect

---

\* Secretary General of ACEEEEO

**PROTOCOL**  
**OF INTENTIONS TO ORGANIZE A**  
**REGIONAL ASSOCIATION OF ELECTORAL ADMINISTRATORS**  
**FOR**  
**CENTRAL AND EASTERN EUROPE**

The election administrators of Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia and government officials, civic education leaders, academics and others met in Budapest on 30 July - 2 August 1991, constituted as the Central European Electoral Systems Symposium, to focus on the essential elements of the democratic election process.

The Symposium participants —

- agreed in principle that a Regional Association of Electoral Administrators of Central and Eastern Europe should be organized, the membership being open to any countries in the region and the members shall enjoy the same rights;
- agreed to form an Organizing Committee of representatives of countries set forth in this Protocol and of international organizations sponsoring the Symposium, such as the Office of Free Elections of the Commission on Security and Cooperation in Europe, to establish principles and prepare organizational documents for further consideration;
- accepted the offer of the National Election Office of Hungary to serve as the Secretariat of the Organizing Committee and accepted the offer of the International Foundation for Electoral Systems to provide information resources to such Organizing Committee and Association;
- affixed their signatures hereto as evidence of their support for these actions.

Budapest  
2 August 1991

these laws in English and in Russian. In the same year the ACEEEO Documentation Centre was established in Budapest, Hungary. At the conference of 1993, members agreed to lay down conditions regarding the fair organisation of elections and proposed to the member countries to create non-governmental organizations, foundations and civic associations beside the official election bodies in their countries, for the support of elections and also to monitor the fairness of them. At the same time the ACEEEO started negotiations with the Association for Electoral Administrators (AEA) of the United Kingdom and built up a fruitful cooperation with the Association. As a consequence, in 1994, the Association observed the European parliamentary elections in Great Britain.

The Association held its first Annual Conference in Ukraine, in 1994. The Kiev meeting underscored that a major threat to democracy is the ad-hoc nature of election administration in many of the countries of Central and Eastern Europe. To promote



stability in the electoral process, the Association set itself a new aim that is to encourage the creation of permanent election bodies throughout the region and ensure that governmental institutions are aware of the advantages of the supportive roles these bodies can play in the overall development of the region's electoral systems.

The first electronic newsletter entitled 'Free Elections' was issued this year. 1995 was important in the life of the Association, because one of the main projects, the participation in election observation missions, got started. The annual conference in Hungary was opened by the President of Hungary where the first exhibition was held with the title 'Using technical devices and computers at elections'. This conference focused on election technology. Since then, every year the ACEEEO organizes the Exhibition of the Suppliers of Election Equipment and Services.



To sum it up, the first five years was about establishing the ACEEEO and proving the necessity of such an organization. During these years the ACEEEO established its Documentation Centre, gathered election officials from the region and consolidated its existence. All this was supported by the International Foundation for Election Systems (IFES).

### **The second five years - building relations and recruiting new members from the region 1996-2000**

After consolidating its place, the Association started to strengthen its relations, seeking for international partners, co-operations and commenced to embody theory in practice. By 1997 the ACEEEO's traditional working method was to hold yearly conferences in the capitals of its member countries. In September 1997 representatives from 21 Central and Eastern European countries gathered in the Russian Federation, to participate in a training conference promoting 'Transparency in Elections'. The conference was focused on election administration, civic involvement and international election support. The significance of the topic was amply illustrated by



the fact that experts from ACEEEO-member countries were present for supervising the local government elections in Bosnia and Herzegovina at the end of 1997.

The next annual conference was held in Vilnius, Lithuania, in November 1998. Three main achievements were realized within the frame of this conference. The first was the adoption of the new Charter by the General Assembly. The main reason was to institute a graduated membership structure, specify membership fees, and establish clear rules for participation. Secondly, Belarus indicated the intention to join the Association. The General Assembly accepted the application, and from 1998 the ACEEEO had 15 member states. At the same time a new tradition was introduced; the General Assembly established honorary membership. Besides the above mentioned achievements, significant issues of international election law were scheduled on the agenda, such as promoting access for voters with special needs, secure production and transportation of ballot papers and legal guarantees against election frauds.

Next year the Association organized its annual meeting in Bratislava, Slovakia (1999), where the General Assembly defined four strategic trends determining the activities of the next 5 years. These trends were as follows: to increase citizen engagement in the electoral process; to encourage the sharing of electoral experience in the region; to promote uniform democratic development across Europe and finally to enhance the institutional capacity of the ACEEEO.

One of our outstanding goals of this year was to contribute to the democratisation process of the Balkan region. For the sake of this goal experts of the Association took part in the foundation of the Association of Election Officials in Bosnia and Herzegovina (AEOBiH) in 1999 and supported the initial activities of the Association as advisors. It was a great pleasure to see that the new Association became an institutional member of the ACEEEO in the same year. Beside AEOBiH, Georgia and Armenia applied for ACEEEO membership, which was granted by the General Assembly during the Bratislava conference. The other great project of the Association was the creation of a multilingual election dictionary, first in 5 languages and since then it has been a collection of election related words and expressions in 11 languages.

Besides the missions in Bosnia and Herzegovina and in Kosovo, the ACEEEO sent observers to Croatia, the Russian Federation, Romania, Serbia and Ukraine. The ACEEEO, as the only NGO, could play a role in a consortium that was organized by the Council of Europe, and was set up for the Kosovo Elections observation. The ACEEEO could send representatives overseas as well, because two of our representatives were invited by the International Foundation for Election Systems (IFES) as observers for the Presidential Elections of the United States.

This year we went further on deepening our relations with the OSCE department responsible for elections. The aim of these steps was to promote the relations and to discuss the possibility of our participation in the international observer missions in Kosovo.

In order to gain acknowledgement of our Association in Western Europe and to build up co-operation with international organizations, the ACEEEO started negotiations with the Council of Europe. The Council of Europe initiated that the Association should tender for consultative NGO status.

In the year 2000 the Association held its annual conference in Warsaw, in the presence of 26 country representatives, with 180 participants, and 15 exhibitors. During the conference an election history exhibition was displayed, which met a great success. The main topic of the conference was the interconnection of information technology and elections. Main events of the conference were: Macedonia and Turkey were admitted as institutional members, and the modification of the charter was accepted. The ACEEEO prepared a program with the intention of collecting international experience relating to campaign financing. Experts analyzed codification and legal practice of several countries in detail. Its importance had lain in that it functioned as a base for submitting a proposal for modernization of the present Hungarian regulation.

In 2000 we renewed the website of the Association and participated in the so-called Essex project. It was about to construct an election database of the Central and Eastern European region. Due to the vivid and rapidly altering practice of the elections in the region, the creation of an election database became essential, including election laws and results of elections.

From the activities of 2000, we could come to the conclusion that after almost 10 years of its establishment, the ACEEEO started to flourish and act as a regional, professional association, in co-operation with international organizations. During these years it could successfully build up close relations with its member states and world-wide organizations devoted to elections.

### **The third five years - stabilization 2001-2006**

In this period the Association continued its projects and missions, and expanded its activities and relations.

During 2001, representatives of the ACEEEO kept on participating in observation missions, such as in Montenegro and Belarus. The Belarus mission was the first mission organized and implemented by the Association itself. In virtue of the invitation of the Belarus Central Election Commission, the ACEEEO – as the only international organisation – implemented a long-term observational mission. During the long-term observation, this mission followed with attention the whole election procedure. In the last phase of the observational mission – in parallel with other international organisations – 61 short-term observers from 11 countries represented the Association. On the Election Day, teams of two visited 240 polling stations on the whole area of the Republic of Belarus. The professional content of the ACEEEO



summary report harmonised with the report of the observers of the OSCE-ODIHR, the European Council and the European Union. The European organisations appraised positively the first independent observation mission of the ACCEEO.

Owing to the professional acknowledgement, the Council of Europe, granted consultative status to the ACCEEO. At the same time, the Association received the UN/NGO regional network membership in November 2001 as well.

The jubilee annual conference of the ACCEEO was held in Brijuni, Croatia in 2001. During this conference, members celebrated the 10<sup>th</sup> anniversary of the Association. President of the Republic of Croatia opened the Conference. The main topic was the financing of the election campaigns. The conference gave recommendations concerning the regulation of campaign financing for the members. For the ten-year-anniversary, a CD was prepared, in order to present the activity and the history of the Association.

In 2002, after the jubilee year of the ACCEEO, participation in election observation missions, as one of the main projects of the Association, was increased, because the ACCEEO sent representatives to the following countries: Ukraine, Hungary, Latvia, and Yugoslavia. As the title of this part indicates, the ACCEEO was open to establish relations with international organizations. Besides strengthening the relationship and co-operation with the Council of Europe, especially with the Venice Commission, the Secretariat participated in meetings with the representatives of the European Parliament, European Commission, and European Policy Centre in order to discuss the possible collaboration. As a result of continuous co-operation and the expertise, the Council for Democratic Elections of the Venice Commission decided to grant the ACCEEO observer status. With this decision we were authorized to attend the meetings of the Venice Commission and work with them cooperatively. Moreover, a co-operation agreement was signed between the OSCE-ODIHR.

One of the most important projects of this year was introduced at the Moscow conference, where the Convention on Election Standards, Electoral Rights and Freedoms was presented. The topic of remodelling of the existing European electoral standards in a format unified international document seemed to be in full



correspondence to the political spirit. The fact that Mr Vladimir Putin, President of the Russian Federation, opened the conference shows the importance of this event. In the Moscow conference the Association admitted the Federal Republic of Yugoslavia and Azerbaijan as new members of the ACEEEEO.

Regarding the main projects of the ACEEEEO, 2002 was a very successful year. The Convention was prepared and adopted; the multilingual election dictionary was enlarged, the ACEEEEO developed the Firstvoter.eu project. The project's aim was to create a web-based informative forum for the widening of knowledge among the youths of Europe about the importance of electoral participation in the form of voting. The project was scheduled in three steps. As the first step toward the realization of the project the Secretariat of the Association organized a preparatory meeting. At this meeting Albania, Hungary, Lithuania, and Sweden were represented and the participants agreed on the continuation of the project through an international youth exchange program, which took place in 2003.

Moreover, the Association contributed in two important international projects. One of them was the Money and Politics project, in co-operation with the IFES, which was developed to test the Political Finance Disclosure Database in Hungary and in Lithuania. The goal of the project was to develop the transparency of political process by giving free access to the campaign and financing information. The second project was the Electoral Process Information Collection (EPIC) project developed by the International IDEA and designed to introduce electoral systems all over the world and make them available easily through the internet. By presenting information about electoral systems, electoral management, legislative framework, voter registration, voter education and other related topics in a wide range of countries, users are able to compare, and identify common practice within the electoral administration. According to the signed cooperation agreement on the EPIC (Elections Process Information Collection) Project between the International IDEA and the ACEEEEO,



the ACEEEEO Secretariat collected all the information needed for the project from its member states and completed the EPIC project.

2003 was the year of missions too, because the ACEEEEO observed the elections in the following countries: Estonia, Armenia, Azerbaijan, Georgia, Serbia and Montenegro (three times), the Russian Federation. This year was significant in the respect of co-operation with the Council of Europe. The ACEEEEO sent representatives to the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting, to the Council for Democratic Elections of the Council of Europe (Venice Commission) and to the Group of Specialists on core technical standards for e-enabled voting. This year the Committee of Ministers (Council of Europe) proclaimed that the consultative status granted in 2001, changed to participatory status with the Council of Europe from 2003.

The ACEEEEO devoted its working program in 2003 to the theme 'Media and Elections'. As the utmost importance of the role of media in a better functioning democratic process compels us to reconsider the link between media and elections on the global level in the course of events that shaped so dramatically the history of the 20th century. With regard to the scope of activities of ACEEEEO, most importantly, the democratization process of societies in Central-Eastern Europe makes this ever-green-topic one of the most timely and most relevant ones of contemporary public discourse on the regional level. To understand the correspondence between media and elections in Central-Eastern Europe, the ACEEEEO Secretariat prepared a study and questionnaire concerning this topic, which was the main theme of the annual conference held in 2003, London. The fact that the annual conference was held in the United Kingdom proved our willingness to open to Western Europe and to establish closer relationship with experts and organizations outside Eastern and Central Europe. The conference was organized by the ACEEEEO in co-operation with The Electoral Commission of UK, the Association of Electoral Administrators of UK, and the International Foundation for Election Systems (IFES). This year the Association accepted Kazakhstan as a new institutional member.

As one year passed on, the Association still continued its main activity: election observation mission. In 2004 the ACEEEEO sent representatives to the countries such as: Georgia, Russian Federation, Kazakhstan, Bosnia and Herzegovina, Belarus and Ukraine (three rounds). The Association went on strengthening its relations with international organizations, namely OSCE-ODIHR, Council of Europe, International IDEA and IFES. Beside co-operation with international and Western European organizations, the Association committed itself to a different path. In view of the election situation in the Middle East, the ACEEEEO considered it important to hand over its expertise and knowledge to the countries in that region and offered its professional background. Firstly representatives participated in the statutory meeting of the International Mission for Iraqi Elections organized by the Elections Canada and supported by the United Nations and the Independent Electoral Commission of Iraq with the involvement of the International Foundation for Election Systems (IFES). The second step was the visit to Palestine, upon the invitation of the Palestinian Election Commission. During the stay in Palestine, there were meetings with several election officials and representatives of organizations interested in elections and made discussions about the further cooperation.

The Association continued its Firstvoter.eu project, which entered the second phase. It was an exchange program among our member states and countries from the European Union. Participants were from Russia, Hungary, Spain, Germany, Bosnia and Herzegovina, and Lithuania.

At the beginning of 2004, the Association started to issue a new publication– *Elections in Europe*. The newsletter was distributed first in our annual conference in Tirana, Albania, where the main topic was ‘Voter Turnout with special regard to the first time voters’. The Election Commission of Bosnia and Herzegovina joined the Association during the Tirana conference.

Still in 2004, the ACEEEO contributed to an other International IDEA project, which was International IDEA and regional partners on the political parties program. The aim of this project was to provide legislators, policymakers, political parties and other reformers with a good basis to assess the advantages and disadvantages of their own systems in order to identify opportunities for reform. ACEEEO experts collected the information on country context and the external regulation of political parties in the ACEEEO countries concerned.

According to the agreements, the ACEEEO continued its participation in the International Mission for Iraqi Elections (IMIE) in 2005 as well. Moreover the Association took another role in the Middle East. Representing the Foundation of Afghanistan and the ACEEEO Secretariat, a Middle East election expert travelled to Afghanistan to observe the election preparations and the elections. After the elections, the Acting Chairman of the Independent Election Commission of Afghanistan visited Hungary and discussed the possible ways of collaboration. In order to continue the co-operation with the Election Commission of Palestine, the Association, cooperating with Panorama Center (Palestinian NGO), organized a workshop in Ramallah for ACEEEO and Palestinian election experts in order to exchange views and experiences on the development of the election systems and to discuss current topics of elections. As a follow-up, the presentations and the summary of the discussions were published by the ACEEEO. This project was initiated and financed by the Foreign Ministry and the Ministry of the Interior of Hungary.

Having observer status at the Venice Commission, representatives attended its meeting and discussed the feasibilities of a jointly-organized conference in 2007. This was an important step in the strengthening the pan-European dimension of the ongoing activities in the electoral field as well as in the co-operation between our organizations.

The newest initiative of the Association was introduced at the third Conference of Global Election Organizations and ACEEEO General Assembly Meeting, held in Siófok, Hungary. The 3rd International Meeting of the Global Election Organizations (GEO) – previously held in Canada and Mexico – was now hosted by Hungary. One of the main topics of this very significant Conference was ‘The role of courts in the judging of electoral disputes’. Participants of the Global Election Officials Conference launched an initiative to hold an annual Global Elections Day on the first Thursday of February every year. The main goals of this day are: confirming our belief in the irreversibility of democratic processes; informing the public of new achievements and challenges related to various types of voting systems; calling the attention of parliaments, governments, politicians and world leaders about the important leadership role they play in promoting a culture of democracy and high levels of voter participation; influencing first-time voters and young voters to commit themselves to democratic values.

Jubilee annual conference and General Assembly Meeting was held in Latvia in 2006. One of the most important achievements of the conference was that the General Assembly adopted the new Charter of the Association and the new strategy for 2006-2010. According to the modified Charter, the new name of the Association is Association of European Election Officials (ACEEEO).

A new project was launched in 2006: ‘Non armis, sed vi suffragiorum’ (By the authority of the ballot, not the force of the bullet). The goal is to make youth

understand the importance of participating in the political processes of the democratic life of the European Union, particularly the right to vote and to stand as a candidate at elections. This project supported by the European Commission contains different activity plans e.g. discussions, exchange of best practices, publication of writings, creating a website, that complement each other and will be undertaken by a coalition of NGOs from member states of the EU. In the frame of this project a conference took place in 2006, in Budapest. As a result of the conference, the special edition of the ACEEEO newsletter was issued and by the end of 2006 there was an intention to prepare a handbook aiming at widening the youths' knowledge about the electoral processes and improving their 'citizenship skills' (critical way of thinking, knowledge of political preferences, analysis of political alternatives). The handbook served as an important tool in providing electoral knowledge in secondary schools during history or citizenship lessons as well as in the course of non-formal education activities, trainings. As 2006 marked the 15th anniversary of the establishment of the ACEEEO, the Association considered it appropriate to celebrate this anniversary with a publication presenting the developments that have taken place in the region during the last 15 years. The ACEEEO jubilee book was published by the 15th annual conference and General Assembly meeting held in Jurmala, Latvia. This jubilee book summarized the aims of the 15 years and the results obtained so far.

#### **The fourth five years – New name, new aims 2007-2011**

Our Association started 2007 with a new name and new aims, but some still remained: election observation missions, strengthening international relations, publishing, informing and gathering election officials and cooperating with international organizations. This year we were present at elections in Spain, Latvia, Kazakhstan, Ukraine, and the Russian Federation. Representatives, among others, attended the Global Electoral Organization (GEO) Conference hosted by IFES; the first meeting of Regional Meeting of Balkan Election Officials.

As regards to international cooperation, the most important and significant step was the affiliation with the ACE Electoral Knowledge Network. It is the first-ever





endeavour for providing a globally accessible information resource on elections. In 2007 ACE Partners created 9 Regional Electoral Research Centres (RERC) all over the world. The ACEEEEO became the RERC responsible for Europe. Our role as a RERC is to facilitate the European Regional Network through online communication and through training seminars, meetings, and conferences; to update data on electoral systems of the respective countries, laws and regulations; to collect materials from our region; to serve as the contact point for any electoral information, resources and contacts for experts in the region.



2007 was a special year in the life of the Association. For the second time the ACEEEEO annual conference was organized outside our region, in Strasbourg. The main topic of the Conference was ‘Professional Education of Electoral Actors’. It was a significant event in the life of the ACEEEEO as this was the first time that our conference was organized under our new name, Association of European Election Officials, and this was also the first time that we organized our annual conference in co-operation with the Venice Commission in Strasbourg.

Organizing this annual conference, the Association proved to be worthy of its new name and its new objectives.

2008 was a year of strengthening international relations within Europe and outside the continent. This year the ACEEEEO started to build the foundation stone of two main projects: Electoral Capacity Building for the Central Election Commission of the Republic of Moldova and International Center for Electoral Training and Research. In order to strengthen international relations, the ACEEEEO and IFE (Mexico) signed a General Collaboration Agreement. The agreement is a framework contract that is signed for a period of 4 years. Another General Collaboration Agreement was signed between ACEEEEO Secretariat and the Central Election Commission of Kosovo.

Within the frame of the project with Moldova, the ACEEEEO built sustainable institutional technical capacity and skills to administer elections and referenda through

implementing a Training program for CEC. The Secretariat organized a training for the members of the Central Election Commission of Moldova in order to build sustainable institutional technical capacity and skills to administer elections and referenda through implementing a Training program for CEC. This initial skills and awareness training focused on election systems, interaction with international election observers, organizational and technical skills necessary for administering elections and referenda, planning and assuring human resources for elections, conflict management and handling legal complaints, interpreting the law on elections. The ultimate test of project impact was the performance of CEC staff in conducting the 2009 elections.

The International Center for Electoral Training and Research was jointly launched by IFE-TRIFE-UN. The Pilot programme was a training for election officials of Bosnia and Herzegovina organized by the ACEEEO and International Center of Electoral Training and Research

As a consequence of continuous negotiations, ACEEEO Secretariat took part in the pilot project, organizing together with the IFE-TRIFE-UN.

Besides these two main important projects, the Association published the next volume of '*Elections in Europe*' dedicated to the 16<sup>th</sup> ACEEEO annual conference; continued the project First time voters in the House of the Nation; celebrated Global Elections Day in more than 10 member states; and actively participated and cooperated with the Regional Electoral Resource Centre for the ACE Electoral Knowledge Network.

The 17th ACEEEO annual conference was held in Romania. In 2008, leading democracy and election experts from all over the world, including old EU members and from newly joined EU countries exchanged their experiences; lessons learned and shared ideas on electoral democracy. The agenda focused on the exchange of experiences on the security of the elections and the international comparison of issues related to the role of the law enforcement bodies in it, ensuring security and accuracy of voting materials.

The restructured and redesigned website was launched in 2009. The new homepage, contains up-to-date information on the Association's projects, planned conferences, organizational structure and partners.

In January 2009 ACEEEO started a two-years project, called 'Developing accurate voter lists in transitional democracies' funded by the United Nations Democracy Fund (UNDEF). The project consisted of research based analysis of the voters' registration legislation and practical implementations in the Central and Eastern European region. The project aimed at improving voter registration in countries concerned encouraging the creation of solid legal frameworks which ensure the completeness of registers, prevent double registration, pay attention to groups with special needs, and allow legal remedies in case of inaccuracies. The annual conference in 2010 (held in Tbilisi, Georgia) was dedicated to this topic. After the conference a handbook was issued entitled 'How to develop accurate voter lists'.

2009 continued with the participation in ACE Electoral Knowledge. ACEEEO, as ACE Regional Centre responsible for Eastern and Central Europe, and in 2009 the Association has become 'Associate Member' of the ACE Electoral Knowledge.

This year we carried on our permanent projects, such as participating in election observation mission; celebrating the Global Elections Day, First time voters in the House of the Nation and publishing the next volume of the *Elections in Europe*. In 2009 the Association's annual publication was renewed and has become more professional and more actual.

On the other hand some projects were amended. One was the European VoteMatch tool in Hungary: Voters' Compass. In 2009 the Association created a

Hungarian ‘Voters’ Compass’ in Hungarian and English for the European Parliamentary Elections. This Compass functioned well, and had about 4500 visitors in 2 months. In November 2009, the Secretariat started the process to create a new Voters’ Compass for the April elections. This time the Compass was highly successful, and the first in the country’s similar initiatives: since its start it has more than 29000 single visitors.

The second project carried out in 2009 was the Pilot project for the members of the State Election Commission of Macedonia in the frame of IFE-ACEEEO Collaboration.

This workshop was realized in cooperation with IFE, TRIFE, UNDP Mexico and the ACEEEO.

2010 was an active year in the life of the Association. Besides the annual conference, ACEEEO accomplished its permanent projects, such as ACEEEO publication, *‘Elections in Europe’*.

In 2011, the 7th issue of the Elections in Europe was focused on the main topics of the 20th anniversary conference. Its aims was to gather articles to investigate the status of the independence of electoral management bodies, why is it important, and related issues. Some projects were carried on that related to Youth Voter’s Education: eg. First time voters in the House of the Nation, Student, first time voters’ participation in Global Elections Day’s organization and Participation in the Sziget Festival (Island Youth Festival). Actively acting as Regional Electoral Resource Centre of the ACE Electoral Knowledge Network still belonged to the main objectives. In 2011, ACEEEO contributed to the Political Party Finance Global Survey by completing desk research regarding 19 ACEEEO countries. Thus, ACEEEO contributed with accurate data to be included in the Political Party Finance database of IDEA which is the leading comparative resource on information about the regulation of political party and campaign finance around the world.

20 years have passed since 1991 – the foundation of the ACEEEO, and by 2011, the ACEEEO counted 24 member countries from the European region. In 2011 the organization celebrated its 20<sup>th</sup> anniversary with a conference organized in the foundation country of the Association: in Hungary.

The professional topic of the jubilee conference was the Independence of the Electoral Management Bodies that was disputed in many aspects by electoral professionals coming from more than 40 countries.

Participants of the conference (more than 160 electoral professionals) had reaffirmed their commitment to free, impartial and fair elections in a declaration. They also ascertained that the EMBs had to face with lots of challenges during the past 20 years, and these challenges targeted their independence and impartiality nevertheless they could overcome them. Application of international professional standards, appropriate and regular trainings of staff as well as the good relationship with the media, with citizens and other election stakeholders also play a key role in securing the independence of electoral management bodies.

The General Assembly (GA) of ACEEEO adopted the new strategy of the Association that reinforced the subservience of free and transparent elections and the aim of appropriate trainings of electoral professionals. The GA accepted the resignation of Secretary General Dr. Zoltán Tóth who had been governing the Association since its foundation. The GA elected Zsolt Szolnoki as the new Secretary General, who worked as the Director of Operations of ACEEEO so far.

Still in 2011, the ACEEEO implemented the first regional BRIDGE program. The implementation of the whole program became possible by a sub-regional grant of IFES and a supplementary donation of the UNDP.

In the frame of this program 3 activities were carried out in the European and CIS region, and another showcase seminar was held in Vienna, Austria.

A 5-days long workshop of BRIDGE foundation modules focusing on Strategic and Financial Planning took place in Budapest, Hungary. This workshop first of all aimed to introduce BRIDGE methodology for the EMB representatives; therefore it served as the introductory training before our Train the Facilitator training that was held in November 2011.

The regional Train the Facilitator (TtF) training in Budapest, Hungary between 21 November and 3 December, 2011 was the first training of BRIDGE facilitators in the Central and Eastern Europe and therefore, it is of utmost importance in terms of introducing BRIDGE as a capacity building tool in the region. Implemented by ACEEEO it was the second milestone of the 10 months program supported by IFES and UNDP.

The Showcase Seminar organized on 3-4 May in Vienna, Austria, was the very first one that aimed to bring together election professionals from across Europe. As BRIDGE methodology is not that widely known in Europe, the Association of European Election Officials decided to take the lead in showcasing BRIDGE methodology with the support of OSCE/ODIHR and E-Voting.CC.

In 2011 regarding to partnerships, we participated in different events hosted by the Asian Election Association, OSCE-ODIHR, the Central Election Commission of Georgia and the Central Election Commission of the Russian Federation.

### **The fifth five years – Collaboration 2012-2016**

In 2012 the Association held its 21st annual conference in Sarajevo, Bosnia and Herzegovina. The professional topic of the conference was ‘Participation of Vulnerable Groups in Election Processes: Minorities and Persons with Disabilities’. Focusing on the questions concerning the right to vote and to be elected of persons belonging to these special groups of society, attendants had the possibility to discuss every aspect of the topic from the general question of equal suffrage to more technical matters like difficulties in creating accessible voting materials. The discussion of 145 electoral professionals from 45 countries was inspired by the presentations of national electoral officials, professionals of international organizations and scientists who shared their experiences both from a theoretical and practical point of view.

Participants of the conference reinforced that guaranteeing participation of vulnerable groups in the political life and especially in elections on an equal ground with others, also in connection with the international human rights instruments, is a basic requirement in democratic states and ensuring that is a common responsibility of every stakeholder of the electoral procedure, so law-makers, electoral management bodies, political parties, media, and the voters. To find the best solutions, cooperation with organisations of minorities and with organisation of persons with disabilities is inevitable.

Still in 2012 an international workshop was held on Electoral Administration and Justice for the Permanent Electoral Authority of Romania in Mexico City, as the next step of the collaboration agreement between IFE, TRIFE and ACEEEO.

The training was jointly organized by IFE, and UNDP Mexico, and the ACEEEO.

As continuation to the collaboration of the Secretariat and the CEC of Kosovo, between 24 and 28 October 2011 election experts from the CEC of Kosovo participated on a training focusing on the best practices of voter lists’ preparations.

In this year the Secretary General visited the ODIHR Director and discussed the continuation of the cooperation between the two organisations.



The possible way to follow up of the different observation mission reports was also discussed. Regarding to this issue, the ODIHR Director highlighted the importance of the role of the ACEEEO experts.

In the frame of the election administration fellowships program managed by the International Electoral Education Council and Creative Associates International, Inc. seven Iranian nationalities PhD students participated in a week long study tour in Budapest. The participants listened presentations of the activities of the ACEEEO and were provided with an introduction to internationally accepted electoral policies and practices.

In 2012 we participated in observation missions to Armenia and the Russian Federation.

In 2013, after 2000, Poland took over again the Presidency of the ACEEEO. The 22nd Annual Conference and the General Assembly Meeting was held in Warsaw, and hosted by the National Election Commission and National Election Office of Poland. The topic of the conference was 'The Role of Information and Communication Technology and Social Media in Elections'. This included two subtopics namely 'Development of Voting Technologies since 2000' and 'The challenges of the Social Media Development in Electoral Matters'. The discussion of 155 electoral professionals from 40 different countries was inspired by the presentations of national electoral officials, professionals of international organizations and scientists who shared their experiences both from theoretical and practical point of view. The main conclusions of the three-day conference were summarized in the Warsaw Declaration that urges countries to take several actions in the field of using ICT and social media.

Still in 2013, with the support of IFES, the ACEEEO Secretariat carried on a strategy planning project involving the representatives of the Association's members. The goal of the project was to increase the strategic planning capacity of the ACEEEO and to improve the ability of the organization to meet the evolving needs of its membership, deliver relevant services, and raise the needed funds to thrive as a professional association.

As a result of this process, the General Assembly on its meeting on 13 September adopted a new Strategic Plan of ACEEEO for the period of 2014-2018 and announced new policies on Privacy, Procurement, Social Media, Staffing, Gift Acceptance and Sponsorship.





The General Assembly has also adopted the Central Election Commission of Kyrgyzstan as a New Institutional Member of ACEEEO

The GA meeting elected a new Executive Board for the next three years.

The General Assembly supported the honorary membership of Vladimir Shapoval, former chairman of the Central Election Commission of Ukraine, Dr. Leonardo Valdes, President Councillor of Instituto Federal Electoral, Mexico and Zurab Kharatishvili, former chairman of the Central Election Commission of Georgia.

At the end of the year, in the framework of the agreement with Federal Electoral Institute of Mexico, the ACEEEO offered an international specialized course for its members to exchange knowledge, share experiences and identify procedures and practices. 19 electoral experts from all over the world participated in the course and among them Georgia, Lithuania, Moldova, Romania and the Russian Federation represented the ACEEEO Members.

The five-day study course focused on two topics: Electoral Systems and Results Transmission.

In this year, the ACEEEO has been represented in many international election-related event, among them let us highlight the international conference on Human Rights of Persons with Disabilities in the Balkans and Turkey and the

Global Electoral Organization Conference and Inaugural Assembly of Association of World Election Bodies, which was held in Seoul, Republic of Korea.

In 2013, The Permanent Electoral Authority of Romania took over the Presidency of ACEEEO and organised a successful Annual Conference in Romania after 2008 again.

The topics of the conference were 'Participation of Women in Electoral Process and Public Life' and 'Planning of a General Election'. The framework was provided for the celebration of the 10 years anniversary of the Permanent Electoral Authority of Romania, too. The discussion of 160 electoral professionals from 47 countries consisted of the representatives of electoral management bodies, professionals of international organizations and academics who acquainted with their experiences both from a theoretical and practical point of view. The main conclusions of the three-day conference were summarized in the Bucharest Declaration that forces countries to take several actions in the field of women's participation and the planning of elections.

In this year we contributed to several international events:

- Informal Peer Review Meeting of the EU Fundamental Rights Agency's project 'Indicators on the political participation of persons with disabilities'

- Workshop on Women's Participation in Elections, organised by the PEA Romania in Brasov,
- Joint European Commission-UNDP Thematic Workshop in Jordan,
- International conference Electoral Processes across the CIS organised by the Interparliamentary Assembly of CIS Member Nations in co-organization with the National Assembly of the Republic of Belarus.

In 2014, we sent observers to the elections held in Ecuador, Georgia, Ukraine and Moldova.

In 2015, the Central Election Commission of Moldova held the Presidency of the ACEEEEO. The 24th annual conference and the General Assembly Meeting of the ACEEEEO was held in Chisinau, Republic of Moldova.

The topics of the conference were 'Continuous training of electoral stakeholders' and 'Equality of voters, equality of votes'. 150 electoral professionals took part in the discussion from 37 countries including representatives of electoral management bodies, professionals of international organizations and academics who acquainted with their experiences both from a theoretical and practical point of view.

During the annual conference the General Assembly supported the honorary membership of Mr. Kazimierz W. Czaplicki (former Head of the Election Office of Poland) and accepted a New Associate institutional member of ACEEEEO: Fijian Elections Office (FEO). Based on the decision of the General Assembly, on behalf of the Association the President and the Secretary General signed a Memorandum of Understanding with the Association of Arab Electoral Management Bodies. ACEEEEO has provided support by the preparation and launch of this new regional organisation and plans common projects to enhance free and fair elections in the Arab region.

In 2015, we contributed to different election related event:

- IFES Workshop on Monitoring and Evaluation for EMB Training Units, 11-13 March 2015, Prague, Czech Republic
- International Conference 'General Elections 2014 – Lessons learned', 20-21 March 2015, Teslic, Bosnia and Herzegovina
- 12th European Conference of Electoral Management Bodies, 30-31 March 2015, Brussels, Belgium
- Conference Commemorating the 25th Anniversary of the First Democratic Elections in Czechoslovakia Following the Fall of Communism, 8-9 June 2015, Prague, Czech Republic

During the year we observed elections in the Kyrgyz Republic, Poland, and Ukraine.

In 2016, on the occasion of the 25th anniversary of ACEEEEO, electoral experts, members of electoral management bodies, academics, members of the Association and also representatives of the media gathered in Budapest to participate in the roundtable discussion 'ACEEEEO25 – European cooperation for free and fair elections'. The discussion was held by Zsolt Szolnoki, the Secretary General of the ACEEEEO, who examined the developments in electoral processes since 1991 with experts, and with those who had been closely related to the Association since its foundation. Such important issues as new voting technologies and participation of women in voting processes were raised, and the participants drew attention also to possible future developments in elections.

And in 2016, after the year 2003, the ACEEEEO family returned to Tirana to celebrate the 25<sup>th</sup> anniversary of the Association! We hope, that the history to be continued...!

# The most important ACEEEO projects 1991-2016

## Annual conferences



BUDAPEST, HUNGARY  
KIEV, UKRAINE  
SIÓFOK, HUNGARY  
MOSCOW, RUSSIAN  
FEDERATION  
VILNIUS, LITHUANIA  
BRATISLAVA, SLOVAKIA  
WARSAW, POLAND  
BRIJUNI, CROATIA  
LONDON, UNITED  
KINGDOM  
TIRANA, ALBANIA  
JURMALA, LATVIA  
STRASBOURG, FRANCE  
CONSTANTA, ROMANIA  
YEREVAN, ARMENIA  
TBILISI, GEORGIA  
SARAJEVO, BOSNIA AND  
HERZEGOVINA  
BUCHAREST, ROMANIA  
CHISINAU, MOLDOVA



# Participation at electoral observation missions

KAZAKHSTAN  
KOSOVO  
LATVIA  
MONTENEGRO  
ROMANIA  
RUSSIAN FEDERATION  
SERBIA  
SPAIN  
UKRAINE  
UNITED STATES

AFGHANISTAN  
ARMENIA  
AZERBAIJAN  
BELARUS  
BOSNIA AND HERZEGOVINA  
CROATIA  
ECUADOR  
GEORGIA  
GREAT BRITAIN  
HUNGARY


## Documentation Center

The ACEEEO Documentation Center was established in 1992 in Budapest and it contains more than a thousand volumes of election related books and other



## Developing Accurate Voters' List in Transitional Democracies

ACEEEO believes accurate voter lists are essential to developing and maintaining the integrity of democratic elections, therefore it realized a two-years project in 2010-2011 with the support of the United Nations Democracy Fund (UNDEF). The project aimed to research, analyse and present the regional practices, experiences and problems in the field of voter registration. As a result, a handbook was published to help electoral management bodies, legislatures and other electoral stakeholders.



# Projects for young voters

## [www.firstvoter.org](http://www.firstvoter.org)

An informational forum available in English, Hungarian and Russian. The website was launched to widen the knowledge of European youth about the elections and voting. [www.firstvoter.org](http://www.firstvoter.org) now has a communication surface with an internal communication system. We would like to introduce further improvements in our website in the future.

## First voters in Parliament

The project gave an excellent opportunity not just to see the House of Parliament of Hungary, but also to learn and ask about the election process. During the visit, a film was presented about the election history and the current election system. The visitors received a DVD of our national symbols.

## "Non armis, sed vi suffragiorum,,

The goal of this project was to make youth understand the importance of participating in the political processes of democratic life, particularly the right to vote and to stand as a candidate at elections. *"Non armis, sed vi suffragiorum"* (By the authority of the ballot, not the force of the bullet) was supported by the European Commission and contained different activity plans e.g. discussion, exchange of practises, managing a website, publication of writings. In the end, a handbook was issued for voter education activities with an enclosed CD containing interactive education material.





Continuous training of electoral stakeholders  
Equality of voters, equality of votes

Непрерывная подготовка участников избирательного процесса  
Равенство избирателей, равенство голосов

In focus: Republic of Moldova

© 2004-2005: Posing/Pressa Magazine

## Elections in Europe

The first editions of the ACEEEO journal was published in 2004 in English and Russian. The journal was distributed in our annual conference in Tirana, Albania, where the main topic was „Voter Turnout with special regard to the first time voters”. Since 2004 the journal is published each year within the scope of the Association’s activities.

## Global Elections Day

From 14 to 17 September 2005, election experts from all around the world participated in the Global Election Officials Conference in Hungary. The participants have launched an initiative to hold an annual ‘Global Elections Day’ on the first Thursday of February every year.

*The main goals of this day are:*

- confirming belief in the irreversibility of democratic processes;
- informing the public of new achievements and challenges related to various types of voting systems;
- draw the attention of parliaments, governments, politicians and world leaders on the importance of their leadership role that they play in promoting a culture of democracy and high levels of voter participation;
- influencing first-time voters and young voters to commit themselves to democratic values.





## Projects to help the work of EMBs

- Multilingual election dictionary
- Convention on Election Standards, Electoral Rights and Freedoms
- Contribution to ACE Electoral Knowledge Network
- Developing accurate voter lists in transitional democracies
- Money and politics project
- European VoteMatch
- Contribution to Electoral Process Information Collection
- Exhibition of the Suppliers of Election Equipment and Services
- BRIDGE Showcase Seminar on External Voting
- Promoting Electoral Access of Persons with Disabilities
- European Parliamentary Election Evaluation Seminar

## Capacity building for national and regional electoral organisations

- 1999: Association of Election Officials in Bosnia and Herzegovina
- 2003: International Mission for Iraqi Elections
- 2003: Palestinian Election Commission
- 2008: Central Election Commission of the Republic of Moldova
- 2006: Palestine, the Association, cooperating with Panorama Center (Palestinian NGO), organized a workshop in Ramallah for ACEEEO and Palestinian election experts

# DEVELOPMENTS AND TRENDS OF THE ELECTORAL SYSTEMS IN THE LAST 25 YEARS IN ACEEEO MEMBERS' STATES



Zoltán Pozsár-Szentmiklós<sup>\*</sup>

## INTRODUCTION

### *General aim*

The aim of this volume of studies is to offer an overview of the *general trends* which were *present in the electoral legislation and practice of ACEEEO members' states* in the last 25 years. As elections have many, very different aspects, in order to have a coherent analysis, it is necessary to make in advance a selection of the examined topics in this regard. Accordingly, the editorial board decided to focus on the following topics: (a) general particularities of national elections, (b) history of the related electoral legislation, (c) activity of election management bodies, and (d) safeguards of free and fair elections. Moreover, our research was limited in time, focusing on the period between 1991-2016 – the „active” ACEEEO years till present –, as well as in scope, as we examined only parliamentary<sup>1</sup> and presidential elections.

We do believe that focusing on these topics one can have a *general view on the trends related to national elections* in the examined period, both from the electoral stakeholders' and from the citizens' point of view which can contribute to the future development of electoral systems.

### *Methodology*

The editorial board asked ACEEEO members to prepare their analyses structured based on the above mentioned four topics. Due to necessary limitation of extension these analyses naturally could not be comprehensive, rather offering the possibility for the authors to *highlight the most important aspects* related to the examined topics. Accordingly, every analysis – all of these are valuable contributions – has a *different emphasis*, specific to the particularities of the given electoral system.

During the edition of this volume we focused on the *general trends which are common in all ACEEEO members' states* or in the significant majority of them. Additionally, we highlighted topics which at present are typical to a minority of the members' states but can be considered as *progressive elements* which can play the role of best practices in the future by strengthening the democratic values underlying the elections and the possibilities to exercise the rights of citizens.

Findings of this study are structured based on the four pillars of the country analyses. Where it is possible, findings are compared with the basic provisions of the relevant international documents related to elections. However, it is important to note that *the general findings are not comprehensive* as – due to the particularities of the project – are not based on empirical data and detailed contextual analyses.

---

<sup>\*</sup> ACEEEO Expert

<sup>1</sup> By *parliamentary elections* in the following we do understand federal elections to the State Duma in the case of the Russian Federation and elections to the House of Representatives of Parliamentary Assembly of Bosnia and Herzegovina.



## ***Relevant similarities and differences between the ACEEEO members' states***

The ACEEEO family is diverse, however, there are significant similarities between the members' states taking into consideration their historical and social background. These elements, as well as the circumstances related to the internationalization of economical and social life, the development of the digital age have impacts on the electoral systems. On the other hand, each country has its own particularities related to constitutional traditions, forms of government, federal or unitarian structure of the state, unicameral or bicameral structure of the legislative power, size of the country, presence of large groups of national minorities, or communities of citizens living abroad, etc., which form an important frame for the institutional and substantive design of elections.

The following elements could be considered as *significant similarities* which could have an effect on the legislation and practice related to national elections in the case of ACEEEO members' states:

- Almost all countries<sup>2</sup> had to rebuild their constitutional system after 1990 (or later). In most of the cases even a new constitution was enacted in the early nineties.<sup>3</sup>
- Each country introduced new electoral systems at all levels of representation (national and local).
- Party pluralism began to function (or to continue after a long pause) in each country after 1990.
- Each country ratified relevant international and regional treaties on human rights, therefore shares the commitment to democratic values and the universal, equal, free, secret and direct suffrage.<sup>4</sup>
- Each country has a republican form, as the head of the state is the president, elected directly, or by the national parliament.
- In the early years each country faced the challenge related to the absence of permanent electoral management bodies thus the lack of the responsibility and expertise to organize elections regularly.
- From the very beginning each country plays an active role in the international cooperation related to elections.

## **TRENDS RELATED TO THE DESIGN OF ELECTORAL SYSTEMS**

### ***Parliamentary elections***

#### ***Nomination of candidates***

In the vast majority of the ACEEEO members' states candidates can run as party nominees or as individual candidates.<sup>5</sup> In some countries – along political parties – it is also possible for socio-political organisations (Moldova) and groups of individuals (Croatia, Georgia, Macedonia, Montenegro, Serbia, and labour collectives in the case of Belarus) to nominate candidates.

The most common requirement for the candidacy is the *collection of a prescribed number of signatures of the voters*. However, in the case of some country regulations,

---

<sup>2</sup> Turkey can be considered as an exception in this regard and in the related questions.

<sup>3</sup> There are also exceptions in this regard: Latvia reinstated its constitution from 1922 in 1991, Kyrgyzstan enacted its new constitution in 2010, while Hungary enacted its new Fundamental Law in 2011.

<sup>4</sup> Among other relevant documents, see the *Code of Good Practice in Electoral Matters* adopted by the European Commission for Democracy through Law (Venice Commission) (Opinion no 190/2002).

<sup>5</sup> Latvia can be considered as an exception in this respect as only registered political parties or alliances of political parties can submit a list of candidates.

those political forces which are already in power are treated preferentially in this respect. In Albania incumbent MPs are not obliged to collect supporting signatures for their candidacy, while in Slovenia incumbent MPs also can nominate candidates. In Georgia nominating organizations that received a certain percentage of votes at the last elections are required to collect less signatures than other parties.

*Election deposits* instead of collecting supporting signatures are still rarely used in ACEEEEO members' states: Latvia and Slovakia can be mentioned in this respect, as well as Turkey in the case of individual candidates. In Lithuania this is an additional requirement along supporting signatures.

### *Election thresholds*

It is a common legislative technique to prescribe election thresholds in order to ensure mandates only for those candidates who obtain the support of a significant proportion of voters. In the case of single-member constituencies (as a majoritarian element of elections) the typical requirement in this respect is obtaining the majority of the votes in the first round and relative majority in the second round. In the case of electoral lists (as a proportional element of elections) the support of the *3-6% of the votes on average it is prescribed* in order to win mandates. In Albania, Montenegro and Slovakia the threshold is 3%, in Slovenia 4%, in Armenia, Croatia, Georgia, Hungary, Latvia, Lithuania, Poland, the Russian Federation, Serbia and Ukraine 5%, in Moldova 6%, while in Kyrgyzstan 7%. The 10% threshold used in Turkey is unusual in this respect. It is also important to note that the frequent change of the election threshold<sup>6</sup> can negatively effect the fairness of the electoral competition.

### *Election systems*

As majoritarian, proportional and mixed elections systems are all appropriate methods for the composition of the national parliaments, on the same time causing different effects on the formation of government and the adequate representation of the voter's preferences, in the ACEEEEO members' states various forms of these are present. However, the vast majority of the countries has a proportional system and a smaller proportion mixed systems (Armenia, Georgia, Hungary, Lithuania, Ukraine). In this regard the majority system used in Belarus can be considered as an exception. Moreover, there can be detected a shift from majoritarian systems to proportional (Albania, Kazakhstan, Moldova) and mixed systems (Macedonia, Ukraine) and from mixed systems to proportional systems (Armenia, Bulgaria, Croatia, Macedonia) as a *trend*.

### *Preferential votes*

Some of the election systems (Croatia, Latvia, Slovakia, Slovenia) applies preferential votes or the possibility of rating candidates (Lithuania). In both cases voters have the possibility to mark the name(s) of those candidates on the list they vote for which they favorize. According the given regulations, the *preferences of the voters have a significant effect* on the allocation of mandates among the candidates representing the same nominating organization. It is important to note that this technique enhances the inclusion of citizens in the core questions of the election process by taking into consideration their personal opinion on the competences of the candidates.

---

<sup>6</sup> See the election laws of the Republic of Moldova.

## *Gender quotas*

In some of the examined countries electoral laws prescribe gender quotas in order to *ensure more equal representation of genders* in the elected representative bodies. Typical legislative techniques are in this respect (a) the prescribed minimal proportions of the less represented gender on the candidates' lists (40% in Bosnia and Herzegovina and in Macedonia, 35% in Slovenia, 30% in Albania, Kyrgyzstan and Montenegro) and (b) the compulsory presence of the less represented gender in given sequences of the candidates' list (among each three candidates in the case of Serbia, among each four candidates in the case of Montenegro and in the first three names of the list in the case of Albania). All of these techniques can be considered as very progressive elements of the election system taking into consideration that women are still deeply under-represented in most of the countries.<sup>7</sup>

## *Representation of national minorities*

National minorities are present in each of the ACEEEO members' states. In those countries where their proportion compared to the majority is significant, in many cases *special rules* are applied in order to ensure their representation in the parliament. In Croatia a special electoral district is created for the election of the representatives of the national minorities, in Serbia for those parties which represent ethnic minorities it is not obligatory to pass the election threshold. Similarly, in Montenegro special election thresholds are used in the case of the political organizations of national minorities. Moreover, in Montenegro special additional mandates are distributed based on the votes casted in those polling districts where the proportion of the Albanian minority is higher. In Slovenia additional seats are assured for the representants of the Hungarian and the Italian community, while in Romania every national minority is entitled to one seat in addition to the number of mandates allocated based on the election results. In Hungary alternative preferential mandates are accessible for the organizations of the national minorities. The election laws of Bosnia and Herzegovina are special as – due to historical reasons – take into consideration ethnic and territorial principles when designing election systems in general. The regulation of Kazakhstan is also special as alongside the elected representatives, nine members of the House of Representatives are appointed by the president among the members of a consultative body representing the ethnic minorities.

## *Representation of citizens living abroad*

In the case of some ACEEEO members' states large communities of citizens live outside the borders of their country of citizenship. In their case, usually there are no special election rules applied. The formation of a *special constituency* for citizens not having domicile in the respective country is a progressive measure in this respect – the Croatian and the Macedonian regulation offer good examples on that.

## *Election methods*

In all of the ACEEEO members' states the most frequently used method for casting the vote is *personal voting* at the polling stations. The possibility of requesting *mobile ballot boxes* for those citizens who cannot access the polling stations due to their health

---

<sup>7</sup> See the database of the Inter-Parliamentary Union <http://www.ipu.org/wmn-e/classif.htm> (Situation as of 1st June 2016)



conditions or imprisonment and voting at the *diplomatic and consular missions* of the given country is frequently used. Moreover, in some countries there is a possibility of *early voting* at designated polling stations (Belarus, Latvia, Slovenia, and absentee voting in Bosnia and Herzegovina) or *postal voting* when voting from abroad (Bosnia and Herzegovina, Latvia, Slovakia, Slovenia) or for those citizens who reside abroad (Hungary, Romania). These measures can be considered as progressive but rare exceptions. *E-voting* systems are still not used in the ACEEEEO members' states. It is worth noting that in Lithuania it was prepared a legislative proposal in this respect, which unfortunately was not debated yet by the parliament. In Latvia the electronic vote counting system proved to be a successful invention. In the Russian Federation electronic voting systems are applied additionally at some of the polling stations. In Kyrgyzstan the biometric voter identification and the partial use of automatic counting ballot boxes proved to be a success.

### ***Presidential elections***

#### ***Election by the parliament***

In a small number of ACEEEEO members' states (Albania, Hungary, Latvia) the president is elected by the parliament, thus citizens do not take part directly in this process. The head of the state is elected in every case with a higher proportion of MPs than of the ordinary majority in order to provide due legitimacy for the president. In the vast majority of these countries there are detailed regulations on the rules applicable in the second, third, etc. rounds and on the possibility of new nominations in order to ensure the success of the election process.

#### ***Direct election***

In the vast majority of the ACEEEEO members' states the head of the state is elected directly by the people, thus offering a higher level of legitimacy for the president. However, this particularity does not determine itself the powers of the president and the form of government: there are examples for directly elected presidents in presidential, semipresidential and parliamentary systems as well. The typical requirement for the direct election of the president is obtaining the majority of the votes in the first round and relative majority in the second round. Bulgaria as well as Bosnia and Herzegovina are unique in this respect as in Bulgaria also exists the position of vice-president, while the presidency of Bosnia and Herzegovina is composed of three members, representing the three constituent nations of the country.

It is worth mentioning that there are legislative techniques which *involve citizens* in the election process: citizens can form nominating committees proposing their own candidates or can support the nomination of candidates with their signatures (Azerbaijan, Belarus, Croatia, Georgia, Macedonia, Montenegro, Serbia).

## **TRENDS RELATED TO THE ELECTORAL LEGISLATION**

### ***Forms of regulation***

In the most of the cases the constitution of the respective country prescribes the basic principles and fundamental rights guiding the elections. Due to their importance, the rules related to the election of the president are mostly included in the text of the basic law, especially in the case of elections by the parliament. The biggest part of the

relevant rules related to elections are included in *statutes* enacted by the national parliaments, in some cases in laws having a special status (e.g. constitutional act in the case of Kazakhstan, organic laws in the case of Georgia). There is also a trend to enact *election codes* which contain rules related to more types of elections as well as procedural rules: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Macedonia, Moldova, Slovakia have detailed election codes. It can be also noted that in Lithuania it started the procedure of drafting an electoral code in 2013, while in Romania the draft electoral code is ready for parliamentary debate since 2011. Alongside the rules on technical matters and details included in regulations (decrees) of the executive power, in many countries other forms of regulation (e.g. *guidelines*) are present as well, mostly adopted by the national election management bodies in order to ensure the uniform interpretation of legislation related to elections.

### *Stability of regulation*

The stability of election laws is a relative democratic requirement. There are cases when an amendment is unavoidable for the proper organization of elections and also cases when the amendment or the replacement of the election legislation in force is not necessary. However, the very frequent amendment or replacement of election laws, as well as amendments one year prior to elections are undesirable in a democratic society.<sup>8</sup> Like in every country, in the ACEEEO members' states there are also examples of the latter approach even in the case of substantive amendments.<sup>9</sup>

### *Typical purposes of amendments*

Electoral laws are amended due to very different reasons. Many of these could be considered as typical which are present in the legislative practice of every country.

- a) There are *ordinary circumstances* which can lead to amendments in every field of law, not particularly in electoral matters. Change of social relations (e.g. the number of voters living in a constituency) and technical improvement (e.g. the use of information technologies) are relevant in electoral matters as well, which usually cause the review of specific elements of the regulation by the legislator on a timely basis. Amendments related to the role of the electronic media in the election campaign are typical in this respect.<sup>10</sup>
- b) The effectiveness of many rules included in election laws can be evaluated only in practice, based on the experiences related to the organisation of elections. Therefore, in many cases the *need for the correction* or specification of a rule or part of the legislation follows from the experience-grounded proposals of professionals. This often leads to the replacement of the former regulation with a new law.<sup>11</sup>
- c) In the constitutional order of almost every ACEEEO members' country is present the possibility of *judicial review* (usually exercised by constitutional

<sup>8</sup> The *Code of Good Practice in Electoral Matters* states clearly in this respect: „*The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.*” [II.2.b.]

<sup>9</sup> Albania 2005, 2013; Armenia 2015 (prior to a referendum); Bulgaria 2005, 2009; Hungary 1994, 1997, 2014; Latvia, 1998, 2006, 2014; Moldova, 2010; Romania 2000; Serbia 1997; Slovakia, 1992, 1998, 2005; Slovenia, 1995.

<sup>10</sup> Albania 1998, 2003.

<sup>11</sup> Albania 2000, 2008; Armenia 1999, 2011, 2016; Bulgaria 1991, 2001, 2011, 2014; Latvia, 1995; Romania, 2004; Serbia 2000; Slovakia, 2004, 2014.

courts or supreme courts) of laws or judicial decisions related to elections. The final judicial decisions in this respect nullify the legislative provisions or judicial decisions which are not in line with the constitution, as well as often determine the correct (constitution-conform) interpretation of the election laws. In both cases there can occur a need for amendment of the election laws in force in order to comply with the findings of the high judicial organ.<sup>12</sup> The same situation can occur in the case of the decisions of international judicial organs (e.g. the European Court of Human Rights).

- d) As national election management bodies, international organizations and other election stakeholders are strongly interconnected, the idea of the improvement of the regulation often is based on *recommendations and reports on best practices*. The Venice Commission of the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) play the most important role in this respect.<sup>13</sup>

### *Non-typical amendments*

In some cases amendments of electoral laws occur unexpectedly for different reasons.

- a) After a *constitutional deadlock* there could be a need for re-formation of the most important state organs. These situations can also serve as a reason to reformulate some of the basic elements of the electoral system in order to avoid future deadlocks.<sup>14</sup>
- b) In other cases clear *political motives* of the actual political majority can be identified in relation with the amendments of electoral laws, by taking into consideration its actual support and interests in the period before the next elections.<sup>15</sup>

### *Significant amendments*

#### *Alternations of electoral systems*

Among the line of amendments of electoral laws those amendments which change the election system as a result have special relevance. These changes in many cases can be well-founded and well-prepared from the professional point of view. However, frequent alternations of the substantive elements of the electoral system are not in line with the democratic values underlying the elections as these negatively effect the fairness of the political competition.

In this respect, there can be mentioned some of the experiences of ACEEEEO members' countries.

---

<sup>12</sup> See the 2005 and 2011 decision of the Constitutional Court of Hungary, the 2006 decision of the Supreme Court of Latvia, the 1998 decision of the Constitutional Court of Slovakia, the 2003 decision of the Constitutional Court of Slovenia, the 2016 decision of the Constitutional Court of the Republic of Moldova, the 2012 decision of the Constitutional Court of Lithuania and the 2012 decision of the Constitutional Court of Romania.

<sup>13</sup> See the recommendations for Bulgaria (2011, 2013) and Moldova (2008).

<sup>14</sup> See the 1994 elections in Moldova.

<sup>15</sup> Albania and Ukraine can be mentioned in this respect due the frequent substantive amendments of electoral laws prior to elections in the past. Romania is another example taking into consideration that the election system was modified right after a national consultative referendum in 2007. In Hungary the Fundamental Law and the acts regulating the elections were enacted with the exclusive support of the governing majority in 2011, while in 2013 even the Fundamental Law was amended unilaterally in order to exclude the repeated judicial review of rules previously found unconstitutional by the Constitutional Court.

In Ukraine after the majority system in the early years, with one exception (the 2006 elections held under a proportional system) the mixed system was used. In Albania, after the various forms of majority and mixed systems, at present (since 2009) a proportional system is used. In Romania after the use of the proportional system, for a shorter period (2008-2016) the mixed system was used, while from 2016 the proportional system will be used again. In Macedonia after the use of a majority system a mixed system (1998-2002), then a proportionally system was used.

In Armenia the mixed electoral system, which in different time periods allocated various proportions of mandates distributed under majoritarian and proportional electoral systems is currently transformed to a fully proportional electoral system which will be applied during the next parliamentary elections of 2017. In Kazakhstan after the use of a majority (in the early nineties) and a mixed system (since 1999) the present electoral system of the House of Representatives is proportional (since 2007). Similarly, in Bulgaria members of parliament were elected under a mixed system in 1990, under a proportional system between 1991-2009, again under a mixed system between 2009-2011 and at present under a proportional system. In the Russian Federation after a mixed system (1993-2007) a proportional system was used (2007-2016) in order to return to a mixed system from 2016.

#### *Alternations of parliamentary / direct elections of the president*

In some countries the way of the elections of the president was also changed from one model to the other. This is the case in Bulgaria, where the president was elected in the early nineties by the parliament, then, since 1992 (together with the vice-president) directly by the people. Similarly, in Slovakia the president was elected by the National Council until 1998, then – based on an amendment to the Constitution – by popular vote.

The story-line of the regulation is more interesting in the Republic of Moldova, where in the early years the president was elected by direct vote of the citizens. Based on the amendment to the Constitution in 2000 the president was elected by the parliament in the next period. However, based on the decision of the Constitutional Court in 2016, the previous amendment to the constitution was declared unconstitutional, therefore the Moldovan citizens will elect the head of the state again directly. Similarly, it is of great importance that – contrary to the election by the Grand National Assembly in the previous period – the president of Turkey is directly elected based on the amendment of the legal provisions in 2012.

## **TRENDS RELATED TO THE FUNCTIONING OF ELECTORAL MANAGEMENT BODIES**

### *Composition and legal status*

The central election management bodies (EMBs) – according to the professional standards – function on a *permanent basis* in every ACEEEO members' country. However, in some countries territorial election management bodies<sup>16</sup> or local management bodies<sup>17</sup> function on a permanent basis as well. It is remarkable that the regulation in separate acts of the different elections (and the related organizational matters) in Bulgaria caused a situation where even several election commissions operated simultaneously. According to the recommendations of international organizations, later

---

<sup>16</sup> See the territorial election commissions in Armenia.

<sup>17</sup> See the precinct election commissions in the Russian Federation.

one central election commission was established, responsible for the organization of all types of elections in Bulgaria.

*Members* of the central election management bodies are elected or appointed in most of the cases by the parliament or by the president. It is a progressive element that certain regulations contain detailed provisions in order to ensure that *majority and opposition* parties in parliament (in some cases independent MPs as well) can nominate members in a proportional (Georgia, Moldova, Slovenia) or equal (Azerbaijan, Croatia, Kyrgyzstan, Slovakia) manner or in fixed proportion (Macedonia, Montenegro, Albania).

There are also examples when a judicial organ is appointing or nominating members (Croatia, Latvia, Slovakia, Slovenia, Turkey). Similarly, there are examples on the nomination of members by NGOs (Bulgaria) and other professional organizations (the Bar Association in Lithuania). In Serbia the representative of the National Statistical Office takes part of the work of the central election commission without having a right to vote. In the case of Armenia and Poland all members of the central election commission – like the members of the territorial election commissions as well – are nominated exclusively by judicial and other independent state organs on a professional basis. In Romania the Electoral Expert Body was established as a database of the citizens who can be presidents of polling stations in order to provide the due formation of polling boards in the future.

Alongside elected members, central election commissions usually also have members delegated by the political parties having factions in parliament or by the nominating organizations in the period before the actual elections. This principle also guides the formation of lower-level election commissions. It is worth mentioning that in some countries delegated members do not have a right to vote but can participate in the work of the election commission on an advisory basis (e.g. Turkey).

### ***General tasks***

All central election management bodies bear the general responsibility for preparing and organizing elections, as well as determining the election results. Alongside the main tasks, the vast majority of the central election management bodies is responsible for other important tasks which are in close relation with elections (e.g. providing uniform and accurate application of election legislation, coordinating the activity of subordinate election commissions, summarizing the results of elections, reviewing complaints about the election procedure, maintaining the voters' list, informing and educating voters about the voting procedures, etc.).

Tasks which are closer to other responsibilities of the state, but still in connection with the elections – such as control of the activity of the media in election period, control of campaign financing – are also important in this regard. In the majority of the ACEEEO members' states these tasks belong to separate state organs (media authority, state audit office, etc.), while in several cases the EMBs hold this responsibility as well.<sup>18</sup>

## **TRENDS RELATED TO THE SAFEGUARDS OF FREE AND FAIR ELECTIONS**

### ***Election campaigns***

#### ***Freedom of speech and freedom of information***

Freedom of speech is of crucial importance in every constitutional democracy. It can be considered also as a *prerequisite for democratic elections*, for two reasons. First,

---

<sup>18</sup> Slovakia can be mentioned regarding the control of party finance.

candidates can participate freely in the electoral competition only if they are entitled to express their messages, programmes to voters without significant limitations. Second, voters may cast freely their votes only if they are well-informed and access all the relevant information they need in order to make an appropriate and free decision on their vote.

One can mention that every constitution and election law provides these freedoms in the case ACEEEO members' states. Typical limitations related to the content of the messages expressed during election campaigns are usually related to the protection of human dignity, the interests of minorities, and the interests of the society. However, in some cases legal provisions also prescribe the protection of the good reputation of the candidates<sup>19</sup> – which could be questionable taking into consideration that in a democratic society the freedom of speech exercised in the electoral competition (political speech) in most of the cases is more valuable than the personal interests of candidates. One can also mention that candidates can be considered as public figures in this respect, therefore could be subject of intensive critique. The use of the *Electoral Code of Ethics* in the Croatian practice can be considered as a good example to guide to some extent the content of election campaigns.

In the vast majority of the regulations of ACEEEO members' countries detailed rules are concerning the way different campaign activities can be conducted. The ban to campaign on Election Day and the day before Election Day<sup>20</sup> can be considered as typical as well.

### *Access to media*

Media, especially its electronic forms (radio and television broadcasting) has much stronger effect on the formation of voters' opinion than other campaign tools. According to the recommendations of international organizations, there should be provided *equal access based on equal conditions* to media for all electoral competitors.<sup>21</sup> In the majority of the electoral laws of the ACEEEO members' states there are detailed regulations related to the access of electoral competitors to electronic media. A typical rule in this respect is that public (state-owned) media broadcasting companies have a duty to publish the political advertisements of all electoral competitors in a limited, by equal time, while private broadcasting companies have to offer equal conditions for all competitors. The media campaign in most of the cases is controlled by state authorities – as it was mentioned earlier – typically by a special media authority, in other cases by EMBs.

It can be also highlighted that regulations related to the activity of the electronic media in election campaigns promote more the political parties than the independent candidates<sup>22</sup> – a challenge which is worth facing in the future. Legal provisions which at first look promote equal opportunities for political parties to broadcast their political advertisements but do not take into consideration all relevant circumstances, in practice can result in a restricted campaign activity and the limitation of the freedom of information.<sup>23</sup> One can also add that there are no provisions which clearly restrain the

---

<sup>19</sup> Bulgaria and Kazakhstan can be mentioned in this regard.

<sup>20</sup> Armenia, Azerbaijan, Bulgaria, Croatia, Latvia, Macedonia, Moldova, Slovenia, while in Lithuania the campaign silence period starts 30 hours, in Serbia and Slovakia 48 hours prior to Election Day.

<sup>21</sup> See *Recommendation of the Council of Europe's Committee of Ministers on measures concerning media coverage of election campaigns* [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1999\)015&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1999)015&expmem_EN.asp)

<sup>22</sup> See assessments based on the Albanian experiences.

<sup>23</sup> In Hungary the provision which prescribed that all political advertisements can be broadcasted for free of charge resulted in a situation where political advertisements were not broadcasted on private broadcasting channels, only in public media – however, private broadcasting channels are much more popular than public ones.



incumbent government from participating directly or indirectly in the election campaign, affecting by its activity the election results.

### ***Campaign financing***

Electoral laws and other related laws of the ACEEEO members' countries contain *rules related to the financing of election campaigns*. A typical rule in this regard is the prohibition of accepting anonymous donations, donations from foreign citizens or legal entities. It is also a typical rule prescribing a maximum limit for donations given by individuals or legal entities (Albania, Belarus, Georgia, Latvia, Lithuania, Macedonia, Serbia, Slovenia, Turkey) or a general limit on campaign finance expenditures (Georgia, Romania, Kazakhstan, Latvia, Macedonia). State funds are also often accessible for political contestants based on equal conditions and on a proportional basis, taking also into consideration the election results.<sup>24</sup>

The requirement to open a *special account* for campaign funds prescribed for candidates and parties (Albania, Kazakhstan, Lithuania, Romania, Slovakia, Slovenia and partly in Hungary) enhances the possibility of effective control by state organs. It is a progressive trend that in many countries it is prescribed the publishing of the donations that exceed a certain limit (Serbia) and of the *financial reports* of parties after the campaign period (Albania, Azerbaijan, Georgia, Hungary, Montenegro, Kazakhstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Russian Federation, Turkey, Ukraine). However, only in a few cases exist detailed rules related to the effective control of campaign funds, which usually is conducted by state audit offices or other authorized entities (the Corruption Prevention and Combating Bureau in the case of Latvia, the Constitutional Court in Turkey, the Agency for Prevention of Corruption in the case of Montenegro) and in some cases by the central election commissions (Lithuania, Romania, Russian Federation).

### ***Transparency***

Transparency is a general requirement related to the activity of state organs which has special relevance related to elections. The *free access to the detailed information* related to elections, to the list of the registered candidates, to the election results can be considered without doubt as minimum requirements of democratic elections. However, strong arguments are demonstrating that the free and unimpeded access to the records of the meetings of election commissions, the decisions of courts deciding in electoral matters and all the data related the funds used by political parties are similarly important to enhance the public confidence in the work of EMBs. This layer of transparency is prescribed as well in the electoral laws of some ACEEEO members' countries which is clearly a progressive trend in this respect (Armenia, Lithuania). One can highlight the practice of Armenia and the Republic of Moldova, where the meetings of the central election commission are also transmitted online. In Azerbaijan webcams are installed at a significant proportion of polling stations.

Transparency of the electoral process is also enhanced by legal provisions (common in all ACEEEO members' countries) stipulating the possibility of presence of citizens and international observers at the polling stations and by the counting of votes.

---

<sup>24</sup> Poland, Russian Federation, Serbia, Latvia and Turkey. In Bulgaria media package funds are accessible for nominating organizations, while in Romania there is a possibility for the reimbursement of campaign expenditures.

## ***Legal remedies***

It is a clear requirement of democratic elections emphasized in many international documents and recommendations that all decisions of election management bodies should be subject of an effective system of appeal.<sup>25</sup> All ACEEEO members' states fulfil this requirement: a typical way of legal remedy is providing the right to appeal against the decisions of the lower level election commissions to the higher level election commissions and then the court functioning on the respective level. The country regulations slightly differ in this respect as in some cases a high administrative court or court of appeal (Armenia, Azerbaijan, Macedonia, Lithuania, Slovakia, Ukraine), a special electoral college of the respective court (Albania), the supreme court (Belarus, Latvia, Poland) or even the constitutional court (Armenia, Croatia, Montenegro and Lithuania in specified cases) has the final word in certain electoral issues. In the case of Azerbaijan the approval of the election results by the Constitutional Court is part of the ordinary procedure.

All examined country regulations open the possibility to submit complaints against the decisions of the EMBs to *all contestants* in order to defend their interests. However, some country regulations offer this possibility also to *every voter* (Azerbaijan, Hungary, Kazakhstan, Macedonia, Montenegro, Moldova, Slovenia, Ukraine). In Croatia 5% of the voters living in a constituency can submit a complaint, while in Slovakia 10% of the voters can request the declaration of the unconstitutionality of the election before the Constitutional Court. One can emphasize that the above mentioned are inclusive, progressive steps as it promote the full exercise of electoral rights and also enhance public confidence in elections.

## **CONCLUSIONS**

As it was mentioned in the introductory remarks, this paper did not have the aim to offer an exhaustive and comprehensive analysis, rather to highlight a set of elements related to elections which are clearly detectable in the practice of the vast majority of ACEEEO members' countries, as well as topics that represent a progressive approach to the related issues and can be part of best practices in the future. Accordingly, the following elements can be highlighted when summing up the above analysis.

## **SUMMARY OF GENERAL TRENDS AND BEST PRACTICES IN THE LAST 25 YEARS IN ACEEEO MEMBERS' STATES**

### **Trends related to the design of electoral systems**

#### ***Preferential votes***

Preferential votes are applied in only a few ACEEEO members' states. By taking into consideration their personal opinion more precisely, this technique enhances the inclusion of citizens in the core questions of the election process. At the same time preferential votes can have a significant effect on the democratization of the activity of political parties by pressing them to nominate candidates who enjoy due public reputation and try to convince voters on their personal competences. On the other hand, preferential votes also enhance the personal responsibility of deputies by offering voters the possibility to express their opinion on her personal activity at the time of the next elections.

---

<sup>25</sup> See the *Code of Good Practice in Electoral Matters* [3.3.]



### *Due representation of national minorities*

National minorities are present in different proportions in the ACEEEO members' states. Accordingly, every country has its own traditions related to the political representation of the communities of national minorities, taking into consideration their equal suffrage as citizens of the respective country and the duty of the state to ensure their presence in the political organs of the state. Country regulations differ based on constitutional framework as well as the size and the number of minority communities. However, the preference principle can be considered typical in this regard. Regulations which promote representation of national minorities based on equal suffrage, democratic legitimacy and a genuine probability of winning preferential mandates are in accordance with constitutional values.

### *New election methods*

The rapidly changing elements of social life (diversity of international relations, frequency of working out of the place of residence, development of information technologies) has practical effects on the way citizens can take part in the political decisions of their home country. That is why some country regulations offer the possibility of early voting at designated polling stations or postal voting when voting from abroad. The aim of the regulation in both cases is to ensure that citizens can cast their votes easily even in the case they are far from their place of residence on Election Day. E-voting can also promote this aim and also could be a progressive trend in the future. It should be emphasized that all these methods should be accessible for all citizens in an equal and genuine manner.

### *Gender quotas*

In some of the ACEEEO members' states electoral laws prescribe gender quotas in order to ensure more equal representation of genders in the elected representative bodies. The under-representation of women in political positions is a fact that calls for due solutions in order to build up more equal societies. This aim can be approached on the long run by taking into consideration complex policies which affect private and social life, as well as political culture. However, out of the many possibilities, the gender quotas related to elections are very plausible methods to strengthen gender equality.

## **Trends related to the electoral legislation**

### *Long-term stability of the basic elements of electoral laws*

Amendments of election laws sometimes are unavoidable for the proper organization of elections, in other cases the amendment or replacement of the election legislation in force is not necessary, while there are also cases when an amendment is undesirable in a democratic society – prohibitions of amendments one year prior to elections is well known in this respect. However, stability of election laws is also important in the long run. Alternations of the core elements of electoral legislation (the electoral system, the way of election of the president) or the very frequent modifications of some important details (the number of mandates, electoral threshold) also weakens the fair political contest and the legitimacy of the elected representatives. There exist examples on both approaches in the practice of some ACEEEO members' countries.

### *Regular, experience-based proposals of EMBs for the correction of the regulation*

Election laws are amended for various – typical and non-typical – purposes. In many cases the need for the correction or specification of a rule, or part of the legislation follows from the experience-grounded proposals of professionals. The effectiveness of many rules included in election laws can be evaluated only in practice, based on the experiences related to the organisation of elections. Therefore EMBs are in the best position to promote amendments or even the enactment of new election laws on a professional ground – a practice which is present in every ACEEEO members' country.

### *Complying with the recommendations of international organizations*

As EMBs, international organizations (Venice Commission, OSCE, GRECO, etc.) and other election stakeholders are strongly interconnected, the improvement of the regulation often can be based on recommendations. As findings and recommendations take into consideration the particularities of the constitutional framework of the given country and best practices based on similar experiences, these form a good starting point for the improvement of election systems. In most of the cases the legislative organs of the ACEEEO members' countries take these recommendations into consideration after a time.

## **Trends related to the functioning of electoral management bodies**

### *Formation of EMBs on professional basis*

Electoral management bodies – according to the professional standards – function on a permanent basis in every ACEEEO members' country. Due to the fact that EMBs are indepent organs, it is of key importance to promote the presence of professionals among its members. The presence of judges, nominees of professional organizations and NGOs can have a significant effect in this respect and can be considered as a progressive trend in the practice of some member states.

### *Political plurality principle in the case of delegated members*

Political parties having factions in parliament or nominating organizations in the period before elections in most of the cases have the right to delegate representatives to EMBs. In this regard detailed rules can ensure that majority and opposition parties delegate representatives in a proportional or equal manner – a technique which is present in the practice of all ACEEEO members' countries.

### *Self-evaluation of electoral management bodies*

The quality of the modality how citizens can exercise their right to vote is affected by many factors. One of these is the organization of elections, the way how EMBs perform their activities, inform citizens, are in contact with political actors, react to unexpected events during the pre-election campaign or the elections, etc. The regular evaluation of the activities of the subordinate EMBs and self-evaluation of the central election commission is a key element of quality-assurance of elections. This aim presumably needs to be strenghtened in the practice of all ACEEEO members' states.

## **Trends related to the safeguards of free and fair elections**

### *Effective measures to restrain government from taking part in the election campaign*

Legal provisions usually promote equal opportunities for political parties to share their political programmes with voters by various communication means, therefore the political contest can be fair. However, in the vast majority of the members' countries there are no provisions which clearly restrain the incumbent government from participating directly or indirectly in the election campaign. Political messages of the government during pre-election campaign can distort balanced public debate and also strongly affect the election results. Therefore, it is worth taking legislative steps to avoid such situations in the future.

### *Effective measures to control campaign financing*

Electoral laws of ACEEEO members' countries usually contain detailed rules related to the financing of election campaigns. However, only in a few cases exist detailed rules related to the effective control of campaign expenditures conducted by the central election commissions or other state organs. It is worth noting that there is a need for effective legal measures and sanctions in case of the infringement of the prescribed rules.<sup>26</sup> Accordingly, it is advisable to take further legislative steps in this regard in the future.

### *Enhancing transparency in electoral matters by using new technologies*

Transparency is a general requirement related to the activity of state organs which has special relevance related to elections. Free and unimpeded access to all relevant information related to elections and the activity of EMBs is of key importance in order to ensure the freedom of information and the exercise of free suffrage of citizens, as well as to constitute legitimate empowerment for the elected officials. Transparency can always be enhanced by using appropriate information technologies. In this regard some of the ACEEEO members' countries have taken significant steps forward.

---

<sup>26</sup> See Article 16 of the *Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns* (Council of Europe, 8 April 2003)



## 1. Election laws in Albania over the last 25 years

During the 25-year history of its political pluralism, Albania has organised 8 parliamentary elections, in 1991, 1992, 1996, 1997, 2001, 2005, 2009 and 2013, out of which two were early elections.

Almost in every pair of elections in Albania, different or similar systems were applied, with the respective modifications within the election formula. During these years of post-communist period, Albania applied a majority system with two rounds (1991), a mixed dependent system (mixed member proportional system) (1992), an independent mixed system (parallel system) (1996, 1997, 2001), a mixed system where the majority aspect is determined in two rounds (1992, 1996, 1997, 2001), or with a minimal majority (first-past-the-post, 2005) and a regional proportional system (2009, 2013).

The way of voting was the same in every election: at a *voting center* within the territory of Albania, with paper ballots, where the voter could choose only one alternative. The voter votes at a *voting center* which is assigned based on her permanent residence.

All Albanian citizens who reach the age of 18, even on the Election Day, have the right to elect. Similarly, all citizens who have reached the age of 18 on Election Day (at 1991 and 1992 elections this age was 21) have the right to be elected as MP.

### *Parliamentary elections*

The parliamentary elections are held every four years. At present, the number of seats in Parliament is prescribed in the Constitution to be 140,<sup>1</sup> while in 1991 it was 250, in 1996 no less than 140 and in 1997 there were 155 seats. In the parliamentary elections there was no requirement related to the voters' turnout in the elections.

Every Albanian citizen who has the right to be elected can run for MP as a representative of a party, a group of parties or as an independent candidate.

The multi-name lists of candidates in the proportional system are submitted by political parties or a group of parties and are closed lists.

When the majority system was applied, Albania was split into 100 *election zones* (constituencies) with an approximate number of voters. An exception was the year 1991, with 250 zones. When the mixed system was applied, due to proportionality reasons, in the territory of Albania it was formed one *election zone*.

Under the current electoral system, a *regional proportional* one, there are 12 *electoral zones* that correspond to the *administrative regions* – a level of administrative territorial division.

However, Albania's 12 regions differ significantly in the number of population. For this reason, a formula was adopted in the Electoral Code in order to determine

---

\* Chairwoman of CEC Albania, email: luzi.leti@gmail.com

<sup>1</sup> The Constitution of the Republic of Albania was approved by a referendum in November 1998.

the number of mandates for each region, according to the criteria that a mandate should represent an approximately equal number of voters. In the last two elections held based on this election system, the average number of citizens for one mandate was approximately 30.000.

The votes are counted manually. Until 2001, the counting was done in the *voting center*, by the respective commission. Later, the counting was concentrated on designated areas according to the *election zones* or *Election Administration Zones (ZAZ)*.<sup>2</sup>

### *Parliamentary elections of 1991*

The first pluralist elections in Albania were held on March 31, 1991. In December 1990, as a result of a *students' movement*, a law was passed which allowed the *establishment of political parties*, in addition to the communist party that governed in a centralised system for nearly 45 years.

The electoral law adopted by the communist parliament, for the first time recognised the right of some social and political organisations, established by law which contained a list of organisations, to run in elections.

The election system of 1991, did not differ much from that of the communist period. It was purely *majority system*, with two rounds: the candidate who received over 50% of the valid votes won the respective mandate. During the elections of 1991 – for the first time – the law prescribed some basic rules and principles for holding free and democratic elections: pluralism, the electoral campaign and the right to appeal.

The disproportionality Index (Gallagher Index – a relation between the percentage of the popular vote and the percentage of seats for electoral subjects) in the elections was 10.2 (*see Table 1 in the Annex*).

### *Parliamentary elections of 1992*

The political crisis that emerged after the 1991 elections (March 31), led to early elections in the year that followed, which were held on March 22, 1992. Meanwhile, in the absence of the fundamental law of the state – the Constitution of the Republic of Albania, the Parliament approved the core constitutional provisions and the law “On elections to the Assembly”<sup>3</sup>, which defined the electoral system, the rules and principles for the conduct of elections in post-communist Albania.

The electoral system was a *mixed dependent system (mixed member proportional system)*, a majority one, with proportional elements, organised in two rounds. The Parliament had no less than 140 members. 100 MPs were directly elected in single-member zones (constituencies), while the additional compensating mandates were allocated based on the lists of candidates, according to their ranking on a national level.

The *multi-member lists of candidates* were closed lists. Once they were submitted and approved by the Central Election Commission (CEC), these were published and their ranking could not change. The majority system had two rounds. The candidate who was supported by 50% of the valid votes in the respective election zone was announced as winner.

---

<sup>2</sup> ZAZs are established based on local government/municipal units. Currently, there are 90 zones of election administration in Albania.

<sup>3</sup> Law no. 7423 dated 13.11.1990.



The votes supporting the candidate of the majority system were also considered as a vote for the respective nominating political party which had a registered multi-member list. The electoral threshold was 4 percent of votes on the national scale.

Disproportionality index (*see Table 2 in the Annex*) in these elections was 3,43.

#### *Parliamentary elections of 1996*

The parliamentary elections that followed, those of 1996 were held pursuant to the previous electoral law, which was amended in certain aspects.

The election system remained *mixed, but independent (parallel system)*: a majority system in 115 multi-member election zones with two rounds and a proportional one for the 25 additional mandates which were allocated to other candidates of the multi-member lists. The formula of seat allocation changed, while the electoral threshold was similarly 4%.

The voting was made in a ballot paper divided into parts – one for candidates of the majority system and the other one for the political parties which registered multi-member lists.

The elections of 1996 were followed by a boycott of members of all-level commissions (commissions of voting centers and commissions of election zones), proposed by opposition parties, which led to strong contesting of the results.

The disproportionality index in these elections was very high, 24,53 (*see Table 3 of the Annex*).

#### *Parliamentary elections of 1997*

After the parliamentary elections of 1996, Albania experienced a political crisis, as several usury/pyramid schemes came into light. This led to the establishment of a new government, called the *Government of National Reconciliation* and *early parliamentary elections* in June 1997.

The electoral system remained almost the same, an *independent mixed system (parallel system)*. The number of seats in Parliament was 155, out of whom 115 MPs were elected based on a two round majority system, while 40 MPs were elected from the multi-member lists based on the votes won by each political party in the first round. The electoral threshold was 2%.

The disproportionality index in these elections was 9.79 (*see Table 4 in the Annex*).

#### *Parliamentary elections of 2001*

The Constitution of 1998 once again stipulated the fundamental principles of the constitutional order, the fundamental rights and freedoms, and also the political rights. In addition, the Constitution prescribed the basic elements of the election system, *the independent mixed system* with an electoral threshold of 2.5% for parties and 4% for coalitions.

The Parliament was composed of 140 MPs. 100 MPs were directly elected in two rounds, in single member constituencies, while 40 MPs were elected based on multi-member lists of parties and/or coalitions.

The disproportionality index in these elections was 8.13 (*see Table 5 in the Annex*).

### *Parliamentary elections of 2005*

Due to the problems that emerged in the parliamentary elections of 2001 and after the recommendations of international observers, the Electoral Code was amended before 2005 elections. The only change in the election system was that the elections were organised in a single round. In the majority system, the candidate, who received the largest number of votes won the mandate (*first-past-the-post* or *winner-takes-all*). The formula of allocation of extra mandates remained unchanged.

As the formula of distribution of additional mandates significantly reduced the chances of large parties to win these seats, the two major parties did not claim votes in the proportional system and guided voters to cast their ballots for their allied parties. The aim was to increase the number of seats fictitiously. Therefore, in these elections, there was a “traffic” of votes in favor of small allied parties.

The disproportionality index in these elections was very high, 29,33 (*see Table 6 in the Annex*).

### *Parliamentary elections of 2009 and 2013*

The shortcomings noted in the elections of 2001 and 2005 made it necessary to change the election system in Albania. As a result, the Albanian Parliament adopted in 2008 some constitutional amendments on the election system and election formula. The *mixed electoral system* was replaced by a *regional proportional election system*. The number of seats in Parliament remained the same, 140.

The proportional system is based on the country's division into multi-member zones (constituencies) which correspond to the 12 administrative-territorial divisions (regions). As indicated above, the number of mandates in constituencies corresponds the density of the populations – the average number of citizens per seat is approximately 30.000 (*see table 9 of the annex*).

Incumbent MPs are exempted from the obligation to collect supporting signatures when running for the upcoming elections. Other candidates should provide signatures of their supporters in the respective electoral zone: independent candidates at least 1% of the voters and no less than 3.000 signatures; while political parties no less than 10.000 signatures and coalitions no less than 15.000 supporting signatures. For the 2013 elections political parties should collect no less than 5.000 signatures, while coalitions no less than 7.000 supporting signatures.

The electoral threshold for political parties and coalitions is respectively 3% and 5%. For the first time the Electoral Code provided for a compulsory gender criteria to be met by the multi-member lists of MP candidates. Accordingly, in the 2009 elections in each constituency at least 30% of the total number of candidates and one of the first three names on the list should belong to each gender. Similarly, during the elections of 2013 in each constituency at least 30% of the total number of candidates and one of the first three names of the multi-member lists should belong to each gender. If this criteria is not met CEC imposes a penalty of 100.000 lekë (approximately 715 EUR) addressed to the nominating organisations for each respective electoral zone

The present Electoral Code prescribes the use of two types of formulas for the allocation of mandates. The D'Hondt formula is used in the case of political parties and coalitions and the Sainte-Laguë formula for the allocation of mandates of political parties within coalitions.

Disproportionality index for the elections of 2009 and 2013 was respectively 7,47 and 5,16 (*see Table 7 and 8 in Annex*).

## *Election of the president*

The Albanian President is elected by the Parliament. Only an Albanian citizen by birth who has resided in Albania for not less than the past 10 years and has reached the age of 40 may be elected as President.

A candidate for President is proposed to the Assembly by a group of not less than 20 of its members. The President of the Republic is elected by the Assembly by secret ballot and without debate. There could take place five ballots regarding the election of the President. The first ballot takes place within 7 days from the day of starting the procedure. Each of the other ballots takes place no longer than seven days from the unsuccessful completion of the previous ballot.

The ballot is considered finished when there are no candidates in the competition. In the second, third and fourth ballots new candidates may be introduced. The President is elected in the first, second or third ballot when a candidate receives the supporting votes of not less than three-fifths majority of all members of Parliament. In the fourth and fifth ballot the candidate who receives more than half of the votes of all members of Parliament is elected as president. Fifth ballot is taking place when in the fourth ballot no candidate has obtained the required majority of votes. The fifth voting takes place only between two candidates who received the most votes on the fourth ballot. If there are more than two candidates with the same number of votes, the candidate who takes part in voting shall be determined by lot. If after the fourth ballot no candidate is left in the competition, new candidates may be nominated, under the conditions set. If there are more than two candidates, the voting takes place between the two candidates who secured the highest number of proposing MPs. If even in the fifth ballot no candidate has received the required majority or if after the fourth ballot without success does not appear any new candidate, the Assembly is dissolved. The term of the President is 5 years, with the right to be reelected only once.

## **2. Stability of election laws**

During the period between 1990-2016, the Albanian parliament adopted 5 new electoral laws and has amended 6 times the electoral laws in force before the elections. The amendments to the Electoral Code before 2005 and 2013 elections could be considered significant in many aspects.

The parliamentary elections of March 31, 1991 were held based on the law no. 7423, dated 13.11.1990. *“On parliamentary elections”*. The parliamentary elections of March 22, 1992 were organized based on a new law, the law no. 7556, dated 04.02.1992. *“On the elections to the Assembly to the Republic of Albania”*. The parliamentary elections of May 26, 1996 were held under the previous law, which underwent some amendments.

The amendments to the law introduced some restrictions of the right to be elected in addition to restrictions provided by the constitutional provisions. According to these amendments all citizens who reach the age of 21 on Election Day, are Albanian citizens, have a permanent residence in the Republic of Albania for at least six months and meet the criteria of the law no. 8001, dated 22.09.1995. *“On genocide and crimes against humanity, committed in Albania during the communist regime, for political, ideological and religious motives”* and the law no. 8043, dated 30.11.1995. *“On the control of the figure of officials and other persons related to the protection of the democratic state”*, had the right to be elected as MP. The law also provided for amendment on the election administration.



The early parliamentary elections of June 28, 1997, were held based on the law no. 7556, dated 04.02.1992. "*On the parliamentary elections of the Republic of Albania*", with some amendments.

The amendments of this law established for the first time the CEC as a permanent body responsible for the organisation, administration and holding of elections in the Republic of Albania. The age criteria for MP candidates changed from 18 to 21 years old.

*The Constitution of the Republic of Albania* was approved by a referendum, on November 22, 1998. The Constitution declared the political rights and prescribed the basic elements of the electoral system. The basic document also provided for the creation and functioning of the Central Election Commission. According to the Constitution, the CEC is a permanent body that prepares, supervises, conducts and checks all the aspects related to elections and referenda and announces their results.

Based on the Constitution, for the first time Parliament adopted in 2000 the *Electoral Code*, adopted through the Law no. 8609, dated 08.05.2000. The local government elections and referenda were also held based on the Electoral Code.

The parliamentary elections of 2001 were held based on the regulations specified by the *Constitution of Albania* and the *Electoral Code* of 2000, as amended by the law no. 8780, dated 03.05.2001. These amendments were mostly of a technical character.

The parliamentary elections of 2005 were held based on the *Election Code*, adopted by the law no. 9087, dated 19.06.2003, as amended by the law no. 9341, dated 10.01.2005. The *Electoral Code of 2003* underwent some further changes in 2005, providing clear procedural rules for the review of election appeals in an administrative way and before the court, and specified provisions related to the ballot counting process.

The parliamentary elections of 2009 were held after significant amendments to the *Constitution of Albania* and the *Electoral Code*. The law no. 10019, dated 29.12.2008., adopted the *new Electoral Code* of the Republic of Albania.

Later the Constitutional amendments changed the election system from a *mixed system* to a *regional proportional* one.

The parliamentary elections of 2013 were held based on 2008 Electoral Code, as amended by the law no. 74/2012, dated 19.07.2012.

The electoral Code also provided some important changes regarding the composition of the CEC, the way of election of the Chairman and simplified the counting process.

### 3. Electoral management bodies

The organization and administration of democratic elections of the post communist period was the responsibility of the Central Elections Commission.<sup>4</sup> The entire process of development of the Albanian electoral legislation has been prevailed by the implementation of the principle of political representation and bipartisan balance. Important tasks related to the organisation and conduct of elections were considered as responsibility of other state organs or local governments.<sup>5</sup>

The election administration, in the first pluralist elections of 1991 was unified with the structures of the party in power and the electoral commissions were attended by representatives of political and social organizations, representatives of various associations and eminent personalities from various fields.<sup>6</sup> The national and local elections between the 1992-1997 period were held according to special laws adopted by the Albanian Parliament, pursuant to the main constitutional provisions.<sup>7</sup> During this period the Central Election Commission was a temporary body, responsible for the organisation and administration of elections, whose primary aim was to ensure the correct and rigorous application of elections laws.

According to the election law of 1992, the CEC was composed of 17 members, chaired by the Chairman and vice chairman. The composition of the CEC was determined (appointed) by the President of the Republic, upon the proposal of political parties, no less than 35 days prior to elections. The political parties that did not have members in the CEC, had the right to appoint observers.

According to the amendments of 1996 election law the CEC members were proposed by the political parties which submitted multi name lists at the parliamentary elections and by the Council of Ministers. Nominees were appointed by the President of the Republic no later than 45 days prior to the elections. The CEC, which was established shortly before the elections, had no institutional authority, its activity was limited to the examination of administrative obligations related to the conduct the elections.<sup>8</sup>

The amendment to the law of 1997, established CEC as a permanent body, composed of 17 members, nominated by political parties and appointed by the President of the Republic for a 7-year term, with the right to be renominated. The

---

<sup>4</sup> Elections in Albania are administered by a three-tier election administration, with clear cut competence, tasks and responsibilities: the Central Election Commission (CEC), the second level of Commissions of Elections Administration Zones (CEAZ), the third level, the Voting Center Commissions and Ballot Counting Teams (BCT) for counting the ballots at the Ballot Counting Centers (BCC).

<sup>5</sup> E.g. the *Civil Registry Offices* for drafting the voters list, the mayors for designating the voting centers, the prefects to propose the facilities for designating the BCCs.

<sup>6</sup> Law no. 7423, dated 13.11.1990. "*On elections in the Republic of Albania*".

<sup>7</sup> Law 7556, dated 04.02.1992 "*On elections to the Assembly of the Republic of Albania*", amended by the Laws no. 8055, dated 01.02.1996, no. 8143, dated 11.09.1996 and the law no. 8218, dated 16.05.1997.

<sup>8</sup> A good example on that is that a candidate in Sarandë was not allowed by the second tier commission to observe the process, despite his accreditation given by the CEC and the Constitutional Court. See: ODHIR "*Report on observation of the parliamentary elections held in the Republic of Albania*" (May 26 and June 2, 1996.)



chairman and vice chairman of the CEC (having the same status) were nominated by the main parties of the parliamentary opposition and majority. The mandates of the CEC members were equally divided among the political parties belonging to the majority and opposition. The CEC, as a permanent body showed a “*high level of responsibility in the identification and addressing of problems in 1997 elections*”.<sup>9</sup>

The Constitution of the Republic of Albania, adopted in 1998, changed completely the election administration, by establishing the CEC as a constitutional body of seven members, with a 7-year term. In the Electoral Code the CEC was determined as a permanent, independent institution, with broad competence in the organisation and administration of elections.<sup>10</sup> The way of election of members enabled an impartial and independent CEC: two members were appointed by the President of the Republic of Albania after the consultation with the civil society, two members were be elected by the parliament, based on the proposals of the parliamentary bureau selected among the lists submitted by parliamentary majority and opposition groups; three members were selected by secret ballot by the High Council of Justice, based on the proposals of the national judiciary conference and individual applications.

The amendments to the Electoral Code in 2003, terminated the 7 year term of the incumbent CEC members and gave the two main parties of the majority and the opposition a ‘*de facto*’ control over the appointment of the CEC members,<sup>11</sup> by imposing restrictions on the competence of three appointing bodies: the Parliament, the President and the High Council of Justice.<sup>12</sup> The influence of political parties in relation to the CEC was strengthened also through the rights of their representatives to the CEC, who had the right to participate in the sessions, but did not have the right to vote in the issues ruled by the CEC.

The Electoral Code of 2005 sustained the former regulation related to the CEC.

The amendment to the Constitution in 2007 increased the number of the Central Election Commission members from seven to nine members, thus enabling a broader spectrum of representation. The Electoral Code continued to restrict the constitutional right of the Parliament, the President of the Republic and the High Council of Justice to “elect” the CEC members.<sup>13</sup>

---

<sup>9</sup> See “*Final Report on Parliamentary elections in Albania 29 June - 6 July 1997*”. (Catherine Lalumiere, OSCE special coordinator for the Albanian Parliamentary elections, member of the European Parliament, Sir Russell Johnston, head of the Council of Europe Parliamentary Delegation, Javier Ruperez, president of the OSCE Parliamentary Assembly)

<sup>10</sup> The Albanian political class decided to enact the electoral law as one of the Albanian Codes. The adoption of Electoral Code required a qualified majority, three-fifths of all Assembly members. By this condition the Albanian legislation reflected the requirement that the electoral legislation should be a product of *consensus among the political forces*, majority and opposition.

<sup>11</sup> See OSCE/ODIHR „*Election Observation Mission Report*. Local government elections. 12 October 2003 - 25 January 2004”

<sup>12</sup> See law no 9087, dated 19.06.2003, on “*The procedure of election of the CEC members*”, Article 22: The Assembly of Albania elects two members of the CEC upon the respective proposals from the left and right spectrum of its political composition, excluding the largest political party of either political spectrum. 2. The President of the Republic appoints two members of the CEC upon the respective proposals of the two largest political parties of the majority and the opposition. 3. The High Council of Justice selects three members of the CEC according to this procedure: a) two members of the CEC are approved from among two candidates for each vacancy proposed respectively from the two largest parties; b) the third candidate is selected by the High Council of Justice according to this procedure: the two largest parliamentary groups propose four candidates who are jurists by profession. Each of the parliamentary groups selects two of the four candidates from the other group. The four selected candidacies are voted on by the High Council of Justice no later than 48 hours after having been deposited.

<sup>13</sup> See OSCE/ODIHR Election Observation Mission “*Report in local government elections*” (February 18, 2007.)

According to the 2008 amendments to the Constitution of the Republic of Albania,<sup>14</sup> the regulation on the functioning of the CEC was left to the Electoral Code.<sup>15</sup> The Central Election Commission, as the highest permanent body responsible for the administration of elections, was composed of seven members, who were elected by the Parliament, for a four-year term, with the right to be re-elected. Four members, including the Chairman were nominated by the parliamentary majority, while three members were proposed by the parliamentary opposition. According to Electoral Code amendments of 2012, the CEC Chairman was elected based on an open competition process instead of political nominations. The CEC members had a six year term, while the Chairman had a four year term. It is important to note that some of the described events caused institutional instability, while the new provisions aimed at strengthening the CEC independence and changing the political parties' attitude towards the CEC as an independent state organ.

#### **4. Safeguards of free and fair elections**

##### ***Electoral campaigns***

During the last 25 years, the electoral campaigns were mainly organized through rallies, meetings with citizens, distribution of electoral campaign materials, such leaflets, posters, etc. The legal provisions that regulate the conduct of election campaigns, aim to guarantee political contestants the right to inform the public and voters' right to be informed.

The Electoral Code has changed over the years and the trend of changes was to establish terms of equal access in written and electronic media for all candidates. During 1990-1998, there were few normative provisions on the election campaigns, regulating general aspects of conducting the campaigns: the start of the campaign, the right of political parties and independent candidates to campaign freely, the duty of local government bodies to guarantee equal opportunities of campaigning. According to these provisions, it was not allowed to campaign in the military units and depoliticized institutions, it was not allowed to slander or insult the candidate running for MP or any electoral subjects, it was prohibited the disruption of meetings or electoral rallies.

The period after 1998 marks a new era in the conduct of the election campaigns. Alongside the development of the society and media in general, the amendment to the Constitution led to major amendments to the Electoral Code in this respect as well. The provisions of the Electoral Code regulated in detail the relations between the electoral subjects and the media, with the aim of holding electoral campaigns in equal terms for all the candidates, offering transparency, publishing political programs in accordance with law, prohibition of the abuse of public property for electoral purposes.

In 2003 the law established the *Media Monitoring Board* for the first time, composed of media professionals, who have the task to supervise the campaign aired in radio and televisions. In case these legal provisions are not observed, the CEC imposes administrative measures. In case of repetition of the offense, the CEC orders the *Authority of Audio Visual Media* to block the broadcasting of radio and TV channels. In addition, the law aims to provide financial equality and non-

---

<sup>14</sup> Law no .9904, dated 21.04.2008.

<sup>15</sup> The Electoral Code was adopted by the law no. 10019, dated 29.12.2008.

discrimination of any subject or a running candidate in the elections, by imposing the media broadcasting companies' obligation to submit to the CEC the official advertising fees and publish them on the CEC website.

In the meantime, in order to improve the campaign activity of candidates and electoral subjects through campaign materials, such as posters, leaflets etc., the CEC adopted a *Guideline*, which would be observed by all local government bodies when determining the sites of posting propaganda materials.

It should be emphasized that even after 25 years, the print media is left outside the legal control in terms of the election campaign. Neither the Electoral Code, nor another law provides for regulations on the conduct of the written and electronic media in covering the election campaign of subjects that run in elections. This has led to inequality in practice in covering the election campaign in the financial, time aspect and discrimination of some candidates and electoral subjects by refusing to cover their electoral programs. Additionally, the electoral legislation discriminates the independent candidates as no amendments were made to the legislation in 25 years to support them, by not providing free airing time in the Albanian Public Radio and Television, and by largely favoring the current parliamentary parties. Given this fact, the CEC, in its discretion, has adopted an instruction which allocated free air time in the public television to independent candidates.

### ***The right to appeal***

The right to appeal pursuant to the law no. 7423, dated 13.11.1990. "*On elections to the People's Assembly*", the law no. 7556, dated 04.02.1992. and the law no. 8055, dated 01.02.1996., is merely established as a right of candidates to appeal at an administrative level (to the CEC) and before a court (the High Court of Appeals).

In the years 1991 and 1992 the addressee of the court appeals related to elections was the High Court of Appeals. Political parties could exercise their right to appeal regarding the results of elections in the administrative level and before court. The decisions of the High Court of Appeals on the appeals of elections result were communicated to the *Commission of mandates of the new Parliament*.

Based on the provisions of the Electoral Code of the year 2000, election appeals could not be called real administrative appeals, i.e administrative appeals where the acts of an administrative body of a lower level is reviewed by an administrative body of a higher level. Electoral subjects could appeal to the court only after the appeal was addressed in the administrative level as well.

The Electoral Code established the right of appeal to the Constitutional Court against the decisions of the CEC on the elections result. As a result, the Constitutional Court should exercise powers not established in the Constitution and reviewed election appeals as a special court. It is worth noting that there have been 46 appeal cases before the Constitutional Court against the election results in 100 election zones. The Constitutional Court overruled the decisions of election commissions in 26 cases.

The CEC decisions on the final elections results of local government elections can be appealed at the High Court of Appeals. Candidates and political parties have the right to file appeals. All the CEC decisions, except for those on the CEC result can be appealed before the Tirana Court of Appeals, within three days from their publication. Tirana Court of Appeals reviews these appeals and rules a decision within five days.

After the amendments to the law no. 9341, dated 10.01.2005. and Electoral Code of 2003 and 2008 the system of election appeals changed completely. The CEC reviews the appeals against the decisions taken by second level commissions,

according to a detailed procedure for the registration, review and ruling of appeals. The Electoral Code provisions on the procedure of addressing appeals to the CEC are similar to the court procedures of first district courts in the Republic of Albania. In Tirana Court of Appeals a special college was created (the Electoral College), which addresses the appeals against the CEC decisions. Every decision of the second level commissions can be appealed by candidates and political parties. Every decision of the CEC can be appealed by the electoral subjects to the Electoral College.

### ***Financing political campaigns***

During a nearly 23-year period, the Albanian regulatory framework on financing of political parties and election campaigns underwent a thorough transformation. Initially, the political party financing was audited by the High State Audit Office.

The Electoral Code, adopted by the law no. 10019, dated 28.12.2008., provided for complete control of the funds of electoral subjects, by determining the CEC as the institution responsible for the financial audit and the publication of it. According to the current legislation in force, the CEC conducts the financial audit by appointing special bodies and accounting experts.

The funds allocated to the political parties should be registered in a special register (adopted as a template by the CEC), including the amount of funds obtained by each physical or legal person, and other data related to the exact identification of donors. The donor has the legal obligation to sign a statement (the sample version of the statement is adopted by the CEC). In this declaration the donor states that she will not be involved in situations of conflicts of interests (pursuant to the Electoral Code), which would constitute a reason for ending her donation.<sup>16</sup> The donation of funds of a greater value than 100.000 Lekë should be made in a special bank account opened by the electoral subject. This account should be opened no later than three days after the start of the election campaign. The head of finance unit of political party declares this account to the CEC, which in turn publishes the account number on the CEC website. The amount of 1 million Lekë is the general amount an individual can contribute to an electoral subject during the entire election campaign.

The CEC publishes the *annual financial reports of the political parties*, the *auditing reports on the financing of the election campaign of electoral subjects*, and the *reports of the calendar year* on the official website of the CEC. The audit reports on the obtained funds and the election expenses are published in the Elections Bulletin. The records on private financing of the electoral subjects and the list of people who donate amounts over 100.000 Lekë are listed in the audit report. The list of donors is made public in the same way as the audit reports.

It is important to note that the Electoral Code and the law of political parties do not provide any limitation for the individual donors to be appointed to public offices in the state administration or companies with a state capital after the elections.

The transparency and supervision of the financing of political parties during the calendar year is done according to the procedures prescribed in relation with the period of the election campaign. The political parties should submit to the CEC their *annual financial reports*. The CEC has adopted the necessary documentation to assist

---

<sup>16</sup> Donation of funds by a legal person or any of its shareholders is prohibited if one of the following conditions applies: a) has received public funds, public contracts or concessions in the last 2 years, exceeding 10 million Lekë; b) exercises media activity; c) has been a partner with public funds in different projects; d) has monetary obligations towards the State Budget or any public institution. This obligation is not applicable if the shareholder owns these shares as a result of a public offer.

the political parties in their financial reporting. It has also adopted the rules on standardised formats of reporting by the accounting experts and the political parties regarding the annual financial reports, thus implementing the recommendations of the *Group of States Against Corruption* (GRECO).

The Law on the Political parties gave the CEC a more important role in the investigation and verification of data and financial activity of political parties. One can note that the CEC has insufficient human and financial resources in order to carry out this process.

**Annex**

**Disproportionality Index (Gallagher Index) in Elections in Albania**

The Formula is a relation between the difference of ballots received (in percentage) and the seats won in parliament (in percentage):

$$Disproportionality\ Index\ (Gallagher\ Index) = \sqrt{\frac{1}{2} \sum_{i=1}^n (V_i - S_i)^2}$$

where

$V_i$  – valid votes in % of “*i*” party

$S_i$  – Parliament seats in % of “*i*” party

$n$  – number of electoral subjects that win seats in Parliament

Table 1 – Parliamentary elections of 31.03.1991

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PPSH	56,17%	67,60%	11,43	130,61
2	PD	38,71%	30,00%	8,71	75,88
3	OMONIA/P BDNJ	0,73%	2,00%	1,27	1,62
4	Kom.Vet.	0,28%	0,40%	0,12	0,01
<b>a</b>	<b>Total difference squared</b>				208,13
<b>b</b>	<b>Total difference squared /2</b>				104,06
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>10,20</b>



Table 2 - Parliamentary elections of 22.03.1992

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PD	62,08%	65,71%	3,63	13,18
2	PS	25,73%	27,14%	1,41	1,99
3	PSD	4,38%	5,00%	0,62	0,38
4	PBDNJ	2,90%	1,43%	1,47	2,16
5	PR	3,11%	0,71%	2,40	5,76
<b>a</b>	<b>Total difference squared</b>				23,47
<b>b</b>	<b>Total difference squared /2</b>				11,74
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>3,43</b>

Table 3 - Parliamentary elections of 26.05.1996

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PD	55,53%	87,14%	31,61	999,19
2	PS	20,37%	7,14%	13,23	175,01
3	PR	5,74%	2,14%	3,60	12,97
4	PBDNJ	4,04%	2,14%	1,90	3,60
5	PBK	4,97%	1,43%	3,54	12,54
<b>a</b>	<b>Total difference squared</b>				1203,31
<b>b</b>	<b>Total difference squared /2</b>				601,66
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>24,53</b>

Table 4 - Parliamentary elections of 29.06.1997

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PS	53,30%	64,52%	11,22	125,84
2	PD	25,16%	17,42%	7,74	59,98
3	PLL	3,25%	1,29%	1,96	3,84
4	PBDNJ	2,86%	2,58%	0,28	0,08
5	PAD	2,76%	1,29%	1,47	2,15
6	PSD	2,63%	0,65%	3,17	10,05
7	PR	2,43%	0,65%	1,79	3,20
8	PBK	2,30%	0,65%	1,65	2,74
<b>a</b>	<b>Total difference squared</b>				191,88
<b>b</b>	<b>Total difference squared /2</b>				95,94
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>9,79</b>

Table 5 - Parliamentary elections of 24.06.2001

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PSSH	41,44%	52,14%	10,70	114,58
2	PD+BF	36,89%	32,86%	4,03	16,23
3	PDr	5,09%	4,29%	0,80	0,64
4	PSD	3,65%	2,86%	0,79	0,63
5	PBDNJ	2,60%	2,14%	0,46	0,21
6	AD	2,56%	2,14%	0,41	0,17
7	PASH	2,56%	2,14%	0,41	0,17
<b>a</b>	<b>Total difference squared</b>				132,30
<b>b</b>	<b>Total difference squared /2</b>				66,15
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>8,13</b>

Table 6 - Parliamentary elections of 3.07.2005

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PD	7,67%	40,00%	32,33	1045,20
2	PSSH	8,89%	30,00%	21,11	445,77
3	PR	19,96%	7,86%	12,11	146,56
4	PSD	12,74%	5,00%	7,74	59,96
5	LSI	8,40%	3,57%	4,83	23,34
6	PDR	7,42%	2,86%	4,56	20,82
7	PAA	6,56%	2,86%	3,70	13,72
8	AD	4,76%	2,14%	2,62	6,87
9	PDSSH	4,25%	1,43%	2,82	7,93
10	PBDNJ	4,13%	1,43%	2,70	7,29
11	PDK	3,26%	1,43%	1,83	3,36
12	BLD	1,06%	0,71%	0,34	0,12
<b>a</b>	<b>Total difference squared</b>				1720,83
<b>b</b>	<b>Total difference squared /2</b>				860,42
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>29,33</b>

Table 7 - Parliamentary elections of 28.06.2009

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PS	40,85%	46,43%	5,58	31,12
2	PD	40,18%	48,57%	8,39	70,35
3	LSI	4,85%	2,86%	1,99	3,97
4	PR	2,11%	0,71%	0,50	0,25
5	PBDNJ	1,19%	0,71%	2,45	6,00
6	PDI	0,95%	0,71%	0,24	0,06
<b>a</b>	<b>Total difference squared</b>				111,70
<b>b</b>	<b>Total difference squared /2</b>				55,85
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>7,47</b>

Table 8 – Parliamentary elections of 23.06.2013

No.	Party	% of ballots	% seats	dif (l%vot- %venl)	Diff. squared
1	PS	41,36%	46,43%	5,07	25,67
2	PD	30,63%	35,71%	5,08	25,81
3	LSI	10,46%	11,43%	0,97	0,93
4	PR	3,02%	2,14%	0,88	0,78
5	PDIU	2,61%	2,86%	0,25	0,06
6	PBDNJ	0,85%	0,71%	0,14	0,02
7	PKDSH	0,46%	0,71%	0,25	0,06
<b>a</b>	<b>Total difference squared</b>				53,25
<b>b</b>	<b>Total difference squared /2</b>				26,62
<b>c</b>	<b>Square root of "b" ( disproportionality index)</b>				<b>5,16</b>

Table 9 – Allocation of seats according to election zones/regions – year 2009

No.	Region/ election zone	Citizens y.2009	Citizens/ av. number	Seats from whole no.	Remainder		Seats from remainder	Total seats
					no	citizens		
1	Berat	233943	7.7064628	7	0.706	21446	1	8
2	Diber	184659	6.0829677	6	0.083	2519		6
3	Durres	401628	13.230279	13	0.230	6991		13
4	Elbasan	423116	13.938129	13	0.938	28479	1	14
5	Fier	485623	15.997211	15	0.997	30272	1	16
6	Gjirokaster	159243	5.2457234	5	0.246	7459		5
7	Korce	352904	11.625232	11	0.625	18980	1	12
8	Kukes	113368	3.7345263	3	0.735	22298	1	4
9	Lezhe	211124	6.9547679	6	0.955	28984	1	7
10	Shkoder	335677	11.057746	11	0.058	1753		11
11	Tirane	978397	32.229988	32	0.230	6982		32
12	Vlore	370260	12.196966	12	0.197	5979		12
	<b>Total</b>	<b>4249942</b>		<b>134</b>			<b>6</b>	<b>140</b>
	Average no.	<b>30357</b>						

Chart 1 – Electoral threshold in years

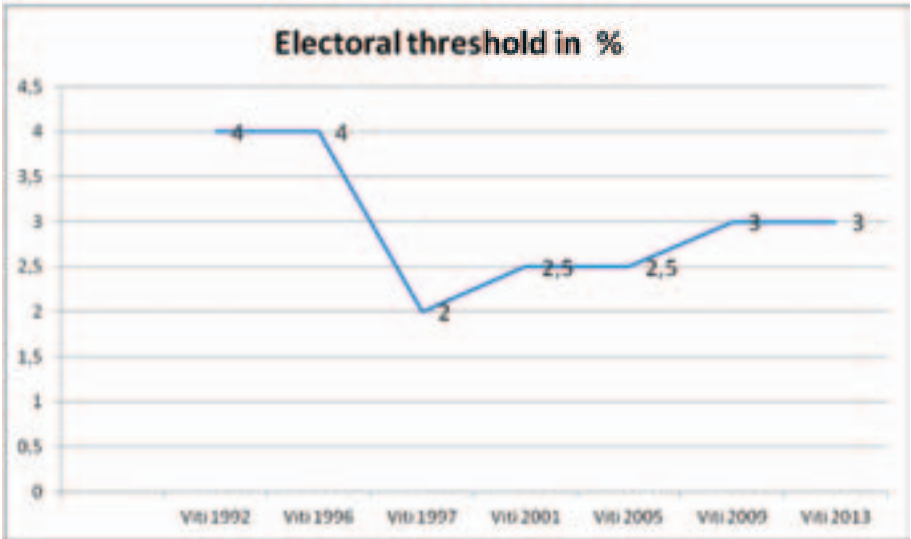
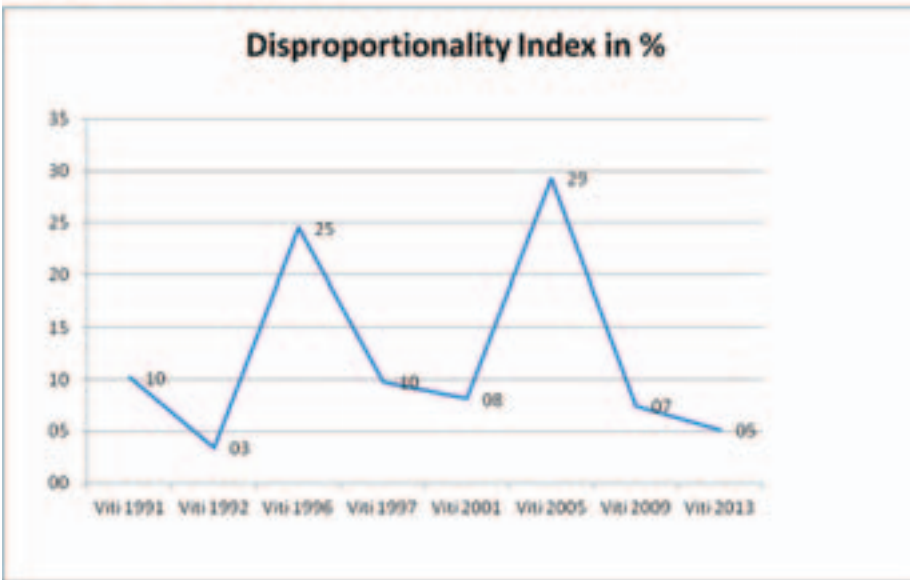


Chart 2 - Disproportionality Index in years





# ARMENIA

*Lilia Hakobyan\**

Making more favorable conditions for implementation of fundamental rights and freedoms is one of the main objectives for democratic state. From this perspective, the issue of rational state structure comes to the establishment of such power and governance system, where the exercise of fundamental rights and freedoms can be more effective. The procedure and rules for the formation of state power and governance system is one of the key issues, since they mainly determine the level of trust by people towards the authority. In this regard, along with global developments in the system of constitutional values the role of direct democratic institutions and elections is invaluable. The formation and development of universal and equal suffrage of the third Republic of Armenia, started in the 90s, is one of the establishing preconditions for modern Armenia.

Let's introduce the legal regulations of electoral rights institutions during the period from 1991 to 2016.

## **1. Electoral Systems**

In the Republic of Armenia from 1991 to 2016 the President of the Republic, the RA Parliament: National Assembly (it was called Supreme Council before the adoption of RA Constitution in 1995), local self-government bodies: Community Mayor and Member of the Council of Aldermen (except for the Mayor of Yerevan, who shall be elected indirectly) have been formed or elected through direct elections.

In accordance with the current legislation of the Republic of Armenia, elections of the Republic of Armenia President as well as elections of the National Assembly and local self-government bodies shall be conducted by secret ballot on the basis of universal, equal, and direct suffrage.<sup>1</sup>

### ***Parliamentary elections***

As regard to the present regulation of parliamentary elections, the total number of mandates in the National Assembly is 131. 41 MPs are elected in 41 single-member constituencies,<sup>2</sup> based on a majoritarian electoral system, while 90 deputies are elected under a proportional system.

According to the RA Law on the Elections of the Number of Deputies in the RA National Assembly of April 4, 1995 that was in force until 1999, the adoption of the RA Electoral Code, the number of deputies in the RA National Assembly was 190. 150 of them were elected in single-mandate majoritarian constituencies, and 40 deputies were elected under the proportional electoral system from the multi-mandate proportional constituency covering the whole territory of the country.<sup>3</sup> After the adoption of the RA Constitution on July 5, 1995, the first RA Electoral Code adopted

---

\* Head of Legal Department of the RA Central Electoral Commission, [liliah@elections.am](mailto:liliah@elections.am)

<sup>1</sup> Article 2 of the RA Electoral Code (adopted in 26.05.2011)

<sup>2</sup> Article 103 of the RA Electoral Code



in 1999 defined that from the 131 deputies in the RA National Assembly fixed by the Constitution, 56 deputies shall be elected under the proportional electoral system from among the number of candidates for deputies nominated by political parties in the electoral lists from one multi-mandate constituency, covering the entire territory of the Republic. 75 deputies shall be elected under the majoritarian electoral system – one deputy from each constituency. (Article 95 of the RA Electoral Code, 1999)

By the RA law (04.12.2000) “On Making Additions and Amendments to the RA Electoral Code” the number of deputies elected under the proportional and majoritarian electoral system was changed: 94 deputies were to be elected under the proportional electoral system, while 37 under the majoritarian electoral system. However, this law didn’t enter into force as it should have acted after the next elections of the RA National Assembly. Before the next elections, another RA law (03.07.2002) “On Making Additions and Amendments to the RA Electoral Code” changed the number of deputies elected under the proportional and majoritarian electoral system: 75 deputies under the proportional electoral system, 56 deputies under the majoritarian electoral system.

Finally, the number of deputies elected under the proportional and majoritarian electoral system (90 deputies under the proportional electoral system, 41 deputies under the majoritarian electoral system) was defined by the RA law (19.05.2005) “On Making Additions and Amendments to the RA Electoral Code”.

A constituency shall be a unified territory that may not include communities of different Marzes (administrative divisions) or non-adjacent settlements within a Marz. Constituencies of the City of Yerevan may not include other communities. Constituencies shall be formed taking into account the borders of the Marzes, the geographic, topographic, and physical features of the area, availability of means of communication, as well as the existing social and other factors. The number of constituencies formed in each Marz (or in the City of Yerevan) shall be determined as follows: the number of voters in the Marz shall be multiplied by the number of mandates of deputies elected under the majoritarian electoral system, the result shall be divided by the total number of voters included in the Voter Register of the Republic of Armenia. Finally, whole numbers shall be separated, which shall be the numbers of constituencies formed in the respective Marz (or in the City of Yerevan). The remaining constituencies shall be distributed in the order of the decimal numbers, according to the “one constituency per one Marz” (City of Yerevan) principle. Moreover, the number of constituencies formed in each Marz (in the City of Yerevan) shall be changed only in case of change of the number of mandates of the National Assembly deputies under the majoritarian electoral system.

In each constituency formed in a Marz (in the City of Yerevan), the number of voters shall not be more than 10 percent more or less than the proportion of the total number of voters in the Marz (in the City of Yerevan) to the number of constituencies formed in the respective Marz (in the City of Yerevan). Constituencies shall be formed and numbered by the Central Electoral Commission (CEC). At by-elections of a National Assembly deputy under the majoritarian electoral system, the borders of constituencies shall not be changed.<sup>4</sup>

---

<sup>3</sup> This law, in essence, is the first RA Law regulating the organization and conduct of Parliamentary elections. Before the independence of the Republic of Armenia the Supreme Council had already been formed during the Soviet Union in two stages, in May-June of 1990. The Supreme Council was formed under the majoritarian electoral system and was composed of 260 deputies.

<sup>4</sup> Article 17 of the RA Electoral Code (adopted in 26.05.2011)

As it was already mentioned above, according to the current RA Constitution and Electoral Code, the National Assembly consists of 131 deputies. Elections of the National Assembly shall be conducted under the proportional and majoritarian electoral systems in the proportion 90 on 41 respectively. Any person who has attained the age of 25, is not a citizen of another state, has been a citizen of the Republic of Armenia for the last five years, has permanently resided in the Republic for the last five years, and has the right of suffrage, may be elected as a National Assembly deputy of the Republic of Armenia. Regular elections of the National Assembly shall be conducted no earlier than 40 and no later than 30 days before the cessation of powers thereof. No later than 70 days prior to the voting day, the President of the Republic shall promulgate a decree on calling regular elections.

### ***Presidential elections***

In the election of the President of the Republic, the whole territory of the Republic of Armenia shall form one constituency, the election is based on majoritarian system.

All laws adopted since the independence of the country that regulate the organization and conduct of the elections of the President, have envisaged such regulation. The electoral system used for the election of the President has not been changed.

The President of the Republic shall be elected through a system of absolute majority and, in the second round, through a system of relative majority.

Any person who has attained the age of 35, is not a citizen of another state, has been a citizen of the Republic of Armenia for the last 10 years, has permanently resided in the Republic for the last 10 years, and has the right of suffrage, may be elected as the President of the Republic. The same person may not be elected to the office of the President of the Republic for more than two consecutive terms. The term of office of the President is five years.

The election of the President is considered to be called by law as “the election day of the President of the Republic”, directly determined by the Constitution and the Electoral Code of the Republic of Armenia. The election shall be conducted 50 days prior to the end of the term in office of the President of the Republic. No later than 70 days prior to the voting day, the CEC Chairperson shall make a statement on the Public Radio and the Public Television on the date of the election of the President of the Republic. The ballot for the election shall contain the surnames of candidates in the alphabetical order, their first names and patronymics, as well as the names of the nominating political parties, or the term “self-nomination” in the respective case.

The CEC shall summarize the results of the elections and – based on the regulation – shall adopt one of the following decisions in the procedure and time also prescribed by law.

- 1) A decision on the election of a candidate as the President of the Republic, if she/he was voted for by more than half of the voters voting for all the candidates. Where only one candidate is voted, she/he shall be elected if voted for by more than half of the participants in the voting.
- 2) A decision on conducting a second round of elections, if more than two candidates were voted, and none of them were voted for by the required number of voters. In that case, a second round of elections of the President of the Republic shall be conducted on the 14<sup>th</sup> day after the voting. In the second round of elections, a system of relative majority is used, that is the candidate voted for by the larger number of voters shall be elected as the President of the Republic.

- 3) A decision on declaring the election as invalid and non-election of a President of the Republic;<sup>5</sup> or
- 4) A decision on declaring the election as not having taken place and nonelection of a President of the Republic.

An application challenging the decision adopted on the basis of the results of elections of the President of the Republic may be lodged with the Constitutional Court, by 18:00 hours on the fifth day following the day of official announcement of the election result.

The CEC shall summarize the results of the National Assembly elections under the proportional electoral system. The mandates envisaged for the proportional electoral system of the National Assembly shall be distributed among the electoral lists of those political parties and alliances of political parties, which receive at least five percent of the “for” votes (in case of parties) and seven percent of the “for” votes (in case of alliances of political parties), respectively, of the sum of the total number of “for” votes and the inaccuracy amount. If the electoral list of only one political party or one alliance of political parties has overcome the mentioned barriers, then the next two political parties (alliances of political parties) that received the highest respective numbers of “for” votes shall participate in the distribution of mandates. If up to three political parties (alliances of political parties) participate in the National Assembly election under the proportional electoral system, all the parties (alliances of political parties) shall participate in the distribution of mandates.

The *method of electoral vote* is used for the distribution of mandates of the National Assembly under the proportional electoral system. During the secondary distribution the principle of one mandate to each is used in the order of the magnitudes of the remainders.

In case the remainders are equal, the contested mandate shall be given to the list that has received the highest number of “for” votes, and in case of a tie, the matter shall be settled by drawing lots.

The relevant territorial electoral commission (TEC) – acting on constituency basis – shall summarize the results of the National Assembly elections under the majoritarian electoral system. A system of relative majority is used on the National Assembly elections, i.e. a candidate voted for by the greatest number of voters shall be elected as a deputy. Where only one candidate is voted, he shall be elected if voted for by more than half of the participants in the voting. If two and more candidates have received an equal number of the highest “for” votes, the elected candidate shall be determined by drawing lots between them.

An application (applications) challenging the decision adopted based on the results of National Assembly elections under the majoritarian and proportional electoral system may be lodged with the Constitutional Court prior to 18:00 hours on the fifth day following the official announcement of the election results.

## 2. Stability of election laws

The development of electoral legislation’s history of modern Armenia can be divided into more stages based on the following important events:

1. The achievement of independence in 1991,
2. The adoption of Constitution in 1995,

---

<sup>5</sup> According to the Article 94 of the Electoral Code of 2011, the election of the President of the Republic shall be declared as invalid in any round, if violations of the Code that could affect the outcome of the election took place in the course of preparing and conducting the election.

3. The first codification of the RA electoral code in 1999,
4. The first amendments in the RA Constitution in 2005,
5. The adoption of the second electoral code of RA in 2011,
6. The second amendments in the RA Constitution in 2015 and the adoption of the third RA electoral code in 2016, which will come into effect on 01.06.2016.

After declaring the RA independence in 1991, the Elections of the President were called on October 16, 1991 by the decision (25.06.1991) of the RA Supreme Council,<sup>6</sup> guided by RA law “On Elections of the RA President” adopted on 02.08.1991 and put into force on 13.08.1991 (which was in force until 04.06.1996). The elections were conducted through a system of absolute majority in one round.

The adoption of the RA Constitution in the development of electoral legislation was important as it is the Constitution that has predetermined the role of elections among democratic institutions. In 1995, with the adoption of the RA Constitution, the RA Law “On Election of the President of the Republic” was also adopted (on 30.04.1996 and came into force on 04.06.1996). After the adoption of the RA Constitution, for the first time Elections of the President were conducted on September 22, 1996, in one round. However, as a result of the RA President’s resignation, the vacant post of the President was supplemented for the first time in two rounds as a result of the early elections of the President on March 16 and March 30, 1998.

The next two regular elections of the President were held in accordance with the procedure prescribed by the new RA electoral code adopted in 1999: on February 19, 2003 in two rounds and on February 19, 2008 in one round. The last elections of the President were conducted in accordance with the procedure prescribed by the new electoral code (2011) on February 18, 2013 in one round. This electoral code is the current one which was adopted on May 26, 2011 and entered into force on June 26, 2011.

As for the Parliamentary elections during the past 25 years the year 1995 was symbolic in this regard, when the Constitutional Referendum on the RA Constitution was adopted, moreover, the Referendum was conducted simultaneously with the elections of the RA National Assembly.<sup>7</sup>

The 5% threshold defined by the RA law (adopted on April 4, 1995 and entered into force on April 5, 1995) “On Elections of the National Assembly Deputies” was overcome by 5 parties among which 40 mandates were distributed. The rest 150 mandates of deputies were distributed under the majoritarian electoral system between the deputies elected in single-mandate constituencies.

The elections of the RA National Assembly of May 30, 1999, May 25, 2003 and May 25, 2007 were organized and conducted in accordance with the procedure prescribed by the RA electoral code (1999).

The last elections of the RA National Assembly were held on May 6, 2012 in accordance with the procedure prescribed by the current RA electoral code of 2011.

Summarizing the above mentioned, during the period after the adoption of the RA Constitution 3 major stages of the development of electoral legislation can be identified:

1. 1996-1999
2. 1999-2011
3. 2011-2016.

---

<sup>6</sup> As it has already been mentioned earlier, during the RA independence the Supreme Council had already been formed during the Soviet Union in May-June of 1990.

<sup>7</sup> With the first article of the RA Constitutional Law (adopted on March 27, 1995), it was prescribed to rename the newly elected Supreme Council to RA National Assembly. The RA Parliament was renamed National Assembly also by the RA Constitution adopted on July 5, 1995.

Special attention should be paid to the electoral codes and the chronology of the amendments.

The first electoral code which was in effect from 28.02.1999 to 26.06.2011, has changed about 15 times, while the second electoral code which has been in effect from 26.06.2011. until 01.06.2016. has changed 7 times. Besides, it seems that a tradition has been built to amend the electoral legislation before each national elections. Thus, if we follow the chronology of conducted elections and the amendments made during the period after the adoption of the RA Constitution then we will get the following picture.

*Table 1*

<b>Elections</b>	<b>The voting day of the elections</b>	<b>Adoption of the electoral code or making amendments to it</b>	<b>The period between the voting day and the day when the law (amendments) entered into force</b>
Elections of the National Assembly	05.07.1995	On 04.04.1995 the law was adopted, on 05.04.1995 entered into force	3 months
Elections of the President of the Republic	22.09.1996	On 30.04.1996 the law was adopted, on 04.06.1996 entered into force	about 4 months
Early Elections of the President of the Republic	16.03.1998	No changes have been made	
Elections of the National Assembly	30.05.1999	On 05.02.1999 the code was adopted, on 28.02.1999 entered into force	3 months
Elections of the President of the Republic	19.02.2003	On 03.07.2002 the code was amended, on 03.08.2002 the amendments entered into force	about 6 months
Elections of the National Assembly	25.05.2003	On 03.07.2002 the code was amended, on 03.08.2002 the amendments entered into force	about 10 months
Elections of the National Assembly	25.05.2007	On 22.12.2006 the code was amended, on 27.01.2007 the amendments entered into force, then on 26.02.2007 the code was amended, on 24.03.2007 the amendments entered into force	4 months and 2 months
Elections of the President of the Republic	19.02.2008	On 16.11.2007 the code was amended, on 20.11.2007 the amendments entered into force, then on 18.12.2007 the code was amended, on 01.01.2008 the amendments entered into force	3 months and about 2 months
Elections of the National Assembly	06.05.2012	On 26.05.2011 the code was adopted, on 26.06.2011 entered into force	about 10 months
Elections of the President of the Republic	18.02.2013	On 20.03.2012 an amendment was made in the code, which entered into force on 01.06.2012	about 9 months

The analysis of the above-mentioned table data shows that only in the period preceding the early Presidential elections of 1998, the RA Electoral legislation has not undergone changes. It must be mentioned that in each case the initiated amendments were aimed at correcting the defects in the Electoral legislation that had



emerged in the period of the organization and conduct of the previous elections, also taking into consideration the expressed remarks and positions observation missions carried out by international organizations.

Moreover, there was a more challenging situation in practice when the Electoral legislation was changed when the Constitutional Referendum had already been called. The RA Constitutional Referendum of December 6, 2015 was called by the decree of the RA President NH-754-N of October 08, 2015, which entered into force on October 09, 2015. The RA Law on Making Additions and Amendments to the RA Electoral Code was adopted on November 11, 2015, and entered into force on November 19, 2015 (that is during the preparation and conduct of referendum 17 days prior to the voting day), which established voters rights and procedure of participation in the voting process with the identification card.

The amendments were urgent due to the fact that the 2012 RA Law on Identification Cards prescribed that the submission (exchange) of the old-type passports provided by the RA Government decision number 821 of December 25, 1998, should be terminated after January 1, 2014, except the cases prescribed by the law.

It was also prescribed by the transitional provisions that the “old” passports were considered to be valid prior to the date of expiry. Prior to the date of expiry of the passport the citizen could receive an identification card. As starting from 2014 “old” passports have not been issued, in fact, a lot of RA citizens had “old” passports no longer and the identification card was used as a personal identification document.

It is important to note that in the period of the organization and conduct of the Constitutional Referendum of December 6, 2015, the current Electoral Code of the Republic of Armenia did not consider the identification card as a personal identification document.<sup>8</sup> It was obvious that as a condition for the exercise of the right of suffrage of the citizens they had to have an opportunity to participate in the voting with the submission of their identification card. Previously, in the cases when the person did not have an “old” passport, she was deprived of the right to vote.

### **3. Electoral management bodies**

It is well known that there are two main principles at the basis of various models while forming electoral commissions. These principles are either political or professional or both at the same time. According to it, we differentiate 3 main models in Armenian reality:

1. The electoral commissions are formed by the parties (represented or not represented in the Parliament) or/and by the political authority (state organs),
2. the electoral commissions are formed partially by the parties (represented or not represented in the Parliament) and/or by the political authority, partially on the basis of professionalism,
3. the electoral commissions are formed on the basis of professionalism.

During the past 25 years of the development of electoral legislation the above mentioned three models have been applied.

So, the first mentioned model was applied, for example, in 1999, as according to the RA electoral code which was in effect at that time, the RA CEC was formed from 3 members appointed by the government, one member appointed by each party, alliance of parties having faction in the Parliament, and members appointed by the first 5 parties which have no deputy faction in the Parliament, but have successfully

---

<sup>8</sup> Article 64, part 3 of the RA Electoral Code

submitted their application on participation in the elections of the National Assembly by proportional system (as a precondition, have submitted at least more than 30.000 valid signatures supporting their nomination).

The system of electoral commissions was of three-level. Besides the CEC, there were also *regional electoral commissions*, which were formed in the same manner and *precinct electoral commissions*, which were formed by the members of the regional electoral commissions taking into consideration the principle that every member of the regional electoral commission has the right nominate one member of the precinct electoral commission.

An example of the above mentioned second model is the legal regulation of the formation of the CEC which came to effect on January 1, 2007. The system of electoral commissions was also three-level: CEC, *territorial electoral commissions (TEC)* and *precinct electoral commissions (PEC)*. The CEC was formed by one member appointed by each party having faction in the Parliament, one member appointed by the RA President, one member appointed by the decision of the deputy group announced during the first session of the acting Parliament and one judicial officer appointed by the RA Council of courts' presidents. The members of the TECs were appointed by the CEC members, based on the principle that every CEC member has the right to nominate one TEC member from persons who had participated in the professional courses and got respective qualification. The judicial officer member of TEC appointed members of TECs from the staff of judicial officers. The members of PECs were appointed by the relevant TEC members taking into consideration the principle that every TEC member has the right nominate one PEC member.

The presented third model is the current one. There are three-levels of electoral commissions in the Republic of Armenia: the CEC, territorial electoral commissions and precinct electoral commissions. The CEC and the TECs act on a permanent basis and are formed based exclusively on the principle of professionalism. The participation of political parties in the formation of electoral commissions is present only at the level of PECs.

The Central Electoral Commission has seven members. Members of the CEC are appointed by the President of the Republic upon the nomination of the Human Rights Defender of the Republic of Armenia (the ombudsperson) (3 candidates), the Cassation Court of the Republic of Armenia (2 candidates), and the Chairperson of the Chamber of Advocates of the Republic of Armenia (2 candidates). Members of the CEC are appointed for a six-year term. A citizen of the Republic of Armenia who has the right of suffrage may be a member of the CEC if she does not publicly carry out public and political activities. The law also stipulates certain requirements related to professional experience and education.

The TECs also have 7 members, who are appointed by the CEC. Professionalism and political principles are compared only at the level of PECs. One or two PEC members (depends on the number of parties represented in the Parliament) are appointed by the political parties that have a faction in the National Assembly and two members by the relevant territorial electoral commissions. The number of PEC's members can't be less than 7.

The staff of the RA CEC is a state administrative institution. The RA electoral code and other legal acts ensure the full and effective implementation of the powers vested in the RA CEC and the commission's participation in civil legal relations.

Most of the employees of the RA CEC staff are civil servants. There are also persons who occupy discretionary (temporary appointed) and civic positions as well as technical support staff who are not civil servants. The structure of the staff includes structural subdivisions (departments, divisions) and separate subdivisions. The staff

has 4 departments, which include 5 divisions, one separate division and 20 separate subdivisions.

The guarantees of the activity, including the safeguards of independence of persons occupying civil servant positions are established by the RA law “On Civil Service”, and the safeguards of the activity of persons occupying discretionary and civic positions as well as technical support staff are established by the RA law “On Public Service”.

#### **4. Safeguards of Free and Fair Elections**

Regarding the safeguards of free and fair elections we would like to highlight three major components: the electoral campaign, the right of electoral process participants to appeal and the publicity of the electoral process.

##### ***Campaign***

The pre-election campaign period is regulated by the Code to ensure equal opportunities for the candidates in access to public resources, campaigning, and financial transparency. Prescription of the pre-election campaign period may not restrain campaigning during other periods (except on the voting day and on the preceding day).

The state shall safeguard free pre-election campaigning. Free pre-election campaigning shall be safeguarded by state authorities and local self-government bodies by means of providing halls and other premises for pre-election meetings, meetings of voters with candidates, and other election-related events.

The nominated candidates and political parties shall have the right to use air time of the Public Radio and Public Television (including live transmission) on equal grounds, for free of charge or for remuneration as well. Candidates shall have the right to disseminate, on equal grounds and in an unimpeded manner, campaign posters, print campaign materials, and other materials. Arrested or detained candidates shall conduct the pre-election campaigning via their proxies in electoral processes.

Voters and candidates shall have the right to campaign, in any way not prohibited by law, for or against a candidate. The procedure of conducting pre-election campaigning, the subject structure and conditions are set forth in Articles 18-22 of the Electoral Code. Some examples of the conditions of campaigning:

Campaigning shall be prohibited on the voting day and on the preceding day.

Campaign posters may be posted only on assigned places.

It is prohibited to post campaign posters on buildings of state organs or local self-government bodies, on or inside public catering or trading facilities and on or inside public transportation means, irrespective of the form of ownership.

Candidates holding political, discretionary, or civil positions, as well as candidates who are state or municipal servants shall conduct the pre-election campaigns in a way which is subject to restrictions.

##### ***Right to appeal***

The RA Electoral Code defines, who shall have the right to bring application (complaint) against the decisions of the electoral authorities, as well as the bodies that are competent to examine the applications (complaints).

Accordingly, the decisions and actions (inactions) of an electoral commission (hereinafter referred to as “acts”) may be appealed by:



- (1) everyone who considers that her subjective right of suffrage has been or may be violated;
- (2) a proxy who considers that the rights of the proxy or the grantor prescribed by this Code have been violated;
- (3) an observer who considers that the rights of an observer prescribed by this Code have been violated; or
- (4) a commission member who considers that a lower commission or the commission of which she is a member has violated her or another person's rights prescribed by this Code.

An application on declaring as invalid or null and void the registration of a candidate or the registration of the electoral list of a political party (or alliance of political parties), as well as appeals against the results of the elections, may be filed only by the candidate or the political party (alliance of political parties) that submitted the electoral list, respectively. An application on declaring as invalid or null and void the registration of a candidate included in a political party's electoral list may be filed only by the political party (alliance of political parties) that submitted the electoral list.

The acts of an electoral commission may be appealed by administrative and judicial procedure. The principle of superiority takes place for the appeal by administrative procedure, i.e., decisions of the precinct electoral commission and the results of the voting in an electoral precinct may be appealed to the TEC, and the latter's decisions - to the CEC.

Acts of the CEC (except for decisions taken on the results of national elections) may be appealed to the Administrative Court.

Decisions on the results of elections of the RA President and the National Assembly deputies may be appealed to the Constitutional Court.

### ***Publicity and transparency of the electoral process***

The legal background for the administrative proceedings is an essential achievement during 25 years of improvement of electoral legislation. Since the

adoption of the Electoral Code in 2011, the administrative proceedings of the electoral commissions have been carried out on the basis of the principles of legality, collegiality, publicity, transparency. The applicant's right to be heard in the frame of administrative proceedings, taking into account the particularity of the electoral procedure is also an important principle which is at the basis of the activity of electoral commissions. It is important to mention the following measures taken by the legislation for ensuring transparency and publicity of the entire electoral process.

1. All the sessions of the CEC are broadcasted online on the official website of the CEC.
2. The decisions of the CEC following the results of administrative proceedings, also in case of refusing the administrative proceedings, are posted on the CEC website.
3. Elections are prepared and conducted publicly.
4. Normative decisions of the Central Electoral Commission shall be posted in accordance with the procedure prescribed by the law. The individual decisions of the CEC are posted on the official website of the Central Electoral Commission ([www.elections.am](http://www.elections.am)) on the day of adoption in case of national elections and by the end of the following working day in case of all other elections. Normative decisions shall be posted on the day of their state registration in case of national elections and by the end of the working day following such state registration in case of all other elections.
5. For the purposes of ensuring the publicity and transparency of organizing and conducting elections, raising the public awareness, and ensuring the security, protection and fail-safe operation of the "Elections" automated system. Similarly, for the proper performance of the powers, electoral commissions are provided with the necessary software, hardware, communication means, equipment, and other facilities.
6. Candidates and political parties may submit their campaign programs in the electronic form prescribed by the CEC for the purpose of posting on the website of the CEC.
7. Candidates for the President and political parties participating at the elections shall submit to the CEC a declaration on the property and financial assets that shall be posted on the website of the CEC. Copies of the declarations of other candidates shall be provided to members of electoral commissions, proxies, mass media representatives, and observers on the basis of their written requests.
8. During elections of the President of the Republic and to the National Assembly, the authorized body<sup>9</sup> maintaining the Voter Register of the Republic of Armenia shall, on the 30<sup>th</sup>, 20<sup>th</sup>, 10<sup>th</sup> day preceding the voting day and on the day preceding the voting day, publish the total number of voters included in the Voter Register of the Republic of Armenia.
9. Voters shall be informed of the composition, locations, and working hours of electoral commissions, the time limits for submission of applications on inaccuracies in the lists of voters, and of the nomination and registration of candidates, the voting day, and the voting results as well as the election results.
10. The CEC shall, at 9:00 of the voting day, publish information on the progress of elections by live broadcast over the Public Radio and Public Television of Armenia; from 12:00 to 21:00, the CEC shall, once every three hours,

---

<sup>9</sup> Passport and Visa Office, belonging to the Police of the Republic of Armenia.





publish information as per the Marzes and the City of Yerevan on the number of voters having participated in the voting as of the foregoing hour.

11. The CEC shall, no later than starting at 0:00 hours on the day following the voting, carry out the tabulation of voting results as per electoral precincts, and shall complete the tabulation and post the preliminary results of the election on the website of the Commission, but no later than within 24 hours of the end of the voting.
12. Proxies, observers, mass media representatives and members of a superior electoral commission shall be entitled to be present at the sessions of electoral commissions and in polling stations during the entire voting process. Proxies, observers, and mass media representatives may take photos and videos of sessions of the electoral commissions, as well as of the voting process without violating the right of voters to secrecy of the ballot.
13. The lists of voters shall be public and freely accessible, except for the lists compiled in military units and the lists signed by voters. Lists signed by voters shall not be published, and no copy of these lists shall be made; furthermore, they may not be photographed or videotaped.

The list of legislative measures offered above is not exhaustive.

## Conclusion

Summing up the above findings and analyzing the practice of formation and application of the electoral legislation during the past 25 years - from 1991 to 2016- we can reach to the following conclusions.

1. At a certain stage of the development of the electoral legislation the Republic of Armenia has codified the electoral regulation, facilitating, first of all, its enforcement by various subjects of the suffrage. It is of equal importance that it ensured the uniform regulation of various electoral procedures and activities at the same time taking into account the features of different types of elections in the Republic of Armenia. However, any revolutionary changes

in fact, even in the case of the adoption of new electoral codes have not occurred. While amending the electoral legislation, maintaining the already elaborated positive experience and previously acquired achievements, the lawmaker has tried each time to combine them with modern trends of the evolutionary development of the suffrage.

2. Tracing the history of the development of the electoral legislation in terms of regulation applied during the parliamentary elections, we can state, that during the past 25 years there was a gradual transition from a full majoritarian electoral system, then a mixed electoral system (in different time periods in various proportions of mandates, distributed under majoritarian and proportional electoral systems) to a fully proportional electoral system (which will be applied during the next parliamentary elections of 2017).
3. Choosing models for election commissions, the electoral legislation has undergone a long way for achievement of an optimum way of their formation, combining various principles and applying a set of variations. Today in RA the Central Election Commission and TECs, formed only on professional bases, work on a permanent basis while precinct election commissions are composed both based on the professional and political representation.
4. A precise legal regulation of the institute of the administrative proceedings in the frame of electoral processes has been elaborated and an effective practice of reviewing applications and complaints has been developed.
5. One of the most notable achievements can be considered the assurance of a high degree of publicity of electoral processes in Armenia in which an important role, in addition to other factors, played the launch and continuous improvement of work of the official website of the CEC.



## *Secretariat of the Central Election Commission of the Republic of Azerbaijan<sup>1</sup>*

The conduct of free and fair elections is one of the fundamental institutions of the political system in every society. The state of Azerbaijan guarantees citizens freedom of expression as well as the protection of principles and norms on the election right.

### **1. Election systems**

The will of the Azerbaijani people constitutes the basis of state power of the Republic of Azerbaijan. This will is reflected by freely and regularly conducted elections by secret and personal voting via general, equal and direct suffrage.

The Central Election Commission (CEC) forms 125 election constituencies every 5 years based on the information on the number of voters permanently residing and registered in the relevant territorial units, provided by the municipalities in cooperation with the relevant executive bodies. The scheme of formation of election constituencies and their maps, as well as proposals on boundaries of election constituencies shall be approved by a commission established by the Central Election Commission and consisting of Commission members and specialists. As a rule, election constituencies are formed on the basis of the *average voter representation norm*. The average voter representation norm is determined by dividing the total number of registered voters in the country by 125 – that is the number of seats in the Milli Majlis (the National Assembly) of the Republic of Azerbaijan.

The members of the Milli Majlis are elected by free, personal and secret voting via general, equal and direct suffrage in the majority election system. Elections to the Milli Majlis are held on the first Sunday of November in every five years and the term of office is 5 years. The nomination of candidates starts since the day of official publication of the decision on the call for elections by the competent body. Citizens with right to be elected may be nominated by political parties and blocs of political parties, voters' initiative groups and on their own initiatives.

During Elections to the Milli Majlis, the relevant election commission considers the documents prescribed by law and adopts a substantiated decision on the approval or refusal from the approval of the candidacy within 5 days upon the submission of these documents. The nominees or their authorized representatives submit the necessary election documents for the registration and signature sheets with 450 valid signatures collected within the relevant election constituency to the election commission at most 50 and at least 30 days prior to the voting day. Based on the decision of election commissions, working groups (consisting of professional experts of relevant fields) are formed by these commissions to check the accuracy of the documents. The activity of the working groups are fully open to local and international observers, candidates and their authorized representatives, the authorized representatives of political parties and blocs of political parties, media representatives

---

<sup>1</sup> CEC Secretariat, office@cec.gov.az

and other interested parties. The election commission examines these documents within 7 days and adopts a decision on the approval or refusal from registering the candidate based on the findings provided by the working group. Election commissions adopt a decision on the registration or refusal from registration of a candidate based on the opinion of the working group and if a plaintiff does not agree with the decision, that decision of the commissions can be appealed against relevantly to superior election commission and court. The registered candidate is provided with a relevant badge. All candidates enjoy equal rights and responsibilities.

The voting is held from 8.00 till 19.00 on Election Day. The voting day is not a working day in the area where the elections are conducted. Election commissions inform voters on the place and date of the voting via mass media, information boards and by sending them relevant notifications by post at least 25 days prior to the voting day.

On the Election Day, when a voter enters the polling station, her identification documents are examined and the left thumb of voter is checked by ultraviolet lamps for invisible ink before voting. After the voter's thumb is marked with ink, she gets a ballot paper. The voter votes in secret and marks the square located at the right hand side of the surname of the candidate she wants to vote for. The vote shall be considered invalid, when more than one square (in the case of Presidential and Parliamentary Elections) or none of the squares is marked. The voter leaves the polling station after she casts the ballot paper upon the voting.

After the voting ends, votes are counted continuously with the participation of the entitled persons. The protocol contains information on the number of voters included in voters' lists, the voters who got ballot papers, ballot papers cancelled without being used and spoilt ballot papers, valid and invalid ballot papers and the votes cast for every candidate.

A protocol consists of 3 carbonized copies, each of them having different colours. It is not allowed to make any corrections in the protocol. The voting results protocols are submitted to the Constituency Election Commissions by Precinct Election Commissions immediately, but not later than 24 hours after the vote counting ends and Constituency Election Commissions deliver the protocols to CEC at latest within 2 days after the voting day. CEC examines the protocols of Constituency Election Commissions and the attached documents at latest within 20 days after the voting day and submits its findings to the Constitutional Court within 24 hours.

After the voting result protocols on election constituencies are submitted to CEC within the time period and procedures defined by the legislation, the information on results is published in the form a table and posted on the CEC official website immediately.

The Constitutional Court checks the conformity of the documents with the Election Code within 10 days upon receiving them and approves the election results in the case of the legal compatibility. The resolution of the Constitutional Court is final.

The law does not imply any restrictions on the voter turnout. The candidate who has collected the majority of the votes in the respective constituency is considered elected. The term of office of the members of the Milli Majlis ends on the first session day of the newly elected Milli Majlis. If new elections of members to replace retired members of the Milli Majlis (by-elections) are carried out, then the term of office of a newly elected member corresponds to the remaining term of office of the member replaced. The elections are not conducted if less than 120 days remain to the termination of the term of office of the Milli Majlis.

If elections are considered invalid in a respective constituency, or returns of elections are not approved, CEC shall conduct repeat elections.

By-elections shall be held in the single-mandate election constituency within a month after a seat has become vacant. Present members of the parliament cannot stand as candidates at by-elections.

The “Elections” State Automated Information System was established in 2000 to ensure transparency and openness in the election process. The system is used for obtaining, transmission and processing of information timely in the conduct of elections, registration of voters, compiling voters’ lists, aggregation of voting results and election returns. All persons with observer status are fully guaranteed the right of access to the information included or transmitted via the network. Transmission of the information on voter turnout, voting results and election returns are carried out *online*.



The President of the Republic of Azerbaijan is elected for a 5-year term by general, direct and equal elections, with free, personal and secret ballot. A citizen of the Republic of Azerbaijan not younger than 35, permanently living in the territory of the Republic of Azerbaijan for longer than 10 years, possessing suffrage, without previous conviction for serious crimes, having no commitments in front of other states, with university degree, not having double citizenship is entitled to be elected President of the Republic of Azerbaijan.

Presidential elections shall be held on the Wednesday of the third week of October of the last year of the President’s term of office as determined by the Constitution. Election Day shall be declared by a decision of CEC and the decision is published at the latest within 2 days.

Presidential candidates are nominated after the decision on the elections has been officially published. Political parties, blocs of political parties and citizens possessing suffrage are entitled to nominate presidential candidates. Each citizen or citizens possessing suffrage may create an initiative group consisting of at least 100 persons for nominating presidential candidates.

No less than 40 thousand signatures shall be collected in support of a candidacy. At least 50 signatures shall be collected from the territory of each constituency and the total number of constituencies from which signatures are collected should be no less than 60. Each voter may support only one candidate.

Presidential candidates are registered by CEC and their list is published in periodicals at least 20 days prior to the voting day.

During the voting in the presidential elections a voter shall mark a blank square at the right hand side of the surname of a candidate for the presidency. The ballot paper shall be considered invalid, if either more than one or no square is marked.

A presidential candidate of the Republic of Azerbaijan shall be considered elected if the candidate is voted by more than half of voters participated in the voting. If more than two persons are included in the ballot paper as presidential candidates

and no one was elected, CEC shall appoint repeat voting for the two of the candidates who gained the majority of the votes during the elections. Repeat voting shall be held on the second Sunday after the general elections and the candidate who gained the majority of votes shall be considered elected President of the Republic of Azerbaijan.

A protocol on results of the presidential elections shall be published within 24 hours upon its signing. CEC finalizes the presidential elections and submits the results to the Constitutional Court for approval no later than 10 days after the Election Day. Relevant decision of the Constitutional Court on the results shall be final.

The Constitutional Court of the Republic of Azerbaijan declares the results of the presidential elections officially within 14 days after the voting day.

In accordance with the Constitution, the elected President shall take an oath within 3 days of the Constitutional Court's official announcement of the returns of the presidential elections and the President of the Republic of Azerbaijan shall commence the exercise of his authority starting from that day.

The President of the Republic of Azerbaijan in office shall exercise his power until the commencement of the powers of the newly elected President.

## **2. Stability of election laws**

Elections in the country are organized and conducted according to the Constitution, the Election Code and a number of instructions, rules and regulations adopted by CEC. The main document for the preparation and conduct of elections, the Election Code – which was worked out in effective cooperation with international organizations and incorporated their recommendations – was adopted on May 27, 2003 following long public discussions and overview of political parties, civil society groups and relevant specialists.

The Election Code consists of general provisions, 7 sections, 38 chapters and a special part. Since the day of adoption, the Code was amended and updated several times.

## **3. Electoral management bodies**

Elections in the Republic of Azerbaijan are organized and held by election commissions. The system of election commissions include CEC (18 members), 125 Constituency Election Commissions (each having 9 members) and about 5500 Precinct Election Commissions (each having 6 members). CEC leads the activity of election commissions.

Six members of CEC are nominated by and represent the political party whose members constitute the majority in the Milli Majlis, six members are nominated by and represent independent members in the Milli Majlis, while six members are nominated by and represent the political parties whose members constitute the opposition in the Milli Majlis. One third of the members of the Constituency Election Commissions and Precinct Election Commissions also represent the majority, one third independents and the remaining one third the opposition in the Milli Majlis.





Decisions of CEC are adopted by open voting in the sessions and are signed by the Commission chairman and two secretaries. CEC Chairman represents the majority in the Milli Majlis, while one of the secretaries represents the opposition and the other one represents independent parliamentarians. Nomination of two of the members representing independent members of the Milli Majlis has to be agreed by the interested parties: one by majority and one by opposition political parties.

Decisions of CEC are adopted by open voting in the CEC session by 2/3 vote majority. CEC establishes its Secretariat. The activity of the Secretariat is coordinated by the Regulation approved by CEC.

The office term of election commissions is 5 years and for full independence of the commissions, they shall not depend on state bodies, municipal institutions, political parties, non-governmental or other public organizations, other legal entities and physical persons with regard to the preparation and holding of elections. Any interference in the activity of election commissions by other entities causes relevant liability as implied by the Criminal Code and the Code of Administrative Offences.

Meanwhile, Articles 17 and 22 of the Election Code considers the *code of conduct for the activity of election bodies* and impose commitments for commission members to be fair and impartial, not to allow any action that could be understood as supporting any particular candidate or political party, not to execute instructions that are illegal or not in accordance with their duties, to treat every political party, candidate, voter and other participants of the election process fairly and equally, not to have party affiliation, not to have any contact with a voter with respect to election issues of a political nature and not to take part in any activity (including private activity) that could lead to a biased attitude towards any candidate or political party.

Decisions and acts adopted by election commissions within their authority shall be binding on state organs and municipalities functioning within the relevant territory, nominees, candidates, political parties, non-governmental organizations and other public organizations, referendum campaign groups, public servants and voters. Decisions of superior election commissions shall also be binding on lower election commissions.

#### **4. Safeguards of free and fair elections**

Transparency of the preparation and conduct of elections is one of the important principles. The elections held in Azerbaijan are characterized by the observation of thousands of local and international observers, domestic and foreign media representatives, usage of webcams since 2008, as well as application of information and communications technologies.

Observers are fully independent to observe all the processes freely before, on and after the Election Day. While conducting observation, the election process should not be influenced in favor of any candidate or political party. All cases and facts regarding the activities observed should be taken into consideration, observation should be open and the results are to be based on facts.

The media representatives who play an important role in ensuring transparency of the election process shall enjoy free access to monitoring the elections conducted in the Republic of Azerbaijan. Domestic media representatives shall monitor all parts of the election process before and after the Election Day freely without any requirement to be registered. Foreign media representatives may join the observation process of the elections after CEC provides them with a relevant badge. According to the Election Code, international and domestic observers shall have equal rights and duties.

The usage of web cameras which has been applied since 2008 in Azerbaijan enables to follow the voting process lively through internet. Apart from all other means to ensure transparency in elections, webcams are installed in 1000 (approximately 20%) polling stations which cover the whole territory of the country. The fact of covering the whole territory of the country is taken as a basis. The issue on using webcams is considered at the CEC session and after a relevant decision is adopted, the list of the polling stations with webcams is published and posted on the CEC official website. Internet users are allowed to monitor the voting process and vote counting lively and continuously through the webcams by the access to the CEC website either in the country or abroad without any registration required.

All election-related information is available on the CEC website ([www.msk.gov.az](http://www.msk.gov.az), [www.cec.gov.az](http://www.cec.gov.az), [www.infocenter.gov.az](http://www.infocenter.gov.az)) in Azerbaijani and English languages with the aim of ensuring transparency.

Appeals and complaints are examined in compliance with the Election Code and “Instruction on the rules for submission and investigation of the complaints and appeals filed to the Central Election Commission of the Republic of Azerbaijan and Constituency Election Commissions”, worked out jointly with the Venice Commission of the Council of Europe. The Instruction is one of the normative acts adopted by CEC.

Decisions and acts adopted by election (referendum) commissions within their authority, shall be binding on state bodies and municipalities functioning within the relevant territory, candidates, registered candidates, political parties, non-governmental organizations and other public organizations, referendum campaign groups, officials, and voters. Relevant decisions are adopted in a manner and timeframe defined by law to ensure the effective and fair investigation of appeals and complaints against the violation of election rights.

Voters, nominees, candidates, political parties, blocs of political parties, referendum campaign groups, their agents, observers and election commissions may file complaints on decisions and actions (inactions) which violate citizens’ electoral rights within 3 days following the date the decision is published or made, or the date when action (inaction) occurred, or the interested person is informed about it. If the case described in the complaint can be considered of a criminal character according to the Criminal Code of the Republic of Azerbaijan, the relevant election commission shall appeal to relevant public prosecutor’s office alongside with making decision regarding the remedy for the shortcomings or irregularities indicated in the complaint. CEC must make a grounded decision on consideration of each complaint. If the investigation of the complaint indicates the probability of a crime, the prosecutor’s office shall be informed about it. The relevant prosecuting body must consider the complaint within 3 days.

The superior election commission shall have the right to cancel the decision of a subordinate election commission, to make a decision regarding the substance of the issue or order re-consideration of the issue. A decision on each complaint received by the election commission during the election processes shall be made within 3 days or immediately if complaints are received on the Election Day or the day after the Election Day. Decisions must be delivered to the plaintiff. Courts shall consider complaints concerning decisions of election commissions within 3 days (if no shorter timeline is indicated by the Election Code). A complaint on the court decision may be filed with a superior court of instance within 3 days.

If complaints are initially not considered by a superior election commission, authorized persons may consequently file complaints on the decision or the action (inaction) of the Constituency Election Commission to CEC and on the decision or

the action (inaction) of CEC to the Court of Appeal.

If the court cancels the decision of the election commission, the same election commission should make a new decision on the issue, or a superior election commission should make a relevant decision based on the decision of the court. Non-implementation of the court resolutions shall impose criminal liability in accordance with the Criminal Code of the Republic of Azerbaijan.

In order to investigate complaints on actions (inactions) and decisions that violate citizens' electoral rights relevant expert groups shall be created at CEC composed of 9 members, and at the Constituency Election Commission composed of 3 members. Commissions' lawyer members may be included in the composition of these groups.

If the applicant expressed willingness to attend the meeting in her appeal, she must be personally informed about the place and time of the meeting by telephone or mail, a day prior to the meeting. The expert shall report on the complaint at the meeting. The member of expert group conducts investigation of the appeal, provides a relevant opinion as a result of the investigation. The opinion is put into the session of the election commission and a relevant decision is adopted after the Commission members get familiarized with the opinion and conduct discussions. During the investigation of complaints the expert group member is independent and carries liability only by the law. If the plaintiff or her authorized representative is present at the meeting they can explain the complaint. A representative of the Constituency Election Commission whose decision is under discussion can be invited to the meeting of CEC and she has the right to justify the decision made.

The expert who investigates the complaint must issue an opinion within the period established by the Election Code. If additional investigation is needed, the relevant election commission can make a decision in this regard. Such a decision must be made within 3 days from the date of receipt of complaint and immediately on the Election Day.

One of the important elements of free and fair elections is pre-election campaign that enables candidates to deliver their messages to voters. Pre-election campaign may be conducted by candidates, political parties and blocs of political parties, the candidate of which has been registered, as well as referendum campaign groups. Pre-election campaign is carried out on free and paid basis. The pre-election campaign may be conducted via mass media, mass activities (gatherings and meetings with citizens, mass discussions and speeches, etc.), distribution of printed, audiovisual and other campaign materials and all other means not prohibited by the law.

The pre-election campaign by mass media is conducted in the form of open discussions, round tables, press conferences, interviews, speeches, political advertisements, TV and Radio programs, video-films and other means not prohibited by law. The registered candidate, political party or bloc of political parties shall



determine the forms and ways of their pre-election campaigning independently based on their choice.

In compliance with the Criminal Code, the Code of Administrative Offences and the Civil Code of the Republic of Azerbaijan, pre-election programs of candidates, political parties, blocs of political parties, meetings and pre-election campaign speeches and materials distributed through the mass media should not contain incitements to overthrow the government by force, change the constitutional system by force, violate the territorial integrity of the country, or insult citizens' honour and dignity. Pursuant to the Criminal Code of the Republic of Azerbaijan, it shall be prohibited during a pre-election campaign to abuse the mass media for campaigns which incite social, racial, national or religious hatred and hostility.

A press group established under CEC, comprised mostly of journalists, shall ensure the observance of the rules on pre-election campaigning. Pursuant to the "Regulation on the Press Group formed under the Central Election Commission of the Republic of Azerbaijan to control the observance of the rules for the conduct of pre-election (pre-referendum) campaign in mass media", approved by the CEC decision, the main duties of the press group are as follows:

- Implementation of the control on the observance of legislation of the Republic of Azerbaijan that regulates rules and methods for the conduct of pre-election campaign and provisions of Instructions and other acts of the CEC by participants of the election process
- Consideration of the appeals and informing the interested parties on the results of the investigation
- Taking relevant measures for the elimination of the violation of the rules for the conduct of pre-election campaign in the manner defined by legislation.

The pre-election campaign shall commence 23 days prior to the voting day and finish 24 hours prior to the beginning of the voting. It shall be prohibited to conduct any pre-election campaign on the voting day and the day before it. Pre-election campaign materials displayed inside and outside the rooms of the election precinct shall be removed on Election Day.

Media outlets shall not conduct pre-election campaign on their own initiatives in favour or against candidates, political parties and blocs of political parties.

Information billboards are installed to post campaign materials in areas densely populated by voters within the boundaries of all polling stations during elections in addition to the other places to post campaign materials and they are planned to be installed in an accessible way for voters to get familiar with.

During campaign period candidates are allocated 6 hours free airtime (3 hours on TV and 3 hours on radio) on Public TV and Radio to provide them more opportunities and conditions for fair competition to convey their pre-election messages to voters. Furthermore, candidates are allocated free print-space in national newspapers in equal amount. CEC determines the rules for using free airtime and oversees the compliance with legal requirements regarding paid airtime. The price list of the paid airtime offered to candidates by media outlets for pre-election campaign is submitted to CEC and the information is posted on the website of the Commission for candidates to get familiar with. CEC aims to guarantee equal terms for all candidates by the mass media.

Pursuant to the Election Code, election funds shall be created to finance activities of nominees, candidates, political parties or blocs of political parties which nominate candidates. A candidate, political party, bloc of political parties shall have the right to determine how to use the election funds belonging to them. The funding can be used only to finance organizational-technical actions for the collection of

signatures in support of the nomination of candidates, to pay persons participating in collection of voters' signatures, to pay pre-election campaigning expenses, information and consulting services, to pay for other expenses for works performed directly by legal entities and citizens during the pre-election campaign. Candidates, political parties, blocs of political parties shall use the money transferred to their election funds up to the voting day, in accordance with the rules defined by legislation and they shall be prohibited from using funds other than the election funds for pre-election campaigning activities and collecting signatures.

By CEC decision, supervisory and audit service is established under the Central Election Commission and Constituency Election Commissions during the activity of election commissions to foster transparency in financing of election campaign. These services are regulated by Regulations "on supervisory and audit service under the Central Election Commission" and "on supervisory and audit service under Constituency Election Commissions". The activity of supervisory and audit services under CEC and Constituency Election Commissions is open to all the election stakeholders – nominees, candidates, authorized representatives of political parties and blocs of political parties, local and international observers, as well as media representatives. The foregoing election actors including local and international observers may get familiarized with the activity of supervisory and audit service and obtain necessary information any time they want, which stimulates the guarantee of transparency in the activity of the supervisory and audit service. The supervisory and audit service shall have the right to control the receipt of funding to the election funds of candidates, political parties and blocs of political parties, the registration of these funds and their targeted spending.

Meanwhile, the Law of the Republic of Azerbaijan "On political parties" was amended by the Law, dated September 30, 2014 aimed at ensuring transparency and openness in the activity of political parties. According to these amendments, political parties shall submit annual financial reports and auditor's opinion to CEC and the reports shall be posted on the Commission's official website.

Azerbaijan has demonstrated strong political will by taking relevant steps for the conduct of free and fair elections. These steps also include prevention of misuse of administrative resources and illegal interference in electoral process. Besides these, The Election Code unambiguously considers that candidates shall join elections on equal conditions and misuse of state and municipal resources in favor of any candidate shall be strictly prevented. According to the Election Code, the persons who misuse their powers and administrative resources in order to influence the results of elections shall be accordingly subject to criminal, civil or administrative liability.

### **Closing remarks**

Activity of CEC is targeted on the safeguards of citizens' constitutional rights to elect and to be elected, proper and inclusive application of election legislation, reinforcement of partnership with international organizations, protection the principles of transparency, openness and fairness in the conduct of elections, increase of legal educational activities, continuous study and implementation of good practices of international experience.



# BELARUS

Stepan Ahiy\*

## 1. Election laws

The Republic of Belarus applies a *simple majority electoral system* in general. The deputies of all levels and the President are elected directly by voters in the republic. According to the legislation of the Republic, the elections of the President and deputies are free and conducted on the basis of direct, equal and universal suffrage, by secret ballot. Voters are the citizens of the Republic of Belarus who have reached the age of 18 and permanently or temporarily residing within a precinct. Voter registration is passive. *Voters' lists* are compiled for each precinct by the local administration authorities and can be updated until the end of voting. There is no existing centralized voter register above the level of Precinct Electoral Commissions (PECs). Verifying and updating the lists by conducting door-to-door checks is carried out by the PECs. Voters, who present a valid passport with confirmation of residence within the precinct are added to the *voters' list* supplementary. In this case, the PEC shall transfer a message about the inclusion of the citizen in the voting list.<sup>1</sup>

The legal basis of the electoral system of Belarus is formed by the *Constitution*, the *Electoral Code*, other acts of legislation (the *Law on Mass Media*, the *Law on Mass Events*, relevant provisions of the *Criminal Code*, the *Code of Administrative Offences*, the *Civil Procedure Code*), and resolutions issued by the *Central Commission on Elections and Holding Republican Referenda (Central Commission)*.

Republic of Belarus is a *presidential republic*. The country is led by the *President* who appoints the prime minister and the government, the judges of the *Supreme Court*, as well as six of the twelve judges of the *Constitutional Court*, including the chief justice, and has the power to dismiss any of them.

The *President* is elected by a direct popular vote for a period of 5 years. The institute of the presidency was for the first time regulated in the Constitution in the year 1994. Candidates for the office of the President should have the support of no less than 100 thousands voters in writing. The candidate must not be younger than 35 years; needs to have permanent residence on the territory of the country for at least ten years prior to the elections; must be a citizen of the Republic of Belarus by birth. The number of terms in office, for which the same person may be elected as the President of the Republic, is not limited by the law.

Presidential elections are called by the *House of Representatives* no later than five months, and shall be held on Sunday no later than two months, prior to the expiration of the previous President's mandate.

Candidates for the office of the President are nominated by *initiative groups* of no fewer than 100 eligible voters, registered by the Central Commission. Signature lists with voters' signatures, collected by the initiative groups in support of the Presidential candidates' nomination shall be submitted to district, city and city district election commissions after the end of the term for collection of signatures. Nomination process begins 80 days and ends 50 days before Election Day.

\* Program Manager, Association of European Election Officials (ACEEEO) [stepan.ahiy@aceeeo.org](mailto:stepan.ahiy@aceeeo.org)

<sup>1</sup> Article 21 of the Electoral Code of the Republic of Belarus





Source: <http://www.rec.gov.by> / Meeting of Lidia Yarmoshyna, Chairperson of the Central Commission with Kent Harstad, Deputy Chairman of the OSCE Parliamentary Assembly

Registration of candidates is carried out by the *Central Commission* and begins 35 days and ends 25 days before Election Day. Within 15 days of the deadline for the signatures' submission, the DEC's check reliability and the number of the collected signatures, fill in verification protocols and transfer them to regional and the city of Minsk commissions. The *regional commissions* summarize collection of signatures, fill in protocols and send them to the *Central Commission*.

The elections of the President shall be deemed valid if over half of the voters attended the voting. The candidate must receive more than half of the votes validly cast to obtain the mandate. If no candidate gains more than 50 percent of the total number of votes cast in the first round, a second round is held within two weeks between the top two candidates. In the second round, a candidate has to obtain over 50 percent of the votes validly cast to get elected.

Elections to the *Parliament* and to the *local Council of Deputies* are called by the *President of the Republic of Belarus*. The *Parliament* – the *National Assembly of the Republic of Belarus* – is a representative and legislative body of the Republic. The Parliament consists of two chambers: the *House of Representatives* and the *Council of the Republic*.

The *Council of Republic* is the body of territorial representation and consists of 64 members. 56 members of the *Council of Republic* are elected by deputies of *local Council of Deputies of the Republic of Belarus* for a 4-year term on the basis of the *indirect suffrage* from six *regions* and the city of Minsk. 8 members are appointed for the same term by the President. According to the Electoral Code only the elections of members of the Council are indirect.<sup>2</sup> The members of the Council of the Republic may be the citizens of the Republic of Belarus who are at least 30 years old and have lived on the territory of the respective *region* for not less than five years.

The *House of Representatives* consists of 110 deputies elected for a four-year term on the basis of a two-round, majoritarian system in single-mandate

<sup>2</sup> Article 8 of the Electoral Code of the Republic of Belarus

constituencies. The candidate to the *House of Representatives* may be the citizen of the Republic of Belarus who reached 21 years of age and resides permanently on the territory of the state.

The deputies of *local Council of Deputies* are elected for four years. The candidate to the local Council of Deputies may be the citizen of the Republic of Belarus who reached 18 years of age and resides or works on the territory of the relevant *local Council of Deputies*. Citizens of the Russian Federation take part in the elections of deputies of *local Councils of Deputies* on an equal basis with Belarusian citizens.

Elections are held in single member constituencies, formed by the corresponding electoral commissions, taking into consideration the principle of equality: the number of registered voters per electoral district should not, as a rule, deviate by more than 10 percent.

Candidates for deputies can be nominated by three groups: by labour collectives, by political parties and by citizens, through collection of signatures. The law gives the right to the parties registered by the *Ministry of Justice* at least six months before the elections to simultaneously nominate candidates for all the 110 single-mandate constituencies. The nomination of the candidates for the deputies of local councils is held by local organizational structures of the parties.

Candidates to the *House of Representatives* might be nominated by collecting not less 1.000 signatures of voters living in the given constituency; candidates to deputies of the regional or Minsk city Council – by not less than 150 signatures; candidates to the district or city councils (cities of regional subordination) – by not less than 75 signatures; while candidates to city councils (city of district subordination), rural settlement or village councils – by not less than 20 signatures. Candidates for the deputies to the *House of Representatives* can be also nominated by voters in the labour collectives exceeding 300 workers, and candidates to the corresponding local councils by the same number of voters, as in the case of the signature collection.



Source: <http://www.rec.gov.by> / The meeting of the Central Commission

The elections of deputies of the Parliament in the first round shall be deemed valid if more than a half of the voters, and in the second round if more than 25 percent of the voters have taken part in voting. If no candidate receives more than 50 percent of all votes cast in the first round, a second round is held within two weeks between the two candidates with the most votes.

Elections of deputies of *local Councils of Deputies* are held in one round, the mandatory minimum of voters' participation in voting is not prescribed, while the results of voting are determined on the basis of the majoritarian system by *relative majority*.

## 2. Stability of election laws

The current *Electoral Code* was adopted in 2000 and combines the legal norms regulating the procedures of the formation of the elective state bodies, holding of referenda, and the recall of the elected members of Parliament and deputies of the local representative bodies. Thus it allows holding of all kinds of elections by uniform rules and promotes the creation of stable legal practice.

In 2010, 2011 and 2015 the *Electoral Code* was amended substantially, addressing some recommendations made earlier by the OSCE/ODIHR. Innovations in the electoral legislation have increased the independence of the electoral commissions. In order to ensure greater inclusivity and to promote confidence, the *Electoral Code* now requires that at least one third of the members of *District Electoral Commissions* and *Precinct Electoral Commissions* must be drawn from political parties and other public associations, and the number of state employees may not exceed one third of the commissions' composition. The commissions may not include judges, prosecutors and authorities of local executive and regulatory bodies. The decisions on the composition of the electoral commissions can now be appealed to courts at the corresponding level.

The procedure of nominating candidates for the President's office as well as candidates for deputies from political parties is greatly simplified by the amended *Electoral Code*. The process of registration of candidates became more liberal. Several new provisions in the electoral legislation also empower implicitly candidates during holding the campaign. It is established that candidates and proxies can use the two-day notification procedure of holding mass events in the places determined by local authorities. Along with budgetary financing it is determined that candidates for the office of the *President* and candidates for deputies of the *House of Representatives* may establish individual campaign funds. These candidates are also entitled to hold debates broadcasted in the State Media.

The amendments also contained additional regulations of *early voting procedures*<sup>3</sup>, including the need to complete a protocol at the end of each day during the *five-day early voting period*. The new *Electoral Code* establishes a quota for the inclusion of political party members in election commissions, provides for certain actions of election commissions to be appealed to the courts, and grants candidates the opportunity to engage in pre-recorded television debates. The most recent, June 2015 amendments to the *Electoral Code* were made due to changes that occurred in different acts relating to prohibition of funding from foreign sources.

---

<sup>3</sup> Article 53 of the Electoral Code of the Republic of Belarus: „*The voter, ...who has no possibility to be at his/her place of residence at the Election Day, ...have the right to fill in the ballot paper and put it in a separate sealed ballot box in the premises of the Precinct Commission...*”

Despite these improvements, the European Commission for Democracy through Law (Venice Commission) and the OSCE/ODIHR raised concerns toward the legal framework, which still does not fully comply with international standards, and continues to contain serious shortcomings.<sup>4</sup>

#### **Elections in the Republic of Belarus 1990-2016**

<b>Year</b>	<b>Date</b>	<b>Type</b>
1994	23 June	Presidential
1995	11 April	Parliamentary
1995	14 May	Referendum
1996	24 November	Referendum
2000	15 October	Parliamentary
2001	9 September	Presidential
2004	17 October	Parliamentary and Referendum
2006	19 March	Presidential
2008	28 September	Parliamentary
2010	19 December	Presidential
2012	23 September	Parliamentary
2015	11 October	Presidential

### **3. Electoral management bodies**

According to the *Constitution of the Republic of Belarus* supervision of the electoral procedures is imposed on election commissions. The election commissions within their powers are independent of state authorities and bodies of territorial local self-government.

The elections are conducted by a three-tiered election administration: the *Central Commission on Elections and Holding Republican Referenda* (CEC), 110 *District Election Commissions* (DECs), and approximately 6,400 *Precinct Election Commissions* (PECs), including about 40 PECs at diplomatic missions abroad. The results of the out-of-country voting are allocated to a *District Election Commission in Minsk*.

The *Central Commission on Elections and Holding Republican Referenda* is a permanent body consisting of 12 members with a five-year mandate.<sup>5</sup> Six members are appointed by the President while six are elected by the indirectly elected upper chamber of the *National Assembly*, the *Council of the Republic*. The CEC Chairperson is appointed by the President from amongst its members, with the consent of the *Council of the Republic*. The Vice-Chairperson and Secretary are elected from amongst the members at the first CEC meeting. Only the Chairperson and the Secretary are permanently employed officials. Those members of the CEC, who belong to political parties, are obliged to suspend their membership in the party and during the course of their work in the commission are not allowed to participate in the activities of the party or carry out its assignments.

CEC sessions and meetings are open and attended by accredited observers; the CEC decisions are posted on the CEC's website to enhance the transparency of its work.

<sup>4</sup> European Commission for Democracy through Law (Venice Commission) and the OSCE/ODIHR *Joint opinion on the Amendments to the Electoral Code of the Republic of Belarus*, CDL-AD(2010)012, June 4, 2010: [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)012-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)012-e.asp)

<sup>5</sup> The incumbent CEC members were appointed on 21 December 2011.



Source: *belprauda.org*

The CEC's work is assisted by advisory (non-voting) members. Each registered candidate during presidential elections is entitled to appoint one member with an advisory vote, and during elections to the *House of Representatives* political parties that nominated candidates may also appoint advisory members.

The *District Election Commissions* and *Precinct Election Commission* are temporary bodies appointed for each election by joint decisions of local legislative and executive bodies in each administrative unit. Each DEC is composed of 13 members, while PEC membership varies from 5 to 19 members depending on the number of registered voters in the given precinct. The CEC issues *guidelines* for the work of DEC and PECs and organizes cascade trainings for lower-level commissions.

Women are well represented in the election administration, particularly at the DEC and PEC levels, including leadership positions.<sup>6</sup> Of the 12 members of the *Central Commission*, 5 are women, including the CEC Chairperson.

#### 4. Safeguards of free and fair elections

Citizens who are deemed to be incapable by court decision or kept in places of confinement in accordance with a court sentence may not take part in elections. Persons in respect of whom detention<sup>7</sup>, as a measure of restraint, is ordered under criminal procedure may not take part in voting.<sup>8</sup> The electoral legislation stipulates

<sup>6</sup> During the last presidential elections, held on 11 October 2015, women represented 57 percent of TEC members and 71 percent of PEC members.

<sup>7</sup> While the term 'detention' is not specified. According to the OSCE/ODIHR Election Observation Mission Report (<http://www.osce.org/odihr/elections/98146?download=true>): 'Citizens in pre-trial detention are denied voting rights and citizens serving a prison sentence, irrespective of the gravity of the crime, are denied voting and candidacy rights. Denial of rights of those in pre-trial detention is contrary to the principle of presumption of innocence, while the blanket denial of voting rights for those serving prison sentences lacks proportionality. These restrictions are contrary to paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.'

<sup>8</sup> Article 4 of the Electoral Code of the Republic of Belarus



the restriction of the passive suffrage of citizens who have no right to take positions in the state bodies or public offices due to court decision in a criminal case.

The election campaign period officially starts after the registration of candidates. During election campaign period political parties and candidates of electoral subjects may hold *campaign rallies* across the country, *meet with voters*, undertake *door-to-door canvassing*, use *printed campaign materials* such as posters and leaflets, and *convey their messages* in an unhindered manner.

Campaigning is possible only in designated locations and after notifying the local or election administration. Local executives designate indoor and outdoor spaces and venues for campaigning within deadlines prescribed by law.

The law prohibits propaganda aimed at boycotting the elections or breakdown. The campaign shall not contain propaganda for war, for forcible change of the constitutional order, violation on territorial integrity of the Republic of Belarus, insults and slander against officials and candidates. It is prohibited agitation or propaganda of social, racial, national, religious or linguistic superiority, the production and dissemination of reports and materials that incite social, racial, national or religious hatred.

*Public funding for the conduct of the campaign* is provided to candidates from the state budget. The 2010 amendments to the *Electoral Code* allowed candidates to establish individual campaign funds, comprising a candidate's private financial contributions, as well as contributions from citizens and legal entities. The November 2013 amendments increased the limits on donations by citizens and legal entities as well as on expenditures. Nominated candidates are allowed to open campaign funds early in order to finance signature collection as well. These funds are managed by the election administration. Candidates must submit invoices for their printed materials to their respective DEC for reimbursement. The CEC publishes information on total income and expenditures of candidates on its website and all candidates submit financial reports to the CEC prior to the election.

The *Electoral Code* provides *free airtime* for candidates on state television and radio, and free space in the state-owned print media. The CEC issued a *resolution on media coverage* safeguarding equal access to state-owned media for all contestants through the distribution of free airtime slots, which is implemented in an uncensored format. Candidates and political parties are also allowed to purchase airtime using their own campaign funds and have the opportunity to participate in pre-recorded debates in state television. Furthermore, candidates have the right to *publish* their *election programmes* in one of the state-owned national or regional newspapers published in their district. The CEC established a *Media Supervisory Council* to monitor the conduct of the election campaign in the media and to consider media-related disputes.

Internet represents an increasingly important platform to access information. However, the *freedom of expression online* has been constrained by the 2014 amendments to the *Law on Mass Media*, which extended the existing restrictions on traditional media to on-line media as well. Based on the amendment, owners of the on-line media are liable for any posted content, potentially including users' comments, blogs and social networks.

*Electoral observation* has become an integral part of the electoral processes in Belarus. The institute of supervision over elections is established by legislation. Both domestic and international observers may exercise supervision over elections. The range of domestic observers is fairly wide. They may be members of political parties, candidate proxies, public associations, labour unions, citizens' groups, and deputies of any level. To ensure transparency of the electoral process, the *Electoral Code*



provides that representatives of *mass media* are entitled to be present at all stages of election campaign and during counting of the votes. Subject to legislation, any political party irrespective of whether it has any registered candidate or not is entitled to observe the elections.

Observers from foreign countries and international organizations are invited to the Republic of Belarus by the *President*, the *House of Representatives*, the *Council of the Republic*, the *Council of Ministers*, the *Ministry of Foreign Affairs* and the *Central Commission*.

The electoral legislation ensures a simple and unimpeded procedure of observer's accreditation. The domestic observers are accredited by appropriate electoral commissions, whereas the international observers are accredited by the CEC. The legal status of the observers is determined by the *Electoral Code*. The observers are entitled to exercise their mission at any stage of electoral campaign, including supervision of voting and vote counting processes.

In accordance with the *Electoral Code*, any person has the right to lodge a complaint against decisions of all levels of election commissions, to a *local administration body* in its sphere of responsibility and to the *Prosecutor's Office*, as the body responsible for supervising the implementation of the law within the executive branch of the government. While complaints against decisions of the election commissions can be lodged with higher commissions, decisions of the courts are final.

Decisions relating to the appointment of members of PECs and TECs can be appealed to a court at the appropriate level. CEC decisions can be appealed to the *Supreme Court* as the court of first instance in only four situations: according to the *Electoral Code*, cases should be related to the denial of candidate registration, the denial of the registration of an initiative group, the recognition of withdrawal by a candidate without a reasonable excuse and the invalidity of the election results in relation to insufficient turnout.<sup>9</sup>

The *Electoral Code* stipulates that TEC and PEC decisions on complaints and appeals are taken by an open vote by the majority of the total members of the respective commission.

The suffrage of participants of the election process is protected by way of appeal to the higher election commissions and courts. Terms of consideration of election disputes are uniform in nature and are equally obligatory for observance by courts and election commissions.

By the general rule, the decisions with respect to the complaints filled in the course of the election campaign are made within three days, whereas complaints submitted on Election Day must be reviewed immediately. If the complaints require additional verification, the review period is extended to 10 days. Some decisions of election commissions can be appealed either to the higher-level election commission or a court at the corresponding level. It is important to note, that when appealing to court with respect to the actions of the election commissions, the court procedure is free of charge. Supervision for observing the election legislation is carried out by the prosecution authorities.

---

<sup>9</sup> Article 33 of the Electoral Code of the Republic of Belarus



# BOSNIA AND HERZEGOVINA

*dr. Suad Arnautović, Irena Hadžić,  
M.Sc. and dr. Ahmet Šantić*

## 1. Election systems

### 1.1. Introductory remarks

At the time, Bosnia and Herzegovina was one of six republics in the Socialist Federal Republic of Yugoslavia (SFRJ). Its population consisted of Bosniaks, Serbs, Croats and other nationalities that lived in Yugoslavia.

A wave of democratization was sweeping the country. The ruling communist party (Communist Union of Yugoslavia/Bosnia-Herzegovina) was allowing new parties to take part in political life. The fall of communism was in sight, but at the same time nationalism was growing up in its place. The nationalist policies that were taking over in Serbia and Croatia inflamed nationalist feelings in Bosnia as well. As a result, Muslims, Serbs and Croats in Bosnia almost all voted for nationalist parties in the 1990 elections.

The main characteristics of the 1990 elections is that these were the first multiparty elections after 45 years of rule of the communist party and produced a complete change in the composition of political authorities in Bosnia-Herzegovina (BiH). Communist rule was replaced by the rule of three nationalist parties, each of which claimed to represent an entire nation. The then communist leaders mostly became transformed into new national leaders, and the previous communist ideology was replaced by national ideology.

### 1.2. Elections in 1990

The election model applied on the elections held on 18 November 1990 differed according to the various structures for which parties nominated their representatives: the Bosnia-Herzegovina Parliament – the Socialist Republic (SR) of BiH Assembly (composed of a Chamber of Municipalities and a Chamber of Citizens) and the SR BiH Presidency.

Voting for the members of the SR BiH presidency was carried out simultaneously with voting for deputies in municipal assemblies (and the city of Sarajevo) and deputies for both Chambers of the Assembly of the SR BiH. The entire Republic was defined as a single election unit, and the law stated that the election of SR BiH Presidency members would be carried out under the relative majority system (*first-past-the-post*), according to national quotas.

Namely, the law defined that among the representatives of one nationality (Bosniaks, Serbs, and Croats), two candidates at the most may be elected, and for candidates representing Yugoslavs and others, one at the most (2+2+2+1). As a consequence, one voter had a total of seven votes at her disposal. Candidates who received the most votes (relative majority) compared to other representatives of the certain group of people were elected as members of the SR BiH Presidency.

Accordingly, four candidate lists (sections of ballots) were formed for the election of Presidency members: a list of candidates representing Bosniaks, a list of

candidates representing Serbs, a list of candidates representing Croats and a list of candidates representing members of other nations and nationalities – the later for citizens who did not define themselves in national terms or who defined themselves according to religious or other background.

On the election of deputies to the Chamber of Citizens of the Assembly of SR BiH results were determined and mandates were apportioned according to the system of proportional representation. As an important feature, this system enabled parliamentary representation for a larger number of parties, affirming the multiparty system. The election of deputies to the Chamber of Citizens of the SR BiH Assembly was carried out in seven election units, as follows: election unit Sarajevo (24 deputies elected), election unit Tuzla (28), election unit Zenica (15), election unit Mostar (15), election unit Doboj (14), election unit Banja Luka (25) and election unit Bihac (9). Therefore, 130 deputies were elected to the Chamber of Citizens of the SR BiH Assembly.

The absolute majority system (based on two rounds) was applied for the election of deputies to the Chamber of Municipalities of the Assembly of SR BiH. The election of deputies for this chamber was extended to the second round for those election units where no single candidate received an absolute majority (in the second round requiring simple majority of ballots cast in the election unit). For the election of deputies to this chamber, which consisted of 110 mandates each municipality out of the 109 was an election unit for the election of one deputy, as well as the Capital City of Sarajevo.

One can say the 1990 elections in Bosnia-Herzegovina represented a combined election model: the majority system, with absolute and relative majorities; and proportional representation.

Later the war practically destroyed the entire system of rules.

### **1.3. Development of election system in BiH after the Dayton Peace Agreement**

Based on the *Dayton Peace Agreement* (DPA, 1995), which had its *Annex 3 as Agreement on elections*, the mandate to design the election system in BiH and to organize elections in the country was entrusted to the Organization for Security and Co-operation in Europe (OSCE), which had organized elections in BiH from 1996 to 2002.

#### *The 1996 general elections*

The 1996 general elections were held pursuant to *Annex 3 of the Dayton Agreement*, although, according to the assessments of some relevant international factors, all necessary conditions for conducting them in September of 1996 had not been fulfilled. However, since the elections were an integral part of the DPA, the international community led by the United States concluded that conducting the general elections, despite the lack of complete freedom of movement, equal media access for all, and the impossibility of political communication throughout the country, was less damaging than not holding them.

Hence, measures were undertaken to organize the elections, after all. Contrary to 1990, when Bosnia-Herzegovina was a single (unitarian) country, the DPA affirmed the new reality – the existence of *two entities* in BiH: the Federation of Bosnia and Herzegovina and Republika Srpska (RS). Pursuant to that, the following structure of state authorities in BiH was conceived: *the BiH Presidency* with three members (one each from the Bosniak, Croat and Serb community), on the *state level the Parliamentary Assembly of BiH*, composed of the House of Representatives (42

members) and House of People's (15 delegates, appointed by the parliaments of the entities), on the *entity levels* the *BiH Federation Parliament* (140 members) and the *People's Assembly of the Republika Srpska* (75 members).

The general elections according to the new state structure were held on 14 September 1996. Voter turnout at these elections was 46.06%

### *The 1998 general elections*

On September 12-13, 1998, elections were held for the three-member BiH Presidency, House of Representatives of the Parliamentary Assembly of Bosnia-Herzegovina, president and vice-president of the Republika Srpska, the National Assembly of the Republika Srpska, and the BiH Federation Parliament. .

The election of Presidency members was carried out according to the majority system in one round (*relative majority system*), which means that those Bosniak and Croat candidates in the FBiH who received the largest numbers of votes among candidates from their respective *constituent people (entities)* were elected, similarly, in the RS the candidate who wins the largest number of votes was elected.

For the election of the 42-member House of Representatives of the Parliamentary Assembly of BiH (28 representatives from the BiH Federation and 14 representatives from the territory of the Republika Srpska) the *proportionate representation* was applied (using the Hare quota).

The election of RS president and vice-president (elected in a package) was carried out according to the *majority system* – the system of relative majority in one round (*first-past-the-post*). (President and vice-president of the BiH Federation are not elected directly but appointed by the Federation Parliament.

On the election of the members of the National Assembly of the Republika Srpska mandates were distributed according to the proportionate representation system.

Voter turnout at these elections was 70.74%, which can be considered as extremely high.

### *The 2000 general elections*

One of the key issues of the election system and electoral process in BiH is voting of the Diaspora - an issue exceptionally important during the 2000 elections.

As seen in the tables, one can observe a huge difference between the number of registered refugees, who voted by mail in the 2000 elections and later in 2002.

In the 2000 Elections 232.739 voters have been registered, who fled BiH due to the conflict, while that number in the 2002 general elections decreased to 58.833, namely 173.906 refugees were not registered compared to 2000. This decrease was influenced by several facts, which are characteristic to all elections in BiH from 1996 until today, such as: acquiring the citizenship from the recipient country, return to the country, complicated system of registration. Additionally, the fact of abstinence should not be neglected, because many people were simply not interested to get registered.<sup>1</sup> Voter turnout at these elections was 63.7%.

---

<sup>1</sup> In order to provide accurate data, one should conduct a scientific study, which would precisely define the rapid decrease in number of refugees who participate in the political process in the country by elections.

## Parallel overview of voters' registration between general elections 2000 and 2002

**Table A**

	Regular voters	Absentee	TOTAL
Elections <b>2000</b>	2,083,798	191,812	2,275,610
Elections 2002	2,113,150	170,976	2,284,126
Difference	29,352	-20,836	8,516

**Table B**

**Registration by-mail**

Elections 2000	232,739
Elections 2002	58,833
Difference	- 173,906

In the year 2000 elections were held for the last time in organization and under full supervision of *international community*.

For the needs of general elections held in November 2000, the *Rules and Regulations of the Provisional Election Commission* have been adapted. These rules were in accordance with the provisions of the *Draft Permanent Election Law*, adopted by the Parliamentary Assembly of BiH only in August 2001.<sup>2</sup>

One of the novelties for these elections was introduction of *independent candidates lists*, which could be formed by independent candidates registered for the same constituency.

During the preparations for municipal elections held in April 2000, the Provisional Election Commission of the OSCE adopted several important modifications relating to the electoral system itself. First of all, the system of proportional representation was maintained (as according to the Sainte-Laguë method) but loosely structured party lists have also been introduced (*ordinal voting method*). In this way the voters were given an opportunity not only to choose for which political party they wish to vote, but also to choose within the candidate list of the chosen political party those candidates and the number of candidates as they wish to.

Those candidates who got at least 3% of votes won by their political party or coalition were the first who received the seats.<sup>3</sup>

Equally important novelty in case of the elections for the House of Representatives of the Parliamentary Assembly of BiH, the BiH Federation Parliament and the National Assembly of Republika Srpska, that multi-seat constituencies had been introduced, as well as compensatory seats.

At the previous elections (1996-2000), representatives elected for the House of Representatives of the Parliamentary Assembly of BiH, BiH Federation Parliament and National Assembly of RS were elected from one of the two constituencies, the boundaries of which corresponded to those of the entities in BiH. By introducing multi-seat constituencies, the elected members of these organs also represent

<sup>2</sup> In previous elections (1996-1998) the *Provisional Election Commission* conducted the process of registration of political parties for taking part in the elections. Meanwhile, in these elections parties were required from to be registered by the competent court authorities. At the same time the Provisional Election Commission retained the competence regarding verification of political parties for participation in the elections.

<sup>3</sup> This electoral threshold for candidates on loosely structured party list was raised to 5% for the elections in 2002, as established by Article 9.9 paragraph 2 of the Permanent Election Law of BiH ("Official Gazette of BiH", no: 23/01, 7/02, 9/02, 20/02, 25/02, 4/04 and 20/04.)

geographical units, covering certain regions in the country, but again, within the boundaries of the given entity. The system of *loosely structured list* was applied for the election of legislative bodies at the state, entity, and canton level. This method was used for the election of approximately 1/3 of the total number of representatives.

A novelty of allocation of so-called *compensatory seats* was introduced to the electoral system of BiH. This innovation made possible the allocation of compensatory seats to the parties, which otherwise would be inadequately represented in Parliament according to computation of votes in the fundamental constituencies<sup>4</sup>, in accordance with summing up the votes within the whole entity.

For the election of the president and the vice-president of Republika Srpska, *preferential system* was introduced as an essential novelty. The system offered an option to the voters RS to rank their candidates on the ballots according to their option.

### *The 2002 general elections*

In 2002 general elections the total number of registered voters, who registered to vote by-mail, was 58.833. Their enfranchisement right was exercised by 38.523 voters (65,4% out of the registered voters).

Elections held in 2002 were the first elections implemented by the local authorities.

Representatives have been elected for the following levels of authorities:

(a) *State level.* Presidency of Bosnia and Herzegovina composed by three seats of which two seats are elected by the voters from Federation of BiH and one seat elected by the voters from Republika Srpska applying the *system of majority vote*.

The House of Representatives of Parliamentary Assembly of BiH with total 42 seats allocated applying the system of *proportional representation* by a «pure» Sainte Laguë formula. They were elected by the voters distributed in eight multi-member constituencies of which three multi-member constituencies were formed by the voters registered in Republika Srpska with total 14 seats to be allocated, of which five were compensatory seats. Voters of Federation of BiH could cast their votes in five multi-member constituencies with total 28 seats of which seven were compensatory seats.

(b) – *Entity level.* The 98 representatives of the *Federation Parliament of BiH* were elected in twelve multi-member constituencies based a *proportional election system* using the «pure» Sainte Laguë formula.

The 83 representatives of the *National Assembly of Republika Srpska* were elected in six multi-member constituencies based a *proportional election system* using the «pure» Sainte Laguë formula.

President and vice-presidents of RS (altogether three seats), were elected by the voters of Republika Srpska applying the system of majority vote.

The established election thresholds for distribution of mandates was 3% of the total number of valid ballots in the respective constituencies for all levels of elections.

The election turnout (55.5%) was on the 2002 general elections.

### *The 2006 general elections*

The next general elections were held on October 1, 2006. The system of “*passive voters’ registration*” was introduced for the first time compared the “active registration” used on previous elections. Every BiH citizens who registered in the

---

<sup>4</sup> Multi-member constituencies within each entity



BiH citizens' register was automatically included in the *Central Voters' Register (CVR)*.

The total election turnout was very similar to the 2002 general elections (55.31%), 17.21% of the elected representatives were women and 82.79% were men.

#### *The 2010 general elections*

The next general elections were held on October 3, 2010. Online data entry and processing of the results of elections through *Integrated Election Information System (JIIS)* was introduced for the first time in BiH.

The voters' turnout was slightly higher than of the previous election: 56.52%. 17.37% of the elected representatives were women and 82.63% were men.

#### *The 2014 general elections*

The next general elections were held on October 12, 2014.<sup>5</sup>

The voters' turnout was slightly lower than of the previous election: 54.47% total. 18.92% of the elected representatives were women and 81.08% were men.

It is also remarkable that in the gender representation segment the new modifier quota was used in the case of the candidates' lists prescribing that at least 40% of candidates should belong to the underrepresented gender.

### **1.4. Special voting procedures and allocation formulas**

Voting procedures differ not only in the voting method and voting techniques, but also in terms of quality, that is, possibility of voters to freely decide who to vote for. Voting is an individual act expressed in various ways. The BiH regulation promotes voting using special techniques in this respect.

*Absentee ballot* is a vote cast by someone who is unable to attend the official polling station for justified reasons or someone who will be away on the Election Day. Such elector will be offered the right to absentee voting usually prior to an election day. In case of early voting, an elector can vote on a single or series of days prior to an election.

In case of *postal voting*, two envelopes are posted to the voter: one secrecy envelope that does not identify voter in any way - a voter places a completed ballot in the secrecy envelope and seals it. One return envelope with identification information of the voter - the voter places the secrecy envelope in the return envelope and seals it. Secrecy envelope also contains printed instructions on voting and on returning a ballot. Voter needs to sign their own ballot return envelope for the ballot to be counted. As it was mentioned above, vote-by-mail option, as an absentee ballot was established in the Dayton Peace Agreement for any absent citizen during BiH General Elections in 1996.

Following the division of the country into constituencies, translation of votes into seats is one of the most important elements of the election system. Hence, the process of transforming votes into seats is often defined as the electoral system in narrower terms. Sometimes election results directly depend on electoral formula used to translate party votes and individual votes into seats in the respective political representative body.

---

<sup>5</sup> Elections were held on the second Sunday in October having in mind that October 5, 2014, when election should have been held, was Eid ul-Adha (Bajram) – a Muslim religious holiday, as set forth in Article 1.14, paragraph (1) of the BiH Election Law.

In Bosnia and Herzegovina, mandates are allocated based on the Saint-Laguë formula. Political parties, coalitions, lists of independent candidates and independent candidates cannot participate in the allocation of mandates if they do not win more than 3% of the total number of valid votes.

### **1.5. Harmonization of the electoral system of BiH with international standards**

Taking into consideration the requirement that the electoral system and the electoral process has to be democratic, electoral right also must be based on democratic grounds. In other words, every electoral right rests on four (five) basic principles that more or less characterize every democratic system and that have become a standard in contemporary democratic societies. These principles are: universal suffrage, principle of equality, direct election and secrecy of the vote. Recently, freedom of expression was added as the fifth principle, which implies freedom of speech, press, assembly and belief. These principles represent standards of contemporary democracy. Nowadays, principles of *universal, equal, direct, free and secret suffrage* are established in constitutional order of all contemporary democracies.

In order to be able to follow the harmonization of the electoral law in Bosnia and Herzegovina with international standards, it is necessary to compare the essence of these principles with legislation and practice related to elections in BiH.

Election Law of Bosnia and Herzegovina (2001) in its first Chapter (General provisions) defines that elections in Bosnia and Herzegovina are free, universal, equal, direct and secret. More importantly, the specific rules of election legislation are designed in accordance with these principles.

Like in the case of any other democracy, challenges also occur related to the implementation of the principles. The electoral system of Bosnia and Herzegovina contains likely discriminatory provisions that prevent certain citizens from running for public offices, primarily for the Presidency of Bosnia and Herzegovina as a collective presidency and members of the representative bodies. Members of the three *entities (constituent people)*, Bosniaks, Serbs and Croats are the only ones allowed to run for public offices in these bodies, whereas others are deprived of such right.

Three members of the BiH Presidency are not elected on the entire territory of Bosnia and Herzegovina as one constituency, thus restricting every citizen, who has the right to vote, to run for the office of the member of the Presidency, regardless of the constituency in which she is registered as a voter.

The BiH Election Law also regulates that election of the members of the BiH Presidency is based on the majority system. According to this regulation, members of the BiH Presidency, directly elected from the territory of the BiH Federation – one Bosniak and one Croat, are elected by voters registered to vote in the BiH Federation. These voters can only vote for one candidate, and not for both. Bosniak and Croat candidate having the highest number of votes amongst the candidates representing the same *constituent people* will be elected.

Accordingly, the Serb member of the BiH Presidency is elected by the voters registered to vote in Republika Srpska, the candidate with the highest number of votes is elected. This requirement means that the candidates, who receive the highest number of votes within among the *constituent people* for which they stand for the elections in first round, will be elected regardless of the turnout figures and regardless of the percentage of votes that candidates, who have the highest number of votes, have won.

A voter with the right to vote also must identify herself as belonging to on group of *constituent people* of Bosnia and Herzegovina in order to stand for the Presidency of BiH and to be elected as member of the BiH Presidency.

Bosniaks and Croats can stand as candidates and be elected for a member of the BiH Presidency only from the territory of the BiH Federation, and not from Republika Srpska, while the members of Serb people can stand as candidates only from the territory of Republika Srpska, and not from the territory of the BiH Federation.

After analyzing the given provisions of the *BiH Constitution* and the provisions of the *BiH Election Law*, one can observe that election of members of the BiH Presidency is founded on *ethnic and territorial principle*.

It is difficult to assume that only members of a particular ethnicity can be regarded as fully loyal citizens. One can also note that members of the Presidency have a veto right whenever there is a *violation of vital interests of the entity* from which they were elected. It cannot be maintained that only Serbs are able and willing to defend the interests of the RS and only Croats and Bosniaks the interests of the Federation. The *identity of interests* in this ethnically-dominated manner impedes the development of a wider sense of nationhood.

Furthermore, members of the *three groups of constituent people* may be prevented from standing as candidates in the entity in which they reside if they live as Serbs in the Federation or as Bosniaks or Croats in the RS. Moreover, the *Election Law* (based on the corresponding provisions of the Constitution) clearly excludes *Others*, i.e. citizens of BiH who identify themselves as neither Bosniak nor Croat nor Serb, from the right to be elected to the Presidency. This seems clearly incompatible with international treaties

Moreover, the *Fourteenth Council of Europe's Bosnia and Herzegovina Progress Report on compliance with the post-accession obligations*", published in January 2008, reads that the BiH constitution is still contrary to the Protocol 12 of the ECHR: "*It is especially reflected in the rules on ethnic affiliation of the members of the BiH Presidency, president and vice presidents of the entities, members of the House of Peoples of the BiH Parliamentary Assembly and other highly ranking officials in the countries, which are contrary to the principle that elections for political position must provide equal treatment to all citizens, permitting all of them to stand for the elections.*"

Based on the above, when we consider the combination of *territorial-entity* and *ethnic principle* in regard to the entire territory of BiH, it is clear that members of *constituent people* and the ones who do not belong to these entities do not have the same passive and active voting rights. Their suffrage is limited as they cannot exercise it in its full capacity on the territory of the entire country to which they belong – solely due to their place of residence i.e. their identification with a group of people, or lack thereof.

There are no reasons for not introducing provisions to the election legislation (preceded by amendments to the Constitution), by which members of the *non-constituent people* would be enabled to be elected members of the BiH Presidency.

## 2. Stability of election laws

The first *Election Law of Bosnia and Herzegovina* was adopted in 2001<sup>6</sup> as a result of the years-long negotiations between the political parties and the international community. The Law itself had kept solutions from the *Rules and Regulations of the*

---

<sup>6</sup> Election Law of BiH "Official gazette of BiH", number 23/01 from September 19, 2001.

*Provisional Election Commission (PEC)* that were in force at the time of the elections administered by international community after the war, namely in the period from 1996 to 2000.

In the period since the enactment of the *BiH Election Law*, the most significant changes and amendments were results of the interventions made by the *High Representative for BiH* (in six cases), but also of the work of the inter-departmental working group of the *BiH Parliamentary Assembly*. The law itself, except for two corrections<sup>7</sup>, was amended 19 times. A consolidated version was never officially published, except for the unofficial version prepared by the BiH Central Election Commission<sup>8</sup>.

The chronology of amendments to the election legislation undoubtedly indicates that these interventions were necessary due to the shortcomings that were observed in the past, the attempts to improve election process (e.g. a shift from active to passive registration), the need to align it with the *Law on gender equality*, the efforts to increase participation of representatives of national minorities, to respect decisions of the BiH courts as well as to consider proposals and suggestions of the OSCE/ODIHR and the Venice Commission, but also to introduce normative-technical improvements.

Former changes of the election legislation addressed mainly individually observed shortcomings that could eventually disable announcing the elections or that have risen from the need to harmonize the law with newly adopted laws.

Only a few important changes of the BiH Election Law had happened by the end of 2015 aimed at increasing democratic standards as direct election of the mayors in BiH and representation of national minorities in the Municipal Councils/Assemblies, creation of conditions for higher representation of women and achieving gender equality in the candidates' lists and in the election administration. Based on the last amendment in this respect, the underrepresented gender in the composition of election commission and polling station committees has to be represented by at least 40%.

It was proved that five years of international communities' work on establishment of an election system was not heading to any substantial progress towards democratic standards. Even though it should have been an additional motive for the domestic authority to show their commitment to establishment of democratic standards, it had turned out that the domestic authorities had had a passive stance concerning the necessary changes to the election legislation. The work of inter-department parliamentary groups for amendments to the *BiH Election Law* had revealed lack of a common strategy on the contents and objectives of the reforms aimed at achieving democratic standards.

These reforms should have been based on the commitment to the main goal – achieving European democratic election standards. Such a task entails a designed and a comprehensive reform of the electoral right, along with an extensive public debate and consideration of experts' opinion, in order to build an election system that is founded on a wide consensus, and not on the basis of political powers. Amendments that enacted just before the elections are announced, without any substantial changes, are certainly not the way to conduct reforms. Blockages and delays became quite

---

<sup>7</sup> Spelling corrections for a more precise expression, Correction of the Law on changes and addenda of the BiH Election Law, "Official Gazette of BiH", no. 25/02 from 10.09.2002 and Correction of the error made with the numbers in Preamble, Correction of the Law on changes and addenda of the BiH Election Law, "Official Gazette of BiH", no. 65/05 from 20.09.2005.

<sup>8</sup> Election Law of BiH, "Official Gazette of BiH", no. 23/01, 07/02, 09/02, 20/02, 25/02, 04/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08 and 37/08, 32/10, 18/13 and 7/14.

frequently used in the BiH Parliamentary Assembly, together with the habit of reaching out for quick and emergency solutions that often complicate the administration of elections.

One can reach to a conclusion that changes to the election legislation did not reflect any substantial progress in achieving democratic standards for administration of elections. Rather it commits the authors to talk about “*democratic chaos*” and “*changes without changes*”<sup>9</sup> many years after the war.

## Conclusion

The first stage of building pluralistic democracy in BiH had been ongoing from 1990 to 1996 with an election system that enabled introduction of multipartism in BiH. Development of this system was stopped by the war in BiH that was held from 1992 to 1995, which was ended by signing of the DPA in December 1995. This Agreement had completely altered the structure and elements of election system in BiH. There were seven (post-Dayton) elections of the BiH Parliament since 1996. In that period election system was being built, changed and supplemented through two main phases: the first phase of managing electoral system in BiH by the OSCE and PEC of OSCE (from 1996 to 2001) taking into consideration their involvement in the election process of 2002; and the second phase of managing electoral processes and building of election system in BiH from 2001/2002 up to this day. The second phase started with the adoption of a permanent Election Law in September of 2001 which has been amended 19 times by 2016. Last modification of the election system in BiH was done in spring of 2016 just before announcing the Local Elections in BiH in May 2016.<sup>10</sup> In the second phase, a domestic permanent election commission was also established, which is today called the BiH Central Election Commission (CEC). The CEC implements the *Election Law of BiH* and the *Law on political party financing*, and it is the key factor in implementing and regulating the overall electoral process in BiH. All competencies of the BiH CEC are derived from the BiH Parliamentary Assembly’s competencies.

Furthermore – according to the above analysis – the current electoral system in Bosnia and Herzegovina has still not embedded all democratic principles of free and fair elections which are part of the European electoral heritage.

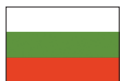
Besides, the electoral system in Bosnia and Herzegovina is still a closed non-blocked list system that builds upon a position of each candidate who won a seat in Parliament, as there is a clear record of personal votes won by her. When we add to this a legal provision from the *Election Law*, which stipulates that a mandate belongs to the elected office holder and not to the political party which nominated her on the candidates’ list, it is evident that there is an increasingly present practice of “snatching” MPs from the “embrace” of leaders and headquarters of political parties with generally narrower political outlook.<sup>11</sup>

---

<sup>9</sup> Suad Arnautović, *Ten Years of Democratic Chaos, Electoral Processes in Bosnia and Herzegovina from 1996 to 2006*, Promocult, Sarajevo, 2006, page 235.

<sup>10</sup> These elections will be held on October 2, 2016.

<sup>11</sup> One can also note that as a consequence, this tendency led to vociferous requests of political parties to change the existing political system and allocate a parliamentary mandate to a political party rather than to elected office holder.



# BULGARIA\*

*Jordanka Gancheva<sup>1</sup>- Maria Musorlieva<sup>2</sup>-  
Kameliya Neykova<sup>3</sup>- Alexander Andreev<sup>4</sup>*

## 1. Electoral systems (Jordanka Gancheva)

### *Parliamentary elections*

For the last 25 years, the parliamentary elections held in Bulgaria have been governed by different laws.

Pursuant to the *Grand National Assembly Election Act*<sup>5</sup>, promulgated on 06.04.1990., the elections were held according to the *mixed system*, i.e. 200 members of Parliament were elected according to the majority principle in single-member constituencies, while 200 deputies were elected according to the principle of proportionality in multi-member constituencies with party lists (the country was divided into 28 such constituencies). The voters voted at *polling stations*, where the process was organized by *section election commissions*. The presence of at least 20 voters was required for setting up a polling station abroad.

On 22.08.1991 the *Election of Members of Parliament, Municipal Councillors and Mayors Act*,<sup>6</sup> which was in force until 2001. Under this law, the elections for members of Parliament were held according to the principle of *proportionality* with fixed electoral lists of parties, independent candidates, coalitions of parties and coalitions of parties with independent candidates, composed in each constituency - the country was divided into 31 constituencies. The results from the elections for members of Parliament were determined by the Central Election Commission (CEC) according to the D'Hondt formula.

Based on the *Election of Members of Parliament Act*, enacted in April 2001, the procedure for election of members of Parliament was the following. The elections were held according to the *proportional system* with electoral lists of parties, coalitions and independent candidates, registered in multi-member constituencies. The D'Hondt method was used on a national level for the distribution of the mandates among parties and coalitions. Parties and coalitions obtaining at least four percent of the validly cast votes at national level, and independent candidates obtaining the minimum of the district electoral quota votes could participate in the distribution of the mandates.

In April 2009 the following amendments to the law were approved. The elections had to be held according to the *mixed system*, under which 31 members of Parliament had to be elected according to the majority system in single-member

---

\* These four analyses dedicated to the 25<sup>th</sup> Anniversary of the setting up of ACEELO were prepared by different members of the Central Election Commission of the Republic of Bulgaria and approved by decision of the Commission. The authors endeavoured to fulfil the requirements of the Association as regards their contents to the highest possible degree. We hope that by this presentation we shall contribute to enrich our mutual experiences in the conducting of elections.

<sup>1</sup> Member of the Central Election Commission of the Republic of Bulgaria, jordanka\_gancheva@abv.bg

<sup>2</sup> Deputy-chair of the Central Election Commission of the Republic of Bulgaria, mariadocument@mail.bg

<sup>3</sup> Member of the Central Election Commission of the Republic of Bulgaria, nkameliya@gmail.com

<sup>4</sup> Member of the Central Election Commission of the Republic of Bulgaria, andreev.adv@gmail.com

<sup>5</sup> Cf. Grand National Assembly Election Act (promulgated in SG No. 28 from 06.04.1990.)

<sup>6</sup> Cf. Election of MPs, Municipal Councilors and Mayors Act (promulgated in SG No. 69 from 22.08.1991)



constituencies, while 209 members of Parliament had to be elected according to the proportional system with electoral lists of the political parties and coalitions registered in multi-member constituencies. The candidate obtaining the highest number of the votes in the single-member constituencies was considered elected. The Hare-Niemeyer method was used on a national level for the distribution of the mandates in the multi-member constituencies among parties and coalitions.

In 2011, the electoral legislation in the Republic of Bulgaria was codified and promulgated on 28 January 2011 as the *Election Code*<sup>7</sup>. Under this code the electoral system for members of Parliament was the *proportional electoral system* with electoral lists of candidates registered in multi-member constituencies. Parties and coalitions of parties obtaining at least four percent of the validly cast votes in and outside the country, and independent candidates obtaining the minimum of the district electoral quota valid votes, could participate in the distribution of the mandates.

When holding elections for members of Parliament, the territory of the country was divided into 31 multi-member constituencies. The total number of mandates for each party and coalition of parties was determined by CEC on the basis of the votes for the respective party or coalition of parties validly cast in and outside the country pursuant to the Hare-Niemeyer method.

On 05.03.2014., it was adopted and promulgated the *Election Code* currently in force<sup>8</sup>. The elections for members of Parliament are presently held in accordance with the *proportional electoral system* with electoral lists of parties, coalitions and nomination committees registered in multi-member constituencies. When voting for an electoral list of a party or coalition, the voter can indicate her preference for a candidate in the respective electoral list.

The CEC determines the number of mandates in the multi-member constituencies on the basis of a single rate of representation for the whole country depending on the number of population according to data provided by the National Statistical Institute based on the result of the last population census. When holding elections for members of Parliament, the territory of the country is divided into 31 multi-member constituencies, including three in the districts of Sofia-City and two in the districts of Plovdiv. Voting is done in and outside the country at polling stations with a ballot according to a form approved by CEC. Voting outside the country is held only with a ballot for parties and coalitions without the option of indicating the preferred candidate.

The total number of mandates for each party and coalition is determined by the CEC on the basis of the votes for the respective party or coalition validly cast in and outside the country pursuant to the Hare-Niemeyer method, taking into consideration the methodology provided in an annex to the Election Code. Only those parties and coalitions are entitled to participate in the distribution of the mandates on the national level which obtained at least four percent of the validly cast votes in and outside the country. The preferences for the individual candidates are considered valid only if the number of votes cast for the candidate is at least 7 percent of the votes cast for the respective electoral list.

### ***Presidential elections***

Holding of Presidential elections in Bulgaria started after 10 November 1989. At the elections held on 3 April and 1 August 1990, the President was elected

---

<sup>7</sup> Cf. Election Code (promulgated in SG No. 9 from 28.01.2011)

<sup>8</sup> Cf. Election Code (promulgated in SG No. 19 from 05.03.2014)

indirectly – by the National Assembly. After 1992, the President has been elected directly by all citizens entitled to vote. Pursuant to the Constitution of the Republic of Bulgaria, the President is elected for a term of five years.

On 3 April 1990, the National Assembly adopted an *Act for Amendment and Supplement to the Constitution of PRB*<sup>9</sup>, under which the then existing State Council was dissolved and replaced by the new positions of Chairman (President) and Deputy-Chairman (Deputy-President) of the Republic. The Chairman was the head of state of PRB. The Chairman (the President) was elected by the National Assembly with the 2/3 majority of votes of the members present. The Deputy-Chairman (the Deputy-President) of the Republic was elected by the National Assembly at the proposal of the Chairman (the President) with a simple majority of those present.

The second election for a President of the Republic was held again indirectly, but this time by the Grand National Assembly. It was held according to the same procedural rules as the first election. Voting was carried out in 6 rounds.

Since 04.10.1991. until the coming into force of the first *Election Code of the Republic of Bulgaria (2011)*, the procedure of the election for President and Vice President of the Republic was determined by the *Election of President and Vice President of the Republic Act*<sup>10</sup>. The President and the Vice President of the Republic were elected directly with one joint list for a term of 5 years. The candidates had to meet requirements strictly defined in the Constitution of the Republic of Bulgaria. They had to be Bulgarian citizens by birth, who had attained the age of 40, met the conditions for electing a member of Parliament and who had lived in the past 5 years in the country. The candidate obtaining more than half of the validly cast votes, if more than half of the constituents had voted, was considered elected. When holding the elections, the territory of the country was divided into 31 constituencies, coinciding with the constituencies during the last elections for members of Parliament. Voting outside the country was carried out in the diplomatic and consular missions.

Under the operation of the *Election Code*<sup>11</sup> of the Republic of Bulgaria, (effective since 28 January 2011), the method of electing the head of the state was based on a *majority electoral system* operating with national electoral lists (on the nominees for President and Vice President) of parties and coalitions of parties, as well as independent candidates. Voters could express their preferences with one joint ballot.

The CEC determined the first two candidates from the lists obtaining the highest number of the validly cast votes and held a new election within the time limit provided in the Bulgarian Constitution – seven days after the Voting Day. The two candidates obtaining the highest number of votes took part in the new election. In the second round the candidate obtaining more votes was considered elected.

According to the *Election Code currently in force*<sup>12</sup>, adopted in 2014, the rules for holding elections for President and Vice President are as follows.

Eligible to be elected as President and Vice President of the Republic are the Bulgarian citizens by birth, who have attained the age of 40, who meet the conditions for electing a member of Parliament and who have lived in the past 5 years in the country. The President and the Vice President are elected directly for a term of 5 years.

The elections are held according to the majority electoral system with registered national electoral lists of parties and coalitions of parties, and initiative commissions

<sup>9</sup> Cf. Act for Amendment and Supplement to the Constitution of PRB (promulgated in SG No. 29 from 10.04.1990)

<sup>10</sup> Cf. Election of President and Vice-President of the Republic Act

<sup>11</sup> Cf. Election Code (promulgated in SG No. 9 from 28.01.2011.)

<sup>12</sup> Cf. Election Code (promulgated, SG, No. 19 / 05.03.2014)

on the nominees for presidency and vice presidency. The Election Code regulates the methodology for determining the voting results at the elections for President and Vice President of the Republic, provided in an annex to the Election Code.

The CEC announces the voting results on the elections for President and Vice President immediately after determining the results, but not later than 48 hours from declaring the Voting Day closed.

## **2. Stability of electoral laws** (*Maria Musorlieva*)

The main directions of electoral law development in the Republic of Bulgaria were settled at the Roundtable of 3 January 1990 – 14 May 1990 by the *Agreement for Election of Grand National Assembly*. In the Agreement it was highlighted the principle of free conduct of elections for *Grand National Assembly* by universal, equal and direct right to vote by secret ballot. The mixed system was also established, 200 Members of Parliament being elected by the majority principle in single-member constituencies and 200 Members of Parliament from party lists by the preferential principle in the multi-seat constituencies. The main purpose of the *Grand National Assembly* was to draft the new Constitution of the Republic of Bulgaria

The principles of universal and direct voting rights by secret ballot were set also in the newly adopted Constitution of 1991. These principles form also the fundamentals of all electoral laws and of the two *election codes*, enacted based on the Constitution.

From 1991 till 2009, the proportional electoral system was applied in parliamentary elections and the majority electoral system was applied in the elections for President and Vice President. Four electoral laws were operational in Bulgaria until the enactment of the Election Code in 2011.

As it was mentioned earlier, after 1990 the conducting of elections for Members of Parliament was regulated by two laws and two codes – *Election of Members of Parliament*, *Municipal Councillors and Mayors Act*, effective since 22 August 1991 and revoked by the newly passed *Election of Members of Parliament Act* which was in effect since 13 April 2001. The procedure for election of President and Vice-President of the Republic was regulated by the *Election of President and Vice-President of the Republic Act* in effect since 4 October 1991.

The *Law on Election of Members of Parliament* was amended and supplemented 14 times during its effectiveness. Six amendments occurred before three elections conducted for Members of Parliament, within two to three months before the Election Day, while before the 2005 elections the law was amended three times, and in 2009 two times. One of the 2009 amendments caused the change of the electoral system from the proportional electoral system to the mixed system based on multi-member constituencies (where 209 members of Parliament were elected based on party lists) and on 31 single-member constituencies, where candidates were elected based on the majority principle.

Until 2005 the votes of the Bulgarian citizens voting abroad were added to the votes of the voters of separate constituencies in the country. This resulted in a significant twisting of the representation of these constituencies. To avoid this tendency, based on the 2005 amendment citizens voting abroad voted only for the lists of parties and coalitions.

The *2011 Election Code* (effective from 1 February 2011) codified the election legislation in the Republic of Bulgaria in respect of all kinds of elections – for members of Parliament, for President and Vice-President, municipal councillors and for mayors and also for members of the European Parliament. By its promulgation

on 28 January 2011 the laws on the respective kinds of elections in force by then were revoked. Later this Election Code was revoked by the *Election Code of 2014*, containing very similar provisions.

The elections for President and Vice-President of the Republic in 2013 were conducted according to the 2011 Election Code.

Changes of the Bulgarian election legislation were aimed to improve it. Like in the case of any other electoral law in the world, the amendments aimed at providing stronger safeguards for transparency of elections, for the accurate voting method and for preserving the secrecy of the vote as part of the will of voters. In general, changes of the electoral law could be considered as parts of the common will of the Bulgarian society to harmonise the legal background of elections.

### **3. Election management bodies** (*Kameliya Neykova*)

In the past 25 years the basic rules of the *central election management body* of the Republic of Bulgaria were subject to different legislative frameworks. The three-tier system of election commissions is preserved, namely:

- Central Election Commission as the central election management body;
- constituency or municipal election commissions – on the territory of each constituency, and municipality, accordingly;
- polling station election commissions – for each polling station.

According to the *Election of Grand National Assembly Election Act* effective in 1990, the CEC was set up by the President and comprised of a chairperson, two deputy-chairs, a secretary and 20 members including representatives of the political parties as well as non-party members. The CEC was elected for the term of office of the Grand National Assembly.

The CEC responsible for conducting the 1990 parliamentary elections was appointed with Decree No. 4/10 April 1990. Its powers concerned the precise implementation of the relevant law in the country and abroad<sup>13</sup>

Based on the next amendments to the electoral law the powers of the CEC were preserved in terms of content, tending to be enlarged. Moreover, the legislator regulated in a more comprehensive manner the powers of the central election management body.

The other tiers of election commissions were set up for each constituency and each polling station. The membership of constituency commissions was formed based on consultations with the political party leaderships. Members of constituency election commissions were appointed by the executive council of the respective regional people's council. The membership of the polling station election commissions was formed based on the same principle by the executive committees of the municipal people's councils.

The meetings of the election commissions at all levels were in accordance with the legal provisions if attended by more than half of their members and decisions were taken by simple majority.

Based on the *Election of Members of Parliament, Municipal Councillors and Mayors Act* (in effect from 22.08.1991.), the CEC was set up for all the elections regulated by this act. Members of the CEC were appointed by the President of the Republic for the term of office of the National Assembly. Members were nominated in consultation with the political parties and coalitions. The CEC consisted of up to 25 members – the majority of them being legal practitioners.

---

<sup>13</sup> Cf. Article 31 of the Grand National Assembly Elections Act, repealed, SG, No. 19 / 5 March 2014.

The members of election commissions at the other levels were nominated by the temporary executive committees in consultation with the political parties.

The meetings of the election commissions at all levels were in accordance with the legal provisions if more than half of their members were present. It was also required for the commissions to take decisions by the 2/3 majority of the attending members instead of simple majority.

The *Election of Members of Parliament Act (EMPA)* (effective from 13 April 2001), also regulated the functioning of election commissions. Besides, the status and powers of the municipal election commissions were regulated in the *Local Elections Act* (passed in 1995) which was applied to the elections for councillors and mayors.

Based on the EMPA, the CEC was appointed with a decree of the President in consultation with the parties and coalitions represented in the National Assembly. The commission's term of office was set till the end of the term of office of the National Assembly. From 2009, the parties and coalitions which had elected members in the European Parliament also had the right to nominate CEC members. For the first time the regulatory framework included provisions on:

- regulating the quotas of representation in the CEC of the parties and coalitions that nominated members, with the aim of preventing majority of any political party;
- specifying the requirements related to nominated persons – in addition to being legally qualified they also had to be Bulgarian nationals eligible for election;
- extending the range of positions which were inconsistent with CEC membership.

The EMPA considerably increased the powers of the CEC under the new rules in the case of national elections as it regulated the status and competences of the CEC comprehensively and in detail<sup>14</sup>.

The principle of appointing the members of the election commissions at the other two levels was preserved. According to EMPA, the total number of the members of constituency commissions was equal to the number of CEC members, at the same time preserving the ratio between the political parties and coalitions represented in the CEC. Those commissions exercised their powers until the election results were announced, then their activity was administratively ended.

The *Local Elections Act (LEA)* passed in 1995 regulated the election of municipal councillors and mayors. The *Election of Members of the European Parliament for the Republic of Bulgaria Elections Act (EMEPRBA)*, effective from 6 March 2007, was applied for the first time for the election of 18 members of the European Parliament for Bulgaria for the 2004-2009 term of office of EP.

The two mentioned acts provided for a separate CECs, as well as election commissions at the other levels for the particular type of elections.

The separate legislative framework for the different elections led to the simultaneous operation even of several Central Election Commissions for the respective type of elections. In many cases the same experts having strong professional experience and good expertise in conducting elections were nominated in the membership of the respective commissions. Overall, it can be said that the powers, status and terms of reference of each CEC were identical, compliant with the particularities of the respective elections for which the commission was appointed. The term of office of each CEC ended at the end of the term of office of the respective

---

<sup>14</sup> Cf. EMPA, Article 23 (1) (repealed, § 9, item 1 of the Transitional and Final Provisions of the Election Code – SG, No. 9 / 28 January 2011)

bodies for whose election the commission was set up. The term of office of the CEC for the local elections was set until the next general elections.

The powers of the other two types of election commissions were preserved on the territory of the respective constituency or polling station.

The *Election of President and Vice-President of the Republic Act* passed in 1991 regulated the status of the CEC which was elected by the National Assembly for conducting the presidential elections. The term of the commission was set until the President and the Vice President took office. That commission had the shortest term of office compared to the CECs appointed under the other acts.

The following are the major characteristics of the regulation of CECs in Bulgaria under the different acts till 2011:

<b>Legal act</b>	<b>Total members</b>	<b>Leadership</b>	<b>Term of office</b>	<b>Body appointing / electing the members of CEC</b>	<b>Nominated by</b>
Election of President and Vice-President of the Republic Act	21	Chairperson Deputy-chairs Secretary	Until the President and the Vice President takes office	National Assembly	Parties and coalitions represented in parliament
Election of Members of Parliament Act	Up to 25	Chairperson Deputy-chairs Secretary	For the term of office of the National Assembly	President of the Republic	Parties and coalitions represented in parliament and those represented in EP
Election of Members of the EP for RB Act	Up to 25	Chairperson Deputy-Chairs Secretary	For the term of office of the European Parliament	President of the Republic	Parties and coalitions represented in parliament and those represented in EP
Local Elections Act	25	Chairperson, First Deputy-Chair Deputy-Chairs Secretary	Until the next elections	President of the Republic	Parties and coalitions represented in parliament

The above legal acts were repealed by the adoption of the *Election Code* in early 2011.

The first step towards codification of the electoral law was made at the end of 2009. A roundtable on “*Determining the legislative framework and a Concept for forthcoming amendments to the electoral law*” was held in the 41st National Assembly on 19 December 2009., composed of representatives of the National Assembly, the Administration of the President, the President of the Supreme Administrative Court, the National Association of Municipalities in the Republic of Bulgaria, the Central Election Commission, NGOs, etc. Another forum was held



in early 2010 to discuss the status and the functional and legal competences of the CEC.

The Election Code adopted at the end of 2010 featured an entirely new approach to the constitution of CEC as a legal entity supported from the state budget - the commission was a first-level spending unit. Its 21 members were appointed with a decree of the President of the Republic for all types of elections and for a 5-year term of office, in consultation with and based on the proposal of the parties and coalitions represented in the National Assembly and in the EP. The chairperson of the CEC was appointed based on the proposal of the biggest party or coalition represented in the National Assembly. Besides, each represented party or coalition had one deputy-chair in the CEC.

The *code* regulated for the first time the grounds for early termination of the powers of a CEC member and introduced a clear mechanism for setting the remunerations of the commission members. It set out in a comprehensive manner the powers of the commission and the procedure for appealing its acts.

The CEC was assisted in its work by an administration whose structure and organisation of work were laid down in the rules of procedure. Till then expert and working groups were set up by the election commissions with the exception of polling station election commissions.

Establishing a CEC with a competence for all types of elections made it possible to start earlier the preparation for organising the next elections. While the new status of CEC had its assets, namely a commission responsible for all types of elections, it was stated in the *Joint Opinion on the Draft Election Code of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights adopted on 16 – 18 June 2011* that election commissions at all levels were appointed following nominations by the political parties. However, it was essential that the representatives of opposition parties could be included in the leadership positions at all levels of the election administration. An allocation of leadership positions among political parties with no consideration given to whether they belong to the ruling coalition might not be sufficient to dismiss perceptions of possible bias.

The *national roundtable on changes to electoral rules* held on 18 June 2013 outlined the necessary changes to ensure publicity and democracy of the election process. Some of the changes affected the structure and organisation of the election administration.

A completely new way of constituting a professional, expert and independent Central Election Commission with members nominated by the National Assembly after a public procedure, hearing of candidates and assessment of their professional qualities was proposed at the public discussion of election rules held on 26 June 2013. Making CEC professional was in line with the recommendations contained in the *Joint Opinion on the Draft Election Code of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights adopted on 16 – 18 June 2011* and the *OSCE/ODIHR Election Observation Mission Final Report on the early parliamentary elections on 12 May 2013*, which state that „it is important that CEC is established as a permanent body with staff to work full time and with an independent budget. This would help build capacity and institutional memory and allow the CEC to develop and propose needed improvements and corrections well before elections”. According to the *Code of Good Practice in Electoral Matters* adopted by the *European Commission for Democracy through Law (Venice Commission)* the election process should be administered in a transparent way by impartial and independent election commissions and the election

administration should not be politically polarised. The practice in other European countries has been taken into account when drafting the specific provisions.

The code regulates the status and power of CEC as an independent state organ<sup>15</sup>. For the first time, a *Public Council* was set up at CEC as a consultative and supporting body comprised of representatives of civil organisations. A *Training Unit* was set up to organise and conduct the training of election commission members. Organisations of Bulgarian nationals abroad may nominate members of election commissions abroad. All levels of the election administration operate in full transparency and the acts of the administration are subject to judicial review except for the acts enacted on Election Day due to lack of time. The Central Election Commission may analyse the elections conducted and may submit proposals to the National Assembly for improvement of the electoral law.

The members of the CEC which is operational from March 2014 have been nominated according to rules of procedure adopted by the 42-nd National Assembly. CEC members could be nominated by Bulgarian NGOs, national representatives, parliamentary groups, parties and coalitions which have members in the European Parliament but are not represented in the National Assembly.

Bulgaria does not have an independent election administration body which is separate from CEC. The Commission is a permanent body which is represented by its chairperson and is supported by an administration. The organisation of the work of the Commission, the structure and functions of the administration are regulated in rules adopted by the Commission.

The CEC has circumscribed the relations with other state institutions in regard to the organisation and technical preparation of elections. Elections are prepared and supported by the Council of Ministers and the district and municipal administration in cooperation with the election commissions.

The CEC and the other election commissions abide in their work by the principles of publicity and transparency as a guarantee for conducting a democratic election process and for enabling control by the civil society on the operation of institutions.

#### **4. Safeguards under the electoral law ensuring free and fair elections**

*(Alexander Andreev)*

The development of the legislative framework of the election campaign from 1991 till the adoption of the *2014 Electoral Code (EC)*<sup>16</sup> is characterized by continuity in the creation and improvement of the rules of law safeguarding equality of parties, coalitions, initiative committees and their candidates. At the same time it provides clear, traceable and stable “*rules of the game*” that are at the basis for fair elections.

The effective legislative framework of the election campaign under the *EC* is common for all types of elections, taking into account at the same time the particularities of each type<sup>17</sup>.

The following principles enshrined in the basic legislative framework of the election campaign are safeguards for ensuring fair and free elections.

---

<sup>15</sup> Election Code, articles 46 through 58

<sup>16</sup> Election Code (Promulgated, SG, No. 19 / 05.03.2014, effective 05.03.2014; as amended, No. 35 / 22.04.2014, effective 22.04.2014; as amended, No. 53 / 27.06.2014; No. 98 / 28.11.2014, effective 28.11.2014; as amended, No. 79 / 13.10.2015, effective 01.11.2015).

<sup>17</sup> For the purposes of this contribution, the election campaign rules applicable to parliamentary and presidential elections will be discussed.

## ***Freedom of expression***

Citizens, parties, coalitions, nomination committees, candidates and their election agents (assisting and representing the interests of the candidates before authorities) enjoy freedom of verbal and written expression and of canvassing<sup>18</sup> at election meetings, as well as via the media service providers<sup>19</sup>.

## ***Equality of candidates and respect for the honour and reputation of candidates***

Election campaigns in all types of elections are launched 30 days prior to Election Day and proceed until 24 hours before Election Day. The election campaign is conducted in the Bulgarian language. The parties, coalitions, nomination committees and their candidates have equal access to the sources of the information they need for the purposes of the election campaign. Election meetings are public. The organisers of such meetings and the units of the Ministry of the Interior are responsible for the maintenance of the order when they are held. In the course of an election campaign, candidates, parties, coalitions and nomination committees may create and distribute posters, addresses and other canvassing materials<sup>20</sup>.

Publishing of election programmes on the public media - *with the exception of the statutory free-of-charge forms* - are paid by the respective political entities according to a tariff approved by the Council of Ministers at least 40 days prior to the Election Day. Commercial media providers are obligated to offer the same terms and conditions and the same broadcasting rates for election and canvassing materials and for coverage of the election campaign to all parties, coalitions and nomination committees that have registered candidates. The rates must be published at their website at least 40 days before the Election Day. The public electronic media<sup>21</sup> covers election campaigns in accordance with the principles of objective and fair coverage of the appearances of the candidates registered by the parties, coalitions and nomination committees and respecting their equality and importance<sup>22</sup>.

Print media or online news service providers which have published a material that encroaches on the rights or harms the reputation of a person representing a party, a coalition or a nomination committee are obliged to publish a response immediately after they receive it. The same obligation is laid down for electronic media providers

---

<sup>18</sup> The legal definition of “campaigning” is introduced with § 1, item 17 of the Supplementary Provisions of EC.

<sup>19</sup> The legal definition of “media service provider” is given in §1, items 15 and 16 of EC SP.

<sup>20</sup> The spots for displaying canvassing materials are designated with an order of the mayor of the municipality/region/mayoralty. The mayor’s order is made public and is sent to the constituency election commission. The display of canvassing materials on buildings, fences and in shop windows requires the permission of the owner or manager of the property.

<sup>21</sup> In the Republic of Bulgaria the status of public electronic media is enjoyed by the Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) and their regional centres. The regional centres of BNT are BNT 2 Blagoevgrad, BNT 2 Varna, BNT 2 Plovdiv, BNT 2 Ruse, BNT 2 Sofia. The regional centres of BNR are Radio Blagoevgrad, Radio Burgas, Radio Varna, Radio Plovdiv, Radio Sofia, Radio Vidin, Radio Stara Zagora, and Radio Shumen.

<sup>22</sup> Prior to the entry into force of the 2014 EC, the terms and conditions for coverage of election campaigns were subject to self-regulation by the electronic media. The requirement to adopt rules for the coverage of election campaigns by the electronic media was introduced by the 2014 EC and it falls within the competence of the CEC. With Decision No. 731-ІН / 19.08.2014, CEC adopted such rules for the parliamentary elections scheduled for 05.10.2014. No such rules were adopted for the presidential elections. CEC’s Decision No. 731-ІН / 19.08.2014 is available in CEC’s website at: [www.cik.bg](http://www.cik.bg)

covering election campaigns based on Article 18 of the Radio and Television Act<sup>23</sup>. The response is broadcast without comments.

### ***Safeguarding fundamental rights and freedoms of citizens***

The fundamental rights and freedoms of citizens are guaranteed by a number of prohibitions which are expressly regulated in the EC, namely:

- Anonymous materials related to the election campaign shall not be published or broadcasted; in that light, each canvassing material shall contain an indication of the entity on whose behalf it has been issued. There are also additional requirements for canvassing materials (printed, audio and audiovisual): these must contain a statement that vote buying and selling is a criminal offence and this statement shall take up not less than 10% of the front-side area of the canvassing material and it shall be laid out in a separate field. In audio and audiovisual materials this information shall take the form of an unambiguous and easy to understand message.
- Furthermore, when broadcasting, publishing and disseminating paid forms of election campaign coverage, media service providers are under the obligation to separate them by visual, sound and space means and to indicate in an appropriate manner that the material is paid for.
- It is prohibited to canvass materials that jeopardise human life and health, private, municipal and state-owned property and traffic safety.
- It is prohibited to canvass materials that harm public decency or the honour and reputation of the candidates.
- It is not allowed to display election materials at state and municipal agencies, institutions, at state and municipal enterprises and at commercial companies with more than 50% state or municipal interest in their capital.
- Persons holding elected positions in trade union and employer organisations are not allowed to practice election canvassing at their place of work.
- State-owned and municipality-owned transportation vehicles shall not be used for election canvassing.
- It is prohibited to use commercials to impart political suggestions to the advantage or disadvantage of one or another political party, coalition or nomination committee or candidate.
- It is prohibited to destroy and deface any canvassing materials, displayed according to the procedure established by law, before the closing of the polls.
- It is prohibited to display canvassing materials of parties, coalitions and nomination committees at polling stations as well as within less than 50 metres from the entrance of the building housing the polling station on Election Day and until the end of the voting.

### ***Effective review for legality ensuring compliance with the rules for conducting election campaigns***

The terms and procedure for conducting the election campaign are set by the CEC. CEC also controls the handling of the election campaign by the media service providers within a national range. CEC also examines complaints for breaches of the

---

<sup>23</sup> Cf. Article 18 of the Radio and Television Act (promulgated, SG, No. 138 / 24.11.1998, as subsequently amended)

rules of election campaigns by the media service providers within national range. The CEC also examines complaints against decisions of the constituency election commissions related to election campaign within the regional or local range.

Moreover, the legislator has delegated to polling station election commissions on Election Day the authority to remove and seize canvassing materials disseminated in the region of the polling station contrary to the legal provisions.

The time limits for declaring breaches of the rules for conducting election campaigns are reduced – 24 hours from filing thereof. The decisions of CEC are subject to judicial review by the Supreme Administrative Court.

### ***Election campaign financing – ensuring equality of participants and safeguarding transparency and publicity of the funds***

According to the EC, election campaigns are financed<sup>24</sup> by financial resources of the parties, coalitions, nomination committees, candidates and by donations of individuals.

The Election Code expressly prohibits the financing of the election campaigns of parties, coalitions or nomination committees from:

- a) anonymous donations in any form;<sup>25</sup>
- b) funds from legal entities and sole traders;
- c) funds from foreign individuals;
- d) funds from religious institutions;
- e) funds from foreign governments or foreign state-owned enterprises, foreign trade companies or foreign non-profit organisations,
- f) the gratuitous use of movable and immovable properties and services from the above persons in any form.

It is also prohibited to use public administrative resources<sup>26</sup> free of charge in relation to an election campaign.

Having the aim to promote the participation of many political entities at all types of elections (with the exception of local elections) and in conducting national referenda, EC introduced a new method for state financing of parties. Those parties and coalitions which do not receive a state subsidy under the Political Parties Act, as well as independent candidates nominated by nomination committees are entitled for media packages<sup>27</sup>. The media packages are a form of subsidising the election campaign of the above entities with funds from the state budget. The media package funds are included in the planned budget for organisational and technical preparation of elections and are intended for paying the coverage of the election campaign through the media service providers. The terms and procedure for disbursement and spending

---

<sup>24</sup> The total amount of the financing of each election campaign of the parties, coalitions and nomination committees may not exceed BGN 3.000.000 per party and per coalition and BGN 200.000 per nomination committee in case of parliamentary elections. The total amount of the financing of each election campaign of the parties, coalitions and nomination committees may not exceed BGN 2.000.000 in case of presidential elections.

<sup>25</sup> In the meaning of § 1, item 1 of the Supplementary Provisions of the Political Parties Act (promulgated, SG, No. 28 / 01.04.2005, as subsequently amended) „anonymous donations” are donations in which the identity or firm of the donor are kept secret with regard to third parties.

<sup>26</sup> According to §1, item 18 of the Supplementary Provisions of the EC, “public administrative resources” are budget funds, premises, automobiles, aircrafts and other means of transportation, equipment and other movable and immovable property – owned by the state or the municipality, provided to the administration, state and local authorities as well as state and municipal enterprises.

<sup>27</sup> Cf. Article 178 of the EC

of the media package funds are established in a separate decision of CEC in coordination with the Minister of Finance. The control for compliance with the terms and procedure for spending the media package funds is delegated to the CEC.

Ensuring publicity of the reporting and origin of the funds used in the election campaign by means of special rules is a guarantee for public confidence in free and fair election campaign.

The control for compliance with the rules for financing of election campaigns is delegated to the National Audit Office. The National Audit Office establishes a single public register of the parties, coalitions and nomination committees registered for participation in the respective type of elections. The register is maintained from the launch of the election campaign until the next elections of the same type.

The parties, coalitions and nomination committees report and disclose in the public register of the National Audit Office also the media package funds used to pay for the different paid forms of coverage of their election campaign through the media service providers.

Similarly, media service providers are obliged to post in their website information about the contracts concluded with the parties, coalitions and nomination committees that have registered candidates and/or with other contracting parties in connection with the election campaign<sup>28</sup>.

---

<sup>28</sup> Cf. Article 180 (3) and (4) of the EC.



*Maja Koić, LL.B.<sup>1</sup>*

In 1991, the Republic of Croatia became an independent state. The Constitution of the Republic of Croatia<sup>2</sup>, which was adopted in December 1990, stipulates in its basic provisions that state power in the Republic of Croatia derives from the people and rests with the people as a community of free and equal citizens. The people exercise this power through the election of representatives and through direct decision-making. The democratic multiparty system is one of the most important values of the constitutional order of the Republic of Croatia.

According to the Constitution, voters are all Croatian citizens who have reached the age of eighteen years, regardless of their legal capacity and their residence. Croatian citizens who live abroad also have both active and passive suffrage. Citizens of the European Union may vote and stand as candidates in elections for members of the European Parliament and in elections for members of local representative bodies, in compliance with the law.

Voters are entitled to universal and equal suffrage in elections and in decision-making procedures by national referendum. Voting is not obligatory.

In the Republic of Croatia, pursuant to the principle of personal voting and the principle of transparency, voting is done in person, using ballot papers. No one may vote on behalf of another person. Despite technology, Croatia does not use the model of electronic voting or remote voting.

After the Republic of Croatia was established as parliamentary democracy based on the democratic freedom of expression of the will of voters and a multiparty system in 1990, the fundamental principles of the elections were implemented into the legislation and also became the basis of the practice of the election management bodies. In the last twenty-five years, all forms of elections in Croatia have been held pursuant to these principles, as prescribed by electoral legislation.

The first parliamentary elections in Croatia were held back in 1990. The first presidential elections were held in 1992 and the first local elections in 1993. After the Constitutional Act on the Rights of National Minorities<sup>3</sup> entered into force, the first elections for members of councils and representatives of national minorities were held at local level in 2003. Finally, when Croatia became a member state of the European Union in July 2013, the elections for members of the European Parliament became part of the Croatian electoral system as well.

In the Republic of Croatia there are currently six types of elections, for whose preparation, conduct and supervision the State Electoral Commission of the Republic of Croatia (hereinafter: the State Electoral Commission) is responsible, whether directly or through lower ranking electoral commissions, depending on the type of election.

These types of elections are:

---

<sup>1</sup> Mrs. Maja Koić, advisor to the President of the State Electoral Commission for legal matters, mkoic@izbori.hr

<sup>2</sup> Official gazette "Narodne novine", No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

<sup>3</sup> Official gazette "Narodne novine", No. 155/02, 47/10, 80/10, 93/11



- elections on national level:
  - elections of representatives to the Croatian Parliament,
  - elections of the president of the Republic of Croatia, and
  - elections of members of the European Parliament from the Republic of Croatia,
- elections on the local level:
  - elections of members of representative bodies of units of local and regional self-governments,
  - elections of mayors of municipalities or cities and county prefects and their deputies<sup>4</sup>, , and
  - elections of members of councils and representatives of national minorities.

Each of the listed types of elections is regulated by respective laws<sup>5</sup>, under which each of these elections are conducted. There is no unified election law, although there is an intention to adopt one.

## **1. Election laws**

### **ELECTIONS OF REPRESENTATIVES TO THE CROATIAN PARLIAMENT**

The Croatian Parliament is the representative body of the citizens of the Republic of Croatia. According to the Constitution, the Croatian Parliament may have

<sup>4</sup> Members of national minorities have the right to representation in representative bodies of local and regional self-government units as well as the right to elect deputies of the mayors and county prefects among the members of the national minority, in compliance with the provisions of the Constitutional Act on the Rights of National Minorities and the Law on Local Elections. In municipalities in which Croatian people present the minority, the members of Croatian people have the right to elect the deputy of the mayor among the members of Croatian people.

<sup>5</sup> Specific laws on each type of elections define who is authorized to call an election and when, active and passive suffrage, nomination procedure, election campaign, electoral management bodies, election procedure, the manner of voting and of establishing election results, and legal remedies. Besides the election laws it is also important to mention the Voter Register Act (official gazette "Narodne novine", No. 144/12, 104/15) and the Political Activity and Election Campaign Financing Act (official gazette "Narodne novine", No. 48/13 - consolidated text), which will be referred to later in this document. Important issues for the election procedure, which are not clearly or not at all prescribed by the election laws, can be regulated by mandatory instructions of the State Electoral Commission.

a minimum of 100 and a maximum of 160 members, who are elected for a four-year term directly by secret ballot based on universal suffrage.

The President of the Republic of Croatia calls an election of representatives to the Parliament and summons the Parliament to its constitutive session.

Representatives to the Croatian Parliament are elected in twelve electoral districts.

The territory of the Republic of Croatia is divided, in accordance with specific law<sup>6</sup>, into ten electoral districts, where each electoral district elects fourteen representatives to the Parliament.

Three representatives elected in the eleventh electoral district are elected by Croatian nationals not having registered domicile in the Republic of Croatia.

Eight representatives of the national minorities are elected to the Croatian Parliament in the twelfth electoral district.

All Croatian citizens aged 18 years or over have the right to vote and the right to be elected. However, the right to be elected is to some extent restricted, so voters and political parties may not nominate:

- persons sentenced to an unconditional sentence of imprisonment longer than six months by a final court sentence, if at the moment of entry into force of the decision to call an election the sentence is being enforced or to be enforced,
- persons whose rehabilitation terms under a special law have not expired at the moment of entry into force of the decision to call an election, and who were sentenced by a final court sentence for certain criminal offences laid down in the Criminal Code.<sup>7</sup>

Lists of candidates in eleven electoral districts may be proposed by political parties registered in the Republic of Croatia or by the voters. Voters propose lists on the basis of validly collected signatures, whereby signatures of at least 500 voters must be collected for the nomination to be valid.

Candidates for national minority representatives in the twelfth electoral district may be proposed by political parties registered in the Republic of Croatia, by the voters or by national minority associations. Voters or national minority associations need to collect signatures of at least 100 voters, who support their candidate, for the nomination to be valid.

<sup>6</sup> The Act on Election of Representatives to the Croatian Parliament lays down that the difference between the numbers of voters in electoral districts must not be greater than  $\pm 5\%$ . Ten electoral districts, stipulated by the Electoral Districts Act (official gazette "Narodne novine", No. 116/99), are roughly based on geography, but also formed according to the number of voters, so that each district holds roughly the same amount of registered voters. Therefore, these districts do not correspond strictly to the borders of the counties within Croatia. Each electoral district contains one or several or parts of several counties. In its report on the issue of electoral districts, published in the official gazette "Narodne novine" No. 116/99 in December 2010, the Constitutional Court of the Republic of Croatia pointed out that an update to the layout of electoral districts is necessary, as the differences in the number of voters among the districts, limited by law to 5%, had grown to 25%. However, the electoral districts have remained unchanged.

<sup>7</sup> The Act on the Election of Representatives to the Croatian Parliament lays down in Article 9 that voters and political parties may not nominate persons whose rehabilitation terms under a special law have not expired at the moment of the entry into force of the decision to call an election, and who were sentenced by a final court decision for any conduct of the following:

1. criminal offences stipulated in Chapter IX of the Criminal Code (official gazette "Narodne novine" 125/11 and 144/12) against humanity and human dignity:
  - genocide, crime of aggression, crime against humanity, war crime, terrorism, terrorist association, torture, slavery,
2. criminal offences stipulated in Chapter X of the Criminal Code (official gazette "Narodne novine" 125/11 and 144/12) against life and body: aggravated murder,
3. criminal offences stipulated in Chapter XXVIII of the Criminal Code (official gazette "Narodne novine" 125/11 and 144/12) against official duty: abuse of position and authority.

### EXAMPLE - Determination of the number of representatives using D'Hont method

The territory of the Republic of Croatia is divided into ten electoral districts, 14 representatives being elected from each electoral district.

The following example shows the determination of the results in one electoral district using D'Hont method. First, the total number of valid votes that each list of candidates won is determined (list's pool of votes). In this example case, the lists A, B and C won at least 5% of valid ballots cast at the elections and are entitled to participate in the division of representative seats from this electoral district.

	List A	List B	List C
List's pool of votes (X)	4160	3380	2460
X : 1	4160 (1)	3380 (2)	2460 (3)
X : 2	2080 (4)	1690 (5)	1230 (7)
X : 3	1386 (6)	1126 (8)	820 (12)
X : 4	1040 (9)	845 (10)	615
X : 5	832 (11)	676 (14)	492
X : 6	693 (13)	563	410
X : 7	594	483	351
X : 8	520	422	307
X : 9	462	375	273
X : 10	416	338	246
X : 11	378	307	224
X : 12	346	282	205
X : 13	320	260	189
X : 14	297	242	176

After dividing the pool of votes for each list with 14, as the number of representatives being elected from this electoral district, the 14 highest ranked results present the representatives that will be elected from this electoral district.

In this example, List A will have 6 representatives elected in Croatian Parliament from this electoral district, List B will have 5 and List C 3 of them.

Nominated lists of candidates and nominated candidates for national minority representatives must be submitted to the State Electoral Commission of the Republic of Croatia within 14 days from the entry into force of the decision to call an election at the latest.

Voters with registered domicile in Croatia vote at polling stations in the territory of the Republic of Croatia, determined according to their place of residence.

Voters without registered domicile in the Republic of Croatia vote at polling stations in diplomatic missions and consular offices of the Republic of Croatia abroad.

In the first eleven electoral districts, representatives to the Parliament are elected based on proportional representation and preferential voting.

Voters may vote for only one list of candidates. The voter may mark one candidate on the ballot to have precedence over other candidates on the list selected (preferential vote).

The number of representatives to the Croatian Parliament elected from each electoral district list is determined as follows:

- first, the total number of valid votes that each list of candidates won is determined (list's pool of votes);

- the lists that won at least 5% of valid ballots cast at the elections in the respective electoral district are entitled to participate in the division of representative seats in an electoral district;
- the number of representatives to the Croatian Parliament elected from each electoral district list is determined using the D'Hondt method (the list's pool of votes is divided by the number of representatives);
- when the number of representatives elected from each electoral district list is determined, the number of votes for each candidate on these lists is determined. Preferential votes for individual candidates are taken into account if the number of preferential votes for a particular candidate amounts to at least 10% of the votes won by a particular list of candidates;
- representative seats are distributed between candidates elected from each list pursuant to the number of their preferential votes and subsequently in accordance with the order on the candidate list;
- if none of the candidates on the list won at least 10% of the votes obtained by a particular list, preferential votes for the candidates will not be taken into account and the deciding factor is the order on the candidate list;
- if only one candidate on the list won at least 10% of the votes obtained by a particular list, this candidate will have an advantage over the other candidates elected from the list, whose representative seats will be distributed pursuant to the order on the candidate list;
- if two or more candidates on the list won at least 10% of the votes obtained by a particular list, representative seats will be distributed between them pursuant to the number of their preferential votes. In case two or more candidates won the same number of preferential votes, the deciding factor is the order on the candidate list.

National minority representatives in the twelfth electoral district are elected as individual candidates. The elected representative is the candidate who has won the greatest number of votes cast. If two or more candidates win the same number of votes, the election is repeated.

## ELECTIONS OF THE PRESIDENT OF THE REPUBLIC OF CROATIA

The President of the Republic of Croatia is elected for a five-year term on the basis of universal and equal suffrage at direct elections by secret ballot. No one may be elected more than twice to the office of the President of the Republic.

The Government of the Republic of Croatia calls an election for the President of the Republic of Croatia (hereinafter: Presidential Elections).

Presidential Elections take place not less than 30 and not more than 60 days before the end of the incumbent president's term of office.

All citizens who have reached the age of eighteen years have the right to vote in Presidential Elections. This means that citizens who find themselves outside state borders and citizens who do not have their residence in the Republic of Croatia are to be enabled to exercise their right to vote. They can do so at polling stations in diplomatic missions and consular offices of the Republic of Croatia abroad.

Candidates may be proposed by political parties registered in the Republic of Croatia and by voters. Irrespective of who nominates the candidate for the presidency, the nominee must gather at least 10,000 duly collected voter signatures in support of their nomination. Each voter can support, with his/her signature, only one candidate.

The President of the Republic of Croatia is elected by the absolute majority of all votes cast, regardless of whether there are one or more candidates running in the

elections. The candidate winning over 50% of all votes cast is elected for the President of the Republic of Croatia. If no candidate wins the required majority in the first round of elections, the elections are repeated 14 days later in a second round. The two candidates who win the largest number of votes in the first round of the election have the right to stand for the second round.

Prior to taking office, the President shall swear a solemn oath before the President of the Constitutional Court of the Republic of Croatia, declaring loyalty to the Constitution.

## **2. Stability of election laws**

### *Parliamentary elections*

The first law on parliamentary elections in the Republic of Croatia was enacted in April 1992<sup>8</sup> and was thereafter amended four times. According to its provisions, the Croatian Parliament consisted of the Chamber of Deputies and the Chamber of Counties. The representatives of the Chamber of Deputies were partially elected based on the absolute majority system and partially based on proportional representation, the whole territory of the Republic of Croatia constituting one electoral district. The representatives of the Chamber of Counties were partially elected based on proportional representation, while the President of the Republic of Croatia was empowered to appoint up to five representatives of the Chamber of Counties from among distinguished citizens. Each county represented one electoral district, from which three representatives were elected to the Chamber of Counties.

The election threshold was first set at 3% of valid votes for the elections of the Chamber of Deputies and later on at 5% of valid votes for the elections of the Chamber of Counties. In 1995, differential party-coalition thresholds were laid down. The intention was to reduce the number of pre-election coalitions, but it eventually led to numerous post-election coalitions.

In November 1999, the new act on parliamentary elections, which is currently in force, was enacted<sup>9</sup>. This law has also been amended several times.

The manner and the system of parliamentary elections since 1999 have been founded on the proportional representation system only. The territory of the Republic of Croatia is divided into ten electoral districts, 14 representatives being elected from each electoral district.

The differential party-coalition thresholds were abolished and the election threshold was set uniformly at 5%.

After the amendment to the parliamentary elections act in April 2003, the Chamber of Deputies and the Chamber of Counties were abolished. Further amendments in December 2010 laid down that Croatian nationals not having registered domicile in the Republic of Croatia may elect three representatives to the Croatian Parliament. Since then the Croatian Parliament consists of 151 representatives - 140 representatives elected in the first ten electoral districts in Croatia, 3 representatives elected by Croatian nationals not having registered domicile in Croatia and 8 representatives of national minorities.

---

<sup>8</sup> Act on the Electios of Representatives to the Parliament of the Republic of Croatia (official gazette "Narodne novine", No. 22/92, 1/93, 30/93, 11/94, 68/95, 108/96)

<sup>9</sup> Act on the Elections of Representatives to the Croatian Parliament (official gazette "Narodne novine", No. 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15)



The last and very significant amendments to the parliamentary elections act entered into force in February 2015. For the first time preferential voting was applied to parliamentary elections in Croatia. Also, passive suffrage was restricted for some persons convicted for crimes, as stipulated earlier in this document.

#### *Presidential elections*

The first law on presidential elections in the Republic of Croatia<sup>10</sup> was enacted in 1992 and is still in force.

It has been slightly amended on several occasions, last in October 2014, but the presidential electoral system has remained the same.

In some cases, the laws on parliamentary and presidential elections were amended one year prior to the respective election.

#### *Other regulations*

It is not only the election laws which have changed, but also the provisions of the Croatian Constitution regarding elections, as well as the provisions of other laws relating to elections, such as the Voter Register Act and the Election Campaign Financing Act, have also been amended.

The most important amendments of Constitutional provisions are those made in 2010, relating to active and passive suffrage and voting abroad. Since 2010, all Croatian citizens aged 18 and over are voters, regardless of their legal capacity. Persons who are for some reason deprived of legal capacity now have the right to vote and to be elected. Also, polling stations abroad may only be situated at the diplomatic missions and consular offices of the Republic of Croatia.

When talking about electoral legislation, it is inevitable to mention the Voter Register Act. It is interesting to emphasize that in Croatia, such an important part of the electoral procedure as the voter register is kept by the Ministry of Administration, and not by the State Electoral Commission.

The legislation on the voter register has also been amended in the last twenty-five years. The existing Voter Register Act<sup>11</sup>, adopted in December 2012, lays down the content of the voter register and of the list of voters, used on election day. It also regulates the procedures for registration necessary when voters want to vote outside their place of residence or when voters have no residence in Croatia. Otherwise, the voters have no obligation to apply for the registration, while the data in Voter Register are based on the state databases.

Thus, it is obvious that changes of the law on voter register may significantly affect the election procedure.

### **3. Electoral management bodies**

The bodies that conduct elections in Croatia are the State Electoral Commission, as a permanent and independent state organ, the electoral commissions of the constituencies (counties, municipalities and cities) and the election committees.

---

<sup>10</sup> Act on the Election of the President of the Republic of Croatia (official gazette “Narodne novine”, No. 22/92, 42/92, 69/04 – the decision of the Constitutional Court of the Republic of Croatia from May 11, 2004, No. U-I-2495/20, 99/04 – correction of the decision of the Constitutional Court of the Republic of Croatia from May 11, 2004, No. U-I-2495/20, 44/06 – Article 27 of the State Electoral Commission Act, 24/11 – Article 52 of the Political Activity and Election Campaign Financing Act, 128/14)

<sup>11</sup> The Voter Register Act (official gazette “Narodne novine”, No. 144/12, 104/15)



The State Electoral Commission was founded as a permanent and independent state organ by the Act on the State Electoral Commission of the Republic of Croatia<sup>12</sup> back in 2007.

Until then, the State Electoral Commission had been an ad hoc body appointed immediately before the respective elections were called. It was composed of the judges of the Supreme Court of the Republic of Croatia and of the members proposed by the political parties represented in Parliament.

Today, the State Electoral Commission is an independent state organ composed of legal experts not affiliated to any political party. This has provided continuity to the work of the Commission and freed it from any partisan influence on its decision making process.

The permanent composition of the State Electoral Commission consists of the President of the Commission, four Vice-Presidents and four members of the Commission.

The President of the Commission is the President of the Supreme Court of the Republic of Croatia in terms of position. Two Vice-Presidents are elected by the General Assembly of the Supreme Court of the Republic of Croatia from among the judges of that court, upon the proposal of the President of the Supreme Court.

The Vice-Presidents who are not judges and the members of the Commission are elected by the Croatian Parliament by a majority vote of all representatives for a term of office of eight years, as follows: one Vice-President and two members are elected upon the proposal of the majority political party or coalition, and the second Vice-President and other two members upon the proposal of opposition political parties or coalitions, in accordance with the composition of the Croatian Parliament at the moment of election.

In addition to its main obligation to prepare and conduct elections, the State Electoral Commission, within its authorities prescribed by law is responsible for the following tasks:

---

<sup>12</sup> official gazette “Narodne novine”, No. 44/06, 19/07

- audits the financing of the electoral campaign, regular financing of political parties, independent members of Parliament and local representative bodies, in accordance with the provisions of the Political Activities and Electoral Campaign Financing Act
- gives its opinion on amendment and improvement of electoral legislation and legislation regulating referenda
- appoints the members of county electoral commissions and the City Electoral Commission of the City of Zagreb
- conducts the education of members of electoral commissions and commissions for conduct of referenda in units of local and regional self-government
- informs citizens on the conduct of elections and the possibilities for exercising and protecting their voting rights in the election procedure
- regulates the manner of archiving and publishing materials on elections and referenda that have been held
- publishes periodical professional publications related to the election system, the conduct of elections and practice,
- files reports with the competent bodies on the conduct of elections and referenda
- establishes the organization of the Commission's professional staff, chooses the Commission secretary and his/her deputy
- cooperates with domestic and international organizations and institutions in the realm of electoral legislation and elections in general
- files a report to the Croatian Parliament on elections and referenda conducted, within 60 days as of the day when the official election results are published
- carries out other tasks prescribed by separate regulations.

The State Electoral Commission has permanent professional staff, formed to perform professional tasks within the competence of the Commission as well as administrative and technical tasks, whose performance assures the regular and undisturbed work of the Commission.

The Secretary of the Commission is the Head of the Expert Service. The Secretary is elected by the Commission, by a majority vote of all members of the Commission, after public advertising of the post, in accordance with the provisions of the law regulating the recruitment of civil servants into the civil service.

The Secretary has a Deputy, elected in the same way and under the same conditions as the Secretary, who represents him/her in all delegated tasks.

The professional staff of the State Electoral Commission currently consists of 14 permanently employed civil servants: the Secretary of the State Electoral Commission, the Deputy Secretary of the State Electoral Commission, two advisors to the President of the Commission for legal matters, two advisors to the President of the Commission for finances, three advisors to the Commission, two expert assistants, two administrative secretaries to the President of the Commission and an administrative secretary.

Unlike the State Electoral Commission, other electoral management bodies are ad hoc bodies appointed immediately after the elections are called.

The composition of the electoral commissions in the constituencies and the election committees is regulated by electoral legislation and differs depending on the type of elections being conducted. These electoral bodies are mostly composed of a president and vice-president, who must not be members of any political party, and of members who are representatives of the majority and opposition political parties. The county electoral commissions and the Electoral Commission of City of Zagreb are

appointed by the State Electoral Commission, the municipality electoral commissions are appointed by the county electoral commissions and the election committees are appointed by the municipality electoral commissions.

The State Electoral Commission has on several occasions pointed out the need to professionalize the lower electoral commissions, which are still temporary in character, and in spite of all the competence they acquire, they are bodies which cease to exist after the elections have been held. Since permanent and educated bodies are a precondition for the conduct of the election procedure to be of good quality, the process of professionalization of electoral commissions at the lower level is necessary.

The electoral commissions of the constituencies mainly perform the following tasks:

- ensure the legality of the implementation of elections at polling stations in their territory;
- determine the polling stations;
- the county electoral commissions appoint municipal and city electoral commissions;
- municipal and city electoral commissions appoint and dissolve election committees;
- carry out all technical preparations for the implementation of elections in their territory pursuant to the mandatory instructions of the State Electoral Commission;
- collect and count the ballots from polling stations in their territory;
- perform other activities as stipulated by law.

When elections are conducted, the State Electoral Commission supervises the lower electoral bodies. Taking into consideration the total number of 576 constituencies currently existing in Croatia, as well as the number of people appointed to electoral management bodies and to election committees in all these constituencies, it is possible to determine that around 6900 persons are involved in conducting one election.

#### **4. Safeguards of free and fair elections**

##### **ELECTORAL CAMPAIGN**

Election laws in Croatia include no provisions on list of campaign activities or prohibitions, or on default forms of electoral campaign. They only stipulate the duration of the electoral campaign. It begins on the day of the publication of the summary list of candidates or the candidate lists, and ends 24 hours before the day of the election.

The electoral campaign is considered to be a group of activities undertaken by participants in the electoral campaign for the purpose of presenting themselves to the public and explaining their election platform to voters. Electoral participants can decide on the way they will conduct their electoral campaign, whether by billboards and leaflets, commercials, donation of items containing their logo or message, organization of public meetings or other.

These activities should be in accordance with the Electoral Code of Ethics<sup>13</sup>, which lays down the fundamental values of electoral campaigns and expected conduct

---

<sup>13</sup> There is no unified and permanent Electoral Code of Ethics in Croatia. After parliamentary elections or elections for members of the European Parliament are called, the Ethics Commission passes the new Electoral Code of Ethics for these elections.

of electoral participants. During the election campaign and the election procedure, electoral participants who act against the Electoral Code of Ethics are expected to apologize in public to those affected.

The State Electoral Commission handles the complaints about the electoral campaign although it has no official authority to impose adequate punishments. Depending on the content of the complaints, the Commission may state its opinion on the presented issue or contact the competent authorities such as the Ethics Commission<sup>14</sup>, the State Attorney Office, the Ombudsperson, or the Croatian Agency for Electronic Media.

Election silence begins after the end of the election campaign, and ends at seven p.m. on the day the election is held. During election silence, the following are prohibited: the public presentation and explanation to voters of the election programmes of participants, persuading voters to vote for a specific candidate or list of candidates, publication of forecasts of election results and publication of preliminary, unofficial results of the election, statements and interviews with participants in the election campaign and quoting their statements or written works. A breach of election silence is defined as offence and can be punished with fine only in local elections and elections for members of the European Parliament. In case of other types of election, there is no fine for breach of election silence, only moral condemnation.

The power of the media in today's world is significant and it is a fact that for election participants it is of special importance their presence in the media both for presentation of their political views and programmes, as well as for winning voters and their votes. It is also the media's task to ensure that the election contest takes place in a fair and democratic atmosphere, as far as the contest is under their influence as well.

Therefore, it is necessary to set rules for electoral campaign presented in media.

Election laws stipulate the principle of equality of all electoral participants and their right to have equal opportunities to present themselves to the voters. However, after the latest amendments of laws on parliamentary and presidential elections in December 2014 and February 2015, this principle of equality in electoral campaign was replaced with the principle of fair representation of electoral participants, giving them fair opportunity to present their programmes in media.

The Croatian Television and the Croatian Radio, as public broadcasters, are obliged to cover the electoral campaign and to enable all those participating in the elections to present and explain their election programmes.

Broadcasters of other media may decide independently whether and to what extent they will cover the electoral campaign.

All broadcast media are obliged to guarantee journalistic independence, professionalism and expertise, consistent compliance with the journalistic code of ethics and in particular the fundamental principle of the freedom of expression.

The Croatian Parliament enacts the rules of conduct of electronic media with national concessions in the Republic of Croatia<sup>15</sup> during the election campaign period. These rules elaborate and determine the forms and times for the coverage of the electoral campaign promotion, the form, duration and other issues concerning

<sup>14</sup> The Ethics Commission, appointed by the Constitutional Court of the Republic of Croatia, evaluates the conduct of participants in the elections during promotion in the election campaign and the election procedure itself, and conducts the extra-administrative supervision of election campaigns.

<sup>15</sup> The first Rules of Conduct of the Electronic Media with National Concessions in the Republic of Croatia were adopted in October 2003 and published in official gazette "Narodne novine", No. 165/03. They were abolished in October 2014, when the new Rules, published in Official Gazette "Narodne novine", No. 118/14, entered into force.

advertising, the manner in which the programs of electoral participants shall be presented, and the rules for the broadcast of electoral debates.

The Croatian Television and the Croatian Radio, as well as broadcasters of other media, which decide to cover the electoral campaign, must prescribe adequate rules of conduct during the electoral campaign for each election separately, in accordance with the above mentioned Rules enacted by Croatian Parliament.

During the parliamentary elections held in November 2015, the State Electoral Commission received several complaints about the rules of conduct of the Croatian Television during the electoral campaign in these elections. The electoral participants found that these rules were in favour of big and well-known political parties.

When resolving the complaints, the State Electoral Commission is not competent to punish or alter the conduct of the media during the electoral campaign, but only to express its opinion on a certain issue and to inform the Agency for Electronic Media or other competent bodies, if necessary.

When talking about the electoral campaign, it is inevitable to mention the Political Activities and Electoral Campaign Financing Act. Although in terms of its subject matter it does not come into the realm of electoral legislation, this is one in a series of acts aimed at improving the election procedure, through conduct of the most efficient supervision possible of the finances of the regular work of political parties and supervision of the funds they collect and spend in electoral campaigns.

The subject matter of financing of political parties was regulated in a vague manner until the beginning of 2007, so various and numerous forms of abuse in the financial affairs of political parties were possible.

The first Act on the Financing of Political Parties, Independent Lists and Candidates, regulating the manner and requirements for attaining funds for the work of political parties, as well as the supervision and transparency of collecting and spending of funds came into force at the beginning of 2007.

Although the financing of political parties was significantly more transparent thereafter, and certain limitations were prescribed for collecting revenue and spending it, this Act still did not sufficiently provide for satisfactory supervision of their financing and operations, and this was especially obvious during electoral campaigns. Therefore, in 2011 a new Political Activities and Electoral Campaign Financing Act was passed.

This Act introduced changes in the control of collecting and spending of funds for election campaigns, since regulations on the financing of election campaigns are now prescribed in one legal act, and apply to all types of elections. In that sense, the Act also conferred new powers to the State Electoral Commission, which now conducts complete supervision of the funding used in election campaigns by parties and independent participants in elections.

In case of any identified breach of the Political Activities and Electoral Campaign Financing Act, the State Electoral Commission is obliged, within the limits of its jurisdiction, to notify the State Attorney's Office of the Republic of Croatia and deliver thereto all documents pertaining to the concerned case. The State Attorney's Office can then initiate misdemeanour proceedings. Notwithstanding their liability for any offence specified by the Political Activities and Electoral Campaign Financing Act, the State Electoral Commission can impose administrative sanctions on political parties, independent participants in elections and candidates for the breach of any provisions of this Act pertaining to the maximum amount of election campaign costs, the disclosure of information on donations and election campaign costs and election campaign financing statements. These administrative sanctions are full and partial forfeiture of the right to recover election campaign costs and suspension of the payment of recoverable election campaign costs.



## PROTECTION OF VOTING RIGHTS

Regardless of the type of election, in the Republic of Croatia each separate electoral act includes provisions that establish the method of protecting electoral rights, the basis for instituting proceedings and the bodies that shall decide in these proceedings.

Complaints concerning irregularities in the nomination procedure or the election are submitted to the competent electoral commission, depending on the type of election, within 48 hours as of the end of the day on which the activity subject to objection occurred. The competent electoral commission, in all types of elections, except the elections held on the local level, is the State Electoral Commission. When the elections are held on the local level, the competent electoral commissions in the first instance procedure are the State Electoral Commission (concerning the irregularities in elections held in counties and the City of Zagreb) and the County Electoral Commissions (concerning the irregularities in elections held in cities and municipalities).

Depending on the type of election and specific electoral laws, persons authorized for protection of electoral rights are prescribed, and in general these rights are held by: political parties, candidates, at least 100 voters and no less than 5% of the voters in the constituency in which elections are being held.

The competent electoral commission is also required to make its decision on the submitted complaint, within 48 hours of its submission.

In the event that the party that submitted the complaint is not satisfied with the ruling issued by the State Electoral Commission or by the competent County Electoral Commission, it can initiate an electoral dispute by submitting an appeal to the Constitutional Court of the Republic of Croatia, which must also render a decision within 48 hours.

Besides resolving electoral disputes, the Constitutional Court of the Republic of Croatia also conducts overall supervision of the constitutionality and legality of elections and state referenda.

Political parties, candidates, not less than 100 voters or not less than 5 % of voters of the constituency in which the elections are held are authorized during the elections, respective not later than the expiry of the term of 30 days from publishing the results of the elections, to request from the Constitutional Court to undertake relevant measures, performing the control of the constitutionality and legality of the elections, if the electoral activities are being carried out in discordance with the Constitution and the law.<sup>16</sup>

The Constitutional Court issues a declaratory decision, if the elections were conducted in accordance with the Constitution and the electoral law.

---

<sup>16</sup> The Constitutional Act on the Constitutional Court of the Republic of Croatia (official gazette "Narodne novine", No. 99/99, 29/02, 49/02)



# GEORGIA

*Eszter Bodnár\**

Georgia is a semi-presidential republic. The president is the head of state and the prime minister is head of the government. The legislative power is vested into the parliament. The history of democratic elections in Georgia started in 1990 when the first multiparty elections were conducted.

## 1. Election laws

Elections in Georgia are held on the basis of universal, equal and direct suffrage, by secret vote.

### *Parliamentary elections*

The *parliamentary elections* are primarily regulated by the *Constitution of Georgia* and the organic law *Election Code of Georgia*. *Parliamentary elections* should be held in October of the calendar year in which the term of parliament expires. The president shall announce an election date, by the prime minister's countersignature, not later than 60 days prior to the election.

The parliament has 150 members elected for four years. The *election system is mixed* where 77 members obtain their mandates from one nationwide constituency based on proportional system and 73 members from single-member constituencies based on majority system.

According to the latest legislative amendments adopted by the *Parliament of Georgia*, the legislative body defined the boundaries of majoritarian single-member constituencies for the 2016 Parliamentary Elections, except for four self-governing cities (Tbilisi, Kutaisi, Batumi and Rustavi). Authority to establish majoritarian election constituencies and define boundaries for these four cities has been granted to the *Central Election Commission*.

Candidate can be who has the right to vote, is at least 21 years old, lives in Georgia for at least the last two years, speaks Georgian and is not a drug addict.

Political parties and blocs can nominate candidates and also independent candidates can run for the office. Independent candidates should be nominated by an initiative group of five voters. Political parties should be registered before the nomination. If they don't have a parliamentary representation, they are required to collect at least 1000 signatures, if they are *qualified election subject* (party or bloc that received 3% or more of votes in the last parliamentary or local elections, conducted under proportional system), if not, at least 25,000 ones. Independent candidates are required to collect signatures of one percent of the voters registered on the territory of the relevant constituency.

In the *single-member constituencies* the candidate must receive at least 50 percent of votes cast to be elected (it was 30 percent in the previous elections). If no

---

\* Electoral law specialist, project manager, Association of European Election Officials (ACEEEO), [eszter.bodnar@aceeeo.org](mailto:eszter.bodnar@aceeeo.org)



candidates manage to receive at least fifty percent, a second round is held within 25 days after the first round, with a relative majority: the candidate who receives the highest number of votes will win.

In the *proportional element of the system*, there is a five percent threshold of valid votes that the political parties and blocs must surpass to obtain mandate from the national list (which is a closed list).

### ***Presidential elections***

The *presidential election* is regulated by the *Constitution of Georgia* and the organic law *Election Code of Georgia*. The president is elected directly for five years. The constitutional amendments made in 2010 that entered into force upon the inauguration of the president in 2013 considerably reduced the powers of the president in favour of the prime minister and the Parliament.<sup>1</sup>

Regular presidential elections shall be conducted in October of the calendar year in which the president's term expires. The president shall, by the prime minister's countersignature, fix the date of elections not later than 60 days before the election.

Any citizen of Georgia who has the right to vote, is at least 35 years of age, has lived in Georgia for at least five years, and resided in Georgia for at least three years before the election was called is allowed to run for the office of president. The same person may be elected as president for only two consecutive terms.

Presidential candidates may be nominated by political parties or can run as independent candidates. Independent candidates can be nominated by an initiative

<sup>1</sup> Georgia Presidential Election, 27 October 2013 OSCE/ODIHR Election Observation Mission Final Report, 4.



group made up of at least five voters. Candidates are required to collect signatures of at least 25,000 (0.75 percent of registered voters).

The candidate must receive more than 50 percent of the votes validly cast to obtain the mandate. Otherwise, a second round is held where only the two candidates who received the two highest numbers of votes can run. In the second round, the candidate who receives more votes will be elected as president.

## 2. Stability of election laws

Until 2001, the presidential and parliamentary elections were determined by the *Organic Law of Georgia on Elections of the Parliament of Georgia* and *Organic Law of Georgia on Elections of the President of Georgia*. Local elections were conducted on the basis of *Georgian Law on the Elections of Representative Bodies of Local Self Governance*.

The main changes during this period were the decreasing of the number of the members of Parliament from 250 to 235, the changes of the electoral threshold (4 to 2 then to 5 then to 7 percent), annulling the territorial multi-member constituencies in the proportional element then changing the system to proportional from the mixed system.

The current *Electoral Code* was adopted on 27 December 2011 and was amended several times.

The most important change was the *change of the proportional system to mixed system*. The threshold was also decreased (from 7 to 5 percent).

Concerning the electoral procedure, the most important amendments were adopted after the cancelled parliamentary elections of 2003. At that time, Georgia did not have a reliable database of citizens so at the rerun election of 2004 they used a

handwritten list approved by the chairperson of the *Precinct Election Commissions*, the secretary of the *Precinct Election Commissions* and the representative of district division for *Internal Affairs* was available at all precincts. On E-Day special procedure was provided for voters who did not go through pre-registration, in order to ensure implementation of their right to vote.<sup>2</sup> The *European Court of Human Rights* found in its judgment that the active registration system of citizens was not a violation of the right to free elections.<sup>3</sup>

Several of the amendments of the procedural regulations were indicated by the OSCE/ODIHR reports' recommendations. The amendments were adopted by consensus in the Parliament and also incorporated most of the recommendations made by NGOs.

Amendments that entered into force in August 2013 enhanced the legal framework. These included clarifications and greater safeguards to reduce the potential for abuse of administrative resources; provisions for more equitable conditions for campaigning, including an obligation for presidential candidates to resign from incompatible offices; and changes to the rules for campaign financing.<sup>4</sup>

Since the last parliamentary elections in 2012, the legislation largely remains unchanged. However, according to the legislative amendments to the organic law, in 2014 the mayors of self-governing cities and the heads of local self-governing communities were elected directly by voters. The previous version of the electoral legislation granted the right to be elected directly only the mayor of Tbilisi, capital of Georgia. In December 2015, the Parliament amended the *Election Code* to redraw the boundaries of all single-mandate constituencies. The amendments prescribe the redrawing of constituencies in a two-stage process and define the boundaries and the number of voters for 43 of 73 single-member constituencies. The CEC was mandated to delimitate the remaining 30 constituencies, which was completed by 1 April 2016. Other amendments include increasing media airtime for parties during the campaign and clarifying campaign finance sanctions.<sup>5</sup>



<sup>2</sup> Georgia – History of elections, 1990-2010. <http://www.cesko.ge/files/TEA/archevnebisistoria/eng-history.pdf>, 16.

<sup>3</sup> However, the annulment of the results in three electoral districts was a violation of the Article 3 Protocol 1 of the European Convention of Human Rights. See: *Georgian Labour Party v. Georgia*, Judgment of 8 July 2008, no. 9103/04.

<sup>4</sup> Georgia Presidential Election 27 October 2013 – OSCE/ODIHR Election Observation Mission Final Report, 5.

<sup>5</sup> Georgia Parliamentary Elections 2016, OSCE/ODIHR Needs Assessment Mission Report, 26-29 April 2016, 1.

### 3. Electoral management bodies

Georgia uses the *independent model*: electoral management bodies are independent from any other public institutions. The elections are conducted by three levels of electoral commissions: the *Central Election Commission* (CEC), 73 *District Election Commissions* (DECs) and approximately 3500 *Precinct Election Commissions* (PECs).

In 1991, the CEC consisted of 24 members. During the parliamentary elections of 1992, it consisted of 44 members.<sup>6</sup>

Currently, all electoral commissions consist of 13 members. The CEC is the supreme body of the electoral administration that shall manage and control election commissions at all levels, and ensure the uniform application of the electoral legislation throughout the territory of Georgia. The Parliament of Georgia elects five members of the CEC, on the recommendation of the President of Georgia, while the qualified parties appoint seven members for five year terms. On the recommendation of the President of Georgia, either the CEC members appointed by parties (except for a member appointed by the party obtaining the best results in the previous parliamentary elections) or the Parliament of Georgia shall elect the CEC Chairperson.

CEC sessions and meetings are open to observers, and the media, and it uploads session minutes, decrees, ordinances, and decisions on complaints on its website to enhance the transparency of its work.



**Parliamentary and presidential elections in Georgia 1990-2016**

Year	Date	Type
1990	28 October	Parliamentary
1991	26 May	Presidential
1992	11 October	Parliamentary
1995	5 November	Parliamentary
1995	5 November	Presidential
1999	31 October	Parliamentary
2000	9 April	Presidential
2003	2 November	Parliamentary (annulled in the proportional element)
2004	4 January	Presidential (extraordinary)
2004	28 March	Parliamentary (rerun in the proportional element)
2008	5 January	Presidential (extraordinary)
2008	21 May	Parliamentary
2012	1 October	Parliamentary
2013	27 October	Presidential
2016	8 October	Parliamentary

<sup>6</sup> Georgia – History of elections. 1990-2010. <http://www.cesko.ge/files/TEA/archevnebisistoria/eng-history.pdf>, 5.



The CEC's work is assisted by the CEC staff that shall ensure organisational, legal, and technical support of elections and referenda.

A commission decision shall be made by a majority of the members present at the session but by not less than one-third of the total number of the election commission members. Some decisions (e.g. annulling of electoral results of electoral districts/precincts) should be adopted by a two-third majority. An election commission member who objects to the decision of the commission shall have the right to express her dissenting opinion in writing that shall be attached to the minutes of the session.

District Election Commission is composed of 13 members; the CEC elects five members, while, during election period, *qualified parties* appoint seven members and the CEC elects one.



Precinct Election Commission is created during electoral period in Georgia. A PEC is composed of 13 members; the upper election commission elects six members while *qualified parties* appoint seven members.

PEC officials are prepared for the elections by the *CEC Training Centre* that conducts regular trainings also for other electoral stakeholders as officials of local administration bodies and public defender's office, media representatives, political party representatives and citizen observers

#### 4. Safeguards of free and fair elections

The *campaign period* starts when the legal act on calling the elections is published and lasts until the Election Day. During election campaign period political parties and candidates of electoral subjects may produce pre-election slogans, statements, inscriptions, papers, photo materials. They also can present a program for further activity. The election program shall not contain propaganda for war or violence, appeal for change or overthrow of the existing state and social order by violence, for violation of the territorial integrity of Georgia, for national strife and enmity, or for religious or ethnic confrontation. Any individual may participate at election campaigning, except for public officers as elections commission members, judges, etc.

*Campaign materials* may be displayed on buildings and premises and other facilities with the consent of their owners or possessors. At the same time, there are also some prohibited places in this respect (e.g. places of worship, buildings of cultural heritage).

It is *forbidden* for electoral subjects, candidates of electoral subjects and their representatives in the electoral period to *give funds, gifts, and other material possessions* (irrespective of their value) to the citizens of Georgia, personally or through other persons; to sell goods to electoral subjects, candidates for electoral subjects, and their representatives at a preferential price; to distribute or disseminate goods free of charge; and to motivate Georgian citizens by promising to give them funds, securities, and other material possessions (irrespective of their value).

Local authorities should assist candidates and political parties in *holding meetings* with voters, public debates and discussions.

Any person who is in a public position and not restricted in campaign activities should *refrain from using administrative resources* in the course of the election campaign in support of or against any political party, candidate of an electoral subject or electoral subject.

*Media campaign* is regulated by the *Law on Broadcasting*. Both public and private broadcasters shall allocate free airtime for election advertisements for *qualified election subjects*. The broadcasters should provide them with equal conditions for placement of paid campaign advertisements. *Qualified parties* are allocated public funds to use for paid advertising.

The media campaign is regulated and monitored by the *Georgian National Communications Commission*. It can impose sanctions in case of the violation of the campaign regulation.

Representatives of electoral subjects and observers have the *right to file complaints and appeals* against election commission/commission head official decisions within one-two days of their delivery. The decision of an election commission may be appealed only to a higher election commission or to the court. The decision of the PEC/commission head official may be appealed to the DEC. The decision of the DEC/ commission head official may be appealed to the district/city court. The decision of the district/city court may be appealed to the *Court of Appeals* – its decision shall be final.

Decisions of DEC may be appealed to the CEC. The decision of the CEC may be appealed to the *Tbilisi City Court* and its decision to the *Court of Appeals* that makes a final decision.

The decisions of the CEC can be challenged in front of the *Tbilisi City Court* then in front of the *Court of Appeals* that issues the final decision.

Voters can challenge only their non-inclusion into the voters list.

In addition, authorized persons of relevant election commissions, local authorities, *Georgian National Communications Commission* and *State Audit Office* may submit protocols of administrative offences to a city or district court requesting administrative sanctions. The deadline for review of such complaints by the relevant body is one month and the deadline for the court to decide is fifteen days.

In the previous election process, an *Inter-Agency Task Force* was established to assess electoral violations by civil servants or by institutions. It was composed of high-level officials and dealt with complaints and allegations of election-related violations, and issued non-binding recommendations concerning electoral campaign.<sup>7</sup>

According to and for the purposes of the *Electoral Code*, the activities of the electoral commissions, electoral subjects, state authorities, and local self-government bodies shall be open and public.

*Campaign finance* is regulated by the *Organic Law on Political Unions of Citizens*, the *Election Code*, and the *Law on State Audit*.

Any citizen of Georgia or legal entity (registered on the territory of Georgia and its partners and beneficiaries are only the citizens of Georgia) is allowed to donate up to GEL 60.000 and GEL 120.000, respectively, per year to one or more parties, via bank transfer. In-kind donations are also permitted. The electoral subject that obtained at least five percent of the votes in the national constituency (in the parliamentary elections, conducted under proportional system), or at least 10% of votes in the first round of the presidential elections will receive a one-time payment

---

<sup>7</sup> Georgia Parliamentary Elections 2016, OSCE/ODIHR Needs Assessment Mission Report, 26-29 April 2016, 8.



of up to GEL 1,000,000 to cover campaign expenses. Electoral subject that received more than three percent in the last municipal elections are also eligible for public funding. Parties eligible for public funding receive an additional 30 percent of base funding if at least 30 percent of candidates of the less represented gender are included in each 10 candidates on their respective list.

The expenditures of a party or bloc shall not exceed 0.1 percent of the gross domestic product (GDP) of Georgia for the previous year.

Campaign finance is overlooked by the *State Audit Office*. After the announcement of the final results of the elections, the candidates and parties have to submit a *final report*. The *State Audit Office* can impose sanctions for violations of campaign finance regulations.



The history of the election laws in Hungary subsequent to the transition in 1989-1990 may be divided into two terms. The first term lasted from 1989 till 2010, the legal framework was determined by *Act XX of 1949 on the Constitution of Hungary* ('Constitution'), by *Act XXXIV of 1989 on the Elections of Members of the Parliament* ('Act XXXIV of 1989') and by *Act C of 1997 on Electoral Procedure* ('Act C of 1997'). Six general elections were held in this period. The second term started in 2010, when the governing parties obtained two-thirds majority in the Parliament. The public law system was reformed, a new constitution was adopted in 2011 ('*Fundamental Law*'), and the electoral system changed as well; *Act CCIII of 2011 on the on the Elections of Members of the Parliament* ('Act CCIII of 2011') and *Act XXXVI of 2013 on Electoral Procedure* was adopted. In this case study we present the characteristics of the Hungarian system mainly focusing on the new regulation, highlighting the significant changes.

## 1. Election laws

### *Parliamentary electoral system*

Under both the *Constitution* and the *Fundamental Law*, members of the Parliament were elected by universal and equal suffrage in a direct and secret ballot, in every four years. The Hungarian electoral system is a *mixed system*, where both individual candidates and lists compete.

### *The system prior 2014*

As part of the democratic transition, *Act XXXIV of 1989* was adopted. The 386 seats in the Parliament were allocated for a four-year term based on a *mixed method*. 176 seats could be won through *individual constituencies* based on *first-past-the-post* principle, at the most 152 seats were allocated by *regional constituencies*, and a minimum of 58 candidates were chosen from the *national party lists*. The voters cast two distinct ballots, one for the candidate in their individual constituency, and one for the party list in one of the twenty regional constituencies (19 counties and Budapest). The third branch was the national list, which could not be voted for directly.

In the *individual constituencies* during the nomination process the candidates needed to collect at least 750 nominations from the voters. The candidate won in the first round if she gained more than 50 percent of the votes and more than 50 percent of the voters of the constituency voted. In the absence of either of these prerequisites, a second round was held, and the candidate receiving the most votes won the seat. In this second round the voter turnout requirement was 25 percent.

---

\* PhD candidate, Eötvös Loránd University, Faculty of Law. e-mail address: mecsjanos@gmail.com

In the *regional constituencies* party lists contested. To draw up a party list in a given region, a party needed to nominate candidates in at least one fourth – but at least in two – of the individual constituencies in the given region. Each voter could cast ballot to one of the party lists, the distribution of the seats was determined with the *Hagenbach-Bischoff quota*. Although a maximum of 152 seats could be distributed, due to the mathematical characteristics of the quota, usually 125-130 seats could be won through the regional lists, and the remaining mandates went to the national lists. The voter turnout requirement was 50 percent, if the first round was invalid, in the second round the voter turnout requirement was 25 percent. A threshold of 5 percent prevailed; only those party lists could win seats, which – in the whole country – received 5 percent of all ballots casted. Any party below this percentage could hope only winning in individual constituencies, which proved to be rare.

The votes not resulting any mandates in the individual and regional constituencies went to the *national list* as *surplus votes*. A party could set up a national list, if it had set up at least seven regional lists. The aim of this branch of the system was to compensate the disproportionality of the individual and regional branch. A minimum of 58 mandates were distributed, but due to the reasons mentioned above, usually this number increased to 65-70. The mandates were distributed with the *d'Hondt quota*.

The regional party lists proved to be slightly disproportionate as a result of the low district magnitude, and the national lists could not balance the disproportion as a result of the low number of seats distributed. As a consequence, the system proved to be disproportionate with a *Loosemore-Handby Index* varying from 6,47 (elections in 2006) to 21,15 (elections in 1994, see Table 1).

*Table 1 – Loosemore Handby index 1990-2010*

1990	20,18
1994	21,15
1998	12,28
2002	11,7
2006	6,47
2010	13,84

#### *The current system*

Subsequent to the elections held in 2010, the constitutional system has been reformed and *Act CCIII of 2011* was adopted. The number of the MPs was reduced to 199. The *new system is mixed* as well; 106 mandates are distributed through *individual constituencies* and 93 through the *national lists*. The regional branch disappeared, national lists could be voted for directly instead. The duration of mandate remained four years.

The *individual constituencies* kept their *first-past-the-post* nature. During the nomination process the candidate needs to collect 500 recommendations from the voters. The possibility of a two-round election disappeared; the candidate receiving the most votes wins, irrespectively of the number of ballots casted, thus the new system has no voter turnout requirement. The new law contains provisions regarding the population of constituencies. The constituencies need to be formed so that the population of each constituency should be approximately equal. The population of a constituency may differ from the nationwide average by more than 15 percent only in exceptional circumstances (not to cross the county border and to keep the territorial integrity of the constituency), and may not differ by more than 20 percent. In this

latter case the parliament needs to restructure the constituencies. The new regulation thus implemented the findings of a previous decision of the *Constitutional Court*, which established that it is the infringement of the equal suffrage if there exists a significant difference between the populations of the constituencies.<sup>1</sup>

In the new system ballots may be casted for the *national lists*. Each party may set up one national list, if it nominates in the individual constituencies at least 27 candidates in at least nine counties and in the capital. In the new system not only parties, but self-governmental bodies of national minorities may draw up lists (*'national minority lists'*). Two kinds of votes are gathered in the national list branch. On the one hand the voters *may cast votes directly* either for one of the *party lists* or for one of the *nationality lists* if they are registered as member of a national minority. On the other hand, *surplus votes* of the individual constituencies are also added. As in the former system, all votes cast for other candidates than the winner qualify as surplus vote. However, the new regulation has a significant new element in this respect: the votes obtained by the winner above the second candidate's votes plus one qualify as *'winner surplus vote'*. It means that if the winner obtains 10.000 votes and the second candidate 5000, then – besides the 5000 surplus votes of the second candidate – 4999 votes are transferred to the winner's national list as surplus votes. This new element resulted a difference of six mandates in 2014.<sup>2</sup> The mandates are allocated in the national list based on the *d'Hondt quota*. There is no voter turnout requirement. The five percent threshold is kept, a party list is excluded if it does not receive at least five percent of all the votes casted for party lists and nationality lists. In case of joint party list the threshold is 10 percent, if two, and 15 percent, if more than two parties are involved.

A new element is the *preferential mandate for nationality lists*. The ballots casted for the party and nationality lists and the surplus votes are added together, the number is divided by 93 – the number of mandates in the national list branch – and it is further divided by 4, which results the *'preferential quota'*. If a nationality list reaches this number, it acquires a mandate, each nationality list may obtain one preferential mandate. In the elections held in 2014, however, no preferential mandate was won.

The new system introduced the possibility for the Hungarian citizens living abroad to vote, but only for the national list branch; they are excluded from the individual constituency branch.

The new system is more disproportionate than the previous one, as the proportion of the individual constituency branch increased (from 45,5 percent to 53,2 percent), and the winner surplus votes magnified the disproportionality as well. The *Loosemore-Handby index* of the election in 2014 is 22, the highest since the democratic transition.

### ***Presidential electoral system***

In the Hungarian constitutional system the *President of the Republic* is elected by the *Parliament (National Assembly)* for five years, and may be reelected only once. The President of the Republic may be any Hungarian citizen, who reached the age of 35.

---

<sup>1</sup> See decision of Constitutional Court no. 22/2005. (VI. 17).

<sup>2</sup> Office for Democratic Institutions and Human Rights Hungary, Parliamentary Elections, 6 April 2014: Final Report Available at: <http://www.osce.org/odihr/elections/hungary/121098?download=true> p. 7.



The election is preceded by a nomination process, where at least one-fifth of the MPs may nominate a candidate. The President of the Republic is elected in the first round, if a candidate receives at least two-thirds of the votes of all MPs. If no such majority is achieved, a second round is held, where the candidate receiving the most votes – regardless of the number of MPs participating in the vote – is elected.

The electoral process under the Constitution was similar, only minor changes have been applied.

## 2. Stability of election laws

The stability of election laws was ensured with the same mechanisms under the *Constitution* as it is ensured under the *Fundamental Law*; the vote of the majority of two-thirds of MPs at present is needed to adopt or amend the election laws. In the democratic history of Hungary subsequent to the transition there were two occasions the government had this majority behind itself; in the periods of 1994-1998 and 2010-2015.

In Hungary since 1989 two acts on the electoral system have entered into force, *Act XXXIV of 1989* in 30th October 1989, and *Act CCIII of 2011* in 1st January 2012. The former law has been modified on more than twenty occasions. Table 2 contains the modifications, which entered into force within one year prior to the respective election.

<i>Table 2 – Modifications within one year prior to the respective election</i>	
Affected election	Date of modification entering into force
1990 (first round – 25 <sup>th</sup> March)	10 <sup>th</sup> November, 1989; 12 <sup>th</sup> January, 1990 ; 4 <sup>th</sup> March, 1990
1994 (first round – 8 <sup>th</sup> May)	20 <sup>th</sup> , January, 1994; 5 <sup>th</sup> April, 1994
1998 (first round – 10 <sup>th</sup> May)	11 <sup>th</sup> November, 1997
2002 (first round – 7 <sup>th</sup> April)	no such modification
2006 (first round – 9 <sup>th</sup> April)	16 <sup>th</sup> July, 2005
2010 (first round – 11 <sup>th</sup> April)	no such modification
2014 (6 <sup>th</sup> April)	3 <sup>rd</sup> May, 2013; 21 <sup>st</sup> June, 2013; 10 <sup>th</sup> July, 2013; 13 <sup>th</sup> July, 2013; 26 <sup>th</sup> November, 2014

The current electoral law has been modified eight times since 2012, five times within one year prior to the elections held in 2014 (see Table 2). These modifications affected Annex 2 of *Act CCIII of 2011*, which determines the constituency boundaries. The constituency boundaries had been determined by a governmental decree till 2011, when the *Constitutional Court* declared the decree null and void.<sup>3</sup> The Court held that the constituency boundaries, as a subject related to the execution of fundamental rights, cannot be determined in other legislation than law adopted by the Parliament. According to the reasoning, however, majority of two-thirds is not needed in this subject. Nevertheless, the boundaries are currently determined by the electoral law, and as such, can be amended only with the majority of two-thirds.

Although to ensure the stability, under *Act CCIII of 2011* the annex may not be amended in the period between the first day of the year preceding the elections and the day the elections are held, an exception was added, so in practice the annex could have been amended. This showed the weaknesses of the modification mechanisms; any provisions ensuring the stability may be avoided with the majority of two-thirds in the Parliament, as the provision itself can be amended.

<sup>3</sup> See decision of the Constitutional Court no. 193/2010 (XII. 8.)

In the past 25 years the electoral system has been subject of serious amendments. As described above, the new law adopted in 2011 has brought about significant changes, including the restructure of constituencies, the abolition of regional lists and voter turnout requirement, the introduction of the one-round election, national-minority lists, the possibility to vote without Hungarian residence, the winner surplus vote, etc. (see Chapter 1.).

From 1989 to 2010, the system has been subject to changes, from which the raise of threshold from four percent to five percent could be highlighted. The threshold related to the regional and national lists described above had been 4 percent from 1989 to 1994, and was raised just five month prior to the elections to five percent. The reasons for the change are not clear, it may be assumed that the leading parties tried to squeeze out the minor ones.

### **3. Electoral management bodies**

In Hungary, two types of electoral management bodies exist: *election commissions* and *election offices*. Election commissions are independent bodies, subject only to the law. Their primary task is to determine the results of the elections, ensuring the fairness and legality of the elections and restoring its legal order if need be. With regards to the election of MPs four kinds of election commissions are relevant: *National Election Commission* ('NEC'); *individual constituency election commission*; *local election commission*; and *polling station commission* ('PSC').

#### ***NEC***

The NEC is a permanent organ, which is responsible for the elections in the whole country. It has at least seven members. Two kind of members can be distinguished: the elected and the appointed members.

Seven members and three alternate members are elected by the *Parliament* on the proposal of the *President of the Republic* for a term of nine years. The former legislation determined the number of members in five, and the duration of mandate in four years, therefore for each election new commission was elected by the Parliament. Moreover, members were proposed by the minister responsible for elections and referendums. The election of members and alternate members of the NEC requires the vote of two-thirds of the members of Parliament present. If the first round is not successful, a second round is held. In case of an unsuccessful second round, a third round is held, where the members are elected with the vote of more than half of the members of Parliament present. If the Parliament fails to elect new members after the nine years have passed, the mandate is lengthened to the date of the inaugural session of the new NEC. The elected members need to be eligible to stand as candidate in the elections, and to have law degree. The members elect the president of the NEC and her deputy.

In addition to the elected members, each party having a group in the Parliament may appoint one member to the NEC. The mandate ends with the day the next election of members of Parliament is called or if the group ceases to exist. Furthermore, after the election is called, an additional member of the NEC is appointed by each of the nominating organizations putting forward national lists. The mandate ends with the inaugural session of the new Parliament.

With regards to both elected and appointed members, the law determines the exact cases in which the mandate ends, for example in case of conflict of interests

(see below), resignation, and death. Furthermore, appointed members may be revoked by the appointer.

Impartiality is promoted on the one hand by provisions on conflict of interests. The law enumerates the positions (for example MP, President of the Republic, candidate) which exclude the membership. High profile state officials, members of political parties, relatives of candidates may not be elected member of the NEC. On the other hand, independence and impartiality may be achieved by the long duration of the mandate, and by the majority needed in the election process. Moreover, members may not be removed, only in the cases enumerated in the law.

### ***National Election Office***

The *National Election Office* ('NEO') qualifies as an *autonomous government agency*, which means that it enjoys wider competencies and independency than other governmental agencies. *Act XXXVI of 2013* prescribes, that the NEO is subject only to the law, it may not be instructed, and carries out its task independently. Any task can be assigned to the NEO only by law adopted by the *Parliament* or other legislation issued pursuant to such law. NEO is led by its president, who is appointed by the *President of the Republic* for nine years on the proposal of the *Prime Minister*. Under the former law the president and the members were appointed by the *Minister of Interior* for an indefinite period. The president is entitled to appoint at the most three deputies.

The mandate of the president is terminated with the completion of the nine years, with her resignation, death, if the prerequisites of her appointment are no longer met, if she violates the provisions regarding her financial disclosure statement or in case of conflict of interests. The latter three cases are determined by the *President of the Republic* on the initiative of the *Prime Minister*. The president may initiate court proceedings to establish the unfoundedness of the initiative.

The impartiality of the office is promoted by provisions on conflict of interests, on obligation to submit financial disclosure statement, and on the financial independence of the office. The above mentioned role of the *President of the Republic* in the appointment, and the possibility of court review in case the prime minister's initiation (see above) may be considered as instruments of promoting the impartiality of the position.

There are strict rules concerning the conflict of interests. The president may not be member of political parties and may not engage in political activities, and may not hold any position in the municipalities. The president may not be member of any election commission, candidate or her relative, or member of an organization nominating a candidate. Those persons, who, in the four years preceding the nomination for appointment, held any of the positions determined in the law (e.g. President of the Republic, member of the government, secretary of state, political party official) cannot be appointed.

The president may not engage in other gainful employment and – with the exception of a small group of activities, e.g. scientific or art activities – may not receive any financial retribution for other activities. The law determines other excluded financial activities. Moreover, the president needs to make a financial disclosure statement every year.

To ensure the financial independence of the office, it makes an independent title in the *national budget* within the budgetary chapter of Parliament and the key figures on the expense and revenue side of its budget may only be reduced by Parliament.

### ***Competences of NEC in controlling NEO***

As mentioned above, NEC and other election commissions have the primary task to determine the results of the elections, ensure the fairness and legality of the elections and restore its legal order if need be. NEO and other election offices carry out administrative tasks.

The NEC may issue *guidelines* to election bodies, which may be considered as one way of controlling the offices. The aim of these guidelines is to ensure the unified interpretation of the legislation on the subject of elections. The guidelines, however, are not binding, therefore these may qualify only as informal control. Nevertheless, as objections may be submitted in case of violation of law, these guidelines may be of great importance.

Another way of control may be the objections submitted by voters candidates, nominating organisations, natural and legal persons or associations without a legal personality affected (see Chapter 4.). These objections are considered by the electoral commissions, thus forming substantive control over the activity of the offices.

## **4. Safeguards of free and fair elections**

### ***Campaign activities***

*Act XXXVI of 2013* regulates the campaign activities. The new regulation abolished the restriction of campaign silence period, which prohibited any active campaign activity on the day of the election from the beginning of the day to 7 pm. A restriction, however, remained that on the day of the election no campaign activity may be pursued within 150 meters of the polling station. The campaign period starts 50 days before the day of voting. The law has special rules concerning *posters, election rallies, political advertisements, door-to-door canvassing and exit polls*.

In the campaign period the nominating organizations and the candidates may freely produce *posters* and may place them without restrictions. With regards to *Act XXXVI of 2013* only a small group of exceptions apply, for example the permission of the owner of the given building is needed, or the municipality may prohibit the placement due to monument protection concerns. Government Decree no. 224/2011 (X. 21.) contains special rules and on posters placed next to public roads. The regulation originally was applicable to posters placed in the interest of companies and other market participants. The decree, however, was amended, just before the elections in 2014, extending the applicability to campaign posters as well. As a result, during the election campaign in 2014 the restrictions of the decree prevailed, for example no posters were allowed to be placed to lampposts.

*Election rallies* can be organized only in the campaign period, but may not be held on Election Day. State and municipality organs may make premises and other equipment for the purposes of rallies available to the nominating organizations under equal conditions.

Special rules apply to *political advertisements*, and in this regard the new regulation has brought about significant changes. Under *Act C of 1997* media providers could publish political advertisements under equal conditions for nominating organizations and candidates. When *Act XXXVI of 2013* was adopted, it contained a provision that prohibited the broadcast of political advertisement by private media providers, thus advertising solely through the public media services could have been possible. The *Constitutional Court* declared this provision null and

void, as an unduly restriction of the freedom of expression and the media.<sup>4</sup> As an answer, the *Fundamental Law* has been amended – among other provisions – in order to sustain the disputed provision. As a result, the prohibition of advertising in private media became constitutional-level, so the Constitutional Court would not have been able to interpret the law any other way. Under the pressure of criticism the *Fundamental Law* has been amended again, the prohibition vanished, but a restriction remained: political advertisements may be published in media services only free of charge. As a consequence, during the campaign in 2014 no private media provider chose to give airtime to political advertisements.<sup>5</sup>

The new law distinguishes between two types of political advertisements, depending on the publisher. On the one hand, one kind of *political advertisement* is *broadcasted by media providers* (e.g. television, radio). The restriction mentioned above applies to this kind of advertisement; providers may not demand or accept consideration for broadcasting political advertisements. In the campaign period, political advertisements may be broadcasted by the media provider with the same conditions, especially with regard to the number, appearing order, timeframe and time of broadcast of political advertisements. No advertisement may be broadcasted on the day of voting. The law determines the rules on the obligation of public media providers to broadcast political advertisements, regarding for example the minimum airtime.

On the other hand, *political advertisement published by the press* (e.g. newspapers, online media surfaces, blogs) is not subject to the financial restriction mentioned above; the publisher may demand consideration. The advertisement has to be able to be recognized as political advertisement and to be distinguished from other advertisements.

### ***Legal remedies***

*Act XXXVI of 2013* contains the possibility of a general complaint, judicial review, constitutional review and a special complaint regarding the participation of media in campaign.

As a '*general complaint*', objections may be submitted by voters, candidates, nominating organizations and natural and legal persons and associations without a legal personality affected by the case, based on a legal violation in connection with the election. Under the law, legal violation is any breach of a legal regulation pertaining to the election or the fundamental principles of election and election procedure. If the alleged violation is related to the activity or decision of the polling station commission, or it is specifically related to an individual constituency, the matter is decided by the *individual constituency election commission*. In other cases, and regarding the appeals against the decisions of individual constituency election commissions *NEC* decides. Objections related to the activities of an election office are decided by the election commission alongside which the election office in question functions. *Act XXXVI of 2013* set up stricter formal requirements than its predecessor, and if these requirements are not met, the objection is rejected without examinations of the merits.

If the objection is sustained, among other legal consequences, the election commission nullifies the given election procedure and orders it to be repeated. There

---

<sup>4</sup> See decision of Constitutional Court no. 1/2013 (I. 7.)

<sup>5</sup> Office for Democratic Institutions and Human Rights – Hungary, Parliamentary Elections, 6 April 2014: Final Report Available at: <http://www.osce.org/odihr/elections/hungary/121098?download=true> p. 15.

may be appeal against the first instance resolutions of the election commission. The appeal is ruled by the NEC.

Second instant resolutions of election commissions, or the resolutions of the NEC may be subject of *judicial review* initiated by natural and legal persons and associations without a legal personality affected by the case. The possibility of appeal needs to be exhausted unless it is excluded by the law. In the review procedure new facts and evidences may be brought up, representation by lawyer is mandatory. Judicial reviews are decided by the higher courts; either by Regional Courts, or – in case the resolution of NEC – by the Curia (the supreme court of Hungary).

Court rulings of judicial review may be subject of *constitutional review* by the *Constitutional Court*. Under the provisions of the *Fundamental Law*, if a provision applied in a certain case or a court decision is in conflict with the provisions of the Fundamental Law, *constitutional complaint* may be lodged. *Act XXXVI of 2013* contains special rules on the constitutional complaint lodged against or related to a court ruling made in a judicial review procedure described above. In this case the complaint may be lodged to the Constitutional Court within three days from the publishing of the given court ruling. The Constitutional Court decides on the admissibility within three working days, and decides on the matter within another three working days. Furthermore, under the special regulation stricter rules apply with regards the deadlines, and the supplement of documents and file is not possible, which could easily lead to the rejection of the complaint without deciding on the merits.

As the previous regulation, *Act XXXVI of 2013* contains special rules on the *objections regarding participation of the media in the campaign*. If media providers, the press, or movie theaters violate the law, the objection lodged is decided by the NEC, or, in case of a territorial media participant, an *individual constituency election commission*. In addition to the legal consequences of a general complaint, the election commission may oblige the media participant to publish the resolution, and may issue a fine.

### ***Publicity of the electoral process***

*Act C of 1997* declared that the activities of the electoral commissions are public, although this publicity could not violate the secrecy of the election, personal rights, and rights related to the protection of personal data. *Act XXXVI of 2013* declared publicity as a basic principle, thus extended its scope of interpretation to the whole electoral procedure. It is to be noted, however, that the secrecy of the elections is still a principle laid down by the *Fundamental Law*, therefore when interpreting the provisions of the law, this prospect is need to be taken into consideration as well.

- In particular, publicity is promoted by the following provisions:
- Election management bodies have shorter deadline to satisfy the requests concerning public information.
- Parties having a faction in the Parliament and nominating organizations putting forward national lists may appoint members to the NEC (see Chapter 3.), and may appoint up to five observers to work alongside the NEO and verify the voting documents and the legality of the ballot counting.
- Nominating organizations and candidates may appoint two members each to the polling station commissions.
- International observers are allowed to be present at every stage of the voting, may view the documents of the electoral commissions and may request copies thereof.



- Meetings of election commissions are public.
- Each nominating organization and independent candidates as well may delegate two observers to each foreign representation.
- Election offices operate as information services.

It is to be noted, that under Hungarian law non-party citizen observation is still not possible.

In the Hungarian *campaign fund system* individual candidates and nominating organizations setting up national list receive funds from the state budget. The funds are transferred by the *Hungarian State Treasury* and kept in a '*treasury account*' so the expenditures can be tracked. The use of the funds is audited by the *State Audit Office*. After the elections candidates need to submit a *report* containing the bills of every disbursement. Furthermore, each candidate and nominating organization has to publish the exact amount of funds spent on the campaign, the way in which these were used and the sources in the *Hungarian Official Journal*.



# KAZAKHSTAN

*M.A. Sarsembayev\**

## **1. General observations. Election laws**

Year of 1991 is a landmark one in the history of Kazakhstan because the history of the independent and sovereign Kazakh state – the Republic of Kazakhstan – begins since this year. After dissolution of the USSR the laws of Kazakhstan, including election laws, have undergone profound changes. Kazakh law and state based on market economy and democratic form of government replaced the Soviet law and the socialist state. The Soviet election system, which proposed to its citizens to support only one possible candidate on the election of public officials, as a non-democratic system has become part of a history. Today, the essence of Kazakh election system is a genuine election of the most worthy candidate from among a number of candidates.

The basic elements of the status of the Supreme Council (Parliament), President, local representative bodies, and the entire election system of Kazakhstan were settled in the provisions of the Constitution of 28 January 1993. The Constitution and the Election Code of 17 March 1993 had temporary nature by providing the transition from the Soviet system to the new democratic state.

The Constitution of the Republic of Kazakhstan adopted at a national referendum on 30 August 1995 by replacing the Constitution of 1993, created the foundations of a presidential system which led to a substantial reform of the election system as well. The President is elected directly and the Parliament has two chambers: the Senate and the House of Representatives (Mazhilis). From that time till now the composition of the Senate was renewed every third year by indirect elections, while in every five years<sup>1</sup> the country's electorate elect the Mazhilis and maslikhats (local representative bodies at the level of oblasts, cities and districts). Since 1991, at national elections the people of Kazakhstan periodically elect the President of the Republic of Kazakhstan as the head of state. In the history of Kazakhstan there were five presidential elections, two elections of the members of the Supreme Council (1991, 1994), while since December 1995 till now there were five elections to the Mazhilis, eight to the Senate of Kazakhstan, and five elections to maslikhats.

Articles 41, 51, 86 of the Constitution in force stipulate the requirements which must be met by candidates for the office of the President, deputies of the Senate, the representatives of the Mazhilis and of the country's maslikhats. These and many other provisions related to the elections have received detailed consolidation in the Constitutional Act of the Republic of Kazakhstan of 28 September 1995 "On elections in the Republic of Kazakhstan", which – with certain modifications and additions – is in force till the present day.

## **2. Stability and development of election legislation**

In the years after the transition the election legislation of the Republic of Kazakhstan was based on the Constitution of the Republic of Kazakhstan of 28

\* Member of the Central Election Commission of the Republic of Kazakhstan

<sup>1</sup> Before 2007 the term of the maslikhats was four years.

January 1993 and the Election Code of 17 March 1993. The Constitution of the Republic of Kazakhstan of 30 August 1995 replaced the former constitution, while the 1993 Election Code has been replaced by the Decree of the President of the Republic of Kazakhstan of 28 September 1995, having the force of the Constitutional Act, “On elections in the Republic of Kazakhstan”. This decree was converted on 6 May 1999 to the Constitutional Act of the Republic of Kazakhstan “On elections in the Republic of Kazakhstan” and other laws regulating different aspects of the elections. (The Law of the Republic of Kazakhstan of 2 July 1996 “On political parties” and the Law of the Republic of Kazakhstan of 15 July 2002 “On political parties”, which has replaced it, the Law of Kazakh SSR of 28 June 1991 “On press and other mass media” and the Law of the Republic of Kazakhstan of 23 July 1999 “On mass media”, which has replaced the previous law.)

Since 1995 till now 1,220 organizational, administrative and norm-setting resolutions were adopted by the Central Election Commission of the Republic of Kazakhstan (CEC) – which also belong to the legal background of the elections.

The Constitutional Act of the Republic of Kazakhstan “On elections” consists of General and Special Parts, which include 133 articles. The General Part contains provisions on free exercise of the “right to elect and to be elected” by a citizen as well as principles of universal, equal and direct suffrage and the secrecy of the vote. It also contains provisions on the system of election management bodies which is headed by the Central Election Commission as a permanently operating body. A series of articles regulate the status of the constituencies and precincts. Much attention is paid to the lists of voters. Rules related to the campaign activities are especially outlined. Election funding rules are also regulated in the General Part of the considered act. Six long articles are devoted to the questions related to the voting procedure. Determining the voting results is also subject of regulation in the General Part. It should be noted that safeguards of the freedom to the election are subject of detailed regulation in the General Part of this act.

The Special Part consists of separate chapters devoted to regulation of elections of the President of the Republic of Kazakhstan, deputies of the Senate, deputies of the Mazhilis, and deputies of maslikhats of the Republic of Kazakhstan.

The President of the Republic of Kazakhstan is elected by a majority system (the candidate for whom the voters of the country casted the most votes becomes the President) – the regulation did not change in this respect.

In the beginning of 1990s the members of the Parliament were elected by a majority system. At the election of 1999 mixed electoral system was used: 67 deputies were elected in single-member constituencies by majority system and 10 deputies by proportional representation system. Since 2007 the Mazhilis of Parliament is formed by a proportional system (98 of 107 deputy seats are open for representatives of political parties) and 9 deputy seats are occupied by the representatives of the Assembly of the People of Kazakhstan (a consultative body of the President which represents the interests of 130 ethnic groups of the republic).

In the early years of sovereign development of Kazakhstan local representative bodies were called as “maslikhats-assemblies”, since 1995 they are called as “maslikhats”. At the election in 1999, 3,322 deputies were elected, later 3,335 deputies of 213 maslikhats at all levels were elected by a majority system at elections in 2007, 2012 and 2016. The competition for each elected office for all kinds of the considered elections was relatively high.

Currently 13,399 election commissions are functioning nation-wide, where 93 793 members perform their work. Electoral precincts in the Republic of Kazakhstan are formed with not more than 3,000 (three thousand) voters per each

of the 9.840 precincts. (The average number of voters per precinct is 995.) The lists of voters consist of more than 9.790.000 citizens of the Republic of Kazakhstan.

#### Election legislation of the Republic of Kazakhstan

#	Title		Quantity
1.	Number of Constitutional Acts on amendments to the basic Constitutional Act on Elections since its adoption in 1995		16
2.	Number of amendments <sup>2</sup> :		814
	1) changes		397
	2) additions		248
	3) exclusions		169
3.	Election system at elections of		
	1) President of RK	Majority system	
	2) deputies of the Mazhilis of Parliament by party lists	Proportional system within one nationwide constituency	
	3) deputies of the Senate of Parliament	Majority system	
	4) deputies of maslikhats	Majority system	
4.	Suffrage at elections of:		
	1) President of RK	Universal, direct, equal	
	2) deputies of the Mazhilis of Parliament by party lists	Universal, direct, equal	
	3) deputies of the Senate of Parliament	Indirect and equal	
	4) deputies of maslikhats	Universal, direct, equal	
5.	Election system at election of Mazhilis of Parliament		
	1) majority system	1995-1999	
	2) mixed (majority and proportional systems)	1999-2007	
	3) proportional system	Since 2007	

The Law of 15 July 2002 “On political parties” includes a number of electoral aspects. In particular, Article 5 stipulates that “political party must create to citizens of the Republic of Kazakhstan, who are members of this political party, equal opportunities for representation” “in the lists of candidates to deputies and other elected office in the bodies of state power”. Article 16 of this law establishes that “at the congress of political party” “candidates to President of the Republic of Kazakhstan, deputies of the Mazhilis of Parliament shall be nominated, the party list of candidates to deputies to be presented to the Central Election Commission of the Republic of Kazakhstan shall be adopted”.

The Law of 23 July 1999 “On mass media” contains a provision related to the responsibility of “the media for the purposes of violation of conditions for holding campaigning”, which could end in the suspension of issue of this media.

Stability of election legislation means that the main principles of democratic elections, the structure of democratically elected supreme and locally elected public state organs and the election management bodies, the rules related the procedure of compilation voter lists, the nomination of candidates, the absolute principle of alternative election are kept unchanged and stable. At the same time the need to improve the methods and means to implement democratic electoral principles led to the fact that over the last 20 years 814 changes and additions were introduced to the basic election law of the Republic of Kazakhstan.

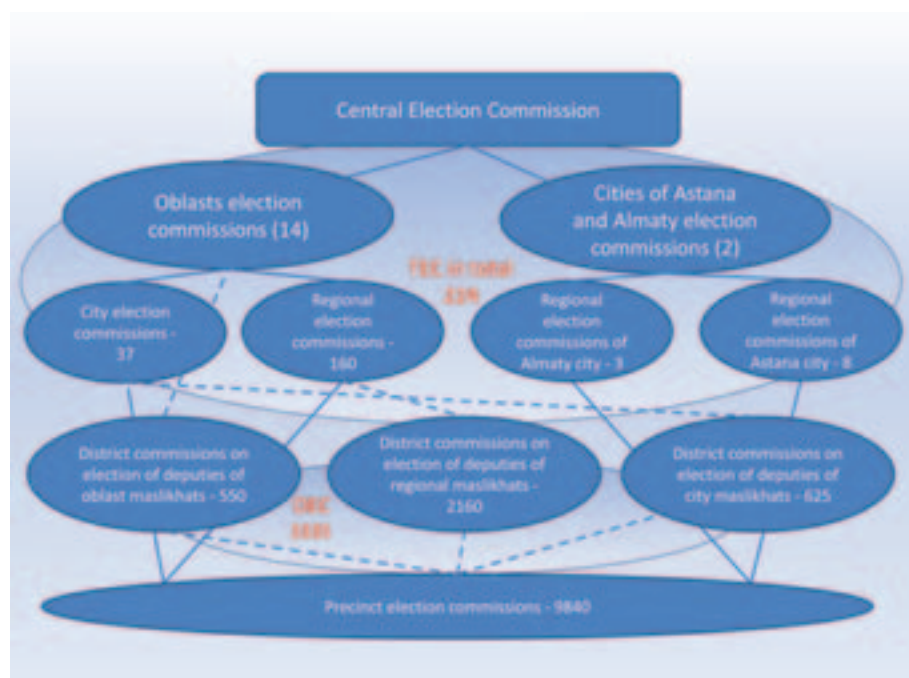
---

<sup>2</sup> Indicates the number of articles or paragraphes opened for modification.

### 3. Electoral management bodies

In the Republic of Kazakhstan state organs, which are responsible for the preparation and conduct of elections in the country, are the election commissions. The term of office of the election commissions is 5 years. All mentioned commissions, which include 14 oblasts, cities of Astana and Almaty election commission, 160 regional commissions, 37 city election commissions, 11 district in cities of Astana and Almaty (3 and 8), 550 district election commissions on election of deputies of oblast maslikhats, 2.160 district election commissions on election of deputies of district maslikhats, 625 district election commissions on election of deputies of city maslikhats, 9.840 precinct election commissions compose the common system of election commissions of the country.

#### The system of electoral management bodies in the Republic of Kazakhstan



As we can see all election commissions of the republic are divided into three classes: 224 territorial commissions (oblasts, cities of Astana and Almaty, city, district, and district in city), 3,335 district commissions and 9,840 precinct commissions. All this set of 13,399 election commissions of the country is headed by the Central Election Commission of the Republic of Kazakhstan. The CEC by its status is a permanently operating state organ. Since 1995, members of the CEC were elected by the Mazhilis and later by the Senate and Mazhilis of Parliament. Since 2012 the system of formation of the CEC composition has been changed. Now the Chairperson and two members of the CEC are appointed by the President of the Republic of Kazakhstan for the term of 5 years, while each of the chambers of Parliament of the Republic of Kazakhstan (Senate and Mazhilis) independently (without participation of other chamber) elects two members of the CEC of the Republic of Kazakhstan for the term of 5 years. Deputy Chairperson and Secretary of the CEC are elected at the first session of the Commission.

Activities of territorial, district and precinct election commissions are carried out on a voluntary basis. The composition of these commissions are formed by maslikhats of the corresponding level based on the proposals of the political parties officially registered by the Ministry of Justice of the Republic of Kazakhstan. In accordance with the established legal provisions each party can submit only one candidacy for the membership of the respective election commission. (At present seven political parties function in the country.) Each election commission is composed of seven members. Some political parties may face challenges of organizational and human resource nature, particularly in the regions. If no proposals of political parties were submitted within the established term, maslikhats shall elect members of election commissions based on the proposals of other public associations as well as of superior election commissions.

The superior election commission has the right to appoint a member of election commission if a position is temporary vacant, instead of the released one. Members appointed by superior election commissions stay in office till the decision of the maslikhat on the new membership.

Wishing to contribute to the representation of political parties not having nominees in the election commissions, the Kazakh legislator provided such parties with the right to delegate representatives in an advisory capacity to the election commissions for the period of preparation and conduct of the elections. Delegate members can exercise the rights of the officially elected members, except the right to vote when the election commissions are taking decisions.

Election legislation clearly delineates the competences of the electoral bodies of the Republic of Kazakhstan with regard to their status. The competence of the Central Election Commission of the Republic of Kazakhstan is the control over the observance of the election legislation, ensuring its uniform and correct application, decision-making (the CEC's decisions are mandatory throughout the country), the organization of the preparation and conduct of elections of the President, deputies of the Mazhilis and the Senate of Parliament, also providing the methodological guidance for territorial election commissions related to the organization and conduct of election of maslikhats.

The Constitutional Act on Elections prescribes for every territorial election commission of the country responsibility related to proper control over the implementation of the electoral legislation, preparation and organising of elections of the President, deputies of the Parliament and maslikhats, 'direct' the work of the subordinate territorial as well as district and precinct election commissions, ensuring the conduct of election of deputies of the Senate, also forming constituencies for the election of deputies of maslikhats, publication of lists of constituencies, informing voters on the locations of election commissions.

All district election commissions perform control over the implementation of the Constitutional Act on Elections in the territory of the corresponding constituency, organize the election of maslikhat deputies and coordinate the activities of the precinct election commissions in the respective district.

The responsibilities of precinct election commissions include holding in election precincts electoral events for all types of elections, informing voters on the location of precinct election commission, clarification of the voter's list in the corresponding election precinct, informing citizens about the voter's list, consideration of applications on errors and inaccuracies on the lists and also taking decisions related to appropriate changes on it, notification of voters about the day, time and place of voting, equipment of the polling station, organizational support to production of polling booths and ballot-boxes, proper organization of the voting on election day, holding the vote count and



**A clear manifestation of the electoral process: voter casts her vote  
(parliamentary election)**



determination of the voting results at the polling station, consideration of complaints and appeals related to the preparation and organization of voting.

#### **4. Safeguards of free and fair elections**

Chapter 5 of the Constitutional Act On Elections in the Republic of Kazakhstan regulates the issues related to the campaign activity of candidates and political parties. The Kazakh state guarantees that citizens, public associations have the right to conduct unimpeded pre-election campaign “for” or “against” a particular candidate or political party.

Candidates and political parties are given the opportunity to hold pre-election campaign in different ways. First of all, they can spread their pre-election advertisements, other documents in the mass media. They are eligible to organise various public campaign events. They may hold campaigning in their favor ‘by issuing and spreading printed, audiovisual and other campaign materials’<sup>3</sup>.

One of the safeguards for free and fair elections is a ban to conduct pre-election campaign and to spread any campaign materials by the central and local state organs and their officials when performing of their duties. The ban is also prescribed for military officers, employees of national security agencies, law enforcement bodies and judges, members of election commissions, religious institutions. A candidate is not entitled to use any advantage of his/her official or employment status. It is forbidden “to attract people, who are subordinate to him/her, to conduct pre-election campaign (except the cases, if they are registered as proxies), to use premises in the building, where state bodies are located, in campaign activities”.<sup>4</sup>In particular, the

<sup>3</sup> Clause 3 of Article 27 of the Constitutional Act on Elections

<sup>4</sup> Clause 4 of Article 27 of the Constitutional Act on Elections

fairness and openness of elections is ensured by the fact that “if journalists, officials of media editorial boards” are registered as candidates or proxies (persons authorized by candidates to collect supporting signatures, conduct campaign or represent them before public authorities), then they “cannot take part in the coverage of campaigning in their media”.

In order to ensure the equality between candidates and political parties, the law prohibits financial support from other sources, accepting any goods, works, and services either from legal entities or physical persons, which are not financed from the official election funds accessible for the candidates.

In order to guarantee free and fair elections the electoral legislation of the country regulates in detail the conditions for pre-election campaign in the mass media. Candidates, political parties are provided with equal conditions for accessing all mass media during their pre-election campaigns. If the media gives its consent to the allocation of airtime or print space to one candidate or political party, at the same time it must give consent to the allocation of the same volume of airtime, print space to other candidates and other political parties as well. Election law prescribes the need to respect the fair sequence of broadcasting the speeches of candidates and political parties in the media. These must be set ‘in the order of receipt of written applications or by casting lots, if applications have been received at the same time’.

When the mass media ‘provides airtime, print space to registered candidates and political parties’ on contractual basis, the contractual conditions ‘must not create advantages to one or another candidate, political party’. It should be particularly noted that information about the amount of payment, conditions and the procedure for provision of airtime, print space must be published by the corresponding mass media in advance.

It is the responsibility of media to spread information about events related to nomination of all candidates and party lists in the same equal volumes. If the media is aware of intentionally false information that would defame ‘honor, dignity and business reputation of a candidate or a political party’, it is obliged to prevent such publication. However, if such cases have been committed, the media outlet is obliged “to provide candidates and political parties with the opportunity to publish free of charge a refutation in the next issue of print edition, on the same page, in the same volume and the same font or television or radio broadcast at the same time during 24 hours after receipt of application”.<sup>5</sup>

Since equality ensures free and fair elections, we emphasize that the local executive state organs of the country are required to provide to candidates premises for meetings with voters on a contractual basis. This means that the conditions for providing premises should be unified and equal for all candidates without exception. Election commissions together with local executive bodies are obliged to draw up a schedule of meetings of candidates with voters in the corresponding premises and to publish a communication about it in the local media. The following provision of the Kazakhstan Constitutional Act on Elections is directed to the achievement of the principle of equality and justice: “improper election campaign is considered as holding election campaigning, followed by the provision of the voters free of charge or on preferential terms with goods, services, securities as well as conducting lotteries, charitable actions, payment of money or promises of such, except for the free distribution of printed, including illustrative materials as well as pins, flags, specially produced for the election campaign”.

---

<sup>5</sup> Clause 7 of Article 27 of the Act on Elections

The local executive bodies jointly with the corresponding election commissions are obliged to determine the places for posting printed campaign materials for all candidates and equip them with stands, advertisement columns. Printed campaign materials must be placed on the conditions that would ensure equal rights and opportunities for all candidates, all political parties taking part in the elections. It should be borne in mind that candidates can post their printed campaign materials in other places as well: in this case they need to obtain permission of the owner of the respective object, on which it is supposed to post these materials. According to the law it is allowed that printed campaign materials, which were previously posted outside the premises of election commissions, shall be kept in their original locations on the voting day. During the election campaign it is prohibited to use the image of a person without his or her written consent, and in case of his/her death without the written permission of his/her heirs. Kazakh law prohibits the production of printed campaign materials outside the territory of the country, as well as distribution of anonymous campaign materials. There is also a ban on “posting of campaign materials on monuments, obelisks, buildings and structures of historical, cultural or architectural value as well as in the polling station”. The former Election Code (17 March 1993) did not have a rule of such a ban: this rule is provided in Clause 8 of Article 29 of the Constitutional Act of the Republic of Kazakhstan on elections of 28 September 1995.

Decisions and actions of local state organs, enterprises, institutions and organizations, their officials, who admit violation of norms of the election legislation, can be appealed to the court by every citizen. Decisions and actions as well as inaction of election commission can be appealed to the superior election commission and/or to the court within 10 days since the day of adopting the decision or making action or inaction. The reduced terms of the appeal, for example on the eve of the day of election, on election day, can be also set. In turn, the complaints against the decisions and actions or inaction of the election commission itself and its members, the superior election commission shall examine within 3 days since the day of a receipt of such complaint.

If it happens that submitted applications are considered simultaneously in the election commission and the court, then the election commission should suspend its procedure: in this case, the court notifies the election commission about the timing of the entry into force of the court decision on the results of consideration of the application.

State organs, institutions and their officials must assist to election commissions in the exercise of their powers, to provide them with the necessary materials and information, to give substantive replies to the letters and requests of election commissions within a 3-day period, while on election day and the day preceding it immediately. This is due to the transience of the election campaign.

Observers from political parties and other public associations, nonprofit organizations of the Republic of Kazakhstan have the right to appeal against decisions, actions or inaction of one or another election commission or its members to a superior election commission or a court.

Members of election commissions, citizens, representatives of public associations may submit applications to the prosecutor's office and the courts related to the conduct of voting and possible violation of election legislation during the preparation and conduct of elections. These state organs consider the applications within five days. If the applications are received less than five days before the election and on election day, they must consider them immediately.

The electoral legislation of the Republic of Kazakhstan contains many rules that enhance the publicity of the electoral process. In particular, the decisions of the

election commissions are posted in the accessible public telecommunication networks.

Candidates, proxies, observers, representatives of mass media can be present at the sessions of election commissions. Thanks to the presence they can be aware of all the electoral events, get answers to their questions and inform the entire country as well as the regions' population about the considered issues.

The publicity of the electoral process is manifested in the fact that "on the voting day since the opening of the polling station and till the establishment of the voting results at the vote count one proxy of each candidate, one representative of each media upon presentation of official certificate and task of the editorial board, one observer from each political party, other public association, other non-profit organization of the Republic of Kazakhstan and the observers of foreign states and international organizations shall be entitled to be present simultaneously in the polling station".<sup>6</sup> The presence of a sufficiently large number of interested people at the polling station not only gives publicity to the voting day, but also reduces the possibility of falsification during the vote count and determination of voting results.

The norms of Articles 33-36 of the Constitutional Act on Elections are devoted to the transparency of funding of the elections in Kazakhstan. Clause 2 of Article 33 of the law fixed in a transparent manner five specific areas of election-related activities to be funded from the republican budget. The legislation establishes a limit on the amount of election funds by the type of the election: thus it ensures the equal position of candidates and political parties during the election campaign. Control over expenditure of monetary and financial means from the election funds is achieved through state registration of these funds as well as due to the fact that the means of the fund "shall be transferred to a special temporary account opened in the bank institutions by the corresponding election commission after registration of the candidate or the party list."<sup>7</sup> Transparency of funding is also ensured due to reports of candidates, political parties on the spending means of the fund, which is submitted to the corresponding election commission.

Articles 20-1 and 20-2 of the Constitutional Act on Elections on the status, rights and obligations of domestic and international observers is the clearest manifestation of openness and publicity of elections in the Republic of Kazakhstan. The following rights provided to observers of political parties and other public associations, non-profit organizations, ensure the transparency of the election procedure. These include: the presence 'at a session of the election commission', getting information 'about the number of voters who participated in voting, including voting outside the premises', presence 'in the premise of the corresponding polling station during voting and vote count', accompanying of mobile ballot-boxes, observing 'the voting, the procedure of vote counting and determination of election results at the polling station', presence 'during the voting by voters outside the polling station in case if they are unable to arrive at the polling station', 'during counting and cancelation by the members of a precinct election commission of unused ballots', holding 'photographic, audio and video recordings', monitoring procedures of 'transmission of protocols on the results of voting to superior election commissions'.

Special, impartial publicity of elections is provided by the presence of observers of foreign countries and international organizations, representatives of foreign mass media, who are granted by law with rights such as: the presence 'at all stages of the electoral process', receiving information about the election campaign in the election

---

<sup>6</sup> Article 20 of the Constitutional Act on Elections

<sup>7</sup> For detailed information see clauses 2, 6 and 8 of article 34 of the Constitutional Act on Elections.

commissions, the right to 'access to polling stations during voting and vote count', obtaining information during meetings with participants of the electoral process, informing the members of election commissions about their observations, revealed violations, making recommendations, speech with public statements, observation of the procedure of 'transfer of protocol on election results to the superior election commissions'.

The peculiarity of the domestic election observation is that local observers may appeal to the corresponding courts thus contributing to the broader publicity of the electoral process during the presidential, parliamentary and local elections. The peculiarity of international observation is that the advantages and shortcomings of the electoral process of a particular type of election are summarized in the final reports of the missions of international organizations, which are published in the Kazakh, Russian and English languages and are available for the international community. This can be defined as the highest degree of publicity of the election process. The Republic of Kazakhstan invites approximately 800-900 international observers to every election. Thus, the country is committed to improve almost all aspects of the electoral process and election legislation.



# KYRGYZSTAN

*Abdyjapar Gapyrovich Bekmatov\**

## General remarks

Election as a method of decision-making has been known to the Kyrgyz people since the early days of the communal system and has accompanied the Kyrgyz society throughout all stages of its development as an integral instrument of the protection of the rights and freedoms of each citizen.

In the global context, the history of elections in our country lasts for a relatively short period of time. In this period, important events and major changes have helped our people realize their civil responsibility for everything that happens not only in their own country, but anywhere in the world. The following short digression to the history of elections provides an insight into the period of formation of the Kyrgyz statehood.

In the second half of 1918, in accordance with the Constitution of the Russian Federation and the Constitution of the Turkestan ASSR, government bodies, administrations, courts, schools and other cultural and educational institutions were set up in the territory of Kyrgyzstan and – for the first time in history – started to operate in the national language, which in fact was the first step towards the birth of the Kyrgyz statehood.

By the beginning of 1919, the power has fully passed to the hands of the people of Kyrgyzstan throughout the country. In the autumn of 1921 local municipal authorities were established – these were rural councils accountable to the Turkestan Central Executive Committee (*TurTSIK*). Deputies were elected to the rural councils at the village meetings. Each village elected one representative. This crucial period of the fledgling people's democracy lasted till 1924; in the end of that year the Revolutionary Committee of the Kara-Kirghiz Autonomous Region adopted a decree according to which four areas (*okrugs*) – Pishpek, Karakol, Osh and Jalal-Abad – were set up. Each of them combined from 16 to 20 counties (*volost's*), which strengthened and improved the structural system of the state power.

The elections in the years 1924–1930 were already conducted by the area, town, county, district and rural election commissions. Any community outreach was out of the question – it was simply impossible under the conditions of a roadless terrain, in a mountainous country. Involvement of the population in the election campaign barely reached 10-15%. As the electoral activity grew from year to year, it became possible to grant legitimacy to the election by establishing a turnout threshold, which was set at 35 percent. It should be mentioned that starting from 1926 the turnout of female voters also began to increase.

In the end of 1930 and in the beginning of 1931 re-elections of the district and city councils were held in Kyrgyzstan under the rules set by the Constitution the Kyrgyz ASSR adopted in 1929. The new system had a number of advantages: its first and foremost benefit was an incomparably wider coverage of the population by active electoral rights, as well as establishing equality between men and women, reducing the age limit, increasing the efficiency of communication between the electorate and

---

\* Deputy Chairman of the CEC of the Kyrgyz Republic



the representative bodies, creating an advanced system of appeal against violations of voting rights, and other improvements.

## 1. Election system

Elections held in the subsequent years did not offer to voters any real choice, as existence of a multi-party system was completely ruled out in the vast USSR (part of which was the Kirghiz Soviet Socialist Republic). The country was led by the single Communist Party of the Soviet Union. Therefore, the electoral system was verified and stable, and the elections always worked smoothly.

On September 22, 1994, the Parliament elected at the general elections of 1990 was dissolved. Prior to that, on September 5, 1994, President of the Kyrgyz Republic issued a decree called *“On Ensuring Political Stability in the Kyrgyz Republic and Urgent Measures of Social and Economic Development”*. With reference to the statement by the majority of the people’s deputies who refused to participate in the work of the Supreme Council (*Parliament, Jogorku Kenesh*), which undermined the capacity of the *Jogorku Kenesh* of the 12<sup>th</sup> convocation to perform its main – legislative – function, the decree announced the decision of the Government to resign.

Starting from 1997, the first stage of a radical reform of election laws began; its primary goal was to introduce the necessary changes to the legislation on elections and referenda.

However, it must be noted that the pre-reform electoral system of Kyrgyzstan differed fundamentally from the models of all prior periods, being based on the principles of democracy and political pluralism. Although it had its faults and flaws and certainly belonged to transition-type electoral systems, it was able to provide a democratic basis for the formation of the elected representative bodies, which was of paramount importance in the period under review.

As regards the modern period in the development of the electoral system of the Kyrgyz Republic, its milestone was the decree issued by the President on September 21, 1994. It established the *Central Commission for Elections and Referendums of the Kyrgyz Republic (Central Election Commission)*, upon adopting by the *Jogorku Kenesh* on December 18, 1993 the law *“On the Central Commission for Elections and Referendums of the Kyrgyz Republic”*.

Since then, the Central Election Commission of Kyrgyzstan has conducted a total of 26 elections, including 6 presidential and 6 parliamentary elections, 9 referendums and 5 elections to local assemblies (*keneshes*). The emergence of independent Kyrgyzstan has been and is currently continued amid a tough and ever escalating power struggle. Yet, all of this is perceived as part of the process of building a fair political system.

Implementation of the government reform and setting up new standards to ensure the electoral rights in Kyrgyzstan required a thorough update of the legal and regulatory framework of the election process.

Moving forward, the CEC is looking for new ways to enhance the exercise by the citizens of their voting right. It has established international co-operation with the central electoral authorities of a number of foreign countries and signed memorandums of cooperation with the Central Election Commissions of the Russian Federation, the Republic of Kazakhstan, the Republic of Korea, Mongolia, the Republic of Latvia, India and many others. The CEC of the Kyrgyz Republic sends delegations to the partner states and as an international observer participates in the monitoring of presidential, parliamentary and municipal elections therein. In our turn, we welcome international observers to monitor election campaigns in Kyrgyzstan.

One of the primary duties of a democratic constitutional state is to ensure free and democratic elections. The Central Election Commission of Kyrgyzstan spends a lot of effort to involve the society as a whole and its individual members in the political life of the country, being aware of the fact that the only acceptable path to power is via free exercise of choice by the citizens, the instrument of which is free election. The governing authorities in Kyrgyzstan shall be elected by the people. The rule of the people implies that every citizen is provided with an opportunity to participate – at her choice – in the process of solving the vital issues of public life, also through the constitutional right of the citizens to elect and be elected to central bodies of state power and local government authorities.

The previous parliamentary election in Kyrgyzstan was the first election governed by the new Constitution approved by the people in a referendum held on June 27, 2010. Despite some violations revealed in course of monitoring of the election campaign, the general conclusion was that the society had demonstrated spectacular progress on the way to democracy.

## **2. Electoral management bodies**

The integrated system of election commissions of the Kyrgyz Republic comprises the following bodies:

- 1) The Central Commission for Elections and Referendums, hereinafter referred to as “the Central Election Commission”;
- 2) territorial level election commissions (commissions for elections and referendums), including the district and city level election commissions, hereinafter referred to as “Territorial Election Commissions”, “TECs” (established by the decision of the Central Election Commission);
- 3) precinct election commissions (commissions for elections and referendums); hereinafter referred to as “Precinct Election Commissions”, “PECs”.

Election commissions shall act on the basis of the Constitution of the Kyrgyz Republic, the Constitutional Law of the Kyrgyz Republic *“On Presidential and Jogorku Kenesh Elections in the Kyrgyz Republic”*, the Constitutional Law of the Kyrgyz Republic *“On Referendum in the Kyrgyz Republic”* and the Law of the Kyrgyz Republic *“On Elections to the Local Self-Government Bodies”*.

Election commissions shall operate on the principles of legality, openness, transparency, independence, collegiality and fairness.

Any interference in the work of election commissions by state and government bodies, local self-government authorities, non-profit organizations, including political parties, other legal entities and individuals, shall be prohibited.

State and government bodies and local self-government authorities, as well as their officials shall assist the election commissions in the exercise of their powers in all possible ways, including: provision of the necessary equipment, vehicles, premises equipped with telephones, including premises for secure storing various operational equipment (stands, boxes, voting booths, etc.) and election-related documentation prior to its transfer to a higher level election authority or archivation (while ensuring the safety of the above documentation); supply of the requested information and materials, responding to queries of the election commissions associated with the preparation and conduct of elections and referendums (such response shall be prompt: the deadline must not exceed 3 days if the requested information needs additional research or verification; queries lodged on the polling day or the day following the polling day require immediate response).

Political parties, other non-profit organizations and legal entities shall provide the information and materials requested by the election commissions and related to

the preparation and conduct of elections and referendums within two working days during the preparation of elections or referendums, or immediately if the query is lodged on the polling day or the day following the polling day.

The Central Election Commission is elected for the term of five years and consists of twelve members.

The *Jogorku Kenesh* of the Kyrgyz Republic nominates the staff members of the Central Election Commission according to the following procedure: one third of the commission staff shall be proposed by the President of the Kyrgyz Republic, another third by the parliamentary majority, and the remaining third by the parliamentary opposition. It shall be noted that representation of individuals of the same gender within the Commission must not exceed seventy percent. The mandate of the Commission members can be terminated in cases stipulated by this Law.

The functions of the Central Election Commission cannot not be suspended prior to expiry of its term of office even in the case of dissolution of the *Jogorku Kenesh*, change in the composition of the coalition of factions in the *Jogorku Kenesh*, expiry or early termination of powers of the President.

The Territorial Election Commission shall be appointed by the Central Election Commission and consist of at least eleven members representing political parties and individuals from the reserve pool of the relevant TEC.

The Precinct Election Commission shall be appointed by the Territorial Election Commission and consist of at least seven members representing political parties and individuals from the reserve pool of the relevant PEC.

The reserve pool of TECs and PECs is formed for a term of five years from members of representative bodies of local self-governments. The number of members in the reserve pool shall reach the minimum quantity stipulated for the relevant Election Commission. Rules for setting up and maintaining the reserve pool of shall be approved by the resolution of the Central Election Commission.

The Central Election Commission is an integrated and open electoral body with powers to carry out the preparation and conduct of elections at all levels, as well as the constitutional referendum in the Kyrgyz Republic. Any election or referendum campaign held in the Kyrgyz Republic shall be supervised by the Central Commission for Elections and Referendums of the Kyrgyz Republic.

### **3. Safeguards of free and fair elections**

Nowadays, the equal opportunities for men and women to participate in the political decision-making process are ensured and supported by a number of mechanisms such as setting the rates of participation for men and women in various management bodies, including the Supreme Court of the Kyrgyz Republic, the Central Commission for Elections and Referendums of the Kyrgyz Republic, the Chamber of Accounts the Kyrgyz Republic, as well as in the elected bodies.

The gender balance in the political life is necessary not only in order to improve the representation, accountability and quality of democracy. It also has a serious impact on the adoption and implementation of political and other decisions of crucial importance for the society.

According to Election Code, the lists of candidates of political parties can not exceed more than 70% of candidates belonging to the same gender, whereas the difference in the priority order of women and men in the lists of candidates nominated by political parties shall not exceed three positions. In other words, according to this regulation every fourth MP candidate shall be female.

In the current Parliament, the majority of seats is held by male MPs, while in accordance with the rules on gender equality the number of female MPs in the Parliament should be much greater (36).

The number of parties competing at the latest parliamentary election amounted to 14. Six parties that cleared the 7% election threshold qualified for MP mandates in the Parliament. The principle of gender balance within the parliamentary groups was unfortunately not observed.

#### **4. Innovative elements of the election system**

On October 4, 2015 elections to the *Jogorku Kenesh* of the Kyrgyz Republic took place in Kyrgyzstan. These elections were unique in a way that the Kyrgyz Republic was the first among the republics of the former Soviet Union to use innovative technologies and biometric data of the citizens for voter identification.

For the first time in the history of elections in Kyrgyzstan the Constitutional Law of the Kyrgyz Republic “*On Presidential and Jogorku Kenesh Elections in the Kyrgyz Republic*” made it possible to integrate innovative technologies in the election process.

Pursuant to the decision of the National Council on Sustainable Development of the Kyrgyz Republic as of April 25, 2014, a model of the election process integrating the use of innovative technologies was approved.

This model elaborated by the Central Commission on Elections and Referendums in the Kyrgyz Republic included support of the election process with advanced technological equipment for voter identification and automatic counting of the votes.

The Constitutional Law of the Kyrgyz Republic “*On Presidential and Jogorku Kenesh Elections in the Kyrgyz Republic*” adopted in April, 2015, contained a detailed description of the procedure for the use of technical equipment in the election process at the parliamentary elections of 2015.





Precinct Election Commissions were provided with computers or laptops, reader units for reading ID cards and scanning fingerprints, automatic counting ballot boxes, monitors and video cameras.

Approbation of the fully modelled election process (including voter identification by biometric data and automatic counting of the votes) took place at the time of elections to the *local keneshes* of the Kyrgyz Republic on May 17, 2015.

The results confirmed the effectiveness of the use of innovative electoral technologies in terms of voter identification and credibility of the vote counting.

The CEC Center for Training and Electoral Technologies delivered a series of trainings in order to prepare members of the Precinct Election Commissions for the upcoming elections. The specially appointed representatives of the CEC of the Kyrgyz Republic selected 120 candidates from all around the country for participation in the training program. Those who underwent the first round of training became trainers themselves and conducted similar programs for the members of Precinct Election Commissions in their respective regions. This cascade model helped to achieve maximum engagement of the election staff in the training. A total of about 5000 members of election commissions of all levels have received the necessary skills to use the advanced information technology in the election process.

Significant progress in the supply of the polling stations with the necessary equipment – along budgetary funds of the Kyrgyz Republic – was made due to international cooperation, namely the aid of the Korean Agency for International Cooperation (KOICA), the Government of Switzerland and the Government of Japan.

Upon delivery, the equipment underwent entry control and inspection by field experts, after which it was installed at the polling stations for operational testing.

Moreover, with the assistance of international organizations (UNDP, OSCE) printed handout materials, as well as information and educational audio and video clips were prepared.

The voter list for participation in the parliamentary elections of October 4, 2015 was drawn up on the basis of the personal and biometric data of voters – in other words, by binding the biometric data (fingerprints from 10 fingers) of the electors to the personal data contained in their passports.

For voters staying or living outside the Kyrgyz Republic 36 Precinct Election Commissions were set up in 26 countries of the world; they were also fitted with the necessary voting equipment.

Elections to the *Jogorku Kenesh* of the Kyrgyz Republic scheduled on October 4, 2015, were conducted at 2374 precincts (polling stations) and supervised by 54 Territorial Election Commissions.

On the polling day, after closing of the polling stations the major server of the Central Commission on Elections and Referendums of the Kyrgyz Republic (CEC)



received 2322 final protocols from the automatic counting ballot boxes via a designated secure communication channel. The voting data were not received automatically from 16 precincts not connected to the communication network and 36 precincts located outside the Kyrgyz Republic. Preliminary data from each polling station, including the voter attendance rate and results of the vote, were displayed in the electoral information system on the site of the CEC of the Kyrgyz Republic.

The voter list counted a total of 2,761,297 registered voters of whom 1,630,125 voters participated in the vote, meaning the voter turnout of 59.03%.

Another important feature of the elections under review was the increased election threshold that was raised from 5% at the national level and 0.5% at the regional level to 7% at the national level and 0.7% in the regions and in the cities of Bishkek and Osh, respectively. This means that in order to obtain seats in the parliament a political party would need to get 7 or more percent of the votes cast for its candidate by those who turned up at the precincts (national threshold) or 0.7 percent of the votes cast for its candidate in the regions or in the cities of Bishkek and Osh, respectively.

As a result of the elections, the seats in the Parliament were distributed between the 6 political parties that managed to obtain a total of above 80% of the votes of the electors who turned up at the precincts on the polling day.

Kyrgyzstan was the first among the CIS countries and other developed countries of the world to use fingerprint identification during voting; the ballot paper was only handed out to the voter who had successfully passed the identification, which made a different identification of the same voter technically impossible. The submitted ballot paper was placed into an automatic counting ballot box which upon completion of the voting generated an automatic report with a summary of the votes cast for each political party.

The integration of advanced technologies into the election process has helped to detect and suppress the use of illegal technical means of electoral manipulation; it has also facilitated the work of independent observers, representatives of civil society and free media who took part in the monitoring of the elections.

Due to the above described amendments the latest parliamentary elections process was entirely fair and transparent, thus can be considered a landmark milestone for Kyrgyzstan.









Latvia became a member of the Association of European Election Officials (ACEEEO) in the year of its foundation and joined the foundation charter together with a number of other states.

Year 1991 was the time of significant historical events in Latvia. In that year, Latvian people expressed their support for the foundation of democratic and independent state of Latvia both by going to the barricades and by expressing their opinion in a referendum. After the events of August 1991, the Republic of Latvia became *de facto* independent.

The electoral system of Latvia, just like the state itself, has gone through numerous changes during the 25 years after restoration of independence. During this time, a multi-party system was established and strengthened, legislative acts regulating the electoral process under the proportional electoral system were restored and implemented, and all the main areas of the election process undergone significant changes. These changes refer to suffrage, right to stand in the election, establishment of electoral register and preparation of up-to-date electoral lists, the voting procedures, providing voters with information, regulation of political party funding and campaigns, calculation of election results, establishment of election commissions and mechanisms aimed at solving electoral disputes.

There has also been a significant development in the use of information technologies in the electoral process. Nowadays, electronic systems are successfully applied for the establishment of the electoral register, composing and submitting the lists of candidates, creating layouts of ballot papers, recording vote-counting protocols, and summarizing and publishing the election results. During the last five years, the Central Election Commission of Latvia has developed and introduced electronic vote counting system, including a vote scanning option at polling stations.

During the period since 1991 until today, eight parliamentary elections and six local elections have been held. In 2011, an early parliamentary election was held for the first time in the history of Latvia. In 2004, Latvia became a member of the European Union, and since then Latvian voters have had the opportunity to participate in three elections to the European Parliament. Additionally, eight national referenda, six collections of signatures on legislative initiatives, and four collections of signatures on legal acts suspended by President have been held so far. Since 2012, Latvian citizens share the same opportunity as citizens of any other EU Member State, i.e., participate in collection of signatures on European Citizens' Initiatives organised within EU.

## **1. Election System**

The Constitution of Latvia (*Satversme*), adopted in 1922 and reinstated in the beginning of 1990ies after restoration of independence, provides that the Parliament

---

\* Chairman of the Central Election Commission of Latvia, e-mail: cimdars@cvk.lv

of the Republic of Latvia (*Saeima*) consists of 100 members and shall be elected in general, equal and direct elections by secret ballot based on proportional representation.

Parliamentary elections in Latvia are held every four years on the first Saturday of October. Before 1998, parliamentary elections were held every three years and lasted for two days – Saturday and Sunday.

There are five constituencies in Latvian parliamentary elections, and the number of mandates belonging to each constituency is determined by the Central Election Commission in proportion to the number of voters registered in the respective constituency, four months before the Election Day. During the latest parliamentary elections in 2014, there were 199,539 registered voters and 13 parliamentary seats in the smallest constituency, while there were 495,890 registered voters and 32 seats in the largest one. There are altogether 100 parliamentary seats.

Changes in the number of mandates per constituency reflect the changes in population migration pattern over the years. Compared with the first parliamentary elections held after restoration of independence, the number of seats in the capital of Latvia, the Riga constituency, has increased from 24 to 32, while in economically most underdeveloped region of Latvia, i.e. the Latgale constituency, the number of seats has decreased from 20 to 15.

**Table 1. Number of voters and seats per constituency on the parliamentary elections of 1993 and 2014**

Constituency	1993		2014	
	Number of seats	Number of voters	Number of seats	Number of voters
Riga	24	322,871	32	495,890
Vidzeme	26	315,569	26	402,615
Latgale	20	232,065	15	226,966
Zemgale	16	191,633	14	226,430
Kurzeme	14	182,996	13	199,539
Total	100	1,245,124	100	1,551,440

Any Latvian citizen aged 18 and over has the rights to vote in parliamentary elections. Since 2014, citizenship and age limit are the sole qualifying criteria for suffrage. The criteria have changed over the years. Before 2003, suspects, accused persons or persons on trial for whom security measure related to deprivation of liberty has been applied were denied the right to vote. Before 2009, convicted persons serving a punishment of deprivation of liberty were not allowed to vote, and before 2014 neither were persons declared legally incapacitated by court.

Number of eligible voters in Latvia during the past 25 years has increased from 1.2 million during the first elections held after restoration of independence to 1.5 million in 2014. Several factors have influenced this trend – both the increased birth rate in the beginning of 1990s and a number of non-citizens opting for Latvian citizenship.

However, the voter turnout in Latvia demonstrates the same trend as elsewhere in Europe, i.e., it is decreasing. The highest turnout was registered in the first parliamentary elections after restoration of independence, held in 1993, while the lowest turnout was registered in the elections of 2014.

Sociologists acknowledge that decreasing electoral participation is a trend caused by alienation from the decision making process, feeling that public opinion is being ignored, and the widespread opinion in the society that policy makers prioritize their own economic and social interests over the public good. During the last decade, voter turnout indicators might be affected by the significant emigration of Latvian citizens as well – as a result, the connection with homeland weakens and so does the motivation to vote.

**Table 2. Voter turnout in Latvia, 1993-2014**

<b>Saeima</b>	<b>Voter turnout (%)</b>
5 <sup>th</sup> Saeima, 1993	89.9
6 <sup>th</sup> Saeima, 1995	71.9
7 <sup>th</sup> Saeima, 1998	71.9
8 <sup>th</sup> Saeima, 2002	71.36
9 <sup>th</sup> Saeima, 2006	60.98
10 <sup>th</sup> Saeima, 2010	63.12
11 <sup>th</sup> Saeima, 2011	59.45
12 <sup>th</sup> Saeima, 2014	58.85

In sociological surveys in Latvia, voters state the following reasons as most important for opting not to participate: mistrust of political parties and their promise, not being able to decide who to vote for, and considering participation in elections as pointless because nothing is going to change anyway. Meanwhile, the main arguments in favour of participation constantly are citizens' moral duty, their wish to support a particular party and hope for a better future.

Only registered parties or party alliances may submit their lists of candidates in parliamentary elections. Any Latvian citizen of age 21 and over is eligible to stand as a candidate in elections. However, there are certain restrictions and based on these the following groups are not eligible to become a member of the parliament: persons upon whom a trusteeship has been established, convicted persons serving their sentence in an institution of deprivation of liberty, persons convicted for intentionally committed crimes and whose criminal record has not been extinguished, persons who have committed a crime in a state of mental incapacity, diminished mental capacity or who, after they have committed the crime, suffer from a mental disorder and as a result are no longer able to understand or control their actions.

Ever since restoration of independence, any permanent employees of foreign security services, former employees of security services of USSR or persons who have been involved in organizations related to Soviet regime after 13 January 1991, are not allowed to stand in the election.

Before 2002, election candidates were obligated to document their state language proficiency corresponding the highest state language proficiency level. Meanwhile, a new restriction has come into force since 2009 – persons previously banned by a court as a result of a criminal procedure from standing in Saeima, European Parliament or municipal elections may not be registered as candidates for Saeima elections.

In general, citizens of Latvia cast their vote in person in polling stations. These have been established abroad as well in diplomatic and consular missions of Latvia, as well as any other suitable premises usually owned by the local Latvian community.

Other possibilities to cast a vote include voting in one's place of residence, postal voting or early voting. The current regulation permits organizing voting on ships sailing under Latvian flag, as well as for soldiers or National Guards serving on a foreign mission.

Option to vote in one's place of residence may be used by eligible voters whose health condition does not permit visiting a polling station. Since 2009, this option is also available for eligible voters in places of detention. Postal voting is available for eligible voters who will be abroad on the Election Day.

In parliamentary elections of 2014, for the first time voters had the option to cast their vote three days prior to the scheduled Election Day in pre-polling stations. This option was available in 61 polling station (out of total number of 953 polling stations) in 39 municipalities having at least 7500 eligible voters.

There are not prearranged voters lists in Latvian parliamentary elections. On the scheduled Election Day, eligible voters may cast their votes in any polling station in Latvia or abroad. In order to ensure the principle “one voter – one vote”, a note in participation in elections is made in voter’s passport. At the same time, an electronic voter register is used for European Parliament and municipal elections.

In Latvia, in any type of elections internally alterable candidate lists are used, meaning that each list of candidates has a separate ballot paper where voters can make special remarks. Voters select one ballot containing the list of candidates they choose to support. In this list, by setting a “+” voters may mark the candidates they support or strike from the list ones they do not support. After making their choice, voters put the ballot paper in a voting envelope. In Latvia, voting envelopes are documents of strict security, not ballot papers. During the counting of votes, only ballot papers in sealed voting envelopes are being counted.



The option to add remarks in a ballot is popular with Latvian voters; in recent Saeima elections, 62% of ballots contained remarks.

The *Saint-Laguë* method of mathematical counts is used to calculate election results. This method prescribes that the number of votes of each candidate list has to be divided by odd numbers (1, 3, 5, 7 etc.) in each constituency. Mandates are distributed only among the lists of candidates having passed the 5% threshold of the total number of votes cast nationwide. The obtained divisors on all lists of candidates within one constituency are sequenced in descending order. Every mandate is allocated to lists of candidates having the actually largest divisor.

The candidates in each list are sequenced by the number of votes cast. These are tallied based on number of valid ballots for the particular list of candidates minus number of ballots striking the relevant candidate and adding the number of ballots with a “+” remark for this candidate.

The highest number of candidate lists submitted so far (twenty-three) was registered in the elections of 1993. Eight of these lists got more than 4% of the total number of votes cast, thus gaining their mandates in the parliament. These were the only elections where a 4% threshold was set. In the subsequent elections, the threshold was increased to 5%.

The largest number of lists of candidates passing the threshold (nine) was registered in the elections of 1995, while the smallest number (five) – in 10<sup>th</sup> (2010) and 11<sup>th</sup> Saeima (2011). The elections of 2010 and 2014 had the largest number of registered candidates. This trend was probably caused by the amendments to the Saeima Election Law adopted on 26 February 2009. The amendments stipulated that the same candidate is not allowed stand for election in more than one constituency. The aim of these amendments was to eliminate the so called ‘locomotive principle’, when leaders of a lists of candidates stand for election in each constituency, become elected in one of them, while in remaining constituencies parliamentary seats are gained by candidates unknown to voters.

**Table 3. Statistics on lists of candidates registered for Saeima elections, candidates and parliamentary representation**

<b>Elections</b>	<b>Number of registered lists of candidates</b>	<b>Number of registered candidates</b>	<b>Number of candidates per seat in parliament</b>	<b>Average number of candidates per list</b>	<b>Number of lists in parliament</b>
5 <sup>th</sup> Saeima, 1993	23	879	9	38	8
6 <sup>th</sup> Saeima, 1995	19	1007	10	53	9
7 <sup>th</sup> Saeima, 1998	21	1081	11	52	6
8 <sup>th</sup> Saeima, 2002	20	1019	10	51	6
9 <sup>th</sup> Saeima, 2006	19	1024	10	54	7
10 <sup>th</sup> Saeima, 2010	13	1234	12	95	5
11 <sup>th</sup> Saeima, 2011	13	1092	11	84	5
12 <sup>th</sup> Saeima, 2014	13	1156	12	89	6

Saeima elects the President of Latvia. Parliamentary session for election of President is convened no earlier than 40 days and no later than 30 days before the end of the term of office of incumbent President.

Any person with an excellent reputation who enjoys full rights of citizenship and who has attained the age of forty years may be elected as the President of Latvia. A person with dual citizenship may not stand for the office. The office of the President shall not be held concurrently with any other office. The President shall be elected by secret ballot with a majority of the votes (not less than fifty-one) of the members of the Parliament.

The Parliament elects President for a term of four years. The members of the Parliament have the right to nominate candidates for the position of the President. Nomination shall be submitted in written form not sooner than 50 days and not later than 45 days before the end of the actual term. The same person shall not hold the office of the President for more than eight consecutive years.

## **2. Stability of election laws**

Every parliament of Latvia has contributed to the development of the election system. One of the most significant contributions was made by the Supreme Council in the early 1990s. It was precisely this parliament that set up a workgroup for revision



of the Saeima Election Law from 1922 in order to organize the first democratic parliamentary elections after regaining independence. In October 1992, the Supreme Council passed the Law on the 5<sup>th</sup> Saeima elections – a slightly amended and revised version of Saeima Election Law from 1922.

In comparison with the law of 1922, the new Saeima Election Law had several significant amendments. It introduced the 4% threshold, replaced the *D'Hondt* method of calculation of election results by the *Saint-Laguë* method, abandoned externally alterable candidate lists that allowed voters to add candidates from other candidate lists to the ballot papers, reduced the eligible voter's age limit from 21 to 18, provided the citizens of Latvia living abroad with postal voting opportunity, as well as banned those persons from standing in election who have collaborated with another country's state security, intelligence or counterintelligence services.

The next significant amendment in parliamentary elections procedures were introduced in 1995 when the new law on the Saeima elections came into force. The most important changes referred to the procedure of submission of candidate lists. In accordance with the previous system, it was necessary to collect supporting signatures of 100 voters in order to submit a candidate list. The new amendments stipulated that only registered parties, registered parties' associations or several political party alliances without registering themselves as an association may submit lists of candidates. It was prescribed the procedure on the Central Election Commission's right to remove candidates who do not fulfil the necessary criteria, and the threshold was increased from 4% to 5%.

The current Saeima Election Law has been amended 18 times since its adoption in 1995. Although there are numerous clarifications of technical nature among these amendments, some of them can be viewed as significant. It should be added that amendments are usually adopted in the final reading by the parliament during election year and rarely earlier.

Amendments have been made to the Election Law prior to every parliamentary elections with the exception of early elections of 2011.

Amendments to Election Law made prior to elections of 1998 extended parliamentary term from three to four years, shortened the elections from two to one day, and prescribed that lists of candidates can be submitted only by registered party associations.

Less significant amendments were made before the elections of 2002. This time the requirement for candidates to submit a certificate proving their state language proficiency was cancelled, and technical details in procedure of tallying the election results were specified. After the parliamentary elections in 2002, the Constitutional Court condemned and repealed the prohibition to vote for suspected, accused or convicted persons.

The most significant amendments made prior to the elections of 2006 clarified the procedure for contesting the decisions made by the Central Election Commission or the local election commissions with a special emphasis on procedure for contesting the election results, e.g. the terms and deadlines for contesting the decision of the Central Election Commission on registration of lists of candidates or striking candidates off the lists. Likewise, it was established that in case of a guilty verdict in a criminal case on infringement on suffrage rights comes into effect, it is the duty of the Central Election Commission to estimate, whether the given infringement affects the allocation of mandates in the respective elections and if necessary, to reallocate the mandates.

The amendments to the Saeima Election Law before parliamentary elections of 2010 prescribed that the each candidate may only be included in one candidate list

in one constituency. Another provision concerned the requirement for parties to prepare and submit candidate lists electronically, not only in paper form, and the working time of polling stations was changed once again – this time by reducing it by 2 hours.

Before these elections, significant amendments were also made to laws regulating conditions of pre-election campaign. For the first time, during the 10<sup>th</sup> Saeima elections (2010) a provision was in force prohibiting any campaigning on the election day and the day before elections in mass media, on Internet, at state and municipality institutions, as well as in companies where more than 50 % of share capital belonged to the state or municipality.

The most significant amendments made prior elections of 2014 revoked the voting prohibition for persons with restricted legal capacity, and introduced the early voting option – 3 days before the scheduled Election Day. It also provided that compulsory deposits lodged by nominating organisations are forfeit if the respective list of candidates fails to receive at least 2% of votes. Prior to these amendments deposits were repaid only to lists of candidates passing the 5% threshold. Likewise, it was clarified that soldiers and national guards on duty in international operations may vote in the area of the said operation.

Special Interim provisions were adopted prior to 12th Saeima elections (2014) to ensure that citizens in possession of an ID card and having no passport are still granted their voting rights. These provisions provided that voters having only ID card present it along with a special voter's ID where a note on participation is made. This solution became necessary after 2012 when ID cards and passports were declared equal documents of personal identification. Meanwhile, the legislative initiative on introducing registry of voters in parliamentary elections was repeatedly rejected by Saeima in 2013.

### **3. Electoral management bodies**

The Central Election Commission of Latvia is an independent and permanently functioning public institution. Its duties are stipulated in the Constitution, the Law on the Central Election Commission, and other election laws. The Central Election Commission is composed of nine members. The chairperson and seven commission members are elected by the parliament, and one additional member by the Supreme Court among its judges. Traditionally all the political parties represented in the parliament, including opposition, nominate representatives to the Central Election Commission.

The term of office of the Central Election Commission of Latvia is four years, and the election of the new commission must be held within the period of 6 months after the first meeting of the newly elected parliament.

The first Central Election Commission after restoration of independence was established in 1992. The Commission has been elected nine times in the past 25 years.

Member of the Central Election Commission cannot be a member of another election commission simultaneously. If a member of the CEC stands for Saeima, European Parliament or municipal elections, her term in the Commission expires on the date when the relevant list of candidates is submitted to the Commission.

Members of CEC are released from their professional duties at the workplace during their service keeping their position after return. Decisions in CEC are adopted in open vote. Decision is adopted with the supporting votes of at least five members of commission.

The technical conditions for elections and referenda are provided by the staff of the Central Election Commission of Latvia. Three members of CEC – chairperson, deputy chairperson and secretary, are government officials whose primary work place is the Central Election Commission.

The Central Election Commission of Latvia has four divisions – legal, financial, information and record-keeping. In order to fulfil all the functions prescribed by law, during election preparation time the Commission outsources services as well. In 25 years with the development of information technologies and increasing demand for high quality services this approach has allowed to avoid a significant increase in the number of permanent employees.

The main tasks of the Central Election Commission are to provide a uniform and accurate application of election legislation, to coordinate the action of local election commissions, to make decisions, give orders and elaborate instructions on preparations and procedures of elections and referenda, to distribute funds among the local election commissions, to organize training for election commission staff, to review complaints about the procedure of elections and referenda, to annul illegal decisions made by local election commissions, to summarize the results of elections and referenda, to inform and educate voters about the voting procedures, as well as to draft proposals to improve election legislation.



*Arnis Cimdars, Chairman of the Central Election Commission of Latvia*

Since 1998, in addition to election commission staff training, for educational and informative purposes CEC gives lectures to prospective submitters of candidate lists, and since 2010, Commission offers an interactive online course for local election observers and other interested persons.

During the election time, the Commission cooperates with 119 municipal election commissions and consults more than 1,000 polling station commissions. At

the same time, the establishing of election commissions in Latvia is decentralized. The municipalities elect municipal election commissions, while the respective municipal election commission establishes polling station commissions.

The Central Election Commission has a duty to manage and monitor the Voters' Register, while its maintenance and data processing is within the competence of the Office of Citizenship and Migration Affairs under Ministry of Interior, which also monitors the Population Register.

Likewise, it is important to note that the supervision of funding of election campaigns of parties is not among the competences of CEC. This area is within the scope of Corruption Prevention and Combating Bureau. Therefore, the Central Election Commission has so far managed to avoid being involved in futile discussions with the political parties on breach of election campaigning provisions or the fines imposed as a result of it. This has contributed to increased voters' trust in election process and helped CEC to become one of the most trusted state institutions.

#### **4. Safeguards of free and fair elections**

Equal and fair conditions for standing in elections as well as voting is one of the preconditions for free and democratic elections. Another important precondition is a well-organized electoral environment regulated by the governing principles in political party funding, pre-election campaigning, possibility for candidates and lists of candidates to defend their electoral rights and freedoms, as well as to contest corrupt or erroneous election results.

In 1995, the Law on Financing of Political Organizations (parties) regulating funding of political parties was elaborated and adopted. It prescribed several sources for funding political organizations: membership and admission fees, donations, income from any optional activities of parties, income from dividends from investments in capital companies, and other legitimate sources. In 2004, the above-mentioned law was amended by setting the limits on party's campaign expenditures. It stipulated that pre-election campaign expenditures of any list of candidates registered for Saeima elections may not exceed 0.20 LVL (0.28 EUR) per voter based on the results of previous elections.

In 2010, the parliament adopted amendments to the Law on Financing of Political Organizations (parties) prescribing a partial party funding from state budget. These amendments stated that parties receiving more than 2% of votes in the previous parliamentary elections would be eligible for state funding. The allocated funding would be 0.50 LVL (0.71 EUR) per vote obtained in the elections.

Additionally, the law prevents those political parties from receiving state funding that have exceeded the permitted pre-election campaigning limit or those which do not declare in their annual reports on election income/expenditure those transactions which exceed the amount of 100 minimum monthly wages.

Parties may use state funding for certain purposes – rental of premises, public utilities, communications and internet services, wages, auditor's services, research, polling, counselling, organizing educational events for citizens, including workshops, charity events, publishing of books and other informational material, and political campaigning. If a party has used the funding for purposes other than prescribed, the unlawfully utilized funding must be transferred back to state budget within 30 days.

Current Law on Financing of Political Organizations (parties) allows for other sources of party funding. In addition to state funding, parties in Latvia may be financed via membership or admission fees, donations made by natural persons, party's economic activity, and any other sources not explicitly prohibited by law.

At the same time, parties are not allowed to accept anonymous donations from third parties; natural persons are prohibited from financing parties with endowments or loans received from third parties, and party funding via third parties is not permitted either. Parties may accept donations from Latvian citizens or non-citizens only, and donation made by a natural person to a single party within a calendar year may not exceed the amount of 50 minimum monthly wages.

Additionally, parties may not be funded by persons who have been banned from standing as candidates in Saeima, European Parliament or municipal elections. Parties may not take loans. Total amount of admission and membership fees as well as donations made by party members to a single political organization may not exceed the amount of 50 minimum wages within one calendar year.

Similarly, the procedure for calculation of amount parties are allowed to spend on covering their pre-election expenditure has been altered. Current law does not prescribe a fixed amount per voter anymore; the pre-election campaigning expenditure is calculated by applying a certain ratio deducted from average monthly gross salary per voter in the previous year based on the data of the Central Statistical Bureau data.

The institution responsible for monitoring of political parties' funding and allocation of state budget funds is the Corruption Prevention and Combating Bureau. Moreover, any person in Latvia has the right to verify the lawfulness of each donation. Law requires information on party financial and economic activity to be publicly accessible. Parties are obligated to submit to Corruption Prevention and Combating Bureau their annual accounts and declaration on election income and expenditure. Declaration on election income and expenditure shall include all income and expenditure parties have had during the pre-election campaigning process lasting in Latvian election system from 120 days before the election until the scheduled Election Day.

Any person may turn to Corruption Prevention and Combating Bureau or the respective party, and become acquainted with parties' annual accounts and declarations. Corruption Prevention and Combating Bureau must publish the annual accounts and election income and expenditure declarations on its website and the national gazette "*Latvijas Vestnesis*" no later than 10 days after receiving the said documents.

Penalties for violating the Law on Financing of Political Organizations (parties) range from an administrative fine and the duty to return the illegally obtained funding to the national budget to the termination of activities of the respective party founded guilty of the offence or even initiating court action against the party. The Chairman of the Corruption Prevention and Combating Bureau has the right to pass the sentence for the failure to comply with the Law, but the political parties have the right to challenge the decision in the court.

The regulatory framework on pre-election campaigning has undergone significant changes in 25 years. Before 2006, the most important campaigning restrictions included prohibition of campaigning in polling stations or in front of them, prohibition to place campaigning materials in state and municipal institutions, using state or municipal premises for pre-election campaigning events, as well as the principle of equality regarding the placement of advertisements in media. However, there were no special limitations on parties' advertising campaigns. Moreover, before 2005 when the amendments to Law on Financing of Political Organizations (parties) setting pre-election campaigning expense limit entered into force, parties were allowed to spend as much money on pre-election advertising as they were able to raise and deemed necessary.



This way parties' pre-election expenditure increased with each passing election. At the same time, media, especially TV, was flooded with political advertisements – often “selling” the candidates as merchandise and slandering the competitors while revealing very little on the lists of candidates or candidates' actual working programmes planned for the period after the election. Number of hidden pre-election campaigning cases in media was also on the rise.

As a result, submitters of four lists of candidates exercised their rights stipulated in Saeima Election Law and contested the 9<sup>th</sup> Saeima election (2006) results in court. Submitters' claim was not founded on a substantial basis in relation with the work of the election commission, but on lack of democracy in relation to third party (several NGOs) advertisements expressing their support to certain political parties and associations subsequently winning the elections. After evaluating the facts of the case, Senate of the Supreme Court rejected their request to annul 9<sup>th</sup> Saeima election results. Meanwhile, Court adopted an additional decision addressed to the Government ordering elaboration of clear and unambiguous pre-election campaign control mechanism to ensure the principles established in the Constitution were followed.

In 2009, the parliament agreed on several significant conditions for restrictions of pre-election campaigning in order to limit it to some extent, as well as to set more equal terms for election participants. The most obvious of these prohibited placing pre-election campaigning material on TV, radio, public places, press and internet on the Election Day as well as the day before it, and imposed a prohibition to publish any results of public polls on parties or popularity of certain candidates on radio or TV on the election day until polling stations close.

A regulatory framework on third party campaigning was elaborated and entered into force; a regulation on broadcasting contracts was established ordering that any contracts on allocation of broadcasting time for pre-election campaigning must be concluded directly, and media are obligated to inform the Corruption Prevention and Combating Bureau on pre-election campaigning pricing and placement. The amendments gave the Corruption Prevention and Combating Bureau authority to suspend parties' paid pre-election campaigning, if it turns out that statutory limit has been exceeded.





The next important measures for improvement of pre-election campaigning regulation were implemented in 2012 by elaborating and adopting the current Pre-election Campaign Law. This law combines all the most important provisions from previous pre-election campaign laws supplemented by several new provisions. For example, prohibition to place political advertising on TV for 30 days before the election diverting the funds to pre-election debates in public media broadcasting services. Accordingly, the new law contains several provisions aimed at limiting the use of administrative (state) resources in pre-election campaign, requiring, in case of breach of the legal provisions to reimburse any loss incurred by the state.

The rights to contest decisions made by election commissions in relation to registration of lists of candidates and determination of election results are enshrined in electoral legislation. Saeima Election Law stipulates that decision by the Central Election Commission on registration or refusal to register a list of candidates, as well as striking an election candidate off the list, may be contested in Administrative District Court within three working days from adoption of the decision. Decision made by the Central Election Commission on the determination of the election results may be contested in the Department of Administrative Cases of Supreme Court within three working days from adoption of the decision.

Submitters of lists of candidates have the right to become acquainted with the polling station's vote counting report and contest it before the Central Election Commission within three working days after election results included in the said report have been approved. The Central Election Commission must consider the request and adopt a decision within three days. In this case the decision made by the Central Election Commission may be contested as well before the Department of Administrative Cases of Supreme Court within three working days.

Saeima Election Law provides for sanctioning of persons who have hindered citizens from participation in elections or campaigning by using violence, fraud, threats, bribing or carrying out any other unlawful activity, or persons who have intentionally misrepresented themselves, falsified election documents, miscounted votes or failed to comply with voting confidentiality. Upon receiving a judgment of conviction in a criminal case on violations of election rights, the Central Election Commission is obligated to review the impact of this violation on allocation on seats and based on this to reallocate seats among candidates registered in respective elections or to make a negative decision in this respect – in both cases within five days. This decision made by the Central Election Commission may be contested before the Department of Administrative Cases of Supreme Court.

### **Closing remarks**

Looking back on the past 25 years, we can conclude that based on a progress the electoral environment is becoming more equal, fair and lawful. However, work on improving the electoral system will never be done, and must evolve as times are changing.

Anyone in Latvia knows the ancient tale on the question whether Riga is complete? The story goes that throughout the centuries: a man in black appears from time to time and enquires about the future of the city by asking this simple question to the first person he meets: "Is Riga complete?" He expects the answer "yes, it is complete", and as soon as he hears it, the city will disappear in the deep waters of Daugava River. However, people of Riga are smart and know the right answer: "Riga will never be complete". The tale of electoral system might be the same – there will always be room for improvement, review and evolvement.



# LITHUANIA

*Kristina Ivanauskaitė-Pettinari\**

## Opening remarks

Symbolically, the establishment of the Association of European Election Officials (ACEEEO) is strongly connected with the restoration of the independence of the Republic of Lithuania. This year ACEEEO is celebrating its twenty fifth birthday and the Republic of Lithuania celebrated its 25 anniversary of the Restoration of Independence in 2015. Only after the restoration of the independence it has been possible *de jure* and *de facto* to organize elections on the basis of universal, equal, and direct suffrage by secret ballot in the Republic of Lithuania.

Nevertheless, the first free and democratic election in Lithuania since World War II has been organized during an occupation of the Union of Soviet Socialist Republics (USSR) period, on 24 February, 1990. For the first time in the history of Lithuania its Parliament – the Supreme Council Soviet of the Lithuanian Soviet Socialist Republic (Lithuanian: *Lietuvos TSR Aukščiausioji Taryba*) – has been elected on the basis of universal, equal and direct suffrage by secret ballot. During this election, there were more candidates than seats to be filled. This has never happened during the period of occupation of the USSR. However, the election has been organized according to the electoral law of USSR. At that date the army of USSR has been deployed in the territory of Lithuania. The people overwhelmingly voted for the candidates endorsed by *Sąjūdis* – a political group fighting for independence – even if this movement did not run as a political party. As a result of the election the first post-war non-communist government was established. If these elections would be evaluated according to our present standards of democratic elections, these would receive a lot of critics. However, it was the first election based on democratic principles and taking the political background into consideration.

During its first session on March 11, 1990, the Supreme Council Soviet of the Lithuanian Soviet Socialist Republic elected its chairman, changed its name over to the Supreme Council of the Republic of Lithuania and adopted an Act on the Restoration of an Independent State of Lithuania.

Unfortunately, the proportional election system has not served the purpose. Voters have been satisfied with a gap between voters and candidates, because high level politicians were able to acquire influence by their position in the list of candidates. Considering all circumstances, the decision to change the electoral system has been taken: to create a mixed system adding also a majoritarian element. After the parliamentary election the legislator has decided to amend the electoral law. In the new “Republic of Lithuania Law on Elections to the Seimas” (1992)<sup>1</sup> the mixed electoral system of election has been established (70 members elected under the proportional system with party lists and 71 members under the majoritarian system in single member constituencies). Nevertheless, it has been also proposed to introduce

---

\* Chief specialist of the Division of Information Technology of the Central Electoral Commission of the Republic of Lithuania. Contact information: phone +370 5 239 6982, e-mail: kristina.ivanauskaite-pettinari@vrk.lt and kristina.ivanauskaite@gmail.com.

<sup>1</sup> The Republic of Lithuania Law on Elections to the Seimas. *Official Gazette*. 9 July, 1992, No I-2721.

a proportional system of election for electing all Parliamentary mandates (like in Estonia, Latvia, and Poland), but the political will of Parliament has been different. In the new electoral law the portable ballot box was abandoned and a voting mechanism based on double ballot envelopes was contemporarily introduced. The new Law on Elections to the Seimas has introduced the possibility for candidates to take part in the broadcasts of the national radio and television.

There were also a lot of debates about the use of alternative voting systems in elections. Finally, the law which provides voters with a wide range of alternative voting methods (early, postal, home-bound, out-of-country voting) was introduced and came into force. According to the new regulation, voters were permitted to vote before the Election Day in municipal buildings, at home, in hospitals, in penal institutions, on ships and in military missions.

In order to prepare parliamentary elections, on the 23 July, 1992, the first Central Electoral Commission of the Republic of Lithuania (hereinafter: CEC) has been established<sup>2</sup> after restoration of the independence of the Republic of Lithuania. Nevertheless, the Central Electoral Commission has been formed by different political powers, on the basis of the principle that nobody would take the main power in it. Unfortunately this principle has not worked in practice as the CEC has been managed by one political power. During this period nobody from the opposition has been permitted to become the chairman of any level electoral commissions in the parliamentary election, which has been held on the 25 October, 1992.

On 25 October, 1992 at parliamentary election all 141 members of the Parliament (*Seimas*, which replaced Supreme Council), were elected. 70 members have been elected from party lists based on a proportionally system and 71 in single member constituencies. The first round of the election was held simultaneously with a *referendum* on the adoption of a new constitution. The Constitution of the Republic of Lithuania was approved in the *referendum* on 25 October, 1992 (hereinafter: 'the Constitution'), which has also introduced the basic principles of democratic elections.

The 1992 parliamentary election could be criticized because of the lack of respect to the democratic principles. Nevertheless, there were more free seats in the Parliament than candidates in the lists of political parties. Moreover, a high number of violations of law was detected during the electoral period. As a result, the Supreme Court of Lithuania had to take a decision on one electoral case. The dispute has concerned the activity of three polling districts electoral committees, which have illegally changed the results of the parliamentary election in favour of a certain party. Later the CEC has lost the case in the court and practically it has become unable to work. Unfortunately it has lost also the trust of society.

Considering the political situation, the President of the Republic of Lithuania has formed the new *Presidential Electoral Commission*: the principle that any political group could not take prominent power in the Presidential Electoral Commission was also taken into consideration. Finally, on 24 February, 1993, the presidential election has been held successfully.

In 20 October, 1996, the election to the Seimas has been held again. One of the biggest novelties of these elections has been the introduction of the possibility to rate the list of candidates, giving them minuses and pluses. The final order of candidates for Seimas on the lists was established according to the points of the rating received by each candidate. The first one enrolled in the list was the candidate who had received

---

<sup>2</sup> Lietuvos Respublikos Aukščiausiosios Tarybos nutarimas „Dėl Vyriausiosios rinkimų komisijos“. *Official Gazette*. 1992, No 23-672.

a better rating. If more candidates have received an equal rating, the first one enrolled in the list was the candidate whose election rating was higher. The electoral law permitted political parties to choose to give or not to give voters the possibility of rating the list of candidates, giving them minuses and pluses. All political parties which have not given permission to rating the list of candidates have not been able to cross the electoral barrier. In order to simplify the counting process of votes, scanning machines have been used in 1996.

The final results of the election have shown that political lists of the candidates have not been deeply altered by voters. At the end only some candidates have changed their places in the lists. Later it was introduced the compulsory rating of the lists of candidates. These changes have increased the value of each voter's vote. In 2000 the system of voters' rating of the lists of candidates has been changed again. As a result, the order of lists of candidates of political parties has stopped to have an effect to the final results of elections.

Before the year 1997, political parties were obliged to specify their electoral expenses after the elections in accordance with the laws on elections. The laws on elections also provided the maximum possible amounts of electoral expenses; however, these did not provide any requirements related to specifying the sources of funding. In 1997, before parliamentary elections, the "Law on Funding Control of Political Campaigns" has come into force<sup>3</sup>. According to this law the control of finances of political parties has been transferred from the Ministry of Justice of the Republic of Lithuania (hereinafter: 'Ministry of Justice') to the CEC. The law required to register and publicize all donations as well as to specify the total income and expenses related to a political campaign. The amount of particular donations was not limited; however, the total sum of the donations could not exceed the maximum amount of expenses provided by law.

In 1999 this law has been amended in order to regulate sources for funding political parties and political organizations as well as financial accounting and control. The new regulation provided that political parties and political organizations should submit their annual declarations on the financial activities to the CEC and the State Tax Inspectorate. Later, these provisions have been amended again. In 2012 the donations of legal persons have been forbidden, while in 2014 the limits for political party membership fees have been introduced.

The use of information technologies in the processes of elections caused a significant enhancement of the electoral system in the Republic of Lithuania. Information technologies have permitted to organize all electoral processes faster, in a cost-effectively and more transparent way. This tendency has also helped public institutions to regain the trust of voters, previously lost during the occupation period.

## **1. Election system**

### ***Parliamentary elections***

Parliamentary elections are primarily regulated by the Constitution, adopted in 1992 and last amended in 2006, as well as by the "Republic of Lithuania Law on Elections to the Seimas" (1992), the "Law on the Central Electoral Commission" and the "Law on Funding of, and Control Over Funding of, Political Campaigns". All these laws have been lately amended, mainly for technical reasons.

---

<sup>3</sup> The Law on Funding Control of Political Campaigns. *Official Gazette*. 11 November, 1997. No 104-2626.

According to the Constitution of the Republic of Lithuania<sup>4</sup>, the state of Lithuania is an independent democratic republic. The Parliament of the Republic of Lithuania, named “Seimas”, consists of 141 Members, representatives of the Nation, elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot. The Seimas is considered “elected” when not less than 3/5 of Members are elected.

The “Republic of Lithuania Law on Elections to the Seimas” provides that all citizens of the Republic of Lithuania who, on the Election Day are 18 years old, have the right to vote. Citizens who have been declared legally incompetent by the court do not participate in elections. The law prohibits any other direct or indirect limitation of suffrage of the citizens of the Republic of Lithuania on the grounds of origin, political conviction, social or property status, nationality, sex, education, language, religion, or the type or character of the occupation. Citizens vote in person and by secret ballot. A voter, who because of his physical handicaps cannot cast a ballot by himself, is permitted to vote with the assistance of another person whom she trusts.

According to the law, any citizen of the Republic of Lithuania (1) who is not under allegiance to a foreign state, (2) is at least 25 years of age on the Election Day and (3) permanently resides in Lithuania<sup>5</sup> is permitted to stand as a candidate for the election of the members of the Seimas. The law provides that people who, in the term of 65 days before elections, have not served sentences imposed by courts yet, as well as people who have been declared legally incompetent and incapable by the court are not permitted to stand as candidates for election of the members of the Seimas. Moreover, (1) judges during their term of office, (2) people who on the Election Day are in active or alternative military service, also (3) servicemen of professional military service who, in the term of 65 days before elections, have not retired from service, or (4) officials of statutory institutions and establishments, or (5) persons, who may not participate in activities of political parties according to special laws or statutes, cannot stand as candidates for the election of the members of the Seimas.

The “Republic of Lithuania Law on Elections to the Seimas” also provides that a person who has been removed from office as a member of Seimas in accordance with an impeachment procedure may not be elected to the Seimas, provided that less than four years have elapsed from the given decision. However, the Constitutional Court of the Republic of Lithuania has passed a ruling<sup>6</sup> which states that the above mentioned provisions are in conflict with the Constitution of the Republic of Lithuania. Unfortunately, the new formulation of this provision has not been passed by Parliament yet.

The law establishes that a candidate could be appointed by political party and by self-nomination in single-member constituencies. In the latter case, a candidate has to prove 1.000 signatures of support which are controlled by the CEC. In order to register a candidate list, political parties and coalitions have to submit a deposit of 10 average monthly salaries<sup>7</sup>, while candidate in a single-member constituency has

---

<sup>4</sup> The Constitution of the Republic of Lithuania. *Official Gazette*. 30 November, 1992, No. 33-1014.

<sup>5</sup> A citizen of the Republic of Lithuania is considered to be a permanent resident in the Republic of Lithuania, if her data about place of residence are entered into the Residents’ Register of the Republic of Lithuania, or a citizen who, under the Civil Code, is recognised as having a permanent place of residence in the Republic of Lithuania.

<sup>6</sup> The Constitutional Court of the Republic of Lithuania ruling on the compliance of paragraph 5 (wording of 22 march 2012) of article 2 of the Republic of Lithuania Law on Elections to the Seimas with the Constitution of the Republic of Lithuania, „On the prohibition for a person, who was removed from office under procedure for impeachment proceedings, to stand in elections for a Member of the Seimas”, Case No. 8/2012, 5 September 2012. *Official Gazette*. 2012, No. 105-5330.

<sup>7</sup> In 2015 it was 7 150 Euros.

to submit one average monthly salary. Since 2012 parliamentary elections, the deposit was returned also to those electoral contestants who did not gain any seats, in the case they submitted the financial disclosure forms after the elections.<sup>8</sup>

Early elections to the Seimas may be also held based on the above described regulation in the cases prescribed by the Constitution.

The Law on Elections to the Seimas<sup>9</sup> provides that when dividing the territory of the Republic of Lithuania into 71 single-member constituencies, it must take into consideration the number of inhabitants, the division into single-member constituencies during the previous elections, and the administrative-territorial division of the Republic of Lithuania. The number of voters in a constituency must be from 0.9 to 1.1 of the average number of voters in all single-member constituencies. The CEC, no later than 210 days before an election, establishes, and no later than 180 days before an election, announces on its website the list of polling districts forming constituencies and the number of voters in the constituency. One multi-member constituency is also formed where all citizens of the Republic of Lithuania eligible to vote cast their votes. Accordingly, 70 Seimas members are elected in this constituency according to the proportional system of elections.

Election results can be established by the CEC after having investigated all complaints and having established all electoral results in the constituencies, including the votes cast by the voters who have voted on ships and abroad. A candidate is considered elected in a single-member constituency, if not less than 40 percent of the voters from the electoral roll of the given constituency has participated in elections and the said candidate has received more than half of votes cast by the voters. If less than 40 percent of the voters from the electoral roll of the given constituency have participated in elections, the candidate who has received the majority, but not less than one-fifth of the votes is considered to have been elected. If more than two candidates have participated in the elections and a Seimas member has not been elected, run-off voting is held after two weeks, in which two candidates who have received the majority of votes participate in the said poll. A candidate who has received more votes, regardless of the number of voters who participated in the elections, is considered to have been elected at the run-off voting.

Besides, elections are considered to have been held in the multi-member constituency if more than one-fourth of all voters have participated. A list of candidates of a given party may take part in the distribution of mandates only if not less than 5 percent of voters participating in the election voted for it. A joint list of candidates may take part in the distribution of mandates provided that not less than 7 percent of the voters have voted for it.

If less than 60 percent of all voters who participated in the election have voted for the lists taking part in the distribution of mandates, the list which has not taken part in the distribution of mandates up till then and for which the majority of voters has voted acquires the right to take part in the distribution of mandates. The number of lists of candidates which have the right to participate in the distribution of mandates are further increased in the same manner until not less than 60 percent of all voters who participated in the election have voted for the lists of candidates participating in the distribution of mandates.

---

<sup>8</sup> The Republic of Lithuania Law on Elections to the Seimas. *Official Gazette*. 9 July, 1992, No I-2721, article 41.

<sup>9</sup> The Republic of Lithuania Law on Elections to the Seimas. *Official Gazette*. 9 July, 1992, No I-2721 (last amended on 19 November 2015 – No XII-2052).



Candidates of the same list receive mandates in the numerical order established by the CEC, which has established by the rating of candidates. The final order of candidates for Seimas member on the lists is established according to points of the rating received by each candidate. The final succession of the lists of candidates for Seimas member is announced by the CEC on the same day in which the results of voting in single-member constituencies are announced.

### ***Presidential elections***

The Constitution of the Republic of Lithuania stipulates that the President of the Republic is the head of state. She represents the state of Lithuania and performs duties with which she is charged by the Constitution and laws. A Lithuanian citizen by descent – who has lived in Lithuania for not less than the last three years, provided that she has reached the age of not less than 40 years before the Election Day, may stand for election as a Member of the Seimas – is permitted to stand as a candidate for the election as the President of the Republic.

Besides, presidential elections are also regulated by the Republic of Lithuania Law on Presidential Elections 22 December 1992 No I-28<sup>10</sup>. Under paragraph 2 of article 2 of this law, a person who has grossly violated the Constitution of the Republic of Lithuania, broken her oath, has been removed from public office, or her parliamentary mandate has been revoked by the Seimas in accordance with impeachment procedure, is not permitted to be elected President of the Republic.

The regulation also introduces the requirement that after the CEC has adopted a decision to issue forms for the collection of signatures to an individual candidate who nominates herself or is nominated as a candidate for President of the Republic, she must, before she is registered as a candidate for presidency, to submit to the CEC the information about her eventual work with the NKVD, NKGB, MGB, KGB of the USSR or the former Soviet republics, as well as with other corresponding services (structures) of other foreign states, also studying at schools of the said services (structures) or collaborating with them. These information are available to the public. Candidates also must give notice of their work, studies or collaboration with the services (structures) specified above in their campaign materials.

The President of the Republic is elected by the citizens of the Republic of Lithuania for a five-year term by universal, equal, and direct suffrage by secret ballot. The right to vote is identical to the suffrage for the election of the members of the Seimas.

If during the first round of voting none of the candidates for President of the Republic gets the required majority of votes, run-off voting is conducted according to the procedure established by the Law within two weeks from Election Day (on Sunday) between the candidates obtaining the most votes in the first round of voting. The date of run-off voting is announced by the CEC together with the final results of the first vote within seven days from Election Day. The candidate who receives more votes during the run-off voting is considered elected. If during the first round of voting no more than two candidates took part and neither of them has received the necessary number of votes, a rerun presidential election is held within three months from the presidential Election Day. The final result of the presidential election is proclaimed by the CEC within seven days from Election Day.

---

<sup>10</sup> The Republic of Lithuania Law on Presidential Elections. *Official Gazette*. 22 December 1992, No I-28 (last amended on 16 June 2015).

## **2. Stability of election laws**

Lithuanian election laws cannot be considered as the example of stable law. “The Republic of Lithuania Law on Elections to the Seimas”, enacted on 9 July 1992, has been changed 36 times; “The Republic of Lithuania Law on Presidential Elections”, enacted on 22 December 1992, has been changed 32 times; “The Republic of Lithuania Law on Elections to Municipal Councils”, enacted on 7 July 1994, has been changed 42 times; “The Republic of Lithuania Law on Elections to the European Parliament”, enacted on 20 November 2003, has been changed 15 times; “The Law on Political Parties”, enacted on 25 September 1990, has been changed 14 times; “The Law on Referendum”, enacted on 4 June 2002, has been changed 7 times; “The Law on the Central Electoral Commission”, enacted on 20 June 2002, has been changed 11 times; while “The Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns”, enacted on 23 August 2004, has been changed 11 times.

Meanwhile, in this period there have been organized: 7 general elections (1992, 1996, 1998, 2000, 2004, 2008, 2012 ) and 13 elections and by-elections (2 elections in 1997; 1998 , 1999, 2003, 2005, 2007, 2009, 2 elections in 2011, 2013, 2 elections in 2015) to the Seimas; 6 presidential elections (1993, 1997, 2002, 2004, 2009, 2014); 3 elections (2004, 2009, 2014) to the European Parliament; 8 elections (1990, 1995, 1997, 2000, 2002, 2007, 2011, 2015) and 4 rerun elections and by-elections (1997 and three elections in 2015) to Municipal Councils; 11 referendums (1991; on May, June and October 1992; 1994; on October and November 1996; 2003; 2008; 2012; 2014).

According to an unwritten rule, Parliament is trying to avoid amendments of electoral laws in the last year before the election. Of course, the legislator is not always able to respect this rule. One can also note that not all amendments are the same: at the beginning the reason of changes has been the necessity to amend procedures, whereas in our days the reason is often the introduction of electronic instruments in the electoral process.

The possibility of introduction of internet voting has also been debated for several years. At the moment there are some proposals put to vote in the Parliament and its committees. Unfortunately, until now no proposal was successful.

In the nearest future, the biggest challenge will be the discussion and possible adoption of the draft of Electoral Code in the Parliament: in 2013 a parliamentary working group was appointed in order to prepare a draft of Electoral Code that would consolidate relevant electoral legislation and juridical decisions.

## **3. Electoral management bodies**

Elections are administered by a three-tiered system, comprising the Central Electoral Commission of the Republic of Lithuania, constituency electoral committees and polling district electoral committees. Additional polling stations are established in diplomatic and consular offices of the Republic of Lithuania and on the ships-at-sea to facilitate out-of-country voting.

### ***The Central Electoral Commission of the Republic of Lithuania***

The CEC is a permanent supreme state institution for organising and conducting elections and referendums, provided in the Constitution of the Republic of Lithuania. Moreover, the CEC is a coordinating institution implementing provisions of



Regulation (EU) No 211/2011 of the European Parliament and of the Council regarding the citizens' initiative.<sup>11</sup>

According to article 3 of the “Law on the Central Electoral Commission”, the CEC organises and conducts elections to the Seimas of the Republic of Lithuania, elections to the Office of the President of the Republic, elections to municipal councils, elections to the European Parliament (hereinafter referred to as “elections”) and referendums; it ensures that elections and referendums are held in pursuance of the principles of democratic elections enshrined in the Constitution and laws of the Republic of Lithuania; it guarantees uniform application of electoral laws and the Law on Referendum on the whole territory of the Republic of Lithuania; it performs the functions of mandate commissions of the Seimas of the Republic of Lithuania and of municipal councils during the period of elections; according to the forms prescribed by law, it controls financing of political parties, political organisations (hereinafter referred to as “parties”) and political campaigns; it also coordinates the procedures related to EU citizens' initiatives. When exerting its functions and passing decisions on issues within its competence, the CEC is independent.

According to the Law on the Central Electoral Commission, the Parliament sets up the CEC no later than 200 days and no earlier than 140 days after regular or early elections to the Seimas. The CEC is composed of: 1) the Commission Chairman; 2) two members with the university law degree who are nominated by the Minister of Justice and appointed by the Seimas by secret ballot; 3) two members with the university law degree who are nominated by the Lithuanian Bar Association and appointed by the Seimas by secret ballot; 4) two members with the university law degree who are nominated by the President of the Republic and appointed by the Seimas by secret ballot; 5) members nominated by the parties which have received mandates of the Seimas members in the multi-member constituency, where such

---

<sup>11</sup> The Republic of Lithuania Law on the Central Electoral Commission. *Official Gazette*. 20 June, 2002, No. IX-985 (last amended on 18 November 2014).

persons have the university law degree and the experience of working in electoral committees.

Parliament appoints the Chairman of the CEC upon the recommendation of the Speaker. The law establishes that the duties of the Chairman are not compatible with any other duties in state institutions, agencies, as well as with any work in business, commercial and other private enterprises or agencies.

To be appointed as chairman and members of the Central Electoral Commission it is necessary: a) to be citizen of the Republic of Lithuania; b) to be of good repute; c) to be, under the Law of Elections to the Seimas, eligible to stand in election as a candidate for Seimas; d) not to be dismissed during the last three elections to the Seimas, presidential elections, elections to municipal councils or referendums from an electoral or referendum committee due to violations of election laws or the Law on Referendum.

The number of persons appointed to the CEC by the Minister of Justice, the President of the Republic and the Lithuanian Bar Association must be not less than the number of members nominated by political parties (coalitions). If the number of these persons is smaller than the other, the number of the members of the Commission is increased of an equal number of members chosen among candidates nominated by the Minister of Justice and the Lithuanian Bar Association.

The Chairman of the CEC, the members thereof appointed to the Commission by nomination of the Minister of Justice, the President of the Republic and the Lithuanian Bar Association must suspend their membership in any party of which they were members, and may not take part in activities thereof during the period of their work in the CEC.

### *The constituency electoral committees*

For the period of an election the CEC sets up constituency electoral committees no later than 85 days before the election. Constituency electoral committees are composed of a person nominated by the Minister of Justice, and one person nominated by the Lithuanian Lawyers' Association. Both of them must have a university law degree, must reside or work in the territory of the municipality the whole or a part whereof has been designated to this constituency. A career civil servant is also member of the constituency electoral committee, who is nominated by the director of the municipal administration and employed in the administration of the municipality the whole or a part whereof has been designated to this constituency; persons nominated by parties which have received the mandates of the Seimas members in the multi-member constituency.

Parties which have received the mandates of the Parliament members in the multi-member constituency according to the list (joint list) of candidates shall each have the right to nominate one representative to constituency electoral committees.

The CEC appoints the chairman of the constituency electoral committee among the members of the committee. During its first meeting, the constituency electoral committee elects the deputy chairman and the secretary of the committee.

The requirements related to constituency electoral committee member candidates are similar to those ones prescribed by law for the CEC members. Committee members cannot concurrently be candidates at the elections.

Moreover, the constituency electoral committee informs, in the manner established by the CEC, the voters who reside in the constituency about the boundaries of the polling districts, their offices, their working hours and polling stations; supervise the implementation of the law in the constituency; it forms polling district

electoral committees; it registers election observers and issues certificates to them; it monitors voting by post in the territory of the constituency; it prepares a list of healthcare (with the exception of outpatient healthcare institutions), social care and guardianship institutions, military units, arrest houses, remand prisons (detention facilities) and penal institutions situated in the territory of the constituency, and, together with the head of the post office, it organises voting by post in those institutions as well as early voting; it draws up the vote counting record of the constituency; it monitors political advertising within a constituency during the election campaign and it submits monitoring data to the CEC in a manner prescribed by it; it considers complaints against decisions and actions of the polling committees and it adopts decisions, repeals decisions which contravene the requirements of laws and other legal acts; it exercises other powers prescribed by law.

### *The polling district electoral committees*

In the perspective of making easier for a voter, to reach a polling station and, therefore, increasing the number of voters, municipalities are divided into polling districts. No more than 5,000 voters must reside within the territory of a polling district. The list of the approved polling districts, as well as changes in the list, is announced by the CEC 100 days before the election.

According to the electoral law, no later than 65 days before an election, the constituency electoral committee determines the number of the members of each polling district electoral committee, that must be a multiple of the number of the parties (their coalitions) which have the right to nominate candidates to electoral committees. An equal number of candidates to each polling district electoral committee may be nominated by each party or coalition of parties which received mandates of the Parliament members in the multi-member constituency during the last election.

The law establishes that a party submits its list of candidates for the members of polling district electoral committees to the constituency polling district electoral committee no later than 48 days before the election. Furthermore, during the period of the election, polling district electoral committees are formed by constituency electoral committees no later than 45 days before the elections. A polling district electoral committee must be made up of at least five members. Besides, a chairman of polling district electoral committees is appointed, among the members of the committees, by constituency electoral committees. A person having experience of working as a chairman or member of an electoral committee or a person having a higher education degree is appointed as chairman of a polling district electoral committee. During its first meeting, the polling district electoral committee elects the deputy chairman and the secretary of the committee.

The law establishes that the polling district electoral committee receives electoral rolls from the constituency electoral committee, it provides conditions for voters, permits representatives of parties at the elections to familiarise with the said lists, it hands or delivers in some other ways poll cards to voters, informs the constituency electoral committee about inaccuracies noticed in the electoral roll of the polling district and transmits such information by means of electronic communications in accordance with the procedure laid down by the CEC; investigates complaints about the errors made in electoral rolls; in the manner prescribed by the CEC, it monitors postal voting conducted in the territory of the polling district in order to create conditions for voting by post in all institutions situated in the territory of the polling district, as well as for voting at home; together with a representative



of the municipality administration, it makes arrangements in accordance with the requirements set forth in the law about a timely preparation of the polling station, voting booths and ballot boxes; it organises voting in the polling district on the Election Day; it counts votes and draws up the vote counting record of the polling district and it transmits the data of this counting record via electronic means of communication in accordance with the procedure laid down by the CEC; it considers the complaints of voters and observers on issues concerning preparation of the elections, organisation of polls, vote counting, drawing up of vote counting record and it adopts decisions related to them; it exercises other powers provided for by the law.

#### **4. Safeguards of free and fair elections**

##### ***The access to the campaign***

In the Republic of Lithuania a political campaign starts in 5-6 months before elections. The access to the campaign is regulated by the “The Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns”<sup>12</sup>. According to this law, “participant in a political campaign” means a person or a group of persons who seek to be elected or to make a referendum issue to be accepted or rejected and who are registered by the CEC in accordance with the procedure prescribed by law. According to the right to receive donations and to incur expenditure for political campaigns, participants of political campaigns have to be “*independent*” or “*represented*”. The following subjects may be registered only as an *independent political campaign participant*: a political party; a potential candidate; a self-nominated candidate; initiators of a referendum; opponents of a referendum; a public election committee (an ad-hoc political organization). Whereas, the following subject is registered as a *represented participant in a political campaign*: a candidate entered on the list of candidates; a candidate or a list of candidates, in the absence of a proposal (application) of the political party which nominated her/them for registration as an independent political campaign participant.

Searching to ensure the safeguards of free and fair elections, the CEC registers independent political campaign participants, announces on its website the lists of registered independent political campaign participants and persons whose registration as independent political campaign participants has been refused. According to the law, only independent participants may accept donations and assume property obligations relating to the expenditure of the political campaign, starting from the date of their registration and the publishing of the announcement of their list on the website of the CEC.

##### ***The transparency of the campaign funding***

“The Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns” prescribes that in the Republic of Lithuania political campaigns may be funded by donations of natural persons, funds received by the political party, own (personal) funds of a candidate, interest on the funds kept in the bank account. Only citizens of Lithuania or citizens and residents of the Republic of Lithuania may donate. Prior to the making of a donation a natural person must declare her assets

---

<sup>12</sup> The Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns. *Official Gazette*. 23 August, 2004, No. IX-2428 (last amended on 16 October, 2014).



and income to the State Tax Inspectorate. There are two kinds of limitations for the size of a donation under the law: (1) during a political campaign, a natural person may donate for each political campaign participant up to 10 average monthly earnings<sup>13</sup>; (2) during a year, the total amount of donations by one natural person for all participants of the campaign may not exceed 10 % of the annual income declared by the natural person for the previous calendar year. The law establishes that donors are allowed to make only small donations without the declaration of their assets and income<sup>14</sup>. However, a candidate may donate to her own political campaign up to 20 average monthly earnings<sup>15</sup>. All donations are public and posted on the CEC website within 10 working days.

Funds designated to finance political campaign must be kept in the specific account of the political campaign. The account of the political campaign is not subjected to any interim measures. Moreover, it is prohibited to finance political campaigns of other independent participants by other funds which are not specified by the law. Political campaigns of *represented participants* are financed exclusively by the funds of *participants of independent political campaigns* who nominated them.

Usually, there are around 1.000 candidates or lists of candidates which are controlled during parliamentary or local elections. The limits of expenditure have relevance when deciding whether a gross violation was committed. It is considered that the political campaign participant has committed a gross violation of the law if the expenditure of political campaign exceeds the limit by 10 % or more, if undeclared funds of political campaign, expenditure and cost of hidden advertising represent 10 % or more of the limit of expenditure.

According to the law, during a political campaign, producers or disseminators of public information may disseminate political advertising only at the rates and under the conditions which are equal to all political campaign participants and which are submitted to the CEC. Their prices are published on the website of the CEC. Moreover, the rates and conditions of political advertising applicable during a political campaign may not be changed during the political campaign. The CEC uses an information system to check a compliance of requirements.

The law establishes that expenditure of a participant to a political campaign for the campaigning videos may not exceed 50 percent of the allowed maximum amount of expenditure set for the participant.

Besides, participants of a political campaign submit to the CEC a report on political advertising done during the election (referendum) campaigning as well as on the sources of and report on its funding.

The following activities are financed by state budget funds from the appropriations allocated to the CE: discussions of candidates over the radio and on television with the aim of presenting election programmes in compliance with the principle of equality and according to the procedure laid down by the CEC; information, disseminated in accordance with the procedure laid down by the CEC, encouraging participation in elections.

Funding of political campaigns is controlled by the CEC and other institutions within their remit in accordance with the procedure prescribed by law, while reports and documents of all participants are inspected by independent auditors.

The law obligates the CEC to announce funding reports of political campaign together with the auditor's report of factual findings (if such report is mandatory) on

---

<sup>13</sup> It was 7.150 Euros in 2015.

<sup>14</sup> The donations are considered as small if one person donates up to 12 euros per participant during all political campaign.

<sup>15</sup> It was 14.300 Euros in 2015.

its website no later than 100 days after the proclamation of the final results of the election (rerun election) or referendum. Also, declarations of producers or disseminators of public information, funding reports of political campaign and the auditors' reports of factual findings, reports concerning the dissemination of political advertisements during an election (referendum) campaign and the funding sources thereof, contracts of participants with service providers, producers or disseminators are public and presented in accordance with the procedure prescribed by the CEC, ensuring the protection of personal data. Based on the auditors' report, the political campaign participant or its treasurer may incur administrative liability for breach of the rules of political campaign funding.

Moreover the CEC publishes information about the established facts of bribery of voters or persons eligible to vote on the website, together with a pledge of the candidate who has violated the legislative prohibition of bribing voters and persons eligible to vote. The recognition of the facts of bribery of voters and persons eligible to vote, as a gross violation of law, leads to the consequences provided by laws.

According to the law, several sanctions may be applied the Republic of Lithuania related to campaign funding. Firstly, paid deposit is not returned to participant in case a participant grossly violated the law on funding or did not submit the political campaign funding statement, annexes and financial documents to the CEC. Secondly, it is applied administrative liability for financial irregularities, for the breaches of requirements of political advertising, failure to submit documents. Thirdly, if the CEC declares that a political party has grossly violated the law, it will not be eligible for funding from state budget for two years.

### ***The prohibitions related to the placement of posters in certain public spaces. Rules related to the broadcasting of political advertisements***

There are about 50 television channels, 50 radio stations, 215 newspapers and magazines which take part in the broadcasting of political advertisements in the Republic of Lithuania. Internet-based media is starting to be more and more popular each year.

The Constitution of the Republic of Lithuania guarantees freedom of expression, the right to seek, receive and impart information and ideas. However, according to article 154 of the Penal Code, the libel and insult of someone's honour and dignity are also criminalized and could be punishable by imprisonment or high fines.

During electoral campaigns, the conduct of media is governed mainly by the electoral law, "the Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns" and the "Law on the Provision of Information to the Public".

The "Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns" prohibits dissemination of political advertising: (a) on the front page of a periodical; (b) if the dissemination of such advertising is in violation of the Constitution and laws of the Republic of Lithuania. Besides these restrictions, during an electoral (referendum) campaign it is prohibited to disseminate political advertising: (a) for free, except discussion programmes; (b) on television, except programmes of discussion and campaigning-related videos of not less than 30 seconds duration, in which a participant to political campaign informs about his political programme or speaks on issues topical to the public. The law obliges the public media to prove equal access to all political parties, coalitions and candidates. All political parties and contestants are given equal and ample access to the public television and radio to present their campaign platforms. The law prohibits to display and

disseminate outdoor political advertising: on buildings used by state administration, law-enforcement and other state and municipal institutions and agencies; inside or outside the public transport vehicles used by the enterprises controlled by the state or municipalities, with the exception of cases where advertising areas or video broadcast equipment belong or are transferred for use to third persons who may not be directly or indirectly influenced by the state or municipal enterprises; on motorways and in their sanitary protection areas, as well as in and alongside streets if it might obstruct technical means of traffic regulation and road signs, reduce visibility, blind traffic participants, distract their attention, so to create danger to traffic participants; it is also prohibited to use advertising that imitates road signs; on sculptures and monuments; within 50 metres around the building which houses a polling station; without permission of the owner of the land, construction works or other structures on or in which it is displayed; in places other than those provided for in accordance with the procedure laid down by law.

Furthermore, outdoor political advertising is permitted in protected areas and immovable cultural properties, as well as in their territories, only upon agreement with the state agency responsible for the protection of cultural properties and the agency authorised by the founder of the protected area. A person who displays outdoor political advertising has an obligation to remove it before the beginning of the period established by the law, when election campaigning is prohibited.

In all types of electoral campaigning, regardless of methods, forms and measures, it is prohibited for the last 30 hours before the opening of poll and on Election Day until the close of poll, with the exception of the permanent visual campaigning material in the designated places, provided that it was displayed at least 48 hours before the opening of poll. During the period of prohibition of electoral campaigning, no visual material (with the exception of the one produced by the CEC) may be displayed in a polling station or within 50 meters from the building which houses a polling station.

Persons who violate these provisions are held liable in accordance with the procedure laid down by laws of the Republic of Lithuania.

### ***The publicity of the meetings of the CEC as a safeguard of publicity of the electoral process***

The publicity of the electoral process is also guaranteed by the “Republic of Lithuania Law on the Central Electoral Commission” and electoral laws. Article 11 of the “Republic of Lithuania Law on the Central Electoral Commission”<sup>16</sup> grants the publicity of the meetings of the CEC. The law declares that meetings and voting of the CEC are public. Information about a meeting of the CEC is announced in the billboard situated in the building in which the headquarters of the Commission is located, as well as on its website, and the Commission members are individually informed about it not later than 24 hours before the beginning of a meeting. Representatives and observers of the parties, public election committees, candidates for Seimas members, candidates for President of the Republic, candidates for municipal councillors, initiative groups of citizens of the Republic of Lithuania for holding of a referendum are permitted to observe meetings of the Central Electoral Commission, upon presenting a certificate of an established form, as well as

---

<sup>16</sup> The Republic of Lithuania Law on the Central Electoral Commission. *Official Gazette*. 20 June 2002, No. IX-985 (last amended on 18 November 2014 – No XII-1339).

representatives of mass media, upon presenting their authority or service cards. Moreover, from January 2012 live broadcasting of meetings of the CEC is conducted on the internet.

### *Complaints and appeals*

Decisions of all levels of electoral commissions can be appealed by the affected person or political party. Appeals can be lodged with the higher-level commission. Electoral laws establish that a party which has nominated a candidate, a person running for election, a representative for election and observers are permitted to appeal the decision of the electoral committee which was adopted before closing of the polls or against any other act of the committee. An appeal against a polling district committee decision is lodged with the constituency electoral committee; an appeal against the decision of a constituency electoral committee decision is lodged with the CEC; an appeal against the CEC decision is lodged in the Supreme Administrative Court of Lithuania. Moreover, a voter or a representative for the election – who does not agree with the decision of the polling district committee adopted in reply to her appeal about errors, made in the electoral roll, which did not let her exercise her right to vote (she has been incorrectly entered in the electoral roll or her name has been struck off the electoral roll or the data about the voter have been inaccurate) – is permitted to lodge an appeal against the decision in the administrative court.

In order to ensure operatively, transparency and credibility of electoral processes, decisions of the CEC or its other acts may be appealed to the Supreme Administrative Court of Lithuania within five days after adoption of a decision, but no later than before the closing of the polls. Appeals must be investigated within 48 hours of lodging them. The decision of the tribunal becomes effective from its pronouncement. According to electoral laws, the CEC establishes final electoral results after it has investigated all complaints and established all election results in the constituency, including votes cast on ships and abroad. A decision of the CEC – taken on the grounds of law – is also considered as the establishment of final election results in the constituency. Whereas, the law establishes that the CEC proclaims final electoral results no later than within seven days following the polls in the multi-candidate constituency and in the first election round in one-member constituencies. If during the elections to a new Seimas the run-off voting is held, the final results in a multi-member constituency and in those single-member constituencies where the run-off voting has been held is proclaimed no later than within seven days from the run-off voting. The CEC proclaims the final electoral results on its website.

Article 86 of the Republic of Lithuania Law on Elections to the Seimas establishes that parties which have nominated candidates for Seimas member as well as candidates for Seimas member are permitted to appeal to the Seimas or the President of the Republic against the decisions of the CEC or against its refusal to investigate complaints about the violations of the Law on Elections not later than within 24 hours after the announcement of the official final electoral results. In such cases, the Seimas or the President of the Republic, not later than within 48 hours, appeal to the Constitutional Court with the inquiry concerning the violation of the Law in Elections to the Seimas.

The Constitutional Court investigates and evaluates the decision of the CEC or its refusal to investigate complaints. This inquiry is investigated by the Constitutional Court no later than within 120 hours from its submission. Based on findings of the Constitutional Court, the Seimas of the Republic of Lithuania adopts the final decision concerning the violation of the Law on Elections to the Seimas. Article 95 of the

Republic of Lithuania Law on Elections to the Seimas establishes that if the Constitutional Court makes a conclusion that the Law on Elections to the Seimas has been severely violated or election documents have been falsified and this has had an essential influence on the establishment of electoral results, the Seimas of the Republic of Lithuania is permitted to pass one of the following resolutions: to declare the elections in a single-member constituency or multi-member constituency invalid – when, from the counting records of voting, it is impossible to establish essential electoral results; or to establish actual essential final electoral results according to the counting records of voting or other electoral documents submitted by electoral committees. The Seimas also passes a resolution on legally and illegally elected Seimas members.

### **Closing remarks**

Since the restoration of the independence of the Republic of Lithuania there have been two fundamental developments in the electoral process: first, the creation of credible electoral procedures and, second, the regulation of political parties campaigning.

After this development of the system, the CEC of the Republic of Lithuania is now permitted to guarantee democratic elections based on highest standards. This circumstance can be also proved by the high number of political parties which take part in political life of the Republic of Lithuania. At the moment, 38 political parties are registered, but usually about 20 political parties contest parliamentary seats in elections, from which only about 8 political parties win seats. Finally, about 4 political parties are usually composing the government. The President of the state and the Speaker of Parliament, as well as some other high-level public officials, are women. During the last parliamentary elections (2012), 32 percent of candidates were female and women constituted 78 percent of electoral commission members. Also, women are under-represented of 24 percent in the Parliament elected in 2012.

The past twenty-five years of the electoral organizing processes would be described also as the process of introducing electronic tools, to improve the fairness or effectiveness of existing systems.



# MACEDONIA

*Ljupka Guguchevska<sup>1</sup>*

## 1. Election systems

The elections are regulated by the Constitution and the Electoral Code, supplemented by regulations promulgated by the State Election Commission (SEC). The Electoral Code was adopted in 2006, but has undergone a number of changes since then.

Elections are administered by the SEC, 80 Municipal Election Commissions (MECs), and approximately 3,500 Electoral Boards (EBs), including 53 abroad. The composition of SEC is comprehensively explained in Chapter 3 of this case study. MECs are composed of five members who are randomly selected by the SEC from employees of the state and municipal administration with a mandate of four years, and their deputies. MECs' members are selected from the database of civil servants. EBs comprise five members – three randomly selected public employees and two appointees of the main ruling and opposition parties in parliament.

Between 120 and 123 members of parliament (MPs) are elected under a proportional representation system, using closed lists. 20 MPs are elected in each of the 6 in-country electoral districts formed on a basis of similar number of voters. The law permits deviations of up to five percent from the average number of voters per district. The votes are transformed into seats using the D'Hondt formula. As a result of the 2015 amendments to the Electoral Code, up to 3 MPs can be elected from a single out-of-country district. In order to be elected, the first candidate must receive the same number of votes as the MP elected with the lowest number of votes from an in-country district; for the second candidate to be elected twice as many votes should be cast, and the election of the third requires thrice as many votes. This is a proportion compared to the number of votes of the MP elected with the lowest number of votes from an in-country district. If the respective threshold is not obtained, no candidate will be elected.

Any eligible voter can be a candidate, except those who have been sentenced by a final court decision to more than six months imprisonment and did not complete their sentence. The law also identifies a range of government and government-related positions that are incompatible with candidacy. It is satisfactory that the citizens holding these positions resign after the successful elections.

Candidates can be nominated by political parties, coalitions of political parties, or by groups of voters. Candidate lists submitted by groups of voters are required to provide at least 1,000 supporting signatures of voters residing in the respective district. A voter can sign in support of more than one prospective contestant, however, signatures must be collected in front of a regional SEC representative, in SEC regional offices. No issues regarding the secrecy of this procedure have occurred so far.

The lists of candidates shall be submitted to the SEC no later than 30 days prior to the Election Day. In an effort to encourage the participation of women, the Electoral

---

<sup>1</sup> Adviser at the State Election Commission of the Republic of Macedonia. E-mail: ljupka.guguchevska@sec.mk





*Solemn session of the Macedonian Parliament*



*Voters queuing to sign in support of a candidate<sup>2</sup>*

Code now provides that at least 40 percent of candidates must belong to the less represented gender. This represents an increase of a quota by 10 percent compared to the 2014 elections. As a result, every third and tenth candidate must be from the less represented gender. The less represented gender is calculated for every particular list of candidates separately, thus the less represented gender in one list can be male as well as female.

<sup>2</sup> <http://b2.mk/news/dik-gragjanite-imaat-15-dena-da-soberat-potpisi-za-nezavisni-kandidati?newsid=98me>

The president is directly elected by popular vote under a majoritarian system. The same person cannot hold the office of presidency for more than two terms. To be elected in the first round, a candidate must receive the majority of votes of all registered voters. If no candidate meets this requirement, a second round is held two weeks later between the two candidates who received the highest number of votes. In the second round, the candidate who receives the most votes is elected, provided that there is a turnout of at least 40 percent of registered voters. Otherwise, the entire election process is repeated.

The right to stand as a presidential candidate is granted to citizens who have the right to vote, are at least 40 years old and have lived in the country for at least 10 of the last 15 years. Nominations for the presidential election have to be supported by 10.000 signatures of registered voters or 30 members of parliament. Voters need to sign in support of a candidate in front of a SEC representative in one of the regional SEC offices.

All citizens over the age of 18 years, owning a biometric identification card or passport, are eligible to vote unless disenfranchised due to mental incapacity, by a final court decision. Voter registration is passive, with the exception of voters temporarily residing abroad who must actively register for out of country voting.



*Map of Diplomatic and Consular Offices (DCO) (polling stations) of Macedonia abroad*

Citizens who are temporarily employed or residing abroad, have their latest residence registered in the Republic of Macedonia and who have submitted voting application for the coming elections to the respective DCO are eligible for voting out of the country. Starting from the day of announcement of the elections, the citizens of the Republic of Macedonia residing abroad may submit a hand-signed or emailed voting application by which they register for voting on the upcoming elections – Parliamentary or Presidential.

The voting takes place in person at the polling stations in the Republic of Macedonia and in the DCO.



*Voters at a polling station<sup>3</sup>*



*Voter casting her ballots on multiple elections<sup>4</sup>*

The voters vote one at a time. When the voter approaches to vote, the electoral board checks whether the voter is at the adequate polling station and, with an ultraviolet lamp, checks whether there is an inerasable mark on the nail and the thumb on the right hand. When the voter approaches to vote, the Election Board checks her

<sup>3</sup> <http://www.gazetashkupi.com/2014/04/28/gruevski-ahmeti-fitojne-zgjedhjet/>

<sup>4</sup> [http://www.independent.mk/media/photos\\_more/201507/path\\_2332.jpg](http://www.independent.mk/media/photos_more/201507/path_2332.jpg)

personal identity. The voter proves her personal identity with an identity card or a passport.

After the identification, the voter receives a ballot, and the thumb on the right hand, i.e. the thumb on the left hand, if the voter has no thumb on the right hand, shall be marked with spray, while paying attention that the spray touches upon the nail of the thumb. If the voter has no thumb on both hands, the marking shall not be done.

Voting is performed with one ballot for each type of election determined by the Electoral Code. The ballot is removed in numerical sequence from the stub of the booklet, a stamp is put on the front side of the ballot and it is given to the voter. The voter casts her vote by circling the ordinal number of the list submitter i.e. the ordinal number of the candidate for whom she has decided to vote and puts the folded ballot into the ballot box.

The Electoral Code provides for specific rights for minorities. In municipalities where ethnic communities constitute at least 20 percent of the population, they should be represented in MECs and EBs, and all templates and election materials, including the ballot, should also be available in their language. In districts where at least 20 per cent of the citizens speak one of six officially recognized minority languages, candidate lists may also be submitted in this language.

## **2. Stability of election laws**

Prior to codification of the electoral laws into one unique Electoral Code in 2006, the elections in Macedonia were organized and conducted in accordance with the separate laws on parliamentary and presidential elections, as well as laws on electoral districts.

The Law on election and withdrawal of MPs and members of committees was adopted on 21 September 1990, just before the first Parliamentary Elections in Macedonia held on 11 November 1990. In accordance with the same law, the second Parliamentary Elections on 16 October 1994 were held.

The Law from 1990 provided a possibility for revocation of MPs and members of committees, which at that time were the municipal representative bodies. The legal provisions that applied to the procedure for candidacy, also applied to the procedure of revocation, meaning that the political organization with at least 1500 members were eligible to submit lists of candidates on national level, as well as to initiate revocation of elected MPs. The same applied for the political organizations with at least 500 members, and their eligibility to submit lists of candidates and initiate revocation of elected members of committees. The citizens and other forms of organizations could also initiate revocation by collecting at least 300 signatures for MPs, and 150 signatures for members of committees.

After such initiative was submitted, voting for revocation was organized. The required turnout for success of this voting was 50% of the registered voters, and the MP or the member of committee was recalled if more than half of the voters voted for revocation.

New Law on election of MPs in the Parliament of RM was adopted on 28 May 1998, and almost five months after that, on 18 October 1998, the Parliamentary Elections were held.

Four years after, on 14 June 2002, new Law on Election of MPs in the Parliament of RM was adopted, and on 15 September the same year the fourth Parliamentary Elections were held.

Similar was the case with the presidential elections. They have been organized and conducted in accordance with the Law on elections for President of RM, which was





Rally before the first parliamentary elections in Macedonia 1990<sup>5</sup>

adopted on 21 April 1994, several months before the first direct Presidential Elections in independent Macedonia, held on 16 October 1994. This law was amended on 8 March 2004, just before the Presidential Elections held one month later - on 14 April 2004.

Of course, the variety of laws and the frequent amendments also brought dynamics and changes to the electoral system in Macedonia, which were also influenced by the democratic experience and social changes and developments.

Historically speaking, this began in 1990, with the delimitation of first constituencies under the Law on Electoral Districts for Election of Members of Parliaments of that time. This law provided for the election of 120 representatives, and the formation of equal number of single member constituencies (120). The representatives were elected based on the majoritarian model. Furthermore, the law included provisions for the number of representatives to be elected in each of the 34 municipalities in the Republic of Macedonia which existed at that time. The territories of those municipalities where more than 1 representative was elected were further divided into electoral districts according to the number of voters. The law did not include provisions for the possible deviation of the number of voters in different electoral districts.

With the aim to ensure a high level of adequate representation of all voters in Parliament as possible, a new Law on Electoral Districts was adopted in 1998, including the promotion of a new, mixed electoral system.

The territory of the Republic of Macedonia was divided into 85 electoral districts and one representative was elected in each of the constituencies. For that purpose, the electorate voted for a candidate in single member constituency.

<sup>5</sup> [http://www.oldprilep.com/politika/izbori-90.html#!prettyPhoto\[Gallery\]/4/](http://www.oldprilep.com/politika/izbori-90.html#!prettyPhoto[Gallery]/4/)



Beside a candidate, the electorate also voted for lists of candidates and based on their votes, the State Election Commission determined the allocation of the remaining 35 seats according to the proportional representation model (D'Hondt formula). In this case the entire territory of the Republic of Macedonia was regarded as a single constituency.

This system was abandoned in 2002, after the adoption of a new Law on Electoral Districts. This law provided for the election of 120 representatives in 6 electoral districts on the territory of the Republic of Macedonia – 20 representatives in each electoral district. The D'Hondt method was used for the allocation of seats. Since its introduction in 2002, the proportional representation model was used for election of Members of Parliament of the Republic of Macedonia at the 2002 and 2006 parliamentary elections, as well as at the early parliamentary elections in 2008, 2011 and 2014.

The electoral laws were codified into one Electoral Code in 2006, before the parliamentary elections held on 5 July 2006. The Electoral Code was since then amended 14 times:

- three amendments in 2008, before the early parliamentary elections held on 1 June 2008;
- three amendments in 2011, before the early parliamentary elections held on 5 June 2011;
- one amendment in 2012;
- two amendments in 2013;
- two amendments in 2014, before the early parliamentary elections held on 27 April 2014, and the presidential elections held on 13 April 2014; and
- two amendments, one in 2015 and one in 2016, before the early parliamentary Elections initially scheduled for 24 April 2016, then re-scheduled for 5 June 2016, and cancelled on 18 May the same year, upon decision by the Constitutional Court.



These amendments did not bring to any major changes in the electoral system in the country, except by the introduction of the out of country voting in 2011, which is thoroughly explained in Chapter 1 of this case study.

### **3. Electoral management bodies**

According to the most recent amendments of the Electoral Code from 2015, the State Election Commission consists of a president, vice-president and seven members. The president and the vice-president are also members of the State Election Commission. The members of the State Election Commission fulfill the responsibilities of their office professionally, performing their activities on a full time basis, and have the right to re-election. The Parliament of Republic of Macedonia elects members of the State Election Commission for a 5-year term, at the latest, 30 days prior to expiry of the actual term.

Upon proposal of the political parties, a person who meets the following criteria may be elected member of the State Election Commission:

- is a citizen of Republic of Macedonia and has a permanent residence in the Republic of Macedonia;
- is a law school graduate with at least 8 years of work experience in legal affairs;
- is not a member of an organ of a political party.

The last mentioned only excludes the ones holding party functions, and not the regular party members. They can still be elected for the position.

A person who is not proposed by the political parties may be elected member of the State Election Commission if she meets the following criteria:

- is a citizen of Republic of Macedonia and has a permanent residence in the Republic of Macedonia;
- has completed higher education, with at least five years of work experience;
- is not a member of a political party in the preceding two years;
- has not been and is not a public office holder, or a nominee for one, in the central and local government;
- is not a public supporter of the policies of the authorities or of the opposition (this refers to the fact that the person did not support in a public way certain political parties);
- has a professional knowledge and practice in elections and electoral processes.

Upon the public call announced in the Official Gazette, every citizen who fulfills the aforementioned criteria, whether for the first or the second group of members of the State Election Commission, can submit an application to the Parliament. After the deadline is closed, the political parties – governing and opposition, receive a draft list with all the applicants. After reviewing the list, they decide on the candidates they will propose to the Parliament. It is worth to mention that only the governing and opposition parties (one Macedonian and one Albanian party in both groups) who won most seats on the latest general elections can propose candidates.

The opposition political parties shall nominate three members among the candidates on the draft list for members of the State Election Commission, while the governing political parties propose three members of the State Election Commission. The three members not proposed by the political parties are elected upon a joint proposal of the governing political parties and the opposition parties from among the applicants. The members of the State Election Commission are elected by the Parliament, with 2/3 majority of votes of the total number of MPs.



*Members of SEC giving solemn statement to the President of the Parliament*

The State Election Commission appoints a secretary-general for a 5-year term of office. A secretary-general may be elected a person who:

- is a citizen of Republic of Macedonia and has permanent residence in Republic of Macedonia;
- has completed higher education in the field of management, public administration and other social sciences;
- is not a member of a political party;
- has professional knowledge and practice in the field of management in the public sector.
- is from among the civil servants of category B, who are the most qualified civil servants, or from the managerial staff employed in line with the Law on Civil Servants.

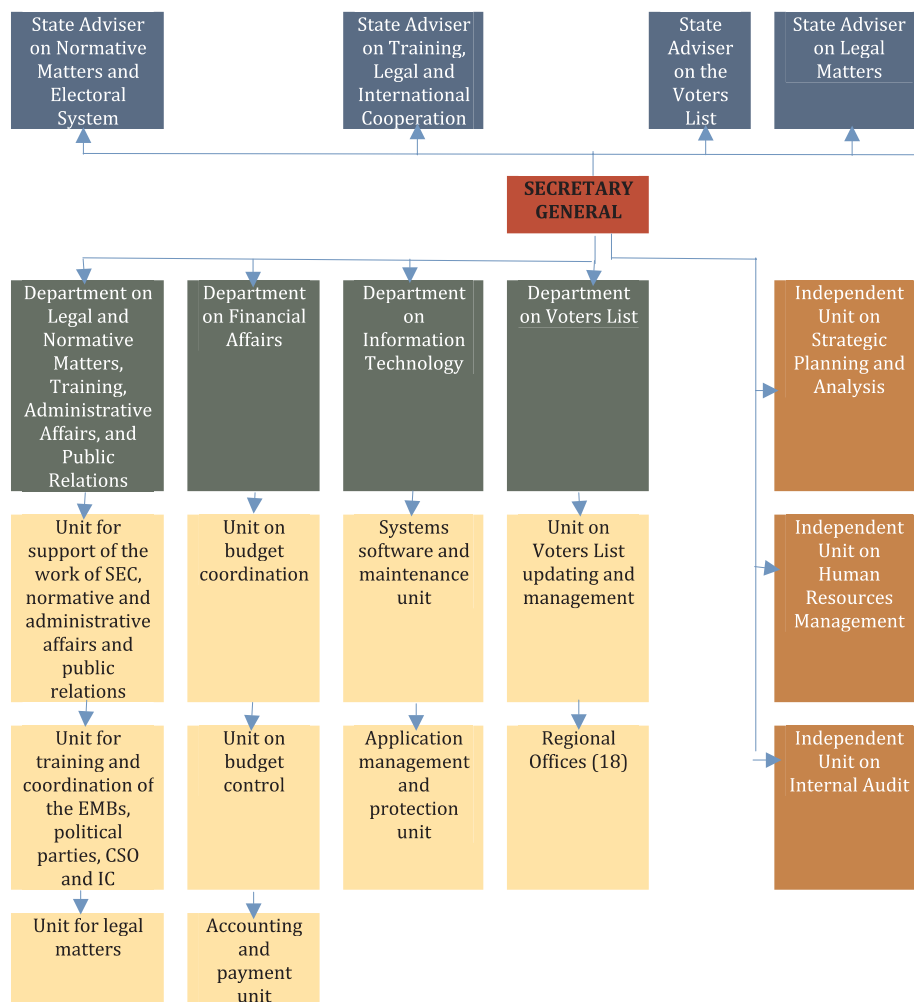
The secretary-general is not a member of the State Election Commission and has no right to vote. The secretary-general professionally, on a full time basis, discharges her responsibilities.

A Support Service is established to the State Election Commission, to discharge the professional/administrative and organizational/technical responsibilities of the State Election Commission. The Support Service is headed by the secretary-general of the State Election Commission. The secretary-general and the Support Service staff of the State Election Commission have the status of civil servants.

Before the amendments of the Electoral Code in 2015, the State Election Commission was composed of president, vice-president and five members. The president, vice-president and the members of the State Election Commission performed this function professionally and they could be re-elected. They were elected within 60 days after the beginning of the session of the Parliament of the Republic of Macedonia for a term of four years.

President, vice-president and members of the State Election Commission could be persons who fulfilled the following requirements:

- Being citizens of Republic of Macedonia with permanent place of residence in Republic of Macedonia;



*Organizational Structure of the Support Service of SEC*

- Having a bachelor degree in law with at least eight years of experience;
- Not being members in a body of a political party.

The last mentioned only excluded the ones holding party functions, and not the regular party members. They could still be elected for the position.

The president, vice-president and members of the State Election Commission were elected by the Parliament with two-thirds majority votes of the total number of MPs.

The described rules were set by the Electoral Code of 2006, and were in force up until the latest amendments in 2015. Throughout the years, though, since Republic of Macedonia gained its independence, and before the codification of the laws for elections in the single Electoral Code, the composition and manner of functioning of the State Election Commission was regulated by the Law on Election of MPs in the Parliament of Republic of Macedonia 1998 and the Law for Election of MPs in the Parliament of Republic of Macedonia adopted in 2002.

Before the establishment of the State Election Commission as the highest electoral body, the elections in RM were organized and implemented by the Republic Election Commission pursuant to the Law on election and withdrawal of MPs and members of committees since 21.09.1990.

The Republic Election Commission was composed of president, secretary and five members and their deputies with a mandate of five years. Additional members and their deputies were also members of the REC as the representatives of political organizations, of citizens who proposed candidates, as well as of independent candidates.

The members of the Republic Election Commission were elected by the Parliament of Republic of Macedonia. The President of the Republic Election Commission and its deputy were appointed among the judges of the Supreme Court of Macedonia, from without the rest of the Commission members

Pursuant to the Law on election of MPs in the Parliament of RM adopted on 28.05.1998 the State Election Commission was composed of president, eight members and their deputies. The president, the members and their deputies were elected by the Parliament of RM for a term of four years.

The president and two members of SEC and their deputies were elected among the judges in the Supreme Court of RM. Three members of SEC and their deputies were proposed by the political party in opposition who won most of the votes on the last elections. Three members of SEC and their deputies were proposed by the governing political parties.

Pursuant to the Law on Election of MPs in the Parliament of RM adopted on 14.06.2002, the State Election Commission was composed of a president, eight members and their deputies. The President of SEC and its deputy were appointed by the President of RM for a term of five years. The members of SEC and their deputies were appointed by the Parliament of RM, also for a term of five years.

Two members of SEC were elected among the judges of the Supreme Court of RM and their deputies among the affirmed lawyers and jurists in accordance with the political parties in the opposition and the governing political parties who won most votes on the last elections. Two members of SEC and their deputies were proposed by the governing political parties and the political parties in opposition who won most votes in the last parliamentary elections.

The first composition of SEC as a professional EMB was elected by the Parliament of RM on 15<sup>th</sup> April 2006.

## **4. Safeguards of free and fair elections**

### **4.1. Campaign and Campaign Finance**

The official election campaign begins 20 days prior, and ends 24 hours before Election Day. The use of administrative resources for campaigning, including the use of office premises, office equipment and official vehicles is explicitly prohibited. The Electoral Code forbids pressuring or intimidating voters and obliges all electoral contestants to sign a Code on Fair and Democratic Elections as a guarantee.

Displaying campaign posters free of charge is allowed only at locations determined by each municipality. Municipalities have to identify locations 45 days before Election Day. Posters can be posted on private buildings only with the permission of the owner. While most forms of campaigning are not allowed until the official start of the campaign, political advertising on billboards and advertising panels is permitted. The Electoral Code allocates the proportions of billboards space: 40 percent each for governing parties and opposition parties; and 10 per cent each for parliamentary parties without parliamentary groups and non-parliamentary parties.

The Electoral Code also regulates the financing of election campaigns. All campaign-related donations and expenditures must be handled through a bank account. Eligible private persons are allowed to donate up to the equivalent of EUR 3,000 in MKD, while legal entities may donate up to EUR 30,000. Foreign or anonymous donations, as well as those from state-owned, religious and charitable organizations, are prohibited. Discounts given by media outlets to campaign participants for political advertisements are considered donations. Each electoral contestant may not spend more than EUR 1.80 (MKD 110) per registered voter in a given electoral district.

Electoral contestants have to submit two interim reports and a final campaign finance report. Itemized reporting on campaign finance expenditure is required. The supervision of campaign finance is primarily carried out by the State Audit Office.

#### 4.2. Complaints and appeals

Election related complaints may be filed by authorized representatives of candidates, by submitters of candidates' lists as well as by voters.

Each submitter of a list of candidates in the procedure for voting, tabulating and determining the results has the right to submit a complaint to the SEC. The complaint shall be submitted within 48 hours after the end of the voting, i.e. after the preliminary results are announced. The SEC shall decide on the complaint within 48 hours from having received it. The decision shall be delivered through the electronic mailbox for receiving correspondence and the decision shall be considered as delivered within five hours after it has been delivered in the electronic mailbox.

A lawsuit against the decision of the SEC may be submitted to the Administrative Court, within 24 hours from the receiving of the decision. The lawsuit to the Administrative Court shall be based on the allegations listed in the complaint on which the first instance decision was adopted.

Every voter whose individual voting right has been violated in the election procedure may submit a complaint to the SEC within 24 hours. Every voter whose election right was violated in the procedure for out-of-country individual voting right may submit complaint to the SEC within 24 hours, through express mail. Time of handing over the shipment shall be considered as a time of submission of the complaint. The SEC is obliged to make a decision upon the complaint within 4 hours from having received it. Lawsuit against the decision made by the SEC may be submitted to the Administrative Court within 24 hours from having received the decision. If the decision refers to the certain action of the Election Board and the voting process is still ongoing, the voter shall be enabled to exercise her voting rights.

As an exception, the relevant basic local court hears the complaints related to any prevention or disturbance of a campaign event. The MECs do not have jurisdiction over electoral complaints.

In addition, all hearings must be open to the public. Decisions on complaints should be published on the websites of the Administrative Court and the SEC.

The SEC established a legal department for handling complaints. In addition, the Electoral Code calls for the establishment of a system for case and complaint management that is yet to be operational.

#### 4.3. Role of media

The media is composed of a high number of outlets, while television remains the predominant source of news and information.<sup>6</sup>

---

<sup>6</sup> OSCE/ODIHR Election Observation Mission, Page: 7, The former Yugoslav Republic of Macedonia, Early Parliamentary Elections, 5 June 2016 Interim Report (31 March – 19 April 2016)

The legal framework for the media is formed by the Constitution, Law on Media and Law on Audio and Audiovisual Media Service, which requires equal treatment of political parties. In addition, the amended Electoral Code obliges broadcast media to cover elections in a fair, balanced and unbiased manner, providing contestants with equitable access. Strict rules governing news coverage and reporting on regular activities of state and municipal institutions during the campaign are also introduced.

The Agency for Audio and Audiovisual Media Services (AVMS), the broadcast media regulatory body, is required to conduct media monitoring of broadcast and Internet media outlets during the electoral period. Due to the lack of a clear definition of the Internet portals in the Electoral Code, the AVMS does not intend to monitor such media. While during the pre-campaign period the AVMS only monitors national broadcasters and checks the regional and local media outlets only in case of complaints, it monitors all broadcast media once the campaign starts.

The Council of Media Ethics (CME), operating since early 2015, is a self-regulatory body that reviews complaints about media content. On 12 February, most private media outlets signed CME's "Charter on Ethical Reporting during Elections", pledging to report in a balanced, truthful, impartial and objective manner. Earlier in January, the public broadcaster Macedonian Radio and Television (MRT), has also adopted "Ethical and Professional Principles of MRT for Media Coverage of the Election Process", establishing the general guidelines for the journalists to cover the elections.

The sessions of the State Election Commission are public. The SEC keeps minutes of its sessions and publishes the approved minutes on its website within 48 hours from the date of their adoption. In addition to that, prior to the sessions, electronic invitations are sent to the media representatives, international community representatives, and civil society representatives to attend the sessions if the agenda is in their interest.



# REPUBLIC OF MOLDOVA



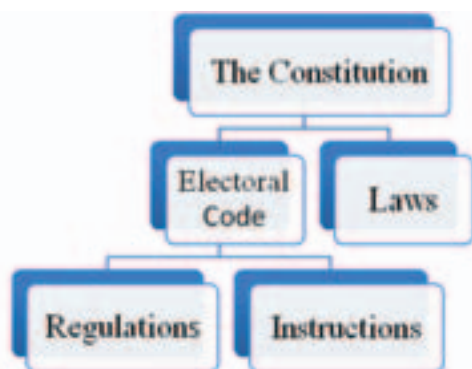
*Corneliu Pasat*

On August 27, 1991, 25 years ago Republic of Moldova has declared its independence. According to the Constitution from 1994. Republic of Moldova is a sovereign, independent, singular and indivisible state. Moldova is a Parliamentary Republic with executive power exercised by the government, headed by the prime minister, and legislative power vested in the National Assembly (Parliament). According to the law, the Parliament is unicameral and consists from 101 Deputies.

After declaring its independence in 1991, in accordance to the principle of pluralism, in the Republic of Moldova were organized 16 national elections. Eight of them were Parliamentary Elections (February 27. 1994, March 22. 1998, February 25. 2001, March 6. 2005, April 5. 2009, July 29. 2009, November 28. 2010 and November 30. 2014), six local elections (April 16. 1995, May 23. 1999, May 25. 2003, June 3. 2007, June 5. 2011 and June 14. 2015) and two of them were Presidential Elections (December 8. 1991 and November 17. 1996). Among the Parliamentary Elections organized in Moldova, four of them were snap elections (in 1994, 2001, 2009 and 2010).

## 1. Election laws

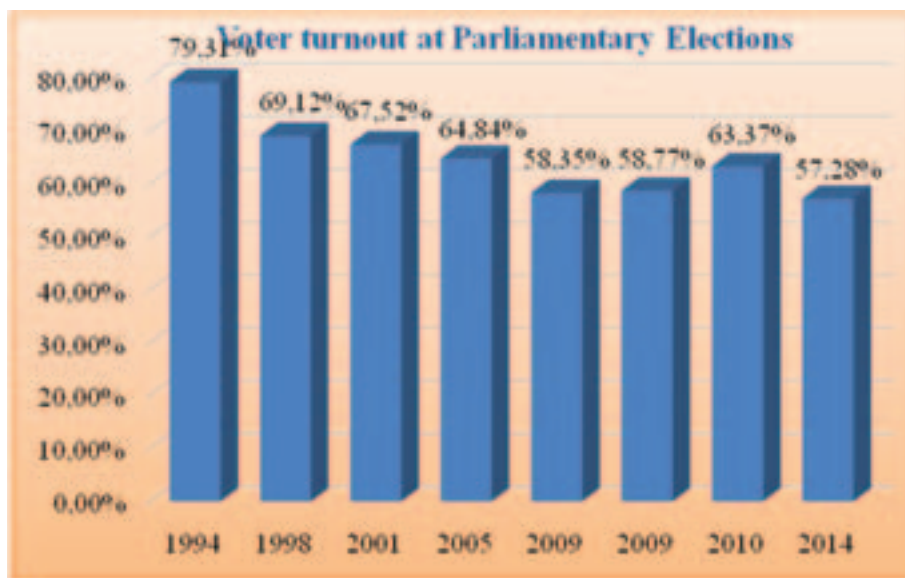
Elections in the Republic of Moldova are regulated by the Constitution, the Electoral Code, the Law on Political Parties, as well as the Regulations, Instructions and Decisions of the Central Electoral Commission and also the relevant sections of some related Laws like the Criminal and Administrative Codes.



### *1.1 Parliamentary Elections*

In the Republic of Moldova, the Parliamentary Elections are based on a proportional representation system which operates with a closed list. The whole country represents one electoral district and people can vote for one list of candidates. Electoral period starts after the decision of the Parliament on the day of the elections, but not less than 60 days prior to E-Day. The election of members of Parliament shall be held within three months of the expiration of Parliament's mandate, or as of the dissolution of the Parliament.

For the organization of elections, the Central Electoral Commission (CEC) establishes 37 electoral districts, including the city of Bender and one for the left bank of Dniester River, at least 55 days before elections. These correspond to the borders of the second level territorial-administrative units of the country. District Electoral Councils establish the polling stations, based on the recommendation of mayors of



towns (municipalities), districts and villages (communes), no later than 35 days before elections, for a minimum of 30 and a maximum of 3000 voters. The decision regarding the opening the polling stations abroad is taken by the Government. These polling stations are under the jurisdiction of the DEC of Chisinau Municipality (which correspond to the capital of the R. Moldova).

The number of polling stations can change from elections to elections. For the Parliamentary Elections 2014 there were established 2073 polling stations, including 95 abroad (38 polling stations within the premises of diplomatic and consular missions and 57 extraterritorial).

For the Parliamentary Elections from 2014, the State Register of Voters (SRV) included 3.226.446 persons. The voter turnout in the Republic of Moldova has diminished since 1994, but still remains pretty high in comparison to other European countries. Elections shall be declared invalid if less than 1/3 of the voters included in the voter lists have participated.

#### *1.1.1 Electoral candidates*

Political parties can be founded by at least 4,000 citizens, who must reside in at least half of the administrative-territorial units of the second level from R. Moldova, but not less than 120 members in each administrative-territorial unit. Political organizations are registered by the Ministry of Justice (43 political parties are registered at the moment).

Immediately after the beginning of the electoral period, CEC publishes a list of political parties and other socio-political organizations (unions, political movements) that according to the statutes are entitled to run in elections and were registered by the Ministry of Justice before the establishment of E-Day.

To register candidates list for an election, the political party has to submit the necessary documents to the CEC, after the Commission makes public the place and time when those documents shall be received, but no later than 30 days before Election Day. Candidates for members of Parliament must be citizens of the Republic of Moldova, eligible to vote, who have reached the age of 18 years before or on Election

Day, and also have permanent residence in the country. Citizens declared incapable by a final decision of a court of law, active duty military personnel, individuals who are sentenced to prison (deprivation of liberty) by a final court decision and who serve their sentence in a penitentiary institutions, individuals who are under court jurisdiction or have active criminal records for deliberately committing crimes and persons deprived of the right to hold decision-taking positions by a final court decision cannot stand as candidates.

Besides political parties, CEC can register independent candidates (need to submit between 2,000 and 2,500 signatures of supporters eligible to vote) and electoral blocs, formed from 2 or more political organizations.

After the registration is ended, the CEC prepares the ballot paper (one for the whole country). Candidates are listed on the ballot in the order determined by the results of the daily drawn organized by the CEC. It includes the name of the political party or electoral block and the name of the independent candidate. The competitors can also have on the ballot their electoral sign/symbol.

### *1.1.2 Voting procedures and determination of elections results*

The MPs are elected in one round. Voting is performed during one day between 7.00 and 21.00 o'clock (local time of the country where the polling station is located).

According to the general rule, every voter votes in person at the specially equipped polling station, corresponding to her residence.

In order to avoid multiple voting, the voter is verified both by the operator (on-line, in the State Voters' Register) and by the PEB member, in the printed Voters' List. In order to vote, voter applies the stamp "Voted" within the circle corresponding to one candidate.

Citizens, who have a canceled or expired domicile or residence registration in R. Moldova, can vote at the polling station according to their last place of domicile or residence indicated in the ID. Voters, who do not have domicile or residence registration in their IDs, can vote at any polling station in Moldova, filling out a declaration on refraining from multiple voting.

The voter, who due to health reasons or other well-grounded reasons cannot be present at the polling station may submit a written request to the PEB, and based on that to vote at her place of stay.

Voters from abroad can vote in any of the polling stations opened outside the country, without a compulsory preliminary registration.

After the counting of the votes the electoral materials are packed and transmitted by the Precinct Electoral Bureaus (PEB) to the competent District Election Commission (DEC). The DEC tabulates the results on the district level, packs the electoral materials and transmits them to the CEC. After the CEC receives and verifies the electoral materials from all DEC's, will adopt a decision on the final elections results, which will be presented to the Constitutional Court for the validation of the Elections results.

### *1.1.3 Electoral threshold and transformation of votes into mandates*

In May 2013, the minimum thresholds for obtaining seats in Parliament were raised as following: for political parties 6 percent, for an electoral bloc of two political parties 9 percent, and for an electoral bloc of 3 or more political parties 11 percent. Independent candidates have to obtain at least 2 percent of votes, in order to win a parliamentary seat.

According to the election results, the Central Electoral Commission assigns electoral candidates, who have obtained the required number of valid votes, seats in the Parliament of the Republic of Moldova. Candidates who were included in the list but were not elected shall be declared alternates. According to the principle of proportional representation, the seats are distributed among the lists and candidates in proportion to the number of valid votes obtained. Following the amendment of Art. 87 of the Electoral Code, starting with the parliamentary elections of November 28, 2010, for the distribution of deputy mandates for the first time there was applied the method of the coefficient (Q) called Hare coefficient.

#### *1.1.4 Mandate duration of the MPs*

The Deputies are elected for a 4 years term. Following a vacancy in the seat of a Member of Parliament, the CEC has to decide on the mandate of next candidate alternate member of the respective political party, the decision also has to be validated by the Constitutional Court.

### **1.2 Presidential Elections**

Any citizen of the Republic of Moldova who has the right to vote, is over 40 years of age, has been living and has the permanent residence on the territory of the Republic of Moldova for no less than 10 years and also speaks the official language of the country may run for the office of President of the Republic of Moldova).<sup>1</sup>

From 1991 to 1996, the President was elected by the direct vote of the citizens. After the amendment to the Constitution in 2000, the head of the state was elected by the Parliament, based on secret suffrage. The candidate obtaining the vote of three fifths of the MPs shall be proclaimed as the new President.

The term of the President of the Republic of Moldova is four years. No person may discharge the duties of the President of the Republic of Moldova unless for two consecutive mandates at the most.<sup>2</sup> (*Article 80 of the Constitution*).

According to the decision of the Constitutional Court from 4<sup>th</sup> of March 2016, the constitutional amendment from 2000 regarding the election of the Moldovan President was declared unconstitutional based on formal and substantive grounds. Therefore, the Court decided to reinvigorate the provisions regarding the election of the President by direct vote and secret suffrage in the way that existed before the amendments were made. During the following period, the Parliament will have to amend the Electoral Code and to decide the day of Presidential Elections, as the actual mandate expires on the 23<sup>rd</sup> of March 2016.

## **2. Stability of election laws**

With the proclamation of “perestroika” there began to crystallize early social-political movements, advocating for building the rule of law. As a result, between 1989 and 1990 the amendments to the Constitution of the Moldavian Soviet Socialist Republic put the foundation to the creation of political and party pluralism. On 17 of September 1991 was adopted the Law on political parties and other social-political organizations, in accordance with international law. Thus was eliminated the single-party system, establishing operating conditions of parties and other socio-political organizations.

---

<sup>1</sup> Article 78 (2) of the Constitution

<sup>2</sup> Article 80 of the Constitution

The elections to the Legislative Forum from 1990 have been conducted according to the majoritarian electoral system, established by the Law in the same year. In Moldova there were created 380 single-member constituencies. Any civic movement with no fewer than 100 members and socio-political organizations had the right to nominate candidates. In order to be elected, a candidate had to receive around 7000 votes from 5-7 localities.

Following the parliamentary crisis, the national legislature elected for five years was dissolved early in the autumn of 1993, but they succeeded to adopt a new law on Parliamentary Elections – that had marked the beginning of the electoral reform in the Republic of Moldova. The purpose of the reform was to substitute majoritarian electoral system with limited proportional representation system. It was established the organization of elections in multi-member constituencies, using political party lists and allowing the registration of independent candidates. The number of seats in Parliament were reduced from 380 to 104 (later the Electoral Code from 1997, reduced this number to 101 seats).

Before the early parliamentary elections of 27 February 1994 it was not possible to establish multi-member constituencies, because till that time it was not implemented the required administrative-territorial reform. Another reason was the Transnistrian conflict that made difficult the creation of polling stations on the respective territory. Due to these conditions, the Parliament was forced to opt for the establishment of a single national constituency, finally accepting the integral proportional system (one country – one constituency). The solution for the safeguard of the electoral rights of the citizens residing on the Transnistrian territory, was to give them the opportunity to vote in the special polling stations opened on the right bank of Dniester River (being under the administration of the Moldovan authorities).

The new Constitution of the Republic of Moldova of 29 July 1994 (Basic Law) provided important role for political parties and other socio-political organizations by expressing the will of citizens and by their participation in the election of people's deputies.

According to the Law on Elections of the President of R. Moldova (adopted in 1991, amended in 1996), the President was elected directly by citizens. In 2000, the Parliament amended the Constitution and excluded from the Electoral Code the provision regarding the presidential elections – the prerogative of electing the President was given to the Parliament.

Besides the above mentioned acts, until 1997, the legal framework for ensuring citizens' right to vote has included some other normative acts: Law on the referendum (adopted in 1992) and Law on local elections (adopted in 1994).

On 21<sup>st</sup> of November 1997 the Electoral Code (Law no. 1381-XIII) was adopted, which marked the unification of all the procedures related to the organization and conduct of local, parliamentary, presidential elections and referenda, by a single law which replaced all applicable laws regarding this field. The Electoral Code governs, till present, the entire electoral process of the Republic of Moldova. Meanwhile, according to the organic law, it was established the permanent Electoral Management Body – the Central Electoral Commission. CEC was granted the power to make proposals for the amendment of the electoral law and to develop the specific electoral legal framework (by regulations and guidelines) designed to improve electoral procedures.

Performing an analysis on amendments supported by the Electoral Code, since the year 1999 and until recently, we can see that it has been amended by 49 separate laws. The most frequent amendments targeted:

- Art. 1 General notions – 51 amendments;
- Art. 47 Electoral campaign - 29 amendments;
- Art. 27 Setting districts and District Electoral Councils and Art. 29 Establishment of polling stations and Precinct Electoral Bureaus – with 28 and, respectively 26 amendments;
- Art. 13 Restrictions - 22 amendments;
- Art. 44 Candidates registration - 21 amendments;
- Art. 22 General attributions of the Central Electoral Commission – 25 amendments;
- Art. 55 Ensuring security of the voting process - 18 amendments;
- Art. 53 Voting - 20 amendments;
- Art. 39 Voters' Lists – 19 amendments.

These parts of the Electoral Code were amended, including during the electoral years. The reasons for the changes were the need to improve the process of organizing and holding elections and circumstances originating from political interest/will. A positive step occurred in this field shortly after the parliamentary elections from 2005: the Electoral Code was included in the list of laws that need to be revised, in order to bring them in line with the recommendations of the Venice Commission of the Council of Europe and the OSCE.

*The conversion of votes into seats*, during the parliamentary elections held between 1994 and 2009, was based on proportional electoral system, using the d'Hondt method. The result usually favored the big parties. According to the amendments to the Electoral Code in June 2010, the method of the (Q) coefficient (also known as Hare coefficient) was introduced for the distribution of deputy mandates. This method is more favorable to smaller parties, enabling them to maximize their electoral advantage in the transformation of votes into seats. However, this change was not welcomed by the OSCE/ODIHR observation mission, emphasizing that the method used was changed four months before the elections, without any public consultations – a practice which contradicts the Code of Good Practice in Electoral Matters of the Venice Commission.

Another element of the proportional system is the *minimum representation threshold*. On the one hand, the application of the threshold is a solution to reduce the political fragmentation. On the other hand it affects the proportionality of the system, reaching to an obvious disparity, especially when using high threshold that can increase the surplus votes.

During the Parliamentary Elections from 1993, the threshold was applied only to political parties (4 %). Electoral Code from 1997 extended the threshold of 4% to the independent candidates as well. In 2000, following the amendment to the Electoral Code, the threshold of representation for political parties was raised from 4% to 6% and decreased from 4 to 3% for independent candidates. In July 2005, it was reduced from 6% to 4% for parties and from 9% and 12% to 8% for electoral blocks. Conversely, in April 2008 the threshold brought back the 6% for political parties and the electoral blocs were prohibited. The OSCE/ODIHR and Venice Commission, recommended maintaining a low threshold, called on the Moldovan authorities to review amendments to the Electoral Code. Subsequently, in June 2009, the minimum threshold for party representation was reduced to 5% and was allowed the creation of electoral blocks. In June 2010, the minimum representation percent was modified as follows: 4% for the political party, 7% - electoral block formed from 2 parties, 9% – electoral block from 3 or more parties and 2% for independent candidates. The last modification was done in 2013 – the threshold was increased by 2% in comparison



with the old provisions, for every type of competitors, except the independent candidates.

The electoral system is the most important element for the development of democratic values in society. Moldova's transition to a democratic society is characterized positively, including free and transparent elections, based on pluralism and improvement of the legal framework of this process, to which the Central Electoral Commission has made a substantial contribution.

It is to mention that, there are still identified provisions of the Electoral Code which carry a general nature and do not cover in detail election procedures, as well as those rules that contain contradictory provisions – so new amendments shall be made in the future in order to remove the existing deficiencies.

### **3. Electoral Management Bodies**

#### ***3.1. National Electoral Body***

In the Republic of Moldova, it is functioning the independent model of Electoral Management Bodies. There is only one national state authority responsible for the implementation of election policy and organization and conduct of elections – *Central Electoral Commission of the Republic of Moldova (CEC)*. CEC is a permanent independent body since 1997. From 1994 to 1997 elections were organized by central structures especially assigned for this purpose, their powers lasted only for the electoral period, so they had new membership every time general elections were called.

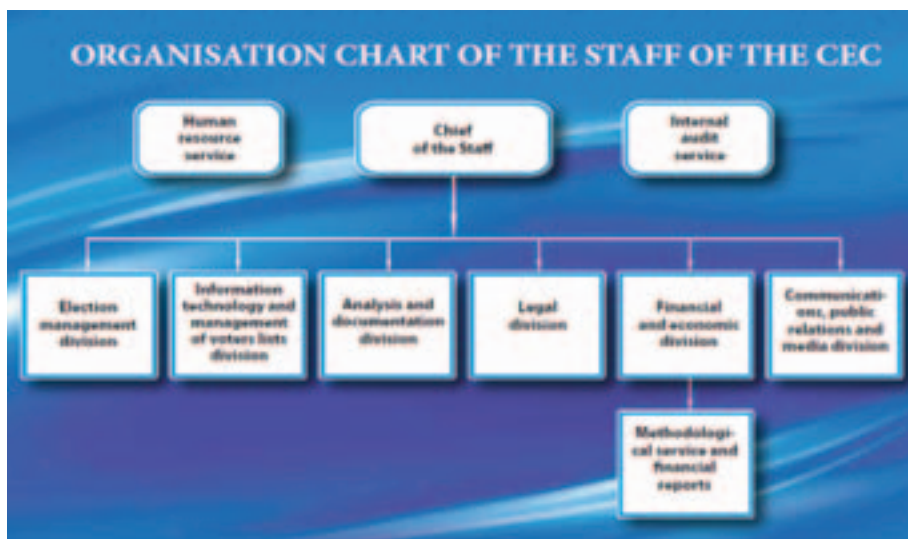
Central Electoral Commission consists of 9 members. According to the provision of the Electoral Code, that were applied for the first time on 11 of February 2011: 1 member is nominated by the President of the Republic of Moldova and the other 8 members by the Parliament, at the same time respecting the proportional representation of the majority and of the opposition in the Parliament. The composition of the Commission is confirmed by Parliament Decision, with the majority of the votes of elected deputies.

All the members of the Central Electoral Commission are nominated at once, for a five years mandate. Upon expiration of the mandate, the composition of the Commission may be changed. If the mandate of the CEC expires during the electoral period, it is automatically extended until this electoral period ends and until new members occupy their positions. However, the mandate cannot be extended for more than 90 days.

The Chairperson, Deputy Chair and Secretary of the Commission are elected from among the CEC members with a majority of votes of the total number of its members.

The Chairperson, Deputy Chair and Secretary of the CEC shall work on a full time basis, other members of the Commission are convened by the CEC Chair upon request. During the period between elections, members are gathering for the ordinary meeting in every two weeks and for special meetings upon necessity. For the duration of the electoral period, members involved on a non-permanent basis in the CEC composition are permanently working at the CEC. They are detached from their professional duties of permanent employment by the CEC decision.

In its activity CEC is assisted by a permanent staff, having the structure and the maximum number of employees as agreed by the Commission. The staff is comprised of civil servants and contracted personnel. The structure of the CEC Staff includes a chief of staff, 6 divisions and 2 autonomous services. According to the current situation, the Staff has 37 units.



The independence and impartiality of the Commission are guaranteed by several legal instruments. Since 2013, CEC budget became a separate line in the state budget (separate from the Government), approved directly by the Parliament. The building was transmitted by the Government in the management/property of the Commission. Also, according to the Electoral Code, during their term, the members of Central Electoral Commission:

- a) may not be members of any political party or other socio-political organization;
- b) may not engage in political activities;
- c) cannot make statements for or against candidates;
- d) cannot contribute in any way to the activities undertaken by candidates, except as provided in the Electoral Code.

The term of a Commission member shall terminate in case of: expiry of term; resignation; dismissal; incapacity to fulfill the office's responsibilities; member is deceased.

### ***3.2. Lower Electoral Bodies***

In the Republic of Moldova there are no permanent local electoral bodies, these are created only for the electoral period. At least 50 days before elections, CEC creates District Electoral Councils (DEC). They have from 7 to 11 members with a deliberative vote. The candidates are nominated by judges, local-level councils of second level and from political parties represented in the Parliament.

The Precinct Electoral Bureaus (PEB), manage elections at the polling stations level. They are set up by the DEC's at least 25 days before the Election Day, from 5 to 11 members with a deliberative vote. Candidates are nominated by the local councils and political parties represented in the Parliament.



For the last Parliamentary elections from 30.11.2014, there were created 35 DEC and 1955 PEB.

## **4. Safeguards of free and fair elections**

### ***4.1. Campaign activities***

The provisions related to campaign activities, are defined in the Electoral Code and the respective normative acts adopted by the CEC:

- Regulation on the placement of electoral advertisement and political promotion on advertising panels
- Regulation on the coverage of electoral campaign by Media from the Republic of Moldova

#### ***4.1.1. Types of campaign activities***

The electoral campaign for every competitor starts only after it has been registered by the CEC for the election in question.

Electoral competitors have the right to submit for free discussion the electoral programs (platforms), their political, professional and personal skills. All candidates shall be guaranteed with equal opportunities for technical and material support and funding of the electoral campaign.

Electoral competitors shall participate in the electoral campaign on an equal basis and shall have equal access to mass media, including radio and television, financed by the state budget. Candidates can:

- Organize meetings with voters (including social events, concerts etc.).
- Place video, audio and typed materials on TV, Radio, printed and electronic means (including Internet).
- Participate at political debates.
- Place information on the outdoor advertising means.
- Disseminate campaign materials (such as flyers, brochures etc.).

Local public administration authorities are obliged, within 3 days as of the registration of the candidate, to establish and guarantee the minimum of special places for electoral advertising, as well as to establish a minimum of locations to organise meetings with voters. The minimum surface for placing the outdoor advertisements, offered for free to one electoral competitor, on a public property panel, has to be not less than 1 m<sup>2</sup>.

A private agency may offer space for publishing outdoor advertisements to all competitors, under equal conditions and it shall not exceed 10% of total owned space per candidate.

The Moldovan legislation regulating media access during campaign periods, ensures that all electoral competitors receive the same amount of time, participate in the same programs (or are divided in groups on criteria announced by the CEC) and are informed on the time of the broadcast 7 days prior the event. Public broadcasters will assign to candidates 1 minute per day of free airtime, to place their electoral advertising. Paid electoral advertising is also possible, each candidate is granted airtime, which shall not exceed 2 minutes per day during the electoral campaign for each broadcast outlet. Airtime for paid electoral advertising is granted to all the candidates at the same broadcasting hours. The electoral competitors are also given free airtime for debates.

#### 4.1.2. Prohibitions related to the electoral campaigns

Electoral competitors may not use public means and goods (administrative resources) during electoral campaigns. Similarly, public authorities and institutions, as well as other related institutions may not grant candidates public goods or other benefits unless on a contract basis, providing equal terms to all candidates. It is prohibited direct or indirect funding or material support of any kind for the electoral campaign by: foreign countries/individuals; foreign/international or joint institutions; Moldovan citizens limited in electoral rights or with incomes from abroad; state organisations or juridical entities financed from public budget or being financed one year before the start of the electoral campaign; anonymous persons, charitable or religious organisations.

Posting electoral messages on private domain is allowed only with the owner's agreement. Electoral advertising on the outside part of the transport unit is performed after the prior coordination with the Ministry of Internal Affairs. Also, it is prohibited to place campaign posters: in public transport (state property); on monuments, buildings, objects and spaces that have a historical, cultural or architectural value; inside or at a distance of 100 meters from the electoral authorities; on fences, pillars and other structures as well as devices, equipment, regardless of form of ownership.

Offering or giving money, goods, services or benefits in order to determine the voter to exercise her electoral rights in a certain way is punishable by a fine, with the deprivation of the right to practice certain activities or liquidation of the legal entity. The amendments to the Criminal Code from 2013 brought a clarity to this topic by giving a description and a list of the goods that shall be considered bribe in this respect. The latest amendments to the Electoral Code from 2015, has expanded the bans on the electoral campaigns. Electoral competitors shall not involve in their campaign activities foreign countries/institutions/citizens or international organizations. Also, they can't use in the electoral campaign images representing state institutions or public authorities (both from inside and outside the country) or international organizations. It is prohibited the combination of colours and/or sounds that invoke national symbols of R. Moldova or of another state, using materials with historical personalities of Moldova or from abroad, symbols of foreign states or international organizations or the image of the foreign officials.

Dissemination of campaign information/materials on Election Day and the day preceding the elections is prohibited, except for the materials posed on internet and outdoor advertisement previously displayed.

#### ***4.2. Electoral complaints***

The state guarantees the achievement of electoral and political rights of participants in the electoral process, ensuring an effective remedy system against the attempts to restrain of guaranteed rights.

##### 4.2.1. Who can complaint?

The regulations regarding the subjects that can submit a complaint has not changed, guaranteeing the right to appeal to the following categories:

- citizens - submit appeals in person or through legal representative.
- electoral competitors - the appeal may be submitted by its representative in the respective electoral body or by a person empowered by the contestant by proxy.

#### 4.2.2. The object of the complaint

Since the adoption of Electoral Code and till present, the provisions of electoral legislation relating to the object of dispute had many amendments, which were aimed to widening it. Initially, voters or electoral competitors could only complaint against the actions and decisions of electoral authorities. Subsequently, the object of complaint was completed by introducing in addition of “action”, the notion of “inaction”.

Currently under the Art. 65 of the Electoral Code, complaints may be submitted against:

- a) actions/inactions electoral authorities.
- b) decisions of electoral authorities.
- c) actions/inactions of electoral candidates.

Also, can be litigated actions that refer to:

- election coverage by broadcasters being under Moldovan jurisdiction.
- written media related to the campaign.

#### 4.2.3. The deadline for submission and examination of complaints

In all the cases, the *submitting deadline* for complaints is 3 calendar days from the date when the action was committed/inaction was identified or decision was approved.

The complaint examination period is calculated from the day of submission, but not later than the E-Day:

- 3 calendar days – examinations of complaints concerning actions/inactions and decisions of DEC and of PEB.
- 5 calendar days - actions/inactions of electoral candidates and actions/inactions and decisions of CEC.
- 24 hours – complaints submitted in the courts on Elections Day. The complaints related to the results tabulation and mandate award are examined simultaneously with the confirmation of legality and validation of mandates.

#### 4.2.4. Delimitation of competence in the complaint review process

To avoid jurisdictional conflicts, by the amendments to the Electoral Code from June, 2010, there were defined more clear responsibilities of various authorities that examine complaints and appeals. The following competences were established:

- 1) Electoral authorities’ competence
  - the complaints regarding organization and conduct of elections shall be examined by the electoral authorities, respecting their hierarchy
  - actions/inactions and decisions of the electoral bodies can be litigated in the Court that has jurisdiction on the respective district. It must be preceded by the preliminary submission of the complaint to the electoral body that is superior to the electoral authority whose act is litigated

*Exception from the general rule:*

On E-Day, complaints against actions/inactions and decisions of the PEB, referring to the exercise of voting rights or the management of elections, the appeals can be submitted directly to the local court. Accordingly, litigating the DEC decisions on complaints regarding actions/inactions of electoral competitors, can be initiated directly at the respective local court.

- 2) The competence of other authorities:
  - a) Courts – the complaints regarding written mass media, refusing to broadcast or to publish election advertisement (paid or for free), complaints over the decisions of electoral authority and Audiovisual Coordinating Council.
  - b) Audiovisual Coordinating Council – the complaints on electoral campaigns coverage by broadcasters being under the jurisdiction of Republic of Moldova.
  - c) Other authorities – cases when is established that the examination of the actions described in the complaint is related to the competence of other institutions (Prosecution Authorities, Ministry of Internal Affairs, local public administration authorities etc.).

### ***4.3. Transparency and publicity of the electoral campaign***

According to Art. 25 of the Electoral Code, CEC ensures that electoral operations are carried out in a transparent manner that enables the mass-media and the public to monitor the Commissions activity. Only the data containing personal information is not public and is protected by the law.

In this regard, all meetings of the electoral authorities are opened to mass media and public. CEC meetings are also transmitted on-line on the CEC official web page. Information/education materials related to the electoral process are available in all formats (in State and Russian language) and are disseminated by using various instruments (TV/Radio, external advertising, mobile groups, web pages and social media, meetings/workshops etc.).

Voters have the possibility to consult their data from the Voters' List, inside the polling station or on the CEC web site. The information regarding the polling station, indicating the address where to vote, is available on the CEC web page and is disseminated by PEB Members to every voter. Also, CEC shall publish on the website the preliminary elections results.

An important aspect that requires special attention is the public character of political parties that obliges them to be even more transparent. The Parliament of the Republic of Moldova has adopted on 9 April 2015 the law on financing of political parties and electoral campaigns. CEC approved the Regulation on campaign financing which sets terms and conditions for financial support of election campaigns, and the procedure for presentation of financial reports on incomes and expenditures by candidates. The information from the reports is public and has to be published on the CEC official webpage, including the identity of donors, the donated amounts, and all relevant information from the independent audit reports.





*Helga Lieszkovszky<sup>1</sup>*

Montenegro became an independent country as a result of a referendum held on 21 May 2006. The *Constitution of the Republic of Montenegro* was adopted on 19 October 2007 by the *Constitutional Assembly*.

Montenegro is a sovereign country with a republican form of government. The sovereignty is vested in the citizens of Montenegro, who exercise this power directly or through their freely elected representatives.

The citizens of Montenegro are committed to live in a state where basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law.<sup>2</sup>

Suffrage also includes the right to elect and to be elected, to nominate and to be nominated, to make decisions concerning the nominated candidates and electoral lists, to put questions publicly to the candidates, to be informed truthfully, objectively, completely and in time about the programmes and activities of the submitters of electoral lists.<sup>3</sup>

The right to elect and to be elected is granted to all the Montenegrin citizens who have reached the age of 18 and have residence in Montenegro for at least two years.

Suffrage is free, general, equal, direct and secret.<sup>4</sup>



<sup>1</sup> ACEEEEO Expert.

<sup>2</sup> *The Constitution of the Republic of Montenegro* (19 October 2007).

<sup>3</sup> *Law on the Election of Councillors and Representatives of Montenegro* (21 March 2014) s 2.

<sup>4</sup> *The Constitution of the Republic of Montenegro* (19 October 2007) s 3.

## 1. Election laws

### *Election of the Representatives in the Parliament*

The legislative body of the Republic of Montenegro is the *Parliament (Skupstina)*, which consists of 81 members elected directly by a general, equal and secret suffrage in a *single nationwide constituency* under a *proportional representation system*. Out of all the total number of the representatives, five representatives are elected at the polling stations designated by the special decision of the Parliament (specified in the following). The mandate of the Parliament lasts for four years.

Every citizen of Montenegro, who has reached 18 years of age and has been a permanent resident of Montenegro for at least 2 years before the Election Day has the right to elect and to be elected a representative.

Representatives of the Parliament are elected on the basis of party *electoral lists*, coalition electoral lists and electoral lists of group of citizens. Mandates for the representatives are distributed in proportion to the number of votes received.

The political parties registered in the Republic of Montenegro, either separately or as a coalition, as well as groups of citizens have to right to nominate candidates for their electoral list on the basis of a prescribed number of electors' signatures (specified in the following).

The submitter of an electoral list may freely determine the order of candidates on the list.

An electoral list shall contain at least 2/3 candidates and not more than the total number of the elected representatives. Electoral lists submitted by groups of citizens or political parties representing a national minority or a minority national community may include at least 1/3 candidates and not more than the total number of the elected representatives.

One person may be nominated as a candidate for the election of representatives on only one electoral list.

Among the candidates on an electoral list there shall be at least 30% of candidates from both genders to be considered a justified candidate list. According to the sequential order of the candidates on a list there has to be at least one candidate from the less represented gender among each four candidates.

An electoral list for the election of representatives shall be considered confirmed if supported by 0,8 % of the total number of voters in the constituency. The total number of voters are determined by the data about the voters based on the last election<sup>5</sup> prior to the calling for the given election.

The list of candidates may be established without signatures of support if the political party or group of electors, which is the submitter of the list of candidates, still has a representative in the Parliament of Montenegro.

Political parties and groups of voters representing a national minority community are required to submit at least 1.000 supporting signatures. For those representing a minority constituting up to 2 per cent of the population<sup>6</sup>, the requirement is 300 signatures.

Electors signing the list for the election of representatives must be permanent residents in the Republic of Montenegro. One elector may support one list for the election of representatives.

---

<sup>5</sup> The determination of the number of electors can be based on the last parliamentary or presidential election prior to the calling for the election.

<sup>6</sup> According to the latest census in Montenegro.



The allocation of the seats is carried out by *State Election Commission (SEC)*. The SEC establishes the total number of votes received by each electoral list and the number of seats won by each list in proportion to the number of votes it has won.

An electoral list shall take part in the apportioning of the seats if it won more than 3% of the votes of the total number of electors in the constituency.

The number of mandates allocated to an electoral list is determined by dividing the total number of votes each electoral list in the constituency has received by 1, 2, 3 etc. till the total number of representatives elected in the constituency. The quotients are sorted by size. Mandates are distributed in the descending order of the quotients by allocating a mandate to the list to which the given quotient belongs. (*d'Hondt method*).

If two or more electoral lists get the same quotient on the basis of which these would be apportioned a seat, it shall be decided by drawing lots which electoral list shall be apportioned the seat in question.<sup>7</sup>

The allocation of the seats for the lists of candidates submitted by nationalities are regulated by different rules. In the event that none of them surpasses the 3-percent threshold but win separately at least 0.7% of the valid votes, they are entitled to win up to three seats as a single (collective) electoral list based on the total number of valid votes that they collectively win. This special threshold applies to electoral lists representing the same minority groups or communities that account for up to 15% of the total population in the electoral constituency based on the latest census.

In the case of the Croatian minority, in cases where none of the minority lists wins 3% of the valid votes, or separately wins at least 0.7% of the valid votes, the most successful list that obtains no less than 0.35% of valid votes shall be entitled to one seat.<sup>8</sup>

<sup>7</sup> Law on the Election of Councillors and Representatives of Montenegro (21 March 2014) s 1-3, 6 and 9.

<sup>8</sup> See: Database of the Inter-Parliamentary Union [http://www.ipu.org/parline-e/reports/2385\\_B.htm](http://www.ipu.org/parline-e/reports/2385_B.htm).

The mandates a candidate list has won are allocated in the order of the candidates on the list.<sup>9</sup>

### **Election of the president of the Republic of Montenegro**

The *President of Montenegro* is elected directly for a five-year term through general and secret elections. The person who has reached 18 years of age, had a place of permanent residence for at least ten years in the fifteen years before holding the elections has the right to be elected for President. The same person can only be elected as President of Montenegro for two terms.

The election of the President is called by the Speaker of the Parliament of Montenegro not later than 120 days before the expiry of the term of office of the incumbent President. The elections shall be held not sooner than 60 and not later than 90 days from the date of calling of the elections.

The candidate for the president can be *nominated* by a political party or a group of citizens with the support of at least 1,5% of the total electorate based on the number of voters of the elections that preceded the Decision on calling of the elections. A single political party or a group of citizens has the right to nominate only one candidate. Two or more political parties can nominate a joint candidate. A voter may support only one candidate for the President with her signature.

A voter may vote for one candidate only.

The candidate who obtains more than half of the valid votes of cast shall be considered as the elected President.

In case none of the candidates obtains more than half of the votes, the second round may be organized within the following 14 days. Candidates in the second round are the two candidates who have obtained the highest number of votes in the first round. In the second round the candidate who receives the majority of the votes shall be elected President.

In the case that any of the candidates who are entitled to enter the second round withdraws, the right to enter the second round is acquired by the next candidate with the highest number of votes obtained in the first round of the elections.

In the case that only one candidate enters the second round due to the withdrawal of other candidates, such candidate shall be deemed elected.

In case that in the second round the two candidates receive an equal number of votes, the voting shall be repeated within the following seven days.<sup>10</sup>

## **2. The stability of election laws**

### ***Parliamentary elections***

Since the declaration of independence in May 2006, the election law of Montenegro, the Law on Election of Councillors and Representatives – adopted in 1998<sup>11</sup> - has been amended three times, in July 2006, in 2011 and in 2014.

The parliamentary elections on 10<sup>th</sup> September 2006 were the first elections held after the referendum on the independence of Montenegro on 21 May, 2006.

Based on this 81 Members of Parliament were elected for a four-year term under a proportional representation system.

<sup>9</sup> OSCE/ODIHR Needs Assessment Mission Report 16-20 May, *Montenegro Parliamentary Elections October 2016* (8 June 2016) p 5.

<sup>10</sup> Law on the Election of the President (2007) s 1-3.

<sup>11</sup> OSCE/ODIHR Election Observation Mission Final Report, *Montenegro Early Parliamentary Elections 29 March 2009* (10 June 2009) p 5.

There existed two separate ways to allocate mandates even though the list of candidates were identical in every polling station and every voter had one vote. Among the 81 representatives elected in a single nationwide constituency, 76 took part in the allocation of seats based on the votes in the entire territory of Montenegro taking into consideration an election threshold of 3 percent of all votes<sup>12</sup>. Another 5 seats were distributed based on votes of 70 specified polling stations located in the areas where the proportion of the Albanian minority was high. These special polling stations were determined by the Parliament before each election. The election threshold was three per cent of all votes cast in the respective 70 polling stations. However, a list that did not reach the threshold could take part in the allocation of the five special mandates based on the votes casted in its favour nationwide. In the case a list already won a mandate from the 76 original seats, it could only use the vote obtained in the 70 specified polling stations in this respect.

The *d'Hondt* formula was used for both ways of allocation of seats.

According to the *Law on the Election of Councillors and Representatives*, half of the seats won by a party or a coalition could be distributed free by the party or the coalition to any candidate on the list and only the other half of the mandates had to be allocated according to the order of the candidates' names on the list.

Before the elections on 10 September 2006, the *Law on Election of Councillors and Representatives* was amended on 28 July, after the elections were called. One amendment prohibited the offensive, slanderous or indecent campaign speech. Another amendment increased the blackout period for the publication of opinion poll results from seven to ten days prior to the polling day and imposed a ban on the publication of preliminary results or estimates for three hours after the polls close. However the latter amendment was declared unconstitutional by the Constitutional Court.<sup>13</sup>

The *Law on the Election of Councillors and Representatives* was also amended in 2011. Several changes were made in the election law in order to harmonize it with the Constitution. To make the regulations of the election law meet the constitutional provision for '*authentic representation*' of minorities, important reforms were adopted. The regulation concerning the "reserved minority mandates" was removed and on the other hand, a reduced threshold was introduced for all minority parties.

Based on the new regulation in case if no minority list receives 3% of the valid votes, but some lists gain 0,7% or more, these lists are entitled to participate in the allocation of 3 mandates in the Parliament. The Croatian minority is entitled to 1 seat in the Parliament if the minority list gains 0,35% or more of the valid votes.

The amendment of 2011 introduced a *gender quota* in candidate lists. For either gender a 30 per cent quota was adopted on candidate lists.

The 2011 amendments also introduced changes in the previous regulation on the distribution of allocated mandates within the candidates in a list. As already was mentioned, previously, half of the seats had to be distributed in the order of the candidates on the list, and the other half of the seats could be distributed freely, based on the party's decision. However, after the amendments, all of the seats are distributed according to the order of the candidates on the respective list.<sup>14</sup>

The 2014 amendment of the *Law on the Election of Councillors and Members of Parliament* introduced a *new system of voter registration* and identification as well as new provisions on candidate registration and the allocation of mandates to minority lists.

<sup>12</sup> Lists had to receive three per cent of the votes cast in all the polling stations, not the valid votes.

<sup>13</sup> OSCE/ODIHR Election Observation Mission Final Report, *Republic of Montenegro Parliamentary Elections 10 September 2006 (28 December 2006)* p 2 and 4-5.

<sup>14</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Montenegro Early Parliamentary Elections 14 October 2012 (7 December 2012)* p 1 and 5.

The changes in 2014 also lowered the necessary number of supporting signatures and in addition to the 2011 amendments, included additional regulations in order to balance the number of participants of either gender. The newly amended law also required that among every four candidate on the list, there should be at least one candidate from a less represented gender.

The 2014 amendment introduced a more detailed regulation on the financing of the campaigns and with the aim to supervise these regulations, established the *Agency for Prevention of Corruption*.

The amendment also introduced further regulations on the allocations of mandates for minority lists. A national minority or a national minority community that shares at least 15% of the population of Montenegro or 1,5% in each municipality has the right to participate in the allocation of seats separately – not taking into account the electoral threshold – based on its obtained valid votes.

As mentioned earlier all mandates won by a candidate list are distributed according to the order of the candidates on the list. This regulations also applies for replacing vacant seats and the less represented gender on the list.<sup>15</sup>

### ***Presidential elections***

After the declaration of independence in Montenegro, two presidential elections were held, the first one on 6 April 2008 and the second one on 7 April 2013.

The *Law on the Election of the President* was adopted in December 2007. The regulations contain specific rules applying to the election of the President, meanwhile all the other aspects are regulated by the *Law on the Election of Councillors and Representatives*.

The Law on the Election of the President has not been amended since its adoption in 2007.<sup>16 17</sup>

## **3. Electoral management bodies**

In Montenegro, election administration is carried out in three levels, by the *State Election Commission*<sup>18</sup>, 21 *Municipal Election Commissions*, and 1167 *Polling Board*.

### ***State Election Commission***

The *State Election Commission* started to function based on the 2011 amendment of the *Law on the Election of Councillors and Representatives* and gained the status of a legal person in 2014.

The *State Election Commission* is a permanent body elected for a four year term by the Parliament. It is composed of a chairperson, a secretary, ten members in the standing composition and one representative authorized by each submitter of candidate lists.

---

<sup>15</sup> OSCE/ODIHR Needs Assessment Mission Report 16-20 May, *Montenegro Parliamentary Elections October 2016* (8 June 2016) p 2 and 5.

<sup>16</sup> OSCE/ODIHR Election Observation Mission Final Report, *Republic of Montenegro Presidential Election 6 April 2008* (1 September 2008) p 1.

<sup>17</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Montenegro Presidential Election 7 April 2013* (25 June 2013) p 3-4.

<sup>18</sup> Before the 2011 amendment of the *Law on the Election of Councillors and Representatives* the body was called *Republican Election Commission*.





The Chairperson is appointed by the Parliament with the majority of the votes the. The Secretary is appointed from the members of the *State Election Commission* representing the opposition.

Four members of the standing composition are appointed based on the proposal of the majority of the Parliament and another four member are appointed based on the proposal of the opposition.

One person of the standing composition of the *State Election Commission* has to be appointed as representative of a political party or a submitter of the list of candidates representing a national minority or a national minority community, which won the highest number of votes at previous elections. The deputy should belong to some other national minority or national minority community.

Additionally, one member of the standing position is a representative of the civil society.

### ***The municipal election commissions***

The *Municipal Election Commission* is also a permanent body elected for a four year term. *Municipal Elections Commissions* are composed of a chairperson, four standing members appointed by municipal councils and one authorized member appointed by each submitter of candidate lists.

The Chairperson of the *Municipal Elections Commission* is appointed from the nominees of the political party that obtained the highest number of seats in the relevant previous local council elections. The Secretary is appointed from the members representing the opposition. Two members are appointed based on the proposal of the opposition, with priority given to those who won the highest number of seats in the previous local council elections.

### ***Polling Boards***

*Polling Boards* are appointed for each election of councillors or representatives, and are established 10 days before the elections.

Polling Boards are composed of a chairperson and four members based on the nominations of political parties and coalitions represented in the respective local council.<sup>19</sup>

### ***The Service***

Election administration is operated by the *Service of the State Election Commission* (Service). The Service is responsible for professional and administrative operations regarding the elections. The Service is managed by the Secretary of the *State Election Commission*.<sup>20</sup>

## **4. Safeguards of free and fair elections**

### ***Campaign activities***

In Montenegro, the election law regulates the coverage of election campaigns and obliges public broadcasters to provide all contestants free and equal access. Each electoral contestant has the right to have a free-of-charge and equal coverage of promotional videos and a three-minute coverage of campaign events.

The public broadcaster, the *Radio and Television Montenegro* can also broadcast paid political advertisements, but the prices have to be the same for all contestants.<sup>21</sup>

Contestants are entitled to equally hold conferences and public gatherings, to present and promote the candidate lists, the candidates on the lists and their election programmes during the election campaign. While organizing these conferences and gatherings, the submitters of the candidate lists and the candidates have to take the requirement of public order and peace into consideration.

The electoral contestants also have the right to publish posters, leaflets, photographs, placards and to distribute them in public without prior permission. However, these election materials can only be distributed on the locations designated by the competent municipal body.

The law also regulates the use of audio equipment related to election campaign. These equipments should be used at a time and in a way that residents are not disturbed, as well as the requirement of public order and peace has to be taken into consideration.

---

<sup>19</sup> OSCE/ODIHR Needs Assessment Mission Report 16-20 May, *Montenegro Parliamentary Elections October 2016* (8 June 2016) p 5-6.

<sup>20</sup> *Law on the Election of Councillors and Representatives of Montenegro* (21 March 2014) s 5.

<sup>21</sup> OSCE/ODIHR Needs Assessment Mission Report 16-20 May, *Montenegro Parliamentary Elections October 2016* (8 June 2016) p 9.

Having the purpose to oversee the implementation of the regulations related to the activity of the media, the *Law on Election of Councillors and Representatives* established a monitoring board (*Board*). The *Board* has 10 members, among which 5 members should be appointed from members of Parliament from the majority and 5 members representing the opposition.<sup>22</sup>

### ***Legal remedies***

The election administration bodies are responsible for notifying voters of their rights during the election and the manner of protection of these rights.

Every voter, candidate and submitter has the right to submit a complaint to the election commission in charge in case of infringement of the electoral rights during the election. These complaints shall be lodged no longer than 72 hours after the decision in question was made or a relevant act was performed.

The competent election commission shall issue its decision within 24 hours following the receipt of the complaint and deliver it to the submitter. If the complaint is justified, the decision or act in question shall be annulled. If a decision is not issued within 24 hours, the complaint shall be deemed justified.

Against the decision by which the complaint has been rejected or refused, a complaint may be also lodged to the *State Election Commission*. Moreover against the decision of the *State Election Commission* by which the complaint has been rejected or refused a complaint can be lodged to the *Constitutional Court*.<sup>23</sup>

### ***Transparency of the elections***

To promote the transparency of the campaign funding, *Law on Financing of Political Entities and Election Campaigns* was enacted in 2015. The law sets detailed rules for contributions, donations, expenditures, as well as restrictions on the use of state funds and resources during the election campaign and establishes the *Agency for Prevention of Corruption* as an independent body, to supervise the implementation of the regulations on campaign financing.

During the election campaign, every electoral contestant has to submit reports to the *Agency* every 15 days. Electoral contestants are also obliged to report the campaign financing to the *Agency* no later than 30 days after the Election Day. Financial sanctions and misdemeanour procedures may apply to those who fail to submit a report. To enforce the transparency and publicity of the elections, these reports are published on the *Agency's* website no later than 7 days after their submission.

The implementation of the law and the misdemeanours concerning campaign finance are overseen by the *State Election Commission*.<sup>24</sup>

It is prohibited for public radio-broadcasting services to publish the result of the polls, researches and analyses concerning the preferences of the citizens ten days prior to the Election Day.

During the voting on the Election Day, it is also prohibited to publish estimations of the election results for the public radio-broadcasting services.<sup>25</sup>

---

<sup>22</sup> *Law on the Election of Councillors and Representatives of Montenegro* (21 March 2014) s 7.

<sup>23</sup> *Law on the Election of Councillors and Representatives of Montenegro* (21 March 2014) s 11.

<sup>24</sup> OSCE/ODIHR Needs Assessment Mission Report, *Montenegro Parliamentary Elections October 2016* (8 June 2016) p 8.

<sup>25</sup> *Law on the Election of Councillors and Representatives of Montenegro* (21 March 2014).



# POLAND

## *Legal Department, National Electoral Office, Republic of Poland*

### **Introduction**

Democratic transformations of the political system in Poland after 1989 opened the gate for the establishment of electoral rules in accordance with the characteristics of the democratic rule of law, safeguarding the real freedom of elections and fairness of their pursuance.

The most important steps in this respect covered, particularly:

- the establishment of institutional safeguards for the functioning of the citizens' organizations based on the pluralism of political parties,
- securing a free election campaign within the boundaries of the law, and based on the competition of the programmes',
- creation of mechanisms allowing legal entities to support candidates according to the principle of equality, at the same time ensuring voters the most important information on candidates (their age, education, political option, their possible participation in the communist security services between 1944 and 1990),
- introduction of an appeal against particular voting acts and of the social control of the voting procedures,
- assigning the ascertainment of validity of elections (including the right to their partial or complete annulment) to the judiciary – the Supreme Court in general, and district court in local elections,
- assigning the organization of the elections to institutions which are independent from other state organs and – according to their position within the territorial structure – are working on a permanent basis (National Electoral Commission, electoral commissioners),
- appointment of qualified electoral civil servants in the elections administration, performing executive (e.g. the non-political National Electoral Office) and supporting services (election officials in communities, counties and voievodeships),
- providing sufficient financial resources for the organization of elections as well as for performing the activities of the electoral institutions
- enforcing the transparency principle regarding the financial matters of the political contestants, including the regulation of political parties' and election campaigns' financing, reporting incomes and expenditures related to the elections and the verification of these by electoral authorities.

### ***Principles of Electoral Law***

Voters that by the date of voting are at least 18 years old, elect in popular vote:

- Parliament (Sejm and Senate) for a four-year term,
- President of the Republic of Poland for a five-year term,

- Deputies to the European Parliament for a five-year term,
- Local government: legislating bodies – councils of communities, counties and voievodships, and executive bodies – village-mayors, mayors of towns and presidents of cities for a four-year term.

### *Suffrage*

One can vote only personally and only once, using official voting cards in the polling stations opened at the territory of Poland, including prisons and hospitals. In the parliamentary and presidential elections and elections to the European Parliament polling stations are organized also abroad and on Polish ships.

## **1. Election systems**

### *Election of the Representatives of Parliament*

Parliament consists of two chambers: Sejm (460 MPs) and Senat (100 Senators). Only Polish citizens may vote and stand as a candidates in parliamentary elections.

#### **ELECTIONS TO SEJM**

Elections:

- are universal, equal, the voting is direct and secret;
- the electoral system is proportional
- a right to nominate candidates belongs to political parties (or coalitions of parties) and groups of voters
- a candidate must be a Polish citizen and by the date of elections must be at least 21 years old
- candidates may not be sentenced to imprisonment for intentional crime prosecuted by public indictment.
- elections are held in 41 constituencies, candidates run for from 7 to 20 mandates in each constituency;
- the allocation of mandates in the constituencies is according to the d'Hondt method; a prerequisite for that is to achieve at least 5% of valid votes within the entire country (8% for coalitions of parties). Election committees created by voters associated as registered organizations of national minorities are exempt from the requirement of gaining the electoral threshold, if within the specified period of time they notify the National Electoral Commission on their will to exercise this right.

#### **ELECTIONS TO SENATE**

Elections:

- are universal, direct and the voting is secret;
- a right to nominate candidates belongs to political parties (coalitions of parties) and groups of voters; a candidate must be a Polish citizen and by the date of elections must be at least 30 years old
- candidates may not be sentenced to imprisonment for intentional crime prosecuted by public indictment.
- elections are held in 100 single-member constituencies,

- mandates are acquired by a candidate who received the largest amount of valid votes in the respective electoral constituency.

### ***Election of the President of the Republic of Poland***

Elections:

- are popular, direct and the voting is secret;
- a right to nominate candidates belongs exclusively to Polish citizens (voters) in groups of at least 100000
- a candidate must be a Polish citizen who by the date of voting is at least 35 years old; and enjoys full electoral rights (ref. sec. A)
- the candidate, who achieves more than 50% of valid votes, wins. If none of the candidates achieves the required amount of votes, then the second turn of elections is held 14 days after the first one – voters choose between two candidates who achieved successively the largest amount of votes in the first turn; in the second turn wins the candidate who achieves more votes.

## **2. Development of electoral law**

Work on the introduction of the democratic election standards to the Polish legal system was continued, with changing intensity and in different periods. Since 1989 there were dozen electoral laws in force, frequently of a one-off character. These laws have also been amended several times. Not until Election Code, law passed by the Sejm on 5<sup>th</sup> January 2011 (Dz. U. of 2011 r., No 21, item 112) unified and systematized suffrage replacing the multitude of election provisions from different periods, often conflicting. The entry into force of the Election Code was from the formal point of view undoubtedly the biggest success in the field of electoral law. Election Code provided a number of changes and new solutions in relation to the previously existing electoral law.

One of the major changes to the electoral law made over a quarter-century of free elections in Poland was the introduction of voting by proxy, i.e. allowing voting via the trusted person. This institution was introduced to the Polish electoral law by the amendment in 2009 and concerned the Law on the Election of the President of the Republic and the Law for municipal councils, county councils and regional councils, as well as the Law on the direct election of the village mayor (mayor, city president). This way of electing was introduced for the first time during election for the President of the Republic of Poland in 2010. Voting by proxy was subsequently maintained in the Election Code and currently is used in all elections. Voting by proxy is carried out exclusively in the country. The right to vote by proxy is given to the disabled voters and voters who have completed 75 years of age.

As indicated above, the entry into force of the Election Code in 2011 has caused a number of changes to the electoral law, i.e. *inter alia*:

- the introduction of single-member districts (100) in the elections to the Polish Senate;
- the requirement to ensure blind voters with the possibility of voting in all elections with an overlay on the ballot prepared in Braille (each polling station must be provided with an overlay on the ballot prepared in Braille, without the need of prior notification by the voter in this respect)
- introduction of correspondence voting domestically and abroad. Initially, the provisions of Election Code provided the possibility to vote by post only for voters abroad and domestically only for disabled voters. However, the



amendment of 2014 introduced the possibility to vote by post by all voters in the country and abroad with the exception of local elections, in which only disabled voters may continue to vote by mail;

- obligation to provide disabled voters with information on: their proper polling station, district electoral commissions closest to the place of residence, including the premises adapted to the needs of people with disabilities, under conditions of adding voters to the list of voters in selected polling stations, election date and hours of voting, electoral committees participating in elections and registered lists of candidates and candidates in given election, and the conditions and forms of voting. This information is available to the public by placing in the Public Information Bulletin and in a general accepted manner in a given municipality, and are delivered by the village mayor (mayor, city president) to disabled voter, at his request, by phone or in printed information materials, including electronic format

It should be emphasized that even after the entry into force of the Election Code amendments are being constantly made, in 2014 *inter alia*:

- introduction of the term of office for members of the National Electoral Commission; term of office lasts for nine years;
- the possibility to record by the trusted representatives, using their own recording equipment, all operations of electoral commission on election day since the beginning of voting and during the closing of the polling station until the signing of the protocols of voting by the commission.

One of the most important recent changes (middle of 2016) in the Polish electoral law is the introduction of ballot boxes made of transparent material, the obligation applies in all elections, including local elections conducted during the term and in the by-election to the Senate, as well as in national and local referendums. This applies to all polling stations in the country, abroad and on Polish ships, including the premises created in separate districts (hospitals, nursing homes, detention centers, prisons, dormitories). In order to ensure the secrecy of voting voter vote can throw the ballot paper into the ballot box in an envelope.

### **3. System of electoral authorities**

Starting from the first electoral laws, which constituted the basis for the 1990 free elections of local self-governments and elections of the President of the Republic of Poland, the organization of elections was assigned to independent electoral authorities. This step has special relevance taking into consideration the Polish experiences from the communist period – the personal composition of electoral authorities is set no more according to the political key. The personal composition has been therefore based on judges due to their independence from the representatives of the executive and legislative powers and legal ban on membership in any political party or involvement in any political activity.

The second factor consisted of the fact that electoral authorities – according to their position within the territorial structure – are working on a permanent basis and not only in election periods. The functioning of such a body is limited by time framework: from the date of ordering elections to the date of determining the results – a factor which could lead to a certain attenuation of the sense of responsibility, also in the eyes of the public. Therefore establishing bodies on a permanent basis enhances their credibility. It is also relevant that an institution at a higher level creates the

personal composition of the institutions at lower level, while the electoral body sets its internal composition itself.

Providing electoral institutions with an executive state organ responsible to them and safeguarding at the same time adequate financial resources for the performance of duties relating to elections (where their amount and control of expenditure is independent from the executive power), constituted the third important element of the independence of electoral institutions.

As a result of the above, the system of electoral institutions responsible for the elections of members of the Parliament (Sejm and Senate), elections of the President of the Republic of Poland and elections to the European Parliament, consists of:

### ***The National Election Commission***

The National Electoral Commission as a supreme and standing electoral institution is in charge of all elections and referenda at a national level.

It consists of nine judges of the supreme courts and tribunals. They are nominated by the presidents of the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court, and then appointed by the President of the Republic of Poland. The term of office for a member of National Electoral Commission is 9 years, and it expires when the judge attains 70 years of age. Members of the National Electoral Commission perform their duties relating to elections independently from performing judge's duties.

The National Electoral Commission designates a chairman and two vice-chairmen among its members.

### **TASKS OF THE NATIONAL ELECTORAL COMMISSION**

During elections, the National Electoral Commission carries out its activities countrywide and oversees the activities undertaken by the electoral bodies of lower rank. The main tasks of the National Electoral Commission include:

#### ***Registration of the electoral committees***

The bodies authorized to nominate candidates in elections are electoral committees. Depending on the type of the election, the committees may be established by political parties, party coalitions, electors and social organizations. Establishing a committee requires notification of the electoral authorities. In local elections these notifications are accepted by the election commissioners.

#### ***Registration of the candidates for the President of the Republic of Poland***

In the process of presidential elections in the Republic of Poland, the National Electoral Commission accepts the candidates and verifies whether the application satisfies the requirements prescribed by law and registers the candidates.

*Specification of the procedure for executing the electoral tasks by the lower rank electoral authorities and oversight of the observance of the electoral law by these authorities*

In all elections and referendums, the National Electoral Commission specifies the guidelines binding upon lower rank electoral authorities. These specify in detail

the manner of executing the electoral tasks by these electoral authorities. If the lower rank authorities carry out their tasks inappropriately, the National Electoral Commission is vested with the supervisory prerogatives – it may waive the decisions of these authorities. The Commission also considers the complaints with respect to the activity of the lower rank authorities.

*Giving explanations to the government and local administration authorities executing the tasks related to the elections and also to the electoral committees and TV and radio stations*

The government and local administration authorities are engaged in the organization of elections and referenda: among other tasks, these state organs are responsible for the establishment of the polling precincts, drawing up the voter's lists, arrangement of the polling stations, appointment of the precinct electoral commissions and their service. The National Electoral Commission, as the authority responsible for the organization of the elections provides explanations to these authorities specifying the procedure they have to follow when executing of their tasks.

The electoral committees receive explanations from the National Electoral Commission concerning the principles of their election activity, the election campaign and the related financial questions.

Public radio and TV stations are obliged to broadcast, on a free of charge basis, the advertisements in which the electoral committees present their programs and candidates while the commercial stations broadcast the advertising spots of the electoral committees on a chargeable basis. All stations receive explanations from the National Electoral Commission concerning the principles governing the election campaign on the media.

*Determining and announcing the results of the voting and the results of the elections countrywide*

The role of the National Electoral Commission in the process of determining the results of the elections depends on the nature of the elections. In the elections of the President of the Republic of Poland its role is to calculate the results of the vote and to determine the results of the election. In the elections for the Polish and the European Parliaments, its role is collecting the results of the voting in all constituencies in order to determine which electoral committees exceeded the electoral threshold and may participate in the allocation of the mandates. The National Electoral Commission also determines the results of the national referenda.

*Audit of the financial statements presented by the electoral committees and political parties*

Financing of the election campaign is open. Electoral committees are obliged to submit their financial reports. The reports of the committees acting countrywide, or in more than one constituency, are accepted, published and audited by the National Electoral Commission. If any irregularities are identified in the financial activity, the National Electoral Commission rejects the statement of acceptance which may entail material liability of the respective electoral committee.

Political parties receive subsidies from the government's budget and have to present reports to the National Electoral Commission on how these resources were spent. Political parties also present to the National Electoral Commission the reports

on the management of the election fund — the resources earmarked by the political party for the election campaign. The National Electoral Commission reviews the statements of the political parties and if any violation of the financing principles is identified, it rejects the report, which may influence the amount of the resources received by the party from the state budget.

#### *Oversight over the process of maintaining the register of electors*

The permanent register of voters includes all the voters in the country and constitutes the basis for preparing the lists of voters for the respective election. The register is maintained by the townships while the National Electoral Commission oversees the execution of this task.

#### *Maintaining the register of the material benefits received by the public servants*

Public servants are obliged to disclose the fact of receiving any material benefits. The register of these benefits is open and maintained and published by the Electoral Commission.

#### ***Constituency Electoral Commissions***

Constituency electoral commissions are functioning at the intermediary level of electoral institutions. These do not function on a permanent basis, rather are formed separately for the respective election. The members of the constituency electoral commissions are nominated by the Minister of Justice among judges from the region. Candidates are appointed by the National Electoral Commission. Constituency electoral commissions are subordinate exclusively to the National Electoral Commission and are in charge of registering the candidates for the elections as well as the preparation and organization of elections within their electoral constituencies.

Due to the proportional voting system, in case of the expiration of an MP's mandate between two parliamentary elections, the following candidate from the list takes the place. As for the second chamber of Parliament (Senate), in similar cases by-elections are organized in the respective constituency, however, such situations are so rare, that these do not constitute a sufficient justification of a permanent work of constituency electoral commissions.

In the case of elections to the European Parliament also intermediary level election commissions perform their activities – regional electoral commissions. Their members are appointed on the similar basis as in the case of constituency electoral commissions. Their main task is determining the voting results within the territory of their competence, which is specified by the National Electoral Commission.

#### ***District Electoral Commissions***

At the lowest level – common for all general elections – function district electoral commissions, which are appointed separately for each election from among the voters and nominees of political parties. District electoral commissions do not have judges as members, these been primarily social institutions, having their main task the organization of voting in their circuit and also determining the results.

One of the characteristics of the functioning of lower level electoral institutions is their subordination to the National Electoral Commission with regard to the unified

application of electoral law provisions. Explanations and interpretations submitted by the National Electoral Commission are binding for the lower level commissions.

On the other hand, performance of duties by the National Electoral Commission is under the exclusive control of the Supreme Court which considers – in the cases determined by law – claims submitted against the National Electoral Commission's activity and decisions.

The National Electoral Commission and constituency electoral commissions have an executive organ – an electoral institution working on a permanent basis – the National Electoral Office, which has 49 departments in the voievodships. National Electoral Office is managed by the Head of the National Electoral Office – Ms Beata Tokaj, who is appointed and dismissed by the National Electoral Commission. She is also, ex officio, a secretary of the National Electoral Commission and participates at its meetings as counsel. Any of the employees of the National Electoral Office, including its Head, cannot be associated in any political party or perform political activity in any other form.

### *The National Electoral Office*

The National Electoral Office independently manages the financial resources for the activity of the National Electoral Commission as well as for its own activity – budget's amount is dependent only on the Parliament, government may not question it.

The practice so far allows to come to the conclusion that the system of electoral institutions consisting of the standing National Electoral Commission as well as intermediary (constituency) commissions has been successful.

## SYSTEM OF ELECTORAL AUTHORITIES AT LOCAL ELECTIONS

In the local elections, due to their particular character and the three levels of local self-government (voievodships, counties – powiat – and communities), the composition and competences of electoral institutions are slightly different.

Apart from the National Electoral Commission, function two divisions of electoral institutions. The first division consists of standing one-person institutions: electoral commissioners who are appointed among judges, for a period of five years by the National Electoral Commission, based on the proposal of the Minister of Justice. The same person may be re-appointed for the office only once and has to perform her duties independently from exercising judge's office. An electoral commissioner is the National Electoral Commission's proxy designated for a part of a voievodship. Electoral commissioners (there are 51 of them) organize local elections and supervise the process according the law. They are, moreover, the chairmen of the electoral constituency commissions in the parliamentary-, presidential- elections and election of members of the European Parliament.

The second division consists of electoral commissions: these function at the level of voievodships, counties (powiat) and communities (municipalities) as well as constituency electoral commissions which are in charge of a direct organization of elections at a particular level of self-government. Voievodship, constituency and municipal electoral commissions' chairman's office is exercised ex officio by a judge appointed by the chairman of the regular court of the respective territory. Other members of these commissions are appointed among persons proposed by political parties. District electoral commissions are composed exclusively of voters and persons designated by political parties. These commissions do not work on a permanent basis and therefore are appointed separately for every respective election.

#### **4. The legal oversight over the correctness of the elections.**

Audit of the correctness of the conduction of the elections is carried out both during the process of registering the electoral committees and the candidates as well as after the results of the voting and of the elections have been determined.

The activities of the electoral authorities related to the registration of the electoral committees and the candidates are subjected to the oversight by the higher rank authorities while the key elements of them are subjected to the legal audit.

The primary tool while verifying the correctness of the elections and determining their results is the right to raise the electoral objections.

Committing an electoral crime or violation of the electoral law in the course of the voting, determining its results or the results of the elections may give rise to the electoral objection. Entities authorized to raise the objections include the electoral committees, the commissions and the voters.

The election objections are filed with the courts: with respect to the elections for the national representative organs and the national referenda – with the Supreme Court, while with respect to the local elections – with the district courts.

The courts considering the objections establish the actual situation and if a breach of the law is ascertained, they assess whether it had influence on the result of the elections. If the court decides it has – it nullifies the elections in the scope resulting from the established violation of the law and orders that the defective election activities or elections have to be repeated.

The court decisions are binding upon the electoral authorities which are obliged to execute the decisions concerning repetition of the election activities.





*Ana Maria Pătru\*, Cristian Petraru\*\**

## Opening remarks

A quarter-century has passed since the 1989 anti-communist revolution in Romania and one of the main democratic conquests of the country during this period was organizing free elections. In the 25 years since the first free elections held in Romania, there were three remarkable points of reference of the Romanian electoral system.

The first one was the establishment in 2004 of the Permanent Electoral Authority (PEA), as an autonomous administrative institution whose mission is to ensure the proper organization and conduct of elections and referendums, as well as the funding of the political parties and electoral campaigns.

The second important milestone in the electoral management was in 2013, when the Electoral Register – the first electronic database where all the Romanian citizens eligible to vote are listed – became operational for all types of elections. The Electoral Register was firstly used at the 2014 election of the members of the European Parliament and proved to be a success.

The third turning point in the Romanian electoral system was the reform of the electoral legislation accomplished in 2015, when the law on local elections, parliamentary elections and the funding of political parties' activity and electoral campaigns was substantially changed, with the active involvement of PEA. Postal voting has also been introduced for the first time in Romania.

## 1. Election laws and stability of election laws

After the Romanian Revolution in December 1989. Communist legislation would have been considered null and void, however, it hadn't been explicitly annulled. Practically, there was no Constitution and the first de facto Romanian electoral law was the Decree-Law no. 92/1990 regulating the election of the Parliament and the President. This Decree-Law was in force until the approval of a new Constitution (1991) and functioned as a "mini-Constitution". It contained elements of constitutional law, i.e. principles (e.g. the principle of separation of powers) which remained valid throughout the post-revolutionary period, many of them being valid at present as well. At that time there were discussions on the way of election of the President of Romania and, at that point, it was decided that the head of the state would be elected by direct vote, in two rounds. In the first round, the winner was required to obtain more than 50% of the votes. If none of the candidates obtained the required proportion of votes, a second round was to be organised for the two candidates obtaining the most votes.

Moreover, the proportional electoral system based on closed lists was established for the parliamentary elections, which remained in force until 2008 and will be used again from 2016. Furthermore, this first Decree-Law also stipulated the

---

\* President of the Permanent Electoral Authority of Romania

\*\*Head of Department for branch coordination and liaison with local authorities of the Permanent Electoral Authority of Romania

principle that each national minority is entitled to one seat in Parliament, in addition to the number of mandates allocated based on the election results. Electoral offices were also set up, comprising of judges, on the one hand, and representatives of electoral competitors (political parties) on the other.

On March 19<sup>th</sup>, 1990, the president of the Provisional Council for National Unity (CPUN)<sup>1</sup> set the date of elections for May 20<sup>th</sup>, 1990. The first elected Parliament in the history of the new Romanian democracy was composed of the Chamber of Deputies and of the Senate. After creating the new Parliament, the Law no. 5/1990<sup>2</sup> was adopted to regulate temporary the local administration, until local authorities were elected under a democratic system. At the same time, the new Parliament operated as a Constituent Assembly, being the one drafting the new Constitution of Romania. In 1991, on November 2<sup>nd</sup>, the Parliament completed the Constitution-drafting process and decided to hold a referendum to approve the new Constitution. For this purpose, Parliament adopted a law on the organisation of the respective referendum, with no other general provisions related to direct democracy. On December 8<sup>th</sup>, 1991 the new Constitution of Romania was approved by the national referendum and, from that moment on, a new democratic era commenced, the constitutional era.

On November 26<sup>th</sup>, 1991, namely immediately after the entry into force of the new Constitution, the Parliament adopted Law no. 69/1991, the first law on local public administration. The Law no. 70/1991 on local elections was adopted straightaway during the same session. This was already a compact and complex law, its structure was in line with the requirements of democratic electoral systems. Immediately after being adopted, the date of elections was also agreed – February 9<sup>th</sup>, 1992. Therefore, since February 9<sup>th</sup>, 1992 democratically-elected local public administration authorities are also part of the Romanian constitutional system.

In the same year, on July 16<sup>th</sup>, 1992 the Parliament adopted the first law on the elections to the Chamber of Deputies and the Senate<sup>3</sup> and the first law on the election of the Romanian President<sup>4</sup> according to the principles of the newly adopted Constitution. The new Constitution stipulated a four-year term for the President of Romania, the terms for the Chamber of Deputies and Senate were for four years as well, and basically the two types of elections were planned to be held simultaneously. This is why, practically, the law on electing the President of Romania does not have its adequate own structure, as it is based on the electoral infrastructure on elections to the Parliament. Therefore, on July 18<sup>th</sup>, 1992, immediately after the respective laws were adopted, the Parliament set the date of elections for September 27<sup>th</sup>. In September 27<sup>th</sup>, 1992, the first simultaneous elections for the Chamber of Deputies, the Senate and for the President of Romania were held, based on constitutional grounds.

The following parliamentary and presidential elections took place on November 3<sup>rd</sup>, 1996, when the electoral threshold of 3% was introduced for the first time.

The next parliamentary and presidential elections were organised on November 26<sup>th</sup>, 2000. The laws of 1992 were in effect, with several amendments. Three amendments of these were approved during the election period, namely after electoral proceedings started.

---

<sup>1</sup> The CPUN was a temporary governing body of Romania in the period between February 9, 1990 and May 20, 1990, when the first elections that followed the 1989 Romanian revolution were held.

<sup>2</sup> Law no. 5 of 19 July 1990 on the administration of counties, cities, towns and villages until the local elections.

<sup>3</sup> Law no. 68 of 1992.

<sup>4</sup> Law no. 69 of 1992.

In 2000 the law on the general regulation of referenda was adopted. It was also need for a constitutional amendment approved by a referendum in the future based on the likely prerequisites of Romania's accession to EU – therefore the need for the general regulation was obvious. The Law no. 3/2000 on the referendum regulates the relevant aspects related to the expression of sovereignty of the people, both at national and local level. The Law was designed as a law operating on the infrastructure of other electoral laws and. As a consequence it remained particularly difficult to hold a referendum in Romania since its enactment as well.

In 2003, the Constitution was amended and a national referendum was organised in order to approve the constitutional amendment. The time of the referendum, October 18<sup>th</sup> and 19<sup>th</sup>, was the first and only time in the Romanian electoral system that an election event was held for 2 days. (Traditionally, in Romania, elections are organised on one day, a Sunday.) As a result, the constitutional amendments were approved. The amendments were focusing on the need of harmonising legislation with the perspective of integrating Romania in the EU, however, the Parliament extended the range of these amendments too wide, so – from the substantive point of view – one can refer to a new Constitution after 2003. With regards to the essential elements of the electoral system, the length of the President's term was extended from four to five years, this being the moment when it was a need to plan separate elections for the following electoral cycle. For the first time, the Constitution explicitly stipulated a permanent electoral authority, as a state electoral management body. Previously, t such body did not exist, just a constitutional provision mentioning this institution.

Changes in substance with regards to electoral legislation started to appear when Law no. 286/2003 was issued, stating the establishment of PEA. On March 25<sup>th</sup>, 2004 a new law on local public administration authorities was issued, namely the Law no. 67/2004. The PEA acted as a permanent electoral authority for the first time when managing the local election held on June 6<sup>th</sup>, 2004.

On September 20<sup>th</sup>, a new law for the election of the President was adopted – Law no. 370/2004 which remained in force to date.

In the same year, on September 24<sup>th</sup>, another new law was adopted regulating the election of the Chamber of Deputies and the Senate – Law no. 373/2004. The voting system for the Chamber of Deputies and the Senate remained proportional with closed lists.

The elections for the president of Romania, for the Chamber of Deputies and for the Senate took place on November 28<sup>th</sup>, 2004, based on the new laws, with one amendment, but a rather substantial one.

On April 25<sup>th</sup>, 2005, Romania signed the treaty of accession to the EU and, practically, upon signing the treaty, a new position was established in the Romanian electoral system, that of the member of the European Parliament. In the treaty, Romania undertook to adopt the necessary legislation for electing the members of the European Parliament until the planned day of accession, January 1<sup>st</sup>, 2007.

The Law no. 33/2007 on election of members of the European Parliament was adopted on January 16<sup>th</sup>, 2007, and on November 25<sup>th</sup>, elections to the European Parliament were held. The newly-adopted law functions since then with three substantial changes.

The year 2008 was another moment of radical change, when the Law no. 35/2008 was adopted, changing the electoral system of the elections for the Chamber of Deputies and the Senate, by replacing the electoral system based on closed lists with a mixed system, specific to Romania.

The context was that of organising a referendum in 2007, when the population was asked whether they would agree to pass to an uninominal system (based on single-

member constituencies). The referendum was not validated, because no quorum was established. However, the majority of the population agreed with the uninominal system. For this reason, the Parliament created a legislative act at the beginning of 2008 in order to hold elections under a uninominal system, up to a point, when the system would turn into a proportional one. This new system is rather complicated and caused operating problems, since it was designed for two electoral cycles.

November 30<sup>th</sup>, 2008 was the first time when the elections for the Chamber of Deputies and the Senate were organised separately from the presidential elections and operated under the law adopted at the beginning of 2008, with some amendments.

The first full-term elections for the Romanian members to the European Parliament took place in 2009, the former term being partial. These were carried out according to the law adopted in 2007, with five substantial amendments. Furthermore, the first presidential elections separate from the elections for the Chamber of Deputies and the Senate were held on November 22<sup>nd</sup>, 2009, based on the Law no. 370/2004 with one amendment.

After 2009, at the level of an already-established and functioning PEA, the first discussion on the issuance of the general electoral code was held. The need of an electoral code was generated, mainly by the multiple changes and differences between the five legislative acts regulating the elections.

In 2010, a group of specialists at PEA prepared the draft Electoral Code, starting from the preconditions that there should be a single law covering the entire electoral system, also containing organisational elements, general notions which comprise the infrastructure of elections. It is a declared aim of the code to keep intact the method of organisation and running of elections even in the case if political factors deem it necessary to change some aspects of the regulation. In 2011 the existence of a certain, perfectible draft code was brought to public debate and communicated to stakeholders, political actors and Parliament. However, until now there were made no legislative steps in order to enact the draft electoral code.

On the 9<sup>th</sup> of December, 2012 elections for the Chamber of Deputies and the Senate were held under the Law no. 35/2008, with seven amendments. It is important to note that the Romanian Constitutional Court (CCR) issued decision no. 662 before the parliamentary elections, setting forth that no frequent amendments to the ballot system could be done with less than one year before elections, as quoted from the recommendation of the Venice Commission.<sup>5</sup> The context of this decision is also interesting, namely rejecting a law adopted by the Parliament in the summer of 2012, which transformed the electoral system from an uninominal mixed system into the pure uninominal system (first-past-the-post). The legislative step was declared unconstitutional by the Constitutional Court due to the above mentioned reasons. In the case this law would not have not rejected by the CCR with the previous arguments, it would have been in effect for the parliamentary elections of 2012. One can add that as a result, the opposition would supposedly consist of one person only.

In the past 25 years each types of electoral processes have undergone various changes, most of which – 32 – have targeted the parliamentary elections.

## **2. Electoral management bodies and safeguards of free and fair elections**

As a result of the amendments of electoral laws, PEA at present acquires increased powers and manages two major projects that are revolutionizing the

---

<sup>5</sup> See: European Commission for Democracy through Law (Venice Commission: Code of good practice in electoral matters (Vence, 18-19. October 2002.) II. 2. b. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

electoral management: the computerized system for monitoring the turnout and prevention of illegal voting – both be applied on the two general elections to take place in 2016. The establishment of the Electoral Experts' Body is also an important step in providing fair and professional management of elections.

The new law for public administration authorities' election has introduced the computerized system for monitoring the turnout and prevention of illegal voting, that was used for the first time during the June 5, 2016 local elections. The computerization of polling stations is a project initiated by PEA and successfully used in a pilot program in the 2011 partial elections. The system is implemented and managed by PEA with the support of the Special Telecommunications Service and the National Institute of Statistics, based on data and information from the Electoral Register, Register of polling stations and complementary electoral lists.

For the voter, the computerization of polling stations means that the first person she will interact at the polling station will be the computer operator to whom she must submit her identity and, where applicable, the document proving the residence. The operator enters the personal identification number in the system that returns information on whether the voter has reached the age of 18 by the voting day, she lost her voting rights, she is registered at another polling station, or she voted already at the same elections. The president of the polling station will stop those citizens from voting who – based on the indication of the system have lost their eligibility to vote due to the previously mentioned reasons.

The use of this system makes multiple voting fraud attempts virtually impossible and ensures accurate real time information regarding the turnout.

The Electoral Experts' Body represents another challenge for the PEA in the electoral year of 2016. The Electoral Expert' Body is a database created and administrated by the PEA comprising citizens who can be presidents of the polling stations electoral bureaus or their deputies. Those who perform these functions in the elections will be appointed by the PEA by computerized drawing lots.

Thereby, the prerogatives regarding the appointment of the polling stations electoral bureau's presidents and their deputies are being transferred from the task of mayors and prefects to that of the Permanent Electoral Authority. Such procedure ensures the professionalization of election officials, removes any suspicion concerning the possible politicization of these appointments and ensures greater transparency of the electoral process.

The admission in the Electoral Experts' Body may be based on approval of the citizens who have held the position of the polling stations electoral bureau's president or her deputy and based on exam, for those who have not performed these functions previously.

Postal voting is also a new element in the Romanian electoral system. The Parliament adopted a law exclusively dedicated to postal voting that will be used only in the elections for the Senate and Chamber of Deputies in 2016. According to the normative act, PEA, Ministry of Foreign Affairs and "Romanian Post" National Company are the institutions responsible for organizing and managing the procedures of postal voting.

The law states that postal voting is open only for Romanian citizens legally residing abroad who enroll into the Electoral Register with the option for postal voting. The registration period starts on April 1, 2016 and ends two days after the beginning of the electoral period. According to the law, the procedures to be taken to vote by mail are:

- *The voter enrolls into the Electoral Register with the option for postal voting, by a written request, signed and dated, submitted in person or mailed to the*

diplomatic mission or consular post of the country of domicile or residence. In case of Romanian citizens having their domicile abroad, the voter must attach a copy of her passport with the indication of the domicile, while in the case of Romanian citizens residing abroad the voter must attach a copy of the identity card and a copy of the document proving the residence issued by the foreign authorities.

- *The voter receives the necessary documents for postal voting by the Romanian Post, no later than 30 days before the election date, at the address of domicile or residence indicated in the application.*
- *The voter fills the ballot following the instructions included in the postal voting necessary documents.*
- *The voter sends the envelope containing the ballot, submitting the outer envelope (prepaid envelope, with the identification data of the Electoral Bureau for postal vote) to any postal office or mailbox.*
- *The Electoral Bureau for postal vote registers the received envelopes, unseals the outer envelopes and places in ballot boxes the sealed inner envelopes containing the ballots.*
- *On the Elections Day after 21:00, the Electoral bureau for postal vote unseals the ballot boxes and the inner envelopes.*



It is also important to note that the law for the election of the Senate and Chamber of Deputies changed the voting system by which the members of Parliament are elected. Thus, they will be no longer elected in uninominal colleges (single-member constituencies) by uninominal ballot, but will be elected by ballot list, according to the principle of proportional representation.

In 2015, the law on funding of the political parties' activity and electoral campaigns was also substantially amended. The most important change in this respect regards the rules on financing the electoral campaigns: for the first time in Romania, starting with the local elections on June 5, 2016, the electoral campaign expenditures were reimbursed from the state budget. The reason for which the legal rules on financing electoral campaigns have changed was to offer equal chances to all political competitors and to ensure total transparency regarding the sources of funding the electoral campaign.

The new version of the law states that political competitors may finance their campaign only from the sources established by law and only within certain limits. At the same time, the law sets up in detail the types of election expenses that may be made and the maximum amount as well. All the financial operations (expenditures) related to the election campaign can only be carried out through bank accounts opened expressly for the election campaign. Those bank accounts can be opened by the electoral competitors only through the financial agents recorded by PEA.



The major novelty of the law is the fact that the electoral campaign expenditures made by electoral competitors (political parties, political or electoral alliances, organizations of citizens belonging to national minorities and independent candidates) will be reimbursed by PEA, in the case of meeting the conditions prescribed by law.

Only those electoral competitors can benefit from the reimbursement of the electoral expenditures who obtain not less than 3% of the valid votes casted at national level or at the level of the respective electoral constituency. If the electoral competitors exceed this threshold they must also meet some cumulative conditions in order to receive the reimbursements:

(a) To submit to PEA, within 15 days from the date of the elections, detailed reports of revenue and expenditure, accompanied by the following documents: the declaration on the total amount of debts recorded as a result of the campaign; the declaration on the total number of propaganda materials produced and utilised, specified by categories; the declaration on the compliance with the limits for electoral expenses prescribed by law; the list of service suppliers and/or the goods utilised during the electoral campaign; the written mandate concerning the deposit or transfer of the electoral contributions of the candidates by financial agents.

The law provides harsh penalties for breaches of the above mentioned provision. From the point of view of the elections, it is probably the most important from these the possibility that, “the mandates of the elected candidates cannot be validated if the detailed report of electoral revenue and expenditure of the electoral campaign for each political party or independent candidate has not been lodged in accordance with the law”.

(b) *To submit to PEA, through the financial agent, within 30 days after the election date, the reimbursement request* of the electoral expenditures, accompanied by the supporting documents provided by law. If the request for reimbursement is submitted after this period or if this is not accompanied by the relevant supporting documents, shall not be taken into account.

After the elections, the refund requests accompanied by supporting documents are verified by PEA, but also by the Romanian Court of Accounts.

Those political competitors who breach the rules concerning the sources of financing and electoral expenses do not benefit from the refund and, moreover, they are penalised, while the amount spent by breaching the law shall be forfeit and integrated in the state budget.

In the forthcoming period, the PEA’s main objective is the comprehensive codification of the electoral law in order to ensure stability, predictability and coherence of the legislation in the field of elections – three vital conditions to ensure fair and transparent elections accessible for all stakeholders.



# RUSSIAN FEDERATION

## *Central Election Commission of the Russian Federation*

Since the autumn of 1993, when the new Russian Constitution was adopted and the elections to the bicameral Federal Assembly were held, the countdown to the modern Russian electoral system began. For more than a 20-year period the Russian electoral system has undergone significant changes and adjustments, many innovations have been put into practice based on the international experience related to elections. The recent history of Russia shows overwhelming evidence of the key role of free elections: these allow us to establish the true balance of political forces.

The Russian electoral experience is extensive, there are centuries-old traditions of representation at national level and application of the election procedures in the formation of government. In the historical perspective it is of course not always possible to identify electoral law in the modern sense, however, historical experience and the continuity of traditions are important for the Russian election officials. In the line of traditions one can mention the *Zemsky Sobor* (Assembly of the Land), a form of national representation and state administration, created for the first time by Ivan the Terrible (1549); the *Zemstvo reform* (reform of local self-governments) (1864); the *Urban reform* (1870); the formation of the *State Duma* (convened for the first time 1906) or the formation of *bodies of rural and local self-government* (after the February Revolution of 1917).

The reform of the Soviet electoral system began in the period of *perestroika*, in the second half of the 80-s of XX century. As a result of the reforms of 1988-1989, the elections became competitive and multiparty for the first time.

In autumn 1993 a breakthrough in the development of the democratic electoral system was made in the shortest time. Originally, there were developed *temporary documents* (provisions on elections), but, nevertheless, these allowed to carry out all-Russian elections to the *Federal Assembly* and the referendum on the new *Draft Russian Constitution*. The aim of the temporary documents was to create the frames of a real multiparty system in Russia.

In 1993 by the *decrees of the President of the Russian Federation*, the organizational structure was created for the voting and summarizing its results: the *Central Election Commission* for the election of deputies of the *State Duma* of the *Federal Assembly of the Russian Federation*, as well as *district election commissions*, which served as a basis for further structural reforms and improvement of the electoral system.

The subsequent establishment of democracy in Russia demanded reforms in the party and political system, creation of a stable legal framework and sustainable institutional mechanisms for elections. Over the years, these conditions have been fully met.

Today the Russian electoral system is one of the most efficient in the world, taking into consideration that it organizes elections and referendums in 85 regions of Russia, located in 11 time zones in an area of 17 million square kilometers, with voters numbering to about 110 million people – within the time frames established by the Constitution and the laws.

## 1. Election laws

The legal framework has been created, as an extensive array of legislation on elections and referendums. All election campaigns, referendum campaigns taking place at the federal, regional and municipal levels are based on the relevant federal laws and laws of the Russian Federation subjects.

One can point to the following dates of adoption of the most important regulations as the stages of development of the Russian electoral legislation and related laws.

**Stage one** (1993-1997) includes the adoption of the *Constitution of the Russian Federation*, of the Federal Laws “On Basic Guarantees of electoral rights of citizens of the Russian Federation”, “On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation”, “On Elections of President of the Russian Federation” and “On Public Associations”.

**Stage two** begins with the adoption of the Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in the Referendums of the Citizens of the Russian Federation” in 1997, continues with the enactment of the new Federal Law “On Elections of Deputies of the State Duma of the Federal Assembly” (1999) and with the Federal Law “On Political Parties” (2001).

**Stage three** is connected with the adoption of a new version of the Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in the Referendums of Citizens of the Russian Federation” in 2002, the Federal Constitutional Law “On Referendum of the Russian Federation”, the new edition of the Federal Laws “On Elections of the President of the Russian Federation”, “On elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation” and “On the State Automated System of the Russian Federation ‘Vybory’”(2003-2005)

**Stage four**, which is still ongoing, is characterized by a partial reform of the electoral law, the abolition and the introduction of certain legal institutions, improvement of the electoral formula of the elections to all levels of the government, clarification of the legal status of the participants of the election campaigns, and an extension of the requirements related to the documents for registration provided by them, also by the development of the institution of local referendum and a number of other adjustments.

In general, the *President* and the *Government of the Russian Federation*, the *State Duma* and the *Federation Council* of the *Federal Assembly of the Russian Federation*, state authorities of the Russian Federation, election commissions of a number of the Russian Federation subjects with the right of legislative initiative are involved in the legislative process related to the elections. The position and views of the legal and expert community are also taken into account.

The legislation on elections and referendums is structured, as it defines:

- the basic principles and safeguards of the active and passive electoral rights of citizens, as well as the right to referendum;
- the procedure for organization and conduct of elections and referendums, including the rules on information support, financing, the procedure of voting, counting of votes and determination of the results;
- the procedure for resolution of electoral disputes, the legal liability of election officials and members of the electoral process;
- the procedure for protection and restoration of violated electoral rights and a number of other issues.

In 17 subjects of the Russian Federation legislation on elections and referendums is also codified.

The respected arbiter in various disputes relating to elections is the Russian judicial system – the Constitutional and Supreme Courts of the Russian Federation. Over the past few years the legal position of the Central Election Commission (CEC) of the Russian Federation was recognized by the Russian Constitutional Court as 12 judgments and 20 rulings were made in relation with the CEC's decisions. The CEC of Russia also represented its position concerning 7 complaints examined by the European Court of Human Rights (ECHR).

Experiences related to election campaigns, generalization of law enforcement practice, analysis of complaints and appeals of participants of election campaigns, changing social and political circumstances and priorities, combating the usage of illegal election technologies and possible fraud were factors which inevitably lead to adjustment and updating of the legislation on elections and referendums.

## **2. Stability of election laws**

In the recent years, the changes in the electoral legislation related: the electoral formula of election of deputies of the federal parliament, lowering of the vote threshold (from 7% to 5%), the abolition of the voter turnout threshold on the election of senior officials of the Russian Federation (heads of higher executive bodies of subjects of the Russian Federation), the liberalization of the requirements prescribed for political parties, individual electoral actions and legal institutions (absentee ballots, voting “against all candidates” (“against all lists of candidates”), early voting and a number of others); expansion of the information provided on the candidates in the process of registration and verification of such information, control of financial flows related to the financing of elections and a number of other issues.

On one hand, innovations seriously altered the scope and quality of the work of Russian election officials, and on the other, these further contribute to ensuring the electoral rights of the citizens, increasing amounts of information on the candidates for positions at all levels of government, creating modern infrastructure of the electoral processes, improving the professionalism of election officials, securing unconditional implementation of the legislation and liability for its violation.

The terms of office of the *President of the Russian Federation* and the *State Duma of the Federal Assembly of the Russian Federation* were increased from four years to six and five years respectively. Over the past years, there was a transition from a *mixed electoral system*, being force since 1993 (i.e. the election of 225 deputies of the *State Duma* in single mandate constituencies and another 225 in the federal electoral district) to the elections based only on party lists (since 2007). The *State Duma* elections under the *proportional electoral system* were held twice since the modification – in 2007 and 2011. The issue on the application and *return to the mixed (majority-proportional) electoral system* on the parliamentary elections in 2016 was solved by the legislation in advance, which allowed the participants of the election campaign to start preparations for the elections. According to many experts, a *mixed electoral system* will let the elected deputies get closer to the voters, and to take into bigger account both the party and the personal preferences of Russians, as well as to avoid monopolization of the party sphere.

The mentioned changes affected the elections to the *Federation Council of the Federal Assembly* as well: there was a transition from direct elections in 1993 of two deputies from the respective region to the membership based positions in bodies of the regional legislative and executive authorities. In 2013 the regulation was modified

again. Based on the new regulation, the head of the region proposes to *the Federation Council* one of the three candidates that have passed the direct elections with him. The second representative of the region is elected among the deputies of the regional parliament. Since 2015 the requirements related to the candidacy for this position were clarified as well: a candidate must be a citizen of the Russian Federation who has reached the age of 30 years, has an impeccable reputation and has been a resident of the correspondent territory of the Russian Federation for five years. It can be mentioned that at present there exists a discussion between politicians and experts on the issue of direct elections to the upper house of the federal parliament.

Russian laws on elections and political parties enhance the parties influence on the formation and activities of governments at the federal, regional and local levels. The legislative impact of this process was the adoption and entry into force in 2001 of the *Federal Law "On Political Parties"*. It can be also mentioned the *transition to the mixed (majority-proportional) elections system* to the legislative (representative) bodies of state authority of subjects of the Russian Federation, where at least half of the deputies are elected according to party lists. The legislator also provided conditions for a broad party representation in the *regional parliaments*, and thus took another step towards more effective protection of the interests of voters.

However, to date the federal legislation has reduced the upper limit of the application of the proportional electoral system in elections to the regional legislative assemblies to 25 percent, while for federal cities (Moscow and St. Petersburg), this boundary has been excluded completely. This tendency is also connected with the desire to give voters a greater choice of variation and the introduction of greater accountability of the deputies to the voters.

In 2012, the institution of direct elections of *heads of Russian regions* who were previously appointed by the *President of the Russian Federation*, since 2005, has been restored. In the recent years, there were four direct elections of *regional governors*, as a result of which 64 heads were elected.

One of the most relevant topics of the conversation about the elections in Russia is the participation of political parties. In general, the development of the Russian political party system can be summarized as follows. In the period from 1993 to 2011 (within federal campaigns) the number of political parties (and other non-governmental organizations), entitled to participate at federal elections, had a predominant downward trend: in 1993 there functioned 167 public associations, in 1995 - 258 public associations and 15 trade unions, in 1999 - 139 all-Russian political public associations, in 2003 - 44 political parties and 20 all-Russian political public associations, in 2007 15 political parties, while in 2011 - only 7 all-Russian political parties. This tendency is both the result of adaptation to changing social and political conditions as well as the result of the high requirements set by the legislation. One can add the lack of election participation experience of the new parties.

In 2012, in order to improve the political and electoral system and, above all, for the development of political competition, the revitalization of the political parties and their participation in the electoral process began due to the liberalization of their registration procedure and the simplification of the requirements for the functioning. (At present the required number of party-members for registration has decreased from 40 thousand to 500 people and the regional offices have to be present in at least half of the Russian Federation). The political party dissolution procedure has been also defined: at present it can be exercised only by a decision of its highest governing body or the *Supreme Court of the Russian Federation*. In 2015 the status of a political party was clarified and defined as a type of social organization being an organizational and legal form of legal entities.

As a result of the above mentioned legislative innovations, more than 200 relevant organizing committees were created. By mid-2012 the scope and structure of the Russian political space had changed dramatically: the number of parties entitled to participate in the elections has increased from 7 to 75. 14 parties of this number are allowed to participate at the elections to *the State Duma of the Federal Assembly of the Russian Federation* without collection of signatures.

The process of formation of the political system is still ongoing. One of the most significant outcomes of the participation in the elections was obtained in the elections of September 13, 2015: 74 political parties had a right to participate in the elections, and 49 of the 55 parties, that had nominated candidates or lists of candidates, de facto took part in the elections.

Along with the many preferences set for the parties, the control over their funding was also increased. For this purpose, control and audit services were established under the election commissions when organizing elections. The inspection mechanism seems to be effective and to fully comply with the international standards.

First of all, the law made a distinction between the ongoing funding of political parties and party funding during the election campaign. The receipt and expenditure of election funds of candidates and electoral associations are regulated by the *Federal Law "On Basic Guarantees of Electoral Rights and the right to participate in a referendum of citizens of the Russian Federation"*, as well as by the special laws on elections. Public funding of political parties that scored three percent of votes in the last elections to the *State Duma* of the sixth convocation has increased, which predetermines the scrutiny of the money expenditure. Regular submission of reliable financial reports is the duty and responsibility of political parties and their regional branches. Illegal financing of political parties and other financial violations shall incur administrative liability. Information on the current financial activities of political parties and the transactions of election funds are published in mass media and posted on the Internet.

### **3. Electoral management bodies. Safeguards of free and fair elections**

An important basis of the elections became the creation of the *system of election commissions* that organizes preparation and conduct of voting. At present, this system is represented by the *Central Election Commission of the Russian Federation*, *85 election commissions of the Russian Federation*, *district election commissions*, more than *2,700 territorial election commissions*, *election commissions of municipalities*, and *district commissions (referendum commissions)*.

In 2013 precinct election commissions were established, operating on a permanent basis for an office period of 5 years – an event unprecedented in scale and significance in Russia. Commission members were appointed by local authorities by proposals of 48 out of 62 Russian political parties registered at that time by the Ministry of Justice of the Russian Federation.

Currently, the total number of precinct election commissions is 94.4 thousand and there were appointed more than 841 thousand members of election commissions. The personnel reserve of election commissions has reached 573.7 thousand people. Within the prescribed term of office, election commissions shall hold elections at all levels, including federal elections (parliamentary and presidential) in 2016 and 2018.

In order to ensure and protect electoral rights and the right for participation of citizens of the Russian Federation in referendum, the election commissions are



examining the received complaints on possible law violations. By now, a complex system of measures aimed at controlling the work of election commissions related to the preparation and conduct of elections of deputies to legislative (representative) bodies and to local government bodies of the Russian Federation, has been developed.

Russian electoral system has gained considerable experience in educating the participants of the election process and the election officials. The *Russian Center for Election Technologies Training* created under the CEC of Russia, acts as a resource and knowledge center at the federal level.

Civil society can take part at the elections and referendums by the means of social control, expressed in the public inspection of preparation and holding elections. During the federal elections of 2011-2012 the total number of observers and election commission members with an *advisory vote*, who were also monitoring the process, exceeded, respectively, 300 thousand and even 400 thousand participants. During the recent single Election Day, September 13, 2015, they amounted to about 108 thousand, of which over 49 thousand were assigned by the registered candidates, more than 58 thousand by 23 political parties and other electoral associations. On the same day, the polling stations were attended by 4.652 representatives from 771 mass media organizations.

The above mentioned could be considered as impressive figures, which show the publicity and transparency of elections. At the same time, it also arose an urgent need to regulate the most important questions related to the activity of observers and media during the elections. Since 2016, it is prescribed the mandatory accreditation of media representatives, time limits for presenting list of observers appointed by a parties, registered candidates, or referendum-initiative groups. The number of observers is also limited (no more than two in each commission).

It should be also noted that the Russian society dictates high requirements related to the work of election officials. On the other hand, the public verdict of the voters and the society, as well as the legitimacy and fairness of elections are key elements which guide the work of Russian election officials.

Information technologies can strengthen voters' confidence in the election results minimizing the impact of the so-called "human factor", to accelerate the process of vote counting and defining election results. Maximum rapid and widespread informing on the progress and outcome of the elections and referendums is provided by a powerful national information system: the *State Automated System of the Russian Federation "Vybory"*.

During the voting at the Russian Federation polling stations ballots processing complexes (BPC) and electronic voting systems (EVS) are applied. On a single Election Day on September 13, 2015 the BPCs were used in 42 subjects of the Russian Federation at 2609 polling stations, while EVSs in four regions of the Russian Federation at 261 polling stations.

Electoral rights of citizens who do not have access to polling stations (e.g. people with disabilities, soldiers, citizens in places of temporary stay) are also ensured.

The CEC also plays an active role in the field of international cooperation by participating in the implementation of international agreements signed by the Russian Federation, preparation of projects in the field of organization and holding of elections and referendums, participating at international election observation missions. Russian election officials also actively interact with the electoral administrations of foreign countries, inform the international community and foreign state bodies of the Russian experience of the organization and conduction of elections and referendums.

## **Closing remarks**

The Russian electoral system is forward-looking. Among the strategic directions of development of the electoral system of the Russian Federation, the following, in our point view, are especially relevant.

1. The expansion of the participation of voters, social and political groups at the elections and processes related to elections. In this regard, special significance is given to the provision of maximum opportunities for citizens to participate in elections in various capacities, the development of additional electoral tools (voting at home, early voting, remote voting); awareness-raising activities with modern communication channels; activation of youth; information publicity and transparency during elections, transparency of electoral actions and procedures, and, of course, pre-election campaign of candidates and political parties.
2. Further development of a meaningful and constructive dialogue between civil society institutions and electoral management bodies, in particular, on the issues on adjustment of the electoral legislation, public monitoring and other electoral issues.
3. Increasing the professionalism of election commissions, continuous training of members of the commissions of all levels with the use of modern and effective educating techniques.
4. Effective control over the party funds, with special attention to parties that receive state funding, over the timing and veracity of parties' financial reports, over the financial flows related to the election funds of participants of election campaigns.
5. Providing modern technologies to ensure the electoral process, and also to eliminate the possibilities for manipulations with the election documents.
6. Ensuring security and public order at the polling stations on Election Day and during the whole working time of the election commissions.

## Main Stages of Development of the Russian Electoral System

(brief overview)

1993	<p>Constitutional reform, reform of the electoral system.</p> <p>Establishment of the Central Electoral Commission on elections of deputies of the State Duma.</p> <p>Nation-wide vote on the draft of a new Constitution of the Russian Federation.</p> <p>Deputies of the State Duma of the Federal Assembly of the Russian Federation of the first convocation (under a mixed electoral system), deputies of the Council of Federation of the Federal Assembly of the Russian Federation were elected.</p> <p>Decree of the President of the Russian Federation “On measures for improvement of the electoral system in the Russian Federation.”</p> <p>The CEC for elections to the State Duma and the Federation Council transformed into the Central Election Commission of the Russian Federation.</p>
1994	<p>Federal Law “On Basic Guarantees of Electoral Rights of Citizens of the Russian Federation” entered into force on December 10, 1994.</p> <p>Beginning of the development and creation of the State automated system of the Russian Federation “Vybory” (SAS “Vybory”).</p> <p>Establishment of the Russian center for election technologies training under the CEC of Russia.</p>
1995	<p>Federal Laws “On elections of deputies of the State Duma of the Federal Assembly of the Russian Federation” and “On elections of President of the Russian Federation” were adopted.</p> <p>SAS “Vybory” runs in test mode for the first time.</p> <p>Publication of the official print body of the CEC of Russia “Vestnik of the Central Election Commission of the Russian Federation” was initiated.</p> <p>For the first time in the electoral practice of Russia, the Information Center was organized on the elections to the State Duma, which worked further on the elections on federal and regional levels.</p> <p>Federal target program for increasing legal culture of voters and officials of the elections in the Russian Federation for 1995-1999 was adopted.</p>
1995-1996	<p>Elections of the deputies of the State Duma of the Federal Assembly of the Russian Federation of the second convocation, elections of the President of the Russian Federation.</p>
1996	<p>Using of scanners for processing ballots (SB-96).</p>
1997	<p>Federal Law “On Basic Guarantees of Electoral Rights and the right to Participate in Referendum of Citizens of the Russian Federation” was adopted.</p>
1998	<p>Participation in the activity of the Association of European Election Officials (ACEEEO) (in 1991 – Association of Central and Eastern European Election Officials).</p>
1999	<p>Changes to the Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in Referendum of Citizens of the Russian Federation.”</p> <p>Adopting new Federal Laws on Elections of Deputies of the State Duma and the President of the Russian Federation.</p>
1999–2000	<p>Elections of deputies of the State Duma of the third convocation and early elections of the President of the Russian Federation.</p>
2000	<p>SAS “Vybory” was put into permanent operation.</p> <p>New version of the scanners of ballots (SB-2000).</p>
2001	<p>Federal Law “On Political Parties” was adopted.</p>

2002	Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in Referendum of Citizens of the Russian Federation” was passed. Convention on the standards of democratic elections, electoral rights and freedoms in States–participants of Commonwealth of Independent States (ratified by the Russian Federation in 2003) was approved.
2002-2003	New laws “On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation” and “On Elections of President of the Russian Federation” were passed.
2003	Federal Law “On State automated system of the Russian Federation “Vybery” was passed. Online portal as a new subsystem of SAS “Vybery” was developed, including group of websites (the CEC of Russia and election commissions of subjects of the Russian Federation), united by a single information space. Hardware-software facilities for voting and counting of votes were developed – complexes of processing ballots (CPB-2003). First use of CPB-2003 onelections.
2003-2004	Federal election campaigns on elections of deputies of the State Duma of the fourth convocation and the President of the Russian Federation were conducted.
2004	Federal constitutional law “On Referendum of the Russian Federation” was passed. Recommendations for international observers of the Commonwealth of Independent States for monitoring of elections and referendums were developed and adopted with the participation of the CEC of Russia.
2005	The first batch of electronic voting systems (EVS) was utilized. Modernization of the SAS “Vybery”. Amendments to the Federal Law “On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation.” Transition to an exclusively proportional electoral system.
2007-2008	Federal election campaigns on elections of deputies of the State Duma of the fifth convocation and the President of the Russian Federation were held. Elections of deputies of the State Duma were held using the proportional electoral system.
2008	Experiments on electronic survey of voters were performed using the Internet in seven regions of the country. Declaration of the Interparliamentary Assembly of States – participants of the Commonwealth of Independent States “On Principles of International Observation of Elections and Referendums in the Participating States of the Commonwealth of Independent States” was adopted.
2009	Beginning of the work to account total broadcasting time spent within one calendar month on coverage of the activities of each parliamentary party in all-Russian and regional TV programs (telecasts), radio programs (radio broadcasts).
2010	Release of an experimental batch of CPB-2010. The first application of CPB-2010 on the single voting day October 10, 2010.
2011	Program of accelerated technical re-equipment of the electoral system of the Russian Federation was adopted. With the participation of the CEC of Russia, were developed and adopted Recommendations on improvement of the legislation of the States-participants of the Interparliamentary Assembly of the Commonwealth of Independent States in accordance with international electoral standards; Recommendations for international observers from the Commonwealth of Independent States for monitoring of elections and referendums.

2011-2012	Elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the sixth convocation and the President of the Russian Federation were held.
2012	Information Center of the CEC became a regular platform. With the participation of the CEC of Russia, Model law “On National Referendum” was prepared and adopted.
2012-2013	Liberalization of legislation on political parties, requirements for the registration of political parties were simplified. Increase in the number of political parties. Transition to the formation of electoral districts for a term of 10 years was implemented, precinct election commissions were formed for a term of 5 years. On the single voting day in the subjects of the Russian Federation in September 2012 a return to direct elections of governors of regions was made (not being held since 2005). New requirements for candidates for the position of the head of the region.
2013	Possibility of alternative elections of governors of regions – direct election or election by vote of the Deputy case of legislative Assembly of the regions on the proposal of the President of the Russian Federation. The CEC became a member of the Association of World Election Bodies.
2014	Federal Law “On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation” was passed. Changing of electoral formulas for parliamentary elections (transition to a mixed electoral system). Decree of the CEC of Russia “On the Youth Electoral Concept” was adopted. With the participation of the CEC of Russia, were developed and adopted Recommendations on improvement of legislation on elections of heads of state in the CIS countries; Recommendations on general principles of organization and conduction of municipal (local) elections, local referendums, voting; the Model law “On the Status of the Elected Official of Local Self-Government”.
2015	Federal Law “On Approval of the Scheme of One-mandatory Constituencies for Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation” was passed.
September 18, 2016	Election of deputies of the State Duma of the Federal Assembly of the Russian Federation of the seventh convocation.



# SERBIA

*Helga Lieszkowszky<sup>1</sup>*

The Republic of Serbia is a sovereign state of the Serbian people and all the people who live within its borders. The sovereignty belongs to the people, who exercise their right directly through referendums and people's initiatives as well as indirectly through freely elected representatives.

Every Serbian citizen, who reached legal age holds the right to elect and to be elected. In the Republic of Serbia, "suffrage is universal and equal; elections are free, direct and secret."<sup>2</sup>

Suffrage – among the right to elect and to be elected – also includes the right to nominate a candidate and to be nominated, to make a decision on the support of the candidates and electoral lists, to ask questions from candidates publicly, to be informed about the election program of the electoral contestants truthfully, completely, objectively and promptly.<sup>3</sup>

## 1. Elections systems

### PARLIAMENTARY ELECTIONS

The legislative body of the Republic of Serbia is the *National Assembly*. The National Assembly has one chamber with 250 members who are elected in a single nationwide constituency. The mandate of the National Assembly lasts for four years. The members of the National Assembly are elected from candidate lists based on a proportional system.<sup>4</sup>

Every Serbian citizen with a residence in the territory of the Republic of Serbia who has reached 18 years of age and is able to work can elect and be elected as a representative.

The *President of the Republic of Serbia* calls for election of representatives. The elections shall be held at least 45 days and no more than 90 days after the calling for the elections and no later than 30 days before the expiry of the mandate of the current representatives.

Candidate lists can be submitted by political parties or their coalitions or groups of at least 10 citizens. It is not forbidden to submit a list with one candidate only, however individual candidates cannot take part in the elections. Seats are allocated in proportion with the number of votes received by the lists.

In order to enforce *gender equality*, every candidate list has to contain one candidate of the less represented gender in every three candidate.<sup>5</sup>

In order to participate in the electoral competition, an electoral list has to gain at least 10.000 supporting signatures of the voters. One voter can only support one electoral list.

---

<sup>1</sup> ACEEEO Expert.

<sup>2</sup> Constitution of the Republic of Serbia, s 1.

<sup>3</sup> Law on the Election of the Representatives of the Republic of Serbia, s 2.

<sup>4</sup> OSCE/ODIHR Limited Election observation Mission Final Report, *Republic of Serbia Early Parliamentary Elections 24 April 2016* (29 July 2016) p 4-5.

<sup>5</sup> OSCE/ODIHR Limited Election Observation Report Mission Final Report, *Republic of Serbia Early Parliamentary Elections 24 April 2016* (29 July 2016) p 2.



To take part in the allocation of the seats, a list has to obtain 5% of the total number of votes cast. This requirement does not apply to the candidate lists of the *political parties of ethnic minorities* or the coalitions of the political parties of ethnic minorities. All political parties whose main political program is to protect the interest of an ethnic minority are considered a *political party of ethnic minority*.

The allocation of seats are carried out by the *Republic Electoral Commission*. The mandates are distributed according to the *highest quotients system*. The number of votes each electoral list gained is divided by all the numbers from one to the total number of mandates distributed. Then the 250 largest quotients are sorted by size and these are the ones that are taken into consideration. Electoral lists are allocated as many seats as the number of quotients it has. If two or more candidate list gains the same quotients and there are no more seats to be allocated, the mandate is distributed to the electoral list that has the higher number of total votes.

When an electoral list gains more seats than the number of candidates it has, the mandate is allocated to the candidate list that has the next largest quotient.<sup>6</sup>



## PRESIDENTIAL ELECTIONS

The election of the *President of the Republic of Serbia* is primarily regulated by the *Constitution of the Republic of Serbia* and the *Law on the Election of the President*. However the *Law on the Election of Members of the Parliament* provides general provisions applying to the presidential elections as well.<sup>7</sup>

The President of the Republic of Serbia is elected directly by the Serbian citizens. The right to elect and to be elected the President of the Republic of Serbia is granted to the people who have the legal age and a citizenship in Serbia.

<sup>6</sup> Law on the Election of the Members of the Parliament of the Republic of Serbia, s 1,2,4,6,9.

<sup>7</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Parliamentary and Early Presidential Elections 6 and 20 May 2012* (31 July 2012) p 5.

The mandate of the President of the Republic of Serbia lasts for five years.

The call for election of the President of the Republic of Serbia is made by the *Speaker of the National Assembly*, no later than 90 days before the mandate of the current President expires. The polling day has to be at least 30 days and no later than 60 days after the call for the elections.

Candidates for the President of the Republic of Serbia can be nominated by a political party registered in Serbia before the calling for the elections, by a coalition of political parties or by citizens' groups.

To take part in the presidential elections as a candidate, a person has to collect at least 10.000 supporting signatures from voters. One voter may only support one candidate with her signature.

The person who is elected the President of the Republic of Serbia is the candidate who acquired the majority of the total number of votes in the first round of elections. If none of the candidates receives the majority of the total votes cast, the elections shall be repeated no later than 15 days after the first round of elections.

The two candidates with the largest number of votes are the candidates who can take part in the second round of the elections. If two or more candidates gain equal number of votes on the first or second place, then more than two candidates can take part in the second round of the elections.

The President of the Republic of Serbia is the person who receives the highest number of votes in the second round. If equal number of votes are gained by the candidates, a third round of elections shall be held within 15 days after the second round.<sup>8</sup>

## 2. Stability of the elections laws

### PARLIAMENTARY ELECTIONS

Parliamentary elections in the Republic of Serbia are regulated by the *Constitution*, the *Law on the Election of the Representatives* and some supplementary laws. Since 1990, a new *Law on the Election of the Representatives* entered into force once, in 2000.

The previous *Law on the Election of Representatives* was last amended in 1997. Late amendments to the election law shortly before the elections introduced a *regional proportional system* with 5% election threshold. Serbia was divided from one nationwide constituency to 29 constituencies in June 1997.<sup>9</sup>

According to the new *Law on the Elections of the Representatives* introduced on 8 October 2000, elections were held again in a single nationwide constituency. However the 5% threshold for the candidate list remained in effect. The mandates were allocated using the *d'Hont method*. The new law enabled the parties to allocate the mandates within the list according to their will and not necessarily according to the order of the candidates on the list. According to the law, the mandate of a representative who lost party membership could be terminated by the decision of the respective party.

Votes could only be cast in person in one of the polling stations in the territory of Serbia.<sup>10</sup>

---

<sup>8</sup> Law on the Election of the President of the Republic of Serbia, s 1, 2 and 5.

<sup>9</sup> OSCE/ODIHR Final Report, *Republic of Serbia Parliamentary Election 21 September 1997 and Presidential Election 21 September and 5 October 1997*, p 4-5.

<sup>10</sup> OSCE/ODIHR Final Report, *Republic of Serbia Parliamentary Election 23 December 2000* (20 February 2001) p 4-5.

The 2004 amendment to the *Law on the Election of the Representatives* ended the provision that enabled only those parties and coalitions to take part in the allocation of the mandates that received at least 5% of the votes in the case of the lists of minority parties.

The possibility of voting at diplomatic and consular missions was introduced for Serbian citizens temporarily residing abroad.

Some changes in the regulation of the elections were not included in the *Law on the Election of the Representatives*, but in the *guidelines of the Republic Election Commission*. One of these guidelines lowered the required number of supporting signatures from 10.000 to 3.000 in the case of the candidate lists of minority parties and coalitions. Other parties still had to reach the 5% threshold in order to take part in the allocation of mandates.<sup>11</sup>

According to the last amendment to the *Law on the Election of the Representatives* in 2011 the parties were no longer permitted to allocate the mandates according to their will, the distribution of mandates rather shall be carried out according to the order of the candidates on the list.

The 2011 amendment also introduced a *gender quota*. As mentioned earlier according to the provision, every third candidate on the list has to be from “the less represented gender”.<sup>12</sup>

The Law on the Election of the Representatives has not been amended since 2011.<sup>13</sup>

## PRESIDENTIAL ELECTIONS

The *Law on the Election of the President* was adopted in 1990 and amended in 1992. According to the 1992 amendments a 50% voter turnout was required, for the second round of the presidential elections as well. Accordingly the winner of the elections had to receive the majority of the total votes including invalid votes.

Shortly before the repeat presidential election on 8 December 2002 the National Assembly introduced amendments to the Law on the Election of the President on 5 November 2002. The requirement of voter turnout was repealed from the law in the case of the second round of the elections. The requirement to receive the majority of the total number of votes including the invalid votes in the second round was also repealed. Accordingly the largest number of votes was enough for a candidate to be elected as the President.

The provision regulating the period between calling and holding the presidential elections was reduced to a minimum of 30 days while the maximum remained 90 days.

The amendments included a provision that established a three-level election administration system for the presidential elections as among the *Republic Electoral Commission* and the *Polling Boards*, the *Municipal Election Commissions* were established as the intermediate level of administration bodies.<sup>14</sup>

On 25 February 2004 significant amendments were introduced to the electoral law. The amendments abolished the 50% voter turnout requirement in the case of presidential elections.

---

<sup>11</sup> OSCE/ODIHR Election Observation Mission Report, *Republic of Serbia Parliamentary Elections 21 January 2007* (26 April 2007) p 1-4.

<sup>12</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Parliamentary and Early Presidential Elections 6 and 20 May 2012* (31 July 2012) p 4-5.

<sup>13</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Early Parliamentary Elections 24 April 2016* (29 July 2016) p 4.

<sup>14</sup> OSCE/ODIHR Final Report, *Republic of Serbia Presidential Elections 29 September and 13 October and Repeat Presidential Elections 8 December* (18 February 2003) p 5-6.

*Out-of-polling-station voting* or mobile voting for the homebound voters had been abolished in 2000 to avoid election fraud; however it was reintroduced with the 2004 amendments. Voting in detention centres was also enabled.<sup>15</sup>

On 3 December 2007 the new Law on the Election of the President of the Republic of Serbia was adopted. The new law abolished the intermediate level of election administration, thus election administration became two-tiered. The Republic Electoral Commission created working groups at municipal levels to carry out election logistics.<sup>16</sup>

The last presidential election of the Republic of Serbia took place in 2012. Significant amendment has not been made to the Law on the Election of the President of the Republic of Serbia since 2007.

### 3. Electoral management bodies

Electoral administration in the Republic of Serbia at present has two levels. The *Republic Electoral Commission* and the *Polling Boards* are the bodies that are responsible for the conduction of the elections. In addition, ad hoc *Working bodies* carry out the technical and logistical support of the elections at municipalities.

#### REPUBLICAN ELECTORAL COMMISSION

The *Republican Electoral Commission* is composed of standing composition and an extended composition. In the standing composition, a chairperson, a deputy chairperson, 16 members and their deputies are appointed for a four-year term by the parliament.

The extended composition of the *Republican Electoral Commission* is appointed for the election period and every electoral contestant has the right to appoint one representative and her deputy.

The *Republican Election Commission* also has two members who are not granted the right to vote: the secretary of the commission and a representative of the National Statistical Office.<sup>17</sup> The secretary is also elected by the Parliament from professionals.

The chairperson and the members of the *Republican Electoral Commission* are required to have a Bachelor degree in Law.<sup>18</sup>

#### POLLING BOARDS

The *Polling Boards* are also composed of a standing composition and an extended composition.

The members of the standing composition of the Polling Boards are nominated by the *Republican Election Commission*. Members of the Polling Boards are: a chairperson and two members and their deputies.

The representatives and their deputies of the extended composition of the Polling Boards are nominated by the electoral contestants of the respective parliamentary and/or municipal elections.<sup>19</sup>

<sup>15</sup> OSCE/ODIHR Election Observation Mission Report, *Republic of Serbia Presidential Election 13 and 27 June 2004* (22 September 2004) p 5-6.

<sup>16</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Presidential Election 20 January and 3 February 2008* (29 August 2008) p 4-5.

<sup>17</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Early Parliamentary Elections 24 April 2016* (29 July 2016) p 5-6.

<sup>18</sup> Law on the Election of the Members of the Parliament of the Republic of Serbia, s 5.

<sup>19</sup> OSCE/ODIHR Limited Election Observation Mission Final Report, *Republic of Serbia Early Parliamentary Elections 24 April 2016* (29 July 2016) p 6.



#### 4. Safeguards of the free and fair elections

##### CAMPAIGN ACTIVITIES

Submitters of the candidate lists in the Republic of Serbia have the right to inform citizens of their political programs, also of the activity of the candidates and the submitter by the contribution of the mass media.

Radio and television broadcaster organisations that are founded by the Republic of Serbia (public radio and television broadcasting companies) are obliged to present the submitter of the candidate lists and the candidates on these lists along with their electoral programs in political-informative programs that can be seen or heard throughout the territory of the Republic of Serbia from the day of calling for the elections. Similarly, public radio and broadcasting companies also have to present all of the electoral contestants independently and impartially during the election campaign. The presentation has to be broadcasted in an impartial attitude towards the programs of the contestants.

Electoral campaigns in the mass media and in the form of public gatherings are forbidden 48 hours before Election Day and during the polling until the polling stations are closed. The publishing of the estimations concerning the election results is also forbidden in the mentioned period.

The electoral lists are proclaimed by the Republican Election Commission within 24 hours of the receipt of the electoral list. The list of the names of the electoral lists and the names of all the candidates on the electoral lists are also displayed at all polling stations on the Election Day.<sup>20</sup>

##### CAMPAIGN FUNDING

In the Republic of Serbia, the *Law on the Financing of the Political Activities* contains the regulations about the sources and manner of the funding of political

---

<sup>20</sup> Law on the Election of the Members of the Parliament of the Republic of Serbia, s 7-8.

parties, coalitions and citizens' groups and the control and record over these funding in order to enhance the transparency of the campaign financing.

Election campaigns of the electoral contestants may be funded by public and private sources.

*Public sources* that are covering the election campaign costs are distributed in the year of the elections and are set in the amount of 0,1% of the budgetary expenditure of the Republic of Serbia for the respective budget year.

20% of these are distributed in equal amounts to the submitters of electoral lists 5 days after the proclamation of the lists.

80% of these sources are allocated to the submitters of candidate lists in proportion with the number of votes the list had received. This part of the fund is paid to the submitters of the list 5 days after the publishing of the election results.

In case the elections are held in a majority system (presidential elections) the 0,1% of the budgetary expenditure of the Republic of Serbia is distributed in a different manner. 50% of the fund is distributed in equal amounts between the proponents of candidates. The remaining 50% is allocated to the candidate winning the elections 5 days after the publication of the election results.

In case of runoff elections under a majority system, the remaining 50% of the fund is distributed between the participants of the second round of the elections.

A political entity also has the right to raise funds from *private sources* in order to finance election campaign.

A natural person or a legal entity is enabled to donate to political entities in the election year however the amount of the donation is limited.

A natural person is allowed to donate 20 average monthly salaries to a political entity annually, while a legal entity is allowed to donate 200 average monthly salaries.

The donations that exceed a monthly salary at an annual level have to be published on the political entity's website within 8 days of the receipt of the donation.<sup>21</sup>

---

<sup>21</sup> Law on the Financing of Political Activities of Serbia, s 2 and 4.





*Ing. Eva Chmelová et al.\**

## 1. Election laws

### *Elections to the National Council of the Slovak Republic*

The sole statutory and legislative body of the Slovak Republic is the National Council of the Slovak Republic (hereinafter referred to as the “National Council”). According to the Constitution of the Slovak Republic the National Council has 150 members, who are elected for a four-year term.

The legal background of elections to the National Council is prescribed in Law No. 180/2014 Coll. on Conditions of exercising the right to vote and on the amendment of certain laws, which entered force on 1. July 2014.

The law has the character of an electoral codex, since it defines also the rules for the election to the European Parliament, elections of the President of the Slovak Republic, elections to regional councils, local councils and rules regulating the referendum.

Elections to the National Council take place using the proportional representation system on the basis of universal, equal and direct right to vote by secret ballot.

Elections have one round and take place under a single, multi-mandate electoral district, which is the territory of the Slovak Republic.

A citizen of the Slovak Republic can be elected as a member of the National Council, if achieved 21 years of age no later than on the day of the elections and has permanent residence in the territory of the Slovak Republic. Persons serving a prison sentence, lawfully convicted of an intentional crime in the absence of remedy as well as persons deprived of legal capacity cannot stand as candidates.

Candidates are proposed by political parties and their coalitions using open candidate lists. Political parties and coalitions can list 150 candidates at the most on the candidate list. The candidate list has to be appended with a proof of paying the election deposit of 17.000 Euros.

Submitted candidate lists are examined and registered by the State Committee for Elections and Control of Political Parties Financing (hereinafter referred to as the “State Committee”).

Every citizen of the Slovak Republic has the right to vote, who reached 18 years of age no later than on the day of the elections. Voting in the elections can be done in the territory of the Slovak Republic or abroad using postal services.

Electoral districts are created in municipalities to hand over and count the votes, which usually include 1.000 voters.

The composition of the lists of voters are decentralized as these are drafted by each municipality. Voters vote individually, representation is not permitted. The order of candidates on the ballot can be adjusted by the voters using four preferential votes.

---

\* JUDr. Ivan Illáš, JUDr. Lenka Šurinová, JUDr. Michaela Kováčová, Mgr. Martin Gajdoš, Mgr. Pavol Kačic

Mandates are assigned to political parties and coalitions in one scrutiny. Election thresholds are different based on the composition of the nominating organizations: for an individually running political party it is 3 % of the total number of valid votes; for two or three member party coalitions is 7 % while for coalitions made of at least four political parties is 10 % of the total number of valid votes cast.

The Hagenbach-Bischoff method is used to assign mandates. The sum of valid votes handed for advancing political parties or coalitions is divided by the number 151 (the number of mandates plus one). The result of this division, rounded to a whole number is the *republic electoral number*.

The total number of valid votes supporting the respective political party or coalition is divided by the *republic voting number*. As a result, the political party or coalition is assigned as many mandates, as many times the republic voting number is contained in the sum of their valid votes.

If one additional mandate is assigned by this method than it was supposed to, the additional mandate is removed from that political party or coalition which has the smallest remainder of the division.

If not all mandates have been assigned by this method, or if the political party or coalition had a lower number of candidates than the number of mandates it was assigned, the State Committee assigns these mandates gradually to those political parties or coalitions, which have the largest remainder of the division.

Candidates win mandates assigned to their political party or coalition in order in which they are listed on the ballot. If the voters used their preferential vote, the mandate is assigned first to the candidate who received at least three percent of preferential votes of the total number of valid votes given to the respective political party or coalition. If the political party or coalition is assigned more mandates and more candidates met the condition prescribed above, the mandates are assigned to candidates gradually in the order from the highest number of received preferential votes. If there is equality of preferential votes order on the ballot is the decisive order.

Candidates who were not assigned a mandate remain substitutes.

If during the term of office a mandate is vacated, it is filled by a substitute of the same political party or coalition, based on the order in which she was listed on the ballot. If preferential votes were used on the ballot, the vacancy is filled by the candidate who received the highest number of preferential votes among the candidates who received at least three percent of preferential votes. If there is no substitute of the same political party or coalition, the mandate remains vacant until the end of the term. If the political party is dissolved, substitute does not fill the vacancy and the mandate remains vacant until the end of the term.

### ***Election of the President***

The election of the President of the Slovak Republic (hereinafter referred to as the “President”) is governed by the Constitution of the Slovak Republic adopted in 1992. Until 1998 the President was elected indirectly by the members of the National Council. Based on the former regulation, the election of the President required a three-fifths majority of all the members of the National Council (90 of 150 members). Amendment to the Constitution in 1999 introduced direct election of the President and the possibility to recall the President from the office by popular vote.

All citizens of the Slovak Republic have the right to vote for the President, who have the right to vote to the National Council – citizens of the Slovak Republic, who reached 18 years of age no later than on the day of the elections.

Elections, which are announced by the Speaker of the National Council, take place in the territory of the Slovak Republic. Citizens of the Slovak Republic with permanent residence outside of its territory, if they wish to vote, they have to get to the territory of the Slovak Republic on the day of the elections.

Each citizen of the Slovak Republic can be elected as President, who can stand as a candidate at the elections of the National Council and who reached 40 years of age no later than on the day of the elections.

Presidential term of office is five years. The same person can be elected as President for not more than two consecutive terms.

Candidates for the President are proposed by at least 15 members of the National Council or citizens who have the right to vote to the National Council, by the means of a petition, which has to contain at least 15 thousand supportive signatures. Proposals for the Presidential elections are handed to the Speaker of the National Council.

The Speaker of the National Council announces the names of candidates, the proposals of which were handed over to the State Committee, which by the means of the Ministry of the Interior of the Slovak Republic secures the printing of the ballots.

The ballot is one for all candidates. Using the ballot the voters give votes to selected candidate by circling her ordinal number.

The election is consisting of two rounds and it is based on the majority electoral system. The candidate, who receives in the first round the absolute majority of valid votes of entitled voters, becomes the President.

If none of the candidates receives the necessary number of valid votes in the first round of the election, in 14 days' time a second round is organized, where proceed two candidates with the highest number of valid votes. If one of the candidates who received the highest number of votes in the first round ceases to be eligible before the second round of the election, or withdraws from the candidacy, the candidate participates in the second round of the election who received the second highest number of valid votes in the first round of the election. If there aren't two candidates for the second round, the second round does not take place and the Speaker of the National Council announces new elections, which take place within 60 days of their announcement.

The results of the elections are announced by the State Committee.

Elected candidate take office of the President by taking an oath to the Chief of the Constitutional Court of the Slovak Republic on the noon of the day on which the presidential term of office of the previous President shall end. Refusal of the oath or taking the oath with reservations leads to annulment of the presidential elections.

President can resign from the office: the presidential term of office ends on the day of delivering the written notice to the Chief of the Constitutional Court of the Slovak Republic, who notifies the resigning from the function to the Speaker of the National Council in writing.

## **2. Stability of election laws**

*The first law governing elections to the Slovak National Council* (after the formation of an independent Slovak Republic - National Council of the Slovak Republic) was adopted in 1990 and was in force until 2004.

The law prescribed the system of proportional representation for the elections to the National Council.

Citizens of the Slovak Republic had the right to vote who reached 18 years of age no later than on the day of the elections and had permanent residence in its territory.

The elections took place in the territory of the Slovak Republic, which was split into four multi-mandate electoral districts.

Political parties and coalitions could run by the means of an open candidate list, which could contain no more than 150 candidates. The political party had to append the list of candidates by a declaration that it has at least 10 thousand members, or a petition signed by the number of voters as determined by law, requesting the candidacy of the respective political party in the elections.

The voters could adjust the order of candidates on the candidates list by using four preferential votes.

The mandates were assigned in two rounds of counting votes, on a regional and nation-wide level. The threshold requirement was unified for independently running political parties and coalitions: it was necessary to get 3 % of valid votes of the total number of valid votes.

The Hare's method was used to assign mandates in the first scrutiny; the Hagenbach- Bischoff method was used for the second scrutiny.

The law was amended eight times since 1990. In 1992, 1994 and 1998 the law was amended in the year before the elections were held.

*Amendments from 1992 and 1998 were decisive ones.* Before elections held on 5 and 6 June 1992 the amendment to the Electoral Law changed the conditions for advancement to the first scrutiny. The threshold for independently running political parties was increased from 3 % to 5 %. Two and three member coalitions had to get 7 % and four and more member coalitions 10 % of valid votes of the total number of valid votes. The Hare method was replaced in the first scrutiny by the Hagen-Bischoff method. The number of preferential votes decreased from an absolute majority of votes of voters of the respective political party to 10 % of preferential votes of the total number of valid votes.

The amendment to the Electoral Law adopted before the elections held on 25 and 26 9. 1998 aimed at the repeal of four electoral districts and the creation of a single multi-mandate electoral district made of the entire territory of the Slovak Republic. The change was justified by the new regulation of the territorial and legal organization of the state.

The adjustment of assigning mandates was in accordance with the creation of a single electoral district. The condition for assigning mandates to a political party was to acquire 5% of the total number of valid votes, even for coalitions.

Mandates were assigned only in one scrutiny using the Hagenbach- Bischoff method.

Preferential votes received by the candidates were determined based on the votes cast in the entire territory of the Slovak Republic.

After the decision of the Constitutional Court of the Slovak Republic (finding of Constitutional Court No. 66/199. Coll.), which declared the amendment to the law as unconstitutional, the law was amended again. This meant return to the legal provisions in force before adopting the amendment which was challenged before the Constitutional Court.

*In 2004 the law from 1990 was abolished and replaced with a new law.* For citizens of the Slovak Republic with permanent residence outside of its territory and citizens of the Slovak Republic with permanent residence inside its territory, who were abroad during the elections, the possibility to vote by mail was established.

The election threshold was differentiated. Independently running political parties had to get 3 % of valid votes of the total number of valid votes to advance to the next tallying. For coalitions of political parties the threshold was set with respect to the number of political parties forming the coalition. Two and three member coalitions had to get 7% while four and more member coalitions had to get 10% of valid votes of the total number of valid votes. Mandates were assigned in one scrutiny using the Hagenbach-Bischoff method.

Since then, the law was amended seven times. In 2005 and 2010 the law was amended in the year before the elections were held.

*The amendment from 2005 was a decisive one.* Before the elections, which were held on 17 June 2006, the amendment to the act introduced the obligation of every political party or coalition to pay an electoral deposit of 500.000 SK (16.596 Euros). The deposit replaced the obligation of the political party to append the candidate list with a declaration that it has at least 10 thousand members, or a petition signed by the number of voters as determined by the law, requesting the candidacy of this political party in the elections.

*In 2014 a new Electoral Law was passed,* which replaced all previously valid laws governing the elections to representative bodies, elections of the President of the Slovak Republic and the referendum in the territory of the Slovak Republic. The law was amended once. The amendment was related to adjusting the competence of the State Committee for Elections and Control of Political Parties Financing.

*The law governing the direct vote of the President of the Slovak republic* was passed on 18. March 1999 and it was amended in 2003, 2008 and 2011.

The mentioned amendments related the change of organization of local state administration, introduction of the Euro currency in the Slovak Republic, reconciling changes of use of the state language and of languages of national minorities, as well as the implementation of international treaties aiming at protecting the rights of national minorities and ethnic groups.

### **3. Electoral management bodies**

The State Committee for Elections and Control of Political Parties Financing was established by the Law No. 180/2014 Coll. on the Conditions of exercising the voting right and on the amendment of certain laws (hereinafter referred to as the “Electoral Law“) from 29 May 2014 as an independent state organ for the control of financing of political parties and political movements, elections governing and determining the results of the elections.

The State Committee has 14 members. Ten members are delegated into the State Committee by the political parties, which got representation in the National Council of the Slovak Republic in the last elections, proportionately based on the number of acquired mandates. The number of the State Committee members delegated by political parties which formed the government has to be equal to the number of delegates of the opposition parties represented in the National Council. This equality has to be maintained during the entire term of office of the State Committee. The Chief of the Constitutional Court of the Slovak Republic, the Chief of the Supreme Court of the Slovak Republic, Attorney General and Chief of the Supreme Audit Office each delegate one member to the State Committee – this mechanism enforces the independence of the State Committee.

Leading representatives of respective political parties, Chief of the Constitutional Court of the Slovak Republic, Chief of the Supreme Court of the

Slovak Republic, Attorney General and Chief of the Supreme Audit Office notify the Speaker of the National Council within 60 days after announcing the results of the elections to the National Council the name, surname, title, date of birth, completed education and address of permanent residence of the member delegated to the State Committee. The notification of the statement of convictions of the members (not older than three months) and proof of completed education should be appended. The Speaker of the National Council issues the members of the State Committee a certificate about their membership within 15 days after the expiration of the period of notification on delegations. The Chairman of the State Committee is elected by the National Council of the Slovak Republic in secret ballot among all the members of the Committee.

The term of office of the State Committee begins on the day of taking the oath by its members and ends on the day when the oath is taken by members of the new State Committee. The oath is taken before the Speaker of the National Council on the day of handing over certificates on the membership in the State Committee.

Membership in the State Committee is a public function. Pursuant to § 13 sec. 4 of the Electoral Law any citizen of the Slovak Republic can be a member of the State Committee, who has permanent residence in the territory of the Slovak Republic, has clear criminal record, has legal capacity in full, completed university education of the second level and is at least 35 years old. One person can be a member of the State Committee in two consecutive terms of office at most.

The function of a member of the State Committee expires:

- by expiration of the term of office,
- by resignation,
- if a member of the State Committee no longer meets the conditions for performing the function pursuant to § 13 sec. 4 of the Electoral law
- due to change of proportion of political forces based on the decision of the political party, which nominated him or her.

An essential feature of independence of the State Committee is the incompatibility of the function of a member of the State Committee with the candidacy for a function or the function of

- President of the Slovak Republic,
- member of the National Council of the Slovak Republic,
- member of the European Parliament,
- head of an self-governing region,
- member of an self-governing region council,
- mayor of community,
- member of a municipal council.

State organ responsible for *organizing elections* is the Ministry of the Interior of the Slovak Republic. The State Committee is independent from the Ministry of the Interior, while cooperates with it in fulfilling tasks based on the Electoral Law and individual regulations.

The State Committee has no individual control powers over the Ministry, however, in matters of financing of political parties and in matters of election campaign the State Committee is the appellate body against the decisions of the Ministry of the Interior.



## 4. Safeguards of free and fair elections

### *Election campaign*

Pursuant to the Law on Election Campaign, *election campaign* is any activity of a political party, political movement, coalition of political parties and political movement, candidates and third parties which aim at promoting their activities, goals and programs, for the purpose of acquiring an elected political function.<sup>1</sup>

Activities related to subjects other than the ones stipulated in the Law on Election Campaign in favor or against running subjects during the time set for election campaign is prohibited.

Forms and types of conducting an election campaign are not restricted by legal regulation of the Slovak Republic.

However, the Law on Election Campaign does impose time regulation of conducting an election campaign, according to which the election campaign begins on the day of announcing the decision on call for elections in the Collection of Laws of the Slovak Republic and ends 48 hours before the day of the elections.

The Law on Election Campaign further imposes limits on costs, which the running subjects can use for the different elements of election campaigns and spendings during the time beginning 180 days before the day of calling for the elections.

Broadcasting of political advertisements through public radio and television channels and private broadcasting channels is allowed during the time beginning 21 days before the day of the elections and ending 48 hours before the day of the elections.

The time allocated for broadcasting of political advertisements during the election campaign is also regulated in the Law on Election Campaign which prescribes the requirement of offering equal conditions for the contestants as well.

Municipalities and city districts in Bratislava and in Košice designate places and establish conditions for placing election posters at public places during election campaigns acting on a basis of a generally binding regulation. Designated areas have to comply with the principles of equality of the running subjects.

### *Remedies*

One of the most important rights of the voter, common for all types elections and referenda, is the right to check at the municipality of her permanent residence, whether she is on the permanent list of voters, her personal data are complete and true. Voters can also request the completion of their personal data or change thereof. The above are called *objection proceedings*. The municipality is obliged to comply with the request or to inform the voters about the reasons because of which it cannot comply with the request within three days. Voters can appeal against the decisions of municipalities to the Administrative Court. Based on the decision of the Administrative Court the municipality carries out the possible change in the permanent list of voters, while on the day of the elections the district election committee is responsible for the correction.

In the elections to the National Council and in the elections to the European Parliament political parties and coalitions can address the respective court against the

---

<sup>1</sup> See § 2, sec. 1 and § 8 of the Law on Election Campaign.

decisions of an election committee on registering their candidate list with adjustments and on rejecting the registration of their candidate list.

In the elections of the President of the Slovak Republic candidates can address the respective court against the decision on the rejection of registering her as a candidate based on the proposal of the Speaker of the National Council.

During the legally set time period after the elections (within 10 days after the announcement of election results), legally designated subjects (political parties and coalitions, 10% of eligible voters, a candidate who received at least 10% of votes, candidates for presidency) can submit a complaint to the Constitutional Court about the unconstitutionality or illegality of the respective election, referendum or popular vote.

District Offices decide on matters of misdemeanors in relation to the election process, as well as misdemeanors in relation to the election campaign according to the Law on misdemeanors.

The accused can file an appeal against the decisions in the misdemeanor proceedings to the district court.

The Law on Election Campaign prescribes that it is possible to submit a remedy to the State Committee against the decisions of the Ministry of the Interior of the Slovak Republic in matters of administrative offences, in which the Ministry it decides in the first instance. However, it is not possible to file an appeal against the decisions of the State Committee on administrative offences according to the Law on Election Campaign. Otherwise, all decisions of the State Committee are subject to judicial review.

### ***Transparency***

*Publicity of the electoral process*, respectively informing of the voters about the election is ensured according to the Electoral Law especially by:

- publishing the decision on the call for elections in the Collection of Laws of the Slovak Republic,
- announcing the information on conditions of the right to vote and the right to be elected on the official board of the municipality and on its webpage, if there is one,
- delivering the notification on the time and place of the elections, form of the ballot and obligation of the voter to identify oneself with an ID before the elections to every household; in municipalities with legally set percentage share of citizens claiming to be of national minority in the language of the national minority,
- delivering a list of registered candidates to each household; for elections to bodies of self-governance of municipalities and self-governing regions by publishing a list of candidates in a way typical for given place,
- informing the accused and the convicted about the elections and about the method and right to vote in the conditions of the facility where they are located.

Publicity and transparency of the electoral process is enhanced also by the provision of the law allowing the presence of citizens and international observers at the polling stations and the counting of the votes.

*Transparency of the election campaign* is secured especially by:

- Obligation of the running political subjects and third parties to cover the costs of the election campaign only with financial resources managed on a separate

bank account (so called *transparent account*). Data about the separate account have to be freely, remotely and continuously available to third parties and it has to display an overview of payment transactions.

- Obligation of the running political subjects and third parties to keep separate records on the use of resources for the election campaign and issue final report on the costs of the election campaign. The final report of the political party is published by the Ministry of the Interior on its website and it is available to the public for five years.
- Obligation of everyone who leads an election campaign to secure that the broadcasted political advertisements, published paid advertisement, published election posters and all other methods of leading an election campaign contain accurate information about the buyer and the supplier.



# SLOVENIA

*Dragana Kopčić\**

## 1. Electoral system in Slovenia

### *Elections to the National Assembly*

National Assembly elections are regulated by the Elections to the National Assembly Act. The right to vote is universal and equal, meaning that every citizen over the age of 18 is entitled to vote and to be elected regardless of their class, nationality, race, economic standing, etc. 'Equal voting right' relates to the active right to vote and means that every vote from every voter has the same value, that every voter has one vote only and that no vote takes precedence over another. The sole exception to this principle is the voting right exercised by members of the Italian and Hungarian national communities: each community is represented by one deputy in the National Assembly, with the members of these communities being entitled to vote for other National Assembly deputies as well.

The electoral procedural rules regulate candidacy, voting and the counting of votes to determine the outcome of an election. The procedure starts at a specified time with the calling of an election, when the start and end of the election procedure are determined. General elections to the National Assembly are called by the president of the republic.

At general elections, all deputies are elected at the same time. A distinction is drawn between regular elections (every four years upon expiry of the term of the parliament) and early elections (when the National Assembly is dissolved during the four-year parliamentary term).

General elections are re-run if irregularities arise during the electoral process, and if elections that have already been held are annulled because of electoral irregularities.

Subsequent elections are elections held when a ballot was not held in an electoral unit or at a specific polling station on the day assigned for voting.

The country is divided into eight electoral units for elections to the National Assembly. Each unit is divided into 11 districts; accordingly, each unit returns 11 deputies. The principle enshrined in law is that one candidate is elected in each electoral district. Special electoral units have been formed to serve those areas in which the Italian and Hungarian national communities reside.

Candidates for election to the National Assembly may be nominated by political parties or groups of voters. There are two ways in which political parties may nominate candidates:

- in any electoral unit, with the support of at least three members of Parliament
- (a) by nomination of party members with a right to vote and permanent residence in the respective electoral unit, supported by the signatures of at least 50 voters with permanent residence in that electoral unit; or (b)

---

\* Advisor to the Director of the National Election Commission

nomination by members of the party or authority of political parties in accordance with party rules, supported by the signatures of at least 100 voters with permanent residence in the respective electoral unit.

Voters nominate a list of candidates by signing it. Within an individual electoral unit, a list of candidates may be nominated by a group of at least 1,000 voters with permanent residence in the electoral unit; these voters must append their signatures to the nomination.

A candidate standing for election to the National Assembly as a representative of the Italian or Hungarian national community must be supported by the signatures of at least 30 voters who are themselves members of the respective community.

Both sexes must have at least 35% representation on each individual list of candidates relative to the total actual number of candidates on the list.

Various bodies are responsible for ensuring that elections are organised and carried out properly. The highest electoral body is the National Electoral Commission (NEC), which is appointed by the National Assembly. The NEC appoints the electoral commissions for the respective electoral units and district electoral commissions; these commissions then appoint electoral boards acting at the polling stations.

The constitutional law that introduced the proportional representation system was adopted in 2000. This law provided that mandates would not be apportioned to lists that failed to get 4% nationwide. On the basis of this constitutional law on the amendment of Article 80 of the Constitution, Slovenia uses the Droop quota.

In National Assembly elections, the election threshold is therefore 4%. The fact, whether a party has reached that threshold is determined by the NEC when the seats are apportioned. Mandates are apportioned to party lists that have reached that threshold. This process takes place at two levels, as follows:

- within an electoral unit: seats are apportioned according to the Droop quota;
- at the national level: seats are apportioned according to the D'Hondt method.

The Constitution states that voters must be permitted to exercise a certain influence over the allocation of seats to candidates; this is ensured in part by a process whereby those candidates who received the highest number of votes as a proportion of the total number of votes in the electoral districts in which they stood are elected from the list of candidates (relative to the seats received). Voters may only opt for that candidate from the list who stood in their voting district, as they only vote for one candidate by circling the number next to the name of the list that appears in front of the first name and surname of the candidate.

Citizens of Slovenia vote in person at a polling station. However, exceptions or special means of voting do exist: voting in advance of election day, voting from abroad, postal voting, voting outside the voter's district of permanent residence, voting at home, and voting at a polling station specially adapted to the needs of those with disabilities.

Voters who are absent on election day may vote in advance of the election day at a special polling station at the head office of the district electoral commission. However, they may not do so more than five days prior to election day nor later than two days prior to election day.

Voters who are temporarily abroad on the day of elections to the National Assembly may vote in one of two ways: at a diplomatic mission or consular post, or by post from abroad. In both forms of voting, voters who are temporarily abroad on election day must signal their intention to vote in one of the above ways to the NEC.

Voters who are outside their district of permanent residence on election day and who wish to vote at a polling station in another district may do so at an 'OMNIA' polling station. The voter must signal her intention to vote outside her district of permanent residence to the district electoral commission for the area in which they have permanent residence.

Carers at retirement homes who do not have their place of permanent residence at the home, voters undergoing treatment at a hospital or health resort and voters who are serving a custodial sentence on the day of the election may vote by post.

The Ministry of Foreign Affairs notifies voters who do not have permanent residence in Slovenia when an election is called. A citizen living outside Slovenia is free to decide whether to vote at a diplomatic mission or consular post, cast a postal vote or vote at a special polling station set up at the head office of a district electoral commission ('OMNIA' polling station). For elections to the National Assembly, presidential elections and elections to the European Parliament, the NEC, under the provisions of Article 82 of the National Assembly Elections Act, sends a ballot paper containing the names of the candidates or lists of candidates to the voter's address of permanent residence abroad. Article 82(1) of the National Assembly Elections Act was amended in 2006. It stipulated that ballot papers and voting cards had to be sent in sufficient time to voters who did not have permanent residence in Slovenia.

Voters who, because of illness, are unable to present themselves in person at the polling station at which they are entered in the electoral register may vote at home in the presence of an electoral committee. They must notify the district electoral commission of their desire to do so no later than three days before election day.

Disabled voters may vote at a polling station accessible to disabled persons and at a polling station equipped with special voting devices. The blind and partially-sighted may use a voting aid (card).

### ***Presidential elections in Slovenia***

The President of the Republic of Slovenia is elected at a direct, universal and secret ballot on the basis of a two-round majority voting system. The Election of the President of the Republic Act provides that the president shall be elected on the basis of a universal and equal voting right at free and direct elections in a secret ballot. The president is elected for five years and may only serve a maximum of two consecutive terms. Presidential elections are called by the president (Speaker) of the National Assembly.

The right to vote in a presidential election is universal and equal, which means that it is open for everyone who has the right to vote in National Assembly elections. The principle of the universal voting right applies to the right to stand for election as well as the right to vote in elections. The Election of the President of the Republic Act sets out in detail who has the right to vote and stand for president of the republic. The right to vote and the right to stand as a candidate for president is therefore open for any citizen of Slovenia who has reached the age of 18 by the time the election is held.

Presidential candidates are nominated by National Assembly deputies, political parties and the electorate. The process of standing for president is similar to that employed when standing for election to the National Assembly. Regardless of the way in which candidates stand for office, the basic rule is that each deputy and each voter may only support one candidate.



Candidacy for president of the republic requires the consent of the candidate, and they may withdraw this consent in a written declaration. A proposal for candidacy, which must contain the elements prescribed, is submitted directly to the National Electoral Commission no later than 25 days prior to the election. The National Electoral Commission draws up a list of candidates for president of the republic on the basis of those candidacies it has approved; this list contains the names of the candidates and those of their nominators. The order of the candidates is determined by the drawing of lots. The National Electoral Commission must publish these lists no later than 15 days prior to the election.

The ballot paper is different from the ballot papers used for National Assembly elections, and contains the names and surnames of the candidates in the order in which they appear on the list of candidates, along with instructions on how to cast a vote. The ballot paper is also completed in a slightly different way. The voter may vote for only one candidate; they do so by circling the number that appears before the name and surname of the candidate for which they are voting. The outcome of the election is established by the National Electoral Commission. The candidate who receives a majority of the valid votes cast is elected president of the republic. If no candidate secures a majority of the valid votes cast, a run-off between the two candidates who secured the most votes is held no later than twenty-one days after the first vote. This means that Slovenian presidential elections can involve a second round of voting in which there are only two candidates.

After the outcome of the election is established, the National Electoral Commission compiles a report on the outcome; it then submits it to the speaker of the National Assembly and publishes it in the Official Gazette of the Republic of Slovenia. This report officially concludes the procedure for electing the president of the republic.

## **2. Legislation**

### ***Amendments to the National Assembly Elections Act***

The National Assembly Elections Act was adopted in 1992 and amended in 1995 and 2006. Elections to the National Assembly took place in December 1992 and in 1996, 2000, 2004, 2008, 2011 and 2014.

The 1992 National Assembly Elections Act introduced a proportional representation system, with certain elements of the majority voting system being added to this. Among other things, this ensured a higher degree of proportionality when apportioning seats. The 1995 Act Amending the National Assembly Elections Act merely contained a provision relating to the name of a list of candidates.

The 2006 Act Amending the National Assembly Elections Act stipulates, among other things, that a citizen of Slovenia who has reached the age of 18 does not have the right to vote or be elected if she has had her legal capacity removed in its entirety for reason of mental illness, developmental delay or mental handicap, or if their parents' parental right has been extended beyond majority. It is also a condition that the person in question has to be unable to understand the significance, purpose and effects of elections, and if the court, in the course of a procedure to remove legal capacity or extend the parental right beyond majority, has reached a separate decision on removal of the right to vote and to be elected. The new version of the act from 2006 gave new responsibilities to the NEC derived from the constitutional law under which lists of candidates could not be apportioned seats if they failed to win at least 4% of the number of votes cast nationwide.

### ***Amendments to the Election of the President of the Republic Act***

The Election of the President of the Republic Act provides that any citizen of Slovenia who has reached the age of 18 by the time the election is held has the right to vote and stand as a candidate for the presidency of the republic. The act also laid down an additional condition: that a person could only vote and stand for president if she had not been deprived of her legal capacity. The Constitutional Court struck down this legal provision in 2003. The court's reasoning in this matter was primarily that it constituted an excessive legislative encroachment on the voting right, as it was removed from anyone who had no legal capacity without first establishing whether and to what extent this incapacity affected their ability to understand elections or their ability to exercise their voting right. Under the new regulation, only those individuals are limited in their right to vote whose legal capacity has been removed in its entirety for reason of mental illness, developmental delay or mental handicap or whose parents or other persons have had their parental right extended beyond majority and they are unable to understand the significance, effects and purpose of elections.

### **3. Electoral bodies**

#### ***National Electoral Commission***

As the highest electoral management body, the NEC is appointed by the National Assembly for a period of four years. The NEC is composed of a chair and five members and their deputies. The posts of chair and deputy chair of the NEC are occupied by two Supreme Court judges. Two members and two deputy members of the NEC are appointed among the highly ranked legal experts in order to ensure that the work of the commission is carried out in a professional manner. Three members and three deputy members are appointed based on the proposal of deputy groups (factions of MPs), where due regard is paid to the proportional representation of political parties. The members and deputies appointed at the proposal of the deputy groups are present to express the varying political interests within the work of the commission.

#### ***NEC department***

Expert, administrative and technical tasks are performed for the NEC by a special department of civil servants. The director of the department is appointed by the NEC for a period of five years following a public call for applications. The director is directly answerable to the NEC for her work and that of the department. The NEC is entitled to request a report on the implementation of decisions, work-related analyses, etc. from the department.

### **4. Election and referendum campaigns**

Election campaigns are regulated by the Election and Referendum Campaigns Act. Under that act, an election campaign comprises all advertising content and other forms of political publicity aimed at influencing voters' voting decisions. Election campaign organisers may make use of the following tools:

- *Pre-election meetings.* These are not permitted to take place on the premises of state organs, local authority premises, the premises of public institutions and

other bodies of public law, or the premises of religious organisations, unless a religious organisation is the organiser of a referendum campaign).

- *Election and referendum campaigns in the media.* When publishing polls and surveys on candidates, lists of candidates, political parties and the referendum question during an election or referendum campaign. The media publisher must, in order to guarantee transparency and provide the public with objective information, state the company name or first name, surname and head office or address of the person or persons commissioning, paying for and conducting the poll or survey, the time at which the poll or survey was conducted, the way in which the poll or survey was conducted, the sample and rate of response of those polled or surveyed, the questionnaire or questions, and any measurement errors.
- *Billboards.* The law guarantees equal entitlement on the part of organisers to erect billboards, and therefore obliges local authorities to set aside a portion of their billboard space to all campaign organisers free of charge and under the same conditions. At the same time, local authorities are permitted to make a portion of their billboard space available to organisers only under certain conditions and for payment. Billboards may also be placed outside these designated spaces in cases where campaign organisers reach agreement with the owners or managers of land and other facilities.

An election campaign may begin 30 days prior to election day and must end no later than 24 hours prior to election day.

Organisers may collect financial contributions for an election campaign from individuals. Total contributions from individuals for an individual election campaign may not exceed the sum of ten average gross monthly wages for a worker in Slovenia according to data supplied by the Statistical Office of the Republic of Slovenia for the previous year. State organs, local authority bodies, legal entities of public and private law, sole traders and individuals independently engaged in an activity may not finance an election campaign, unless the law determines otherwise. Legal entities of private law whose founding purpose is not the generation of profit may make contributions to a referendum campaign. The funding of an election campaign from abroad is prohibited, except for elections of Slovenian members of the European Parliament. The law provides, inter alia, that an election campaign organiser must, within a specified period prior to election day, open a special current account marked 'for election campaign' or 'for referendum campaign' and, in doing so, also make reference to the election or referendum for which they are organising a campaign.

## **5. Safeguards of free and fair elections**

All election activities, including an election campaign, are public in nature.

The voting right is legally protected. Exercise of the protection of the voting right is guaranteed by procedures before electoral commissions and the National Assembly; judicial protection of the right is also guaranteed before the courts and the Constitutional Court.

Every candidate or representative of a list of candidates has the right to file an objection in response to an irregularity during the candidacy procedure, with any such objection being filed with an electoral unit's electoral commission by the deadline for the submission of lists of candidates. A commission conducting a procedure to

establish constitutionality is obliged to rule on an objection within 48 hours of the expiry of the deadline for the submission of lists of candidates.

The same applies to objections during the voting process alleging irregularities in the work of electoral committees and district electoral commissions. Every candidate, representative of a list of candidates and voter may file an objection within three days of an election. The electoral commission in an electoral unit must also rule on such objections within 48 hours. If it finds that irregularities at a specific polling station or in the work of a specific electoral committee have had a significant effect on the outcome of an election, the vote at the polling station shall be annulled and a new election ordered to the extent to which the vote was annulled. If irregularities are established at the level of an electoral district or district electoral commission, the electoral unit commission may itself establish the outcome of the election for the district in question.

*Eszter Balogh<sup>1</sup>*

The Preamble of the Turkish Constitution strongly affirms the absolute supremacy of the will of the nation and states that only this entity is vested by unconditional sovereignty.<sup>2</sup> To ensure this power, the Turkish law has been making many efforts, accepting new rules and amendments, that thorough making the election system more inclusive, allowed as many citizens as possible to be a part of the political decision-making process. In the past two decades these changes altered the whole election system, following current political events, international recommendations, and the demands of voters.

## 1. Election systems

The current election system concerns directly two state institutions – the legislative branch of power, the parliament, and the presidential office. The exclusive legislative body of Turkey is the unicameral Grand National Assembly (*Türkiye Büyük Millet Meclisi*). As its competences cannot be delegated to any other organ, it has a broad sphere of action in the law-making process, in the representation of the nation, and in the control and formation of the Turkish government.<sup>3</sup> This way, its construction is one of the main reflections of the people's will.

The Assembly has 550 representatives who are elected based on the principle of free, equal, secret, direct and universal suffrage. Getting possibly the most votes is of great importance for parties, as 276 seats are needed for a majority, 367 to change the constitution directly, and 330 to call for a referendum.<sup>4</sup> The framework of the Turkish parliamentary elections has a firm legal base. The rules are outlined in the *1982 Constitution*, the *1983 Law on Parliamentary Elections*, the *1963 Law and Basic Provisions on Elections and Voter Registers*, and the *1983 Law on Political Parties*.<sup>5</sup>

According to Article 78 of the Constitution, the elections are held in every fourth year – when the mandate of the previous representatives elapses. This four-year mandate can be prolonged with one year in times of war. Apart from ordinary elections, there is a legal possibility to hold extraordinary and by-elections. Extraordinary elections have usually been called for because of political crises or deadlocks as a way to solve intense debates. Only the President of the Republic and the Grand National Assembly can announce such elections and since 1990 there have been seven of them.<sup>6</sup>

<sup>1</sup> Corvinus University of Budapest, esztiii456@gmail.com

<sup>2</sup> Constitution of the Republic of Turkey 1981.

<sup>3</sup> Constitution of the Republic of Turkey 1981.

<sup>4</sup> Daan Louter, 'The world's most unfair election system – how would your parliament fare?' (The Guardian, 1 June 2015) <<http://www.theguardian.com/world/2015/jun/01/turkey-the-worlds-most-unfair-election-system>> accessed 12 April 2016

<sup>5</sup> OSCE, 'Parliamentary Elections 7 June 2015' (Osceorg, 27 April 2015) <<http://www.osce.org/odihr/elections/turkey/153211?download=true>> accessed 19 April 2016

<sup>6</sup> Kasim Erdem and Mehmet Solak, 'Grand National Assembly of Turkey' (Grand National Assembly of Turkey, 2012) <[https://www.tbmm.gov.tr/yayinlar/arastirma\\_merkezi.pdf](https://www.tbmm.gov.tr/yayinlar/arastirma_merkezi.pdf)> accessed 12 April 2016

By-elections, from the other hand, are held when a seat becomes vacant in the Assembly, usually due to unexpected events. Certain rules assure the continuity of the work of the organ, such as the ban on organizing by-elections less than 30 months after the previous one, and one year before the next elections – although there are some exceptions when the ratio of vacant seats reaches 5 percent. Since 1990 there was only one by-election, in 2003.<sup>7</sup>

Every Turkish citizen over the age of 18 who is enrolled in the electoral register is entitled to vote with a few exceptions. These include circumstances such as criminal conviction, insanity, and allegiance to a foreign state.<sup>8</sup> Turkish citizens residing abroad are also given the opportunity to participate in the elections. Those who are eligible to vote have a legal obligation to do so, as laws impose fine for those who do not wish to use their right – even though such punishments are rarely executed.<sup>9</sup>

The age limit in the case of the right to be elected is higher, 25 years. There is also a longer list of exceptions, such as legal incapacitation, ongoing or not completed military service, and also limitation on public service as confirmed by the court and certain criminal convictions.<sup>10</sup> In addition, office holders who wish to become candidates must resign from their position at least one month prior to the election.<sup>11</sup>

Candidates who fulfil the aforementioned requirements have two ways to obtain a seat in the Assembly. As the representatives are elected in a closed-list system, they have the opportunity to get nominated either as an individual or a political party candidate. In spite of the opportunity, most candidates receive their nomination from political parties. If an independent candidate wishes to get a seat, she has to submit her application to the provincial board of elections and deposit of approximately 30.000 USD.<sup>12</sup> As an important rule, political parties are prohibited to make agreements with each other or have a joint list of candidates. In addition, it is forbidden for candidates to run for more than one political party or in more than one constituency during the same elections.

Listed candidates are elected from 85 multi-member constituencies that represent 81 administrative provinces of the country. The four extra constituencies guarantee that provinces with higher population get the necessary amount of representation in the Assembly. Apart from this, regardless to the population size, each province is entitled to at least one seat.<sup>13</sup> During the last elections, the number of registered voters varied from the minimum 27.059 to the maximum 120.877 in each constituency<sup>14</sup>; the difference in the numbers show why it is highly important to make these constituencies more equal by the extra seats.

The counting of the votes and the recording of the results is a public process, ensuring transparency during the elections. The transformation of votes into seats follows the principle of representation, using the D'Hondt formula. But before applying this mathematical method, there are several requirements for a vote to turn into a seat. Candidates of political parties can get into the Parliament only if the nominating party is present as an organisation in at least half of the provinces and

---

<sup>7</sup> Erdem and Solak, 2012.

<sup>8</sup> Inter-Parliamentary Union, 'General information about the Parliamentary Chamber' (Grand National Assembly of Turkey, 26 November 2015) <<http://www.ipu.org/parline-e/reports/2323.htm>> accessed 12 April 2016

<sup>9</sup> Erdem and Solak, 2012.

<sup>10</sup> OSCE, 2015.

<sup>11</sup> Inter-Parliamentary Union.

<sup>12</sup> Inter-Parliamentary Union.

<sup>13</sup> Erdem and Solak, 2012.

<sup>14</sup> OSCE, 2015.



one-third of the districts within these provinces. This way, candidates of parties that do not have a congress or assembly maximum six months prior to Election Day or do not have a political party group in the provinces are not eligible. Also, parties have to nominate two candidates for each parliamentary seat in at least half of the provinces. As the last basic requirement, the threshold is 10 percent, so parties that are not supported by 10 percent of the valid votes cannot get mandates in the Assembly.<sup>15</sup> This last rule, of course, does not apply to individual candidates.

The parliamentary election formally ends when the results are announced in the Official Gazette by the Supreme Board of Elections.<sup>16</sup> The last parliamentary elections were held on 1 November 2015, when the now governing party obtained the absolute majority. As the last two decades' trend, the number of woman deputies has been growing. In 1990, there were only 8 woman representatives out of 550, while in 2015 it reached the highest number so far – 98.<sup>17</sup>

The other highly important institution that represents the unity and the will of the nation is the office of the President of the Republic.<sup>18</sup> As it is an outstanding position, since the elections in August 2014, Turkish citizens have the right to vote for their president directly, by general vote. It was a big change after the former system, according to which this power was vested on the members of the Parliament.

The process of presidential elections is regulated in detail by the Turkish law. The main sources are the *Constitution*, the *Law of Presidential Elections from 2012*, and the *Law on Basic Provisions on Elections and Voter Registers*. This legal framework was supplemented and modified by the referendum of 2007 on electoral reform which affected several points of the Constitution. These amended issues include the process of the presidential elections and the term of the elected president.

To be a candidate on the presidential elections, one should meet several criteria. Candidates must be older than 40 years, have higher education degree and fulfil the requirements to become an elected deputy.<sup>19</sup> Judges, prosecutors, academics, military officers and certain government officials can only run for presidency if they first retire from their office. In this case, their candidacy blocks their reassignment to their previous position. In the meantime, this criterium does not apply to parliamentary deputies who do not even have to leave their post during the campaign – this includes the prime minister as well, whose candidacy has no effect on his position.<sup>20</sup>

To run for presidency, the candidate must be nominated at least by 20 members of the Grand National Assembly, which constitutes 3,73 percent of the seats. As a main rule, parliamentary deputies cannot appoint themselves, and to ensure bigger representation, political parties that are not represented in the Parliament can nominate a joint candidate if their total voting rate is around 10 percent.<sup>21</sup>

Turkish citizens over the age of 18 can vote, and compatriots living abroad also have this right once they registered themselves in advance – the provisions are the same as in the case of the General Assembly elections.<sup>22</sup> According to the amendment

---

<sup>15</sup> Inter-Parliamentary Union.

<sup>16</sup> Erdem and Solak, 2012.

<sup>17</sup> Inter-Parliamentary Union.

<sup>18</sup> Constitution of the Republic of Turkey 1981.

<sup>19</sup> Sena Alkan, 'Turkey's most asked questions about presidential election' (Turkey's most asked questions about presidential election, 18 April 2014) <<http://www.dailysabah.com/politics/2014/04/18/turkeys-most-asked-questions-about-presidential-election>> accessed 12 April 2016

<sup>20</sup> Alkan, 2014.

<sup>21</sup> Alkan, 2014.

<sup>22</sup> OSCE, 'OSCE/ODIHR Limited Election Observation Mission Final Report' (Republic of Turkey Presidential Election, 10 August 2014) <<http://www.osce.org/odihr/elections/turkey/126851?download=true>> accessed 14 April 2016

of the Constitution, the election of the president has to begin 60 days before the expiration of the incumbent president's term, or in extraordinary cases, 60 days following the vacancy.<sup>23</sup> The President is elected by the absolute majority of valid votes and if in the first round of the elections no one obtains it, a second round should be held in which the two leading candidates can run again. In this case, the candidate, who gets the majority, becomes the President.<sup>24</sup> Once the election process is closed, the President can start her 5-year-term, having the right to run for this position once again.<sup>25</sup>

## 2. Stability of election laws

While achieving its current form, Turkish election law went through many changes since 1991. New election law has not been introduced during this time, but there were many significant amendments that altered the whole election system. Most of these were aimed at making the voting process more inclusive, letting possibly the most citizens to express their political will.

As an important step towards a more inclusive system, the voting age was lowered from 21 to 18 in 1995. As a result, the electorate grew from 19,8 million registered voters to almost 40 million between 1983 and 2002, with the contributing factor of the rise of the young population.<sup>26</sup> The wave of new first voters changed the whole political face of the Parliament, letting twice as many citizens to cast their ballot.<sup>27</sup>

In the same year, the law modified also the structure of the Grand National Assembly. As a background, provisions of the 1961 Constitution had been amended before, as the bicameral system could not provide the country with an effective legislative process. Because of this, in 1982 the Parliament became unicameral with 450 deputies. During the first half of the nineties the political life it also proved to function in an ineffective way, as the number of deputies was insufficient. As a result, an amendment in 1995 increased this number to the current 550<sup>28</sup>, which new rule became effective in 1998.<sup>29</sup>

The aforementioned age limit went through a change again in 2006, but this time it applied to elected deputies. According to the amendment, from 2007 on to become a representative in the Parliament one did not have to reach the age of 30, only the age of 25.<sup>30</sup> It was not applied though during the elections in 2007, as the necessary one year had not passed since the introduction of the new rule by that time.<sup>31</sup>

<sup>23</sup> Constitution of the Republic of Turkey 1981.

<sup>24</sup> Constitution of the Republic of Turkey 1981.

<sup>25</sup> Council of Europe, 'Election Observation Report' (Observation of the parliamentary elections in Turkey, 7 June 2015) <<http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbnVlL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yMTgzNCZsYW5nPUVO&xsl=aHR0cDovL3NlbWVudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIxODM0>> accessed 20 April 2016

<sup>26</sup> Huri Türsan, *Democratisation in Turkey: The Role of Political Parties* (Presses Interuniversitaires Européennes 2004)

<sup>27</sup> Inter-Parliamentary Union.

<sup>28</sup> Özcan Kılıç, 'The Changes Made to the Electoral Systems in Turkey and their Reflections to The Elections' [2014] 16(2) *International Journal of Sciences: Basic and Applied Research* 111-123

<sup>29</sup> Allaboutturkey.com, 'Türkiye Büyük Millet Meclisi - TBMM' (Grand National Assembly, Unknown) <<http://www.allaboutturkey.com/tbmm.htm>> accessed 3 May 2016

<sup>30</sup> Serap Yazici, 'A Guide to Turkish Public Law and Legal Research' (A Guide to Turkish Public Law and Legal Research, May/June 2011) <<http://www.nyulawglobal.org/globalex/Turkey1.html>> accessed 3 May 2016

<sup>31</sup> OSCE, 'OSCE/ODIHR Needs Mission Assessment Report' (Turkey Parliamentary Elections, 22 July 2007) <<http://www.osce.org/odihr/elections/turkey/25669?download=true>> accessed 7 April 2016

The same law modified also the term of these elected deputies. From 2007, the previous 5-year long term was changed to a 4-year one.<sup>32</sup>

As to the allocation of seats, the d'Hondt formula has not always been the only applied method. Between 1987 and 1994, Turkey had a mixed election system – every first seat in the constituencies was allocated under plurality rule and only the remaining under the d'Hondt method. This way, majoritarian and proportional formulas were applied in one district. This changed in 1999, since then the d'Hondt system is applied exclusively, having a huge impact on the actual allocations.<sup>33</sup>

While no modification has been made on this issue, the question of the national threshold has been a highly debated question since 1991, being one of the most criticised elements of the election system in 1995.<sup>34</sup> With 10 percent, Turkey has one of the highest limits in the world. Accordingly, small parties have very little chance to get into the Parliament. Many international organisations have made recommendations to change the current system, but at the same time the high threshold does not violate any legal obligation of Turkey.<sup>35</sup>

While all these changes and recommendations altered the overall election system, there are modifications that had even more basic effect on it. One of the most important amendments was passed in 2012 named *Law on Presidential Elections*, which finalized the changes in 2008 and laid down the aforementioned rules of presidential elections – the indirect presidential election system was transformed into a direct one, taking this important right away from the Parliament.<sup>36</sup>

According to several experts, this changed the whole constitutional and legal basis of Turkey as it was a big step towards a semi-presidential system. The President became a clearly important position, having her authority directly from the people. The new law contains provisions to the presidential term as well. Previously, the President could be appointed for one 7-year term. The new law changed the time of the mandate to 5 years with the possibility of renewal.<sup>37</sup>

Another highly important modification was the bigger involvement of voters into the election process in the nineties. There are millions of Turkish citizens living permanently or temporarily abroad, who previously had no right to express their political will on elections. The first law allowing them to vote was passed in 1987, but it only made possible voting on the borders. This did not actually provide them with better opportunities as they had to travel back to Turkey to cast their ballot. The real breakthrough happened in 1995, when an amendment allowed voters to vote in their country of residence. The organisation of these, and in-country elections became the task of the Supreme Board of Elections<sup>38</sup>, which will be discussed in a later chapter.

This 1995 law was supplemented in 2008 – in connection with the aforementioned *Law on Presidential Elections* –, letting citizens living abroad to vote on referendums as well. Originally, the law visioned four methods of casting the votes; it was supposed to be possible electronically, via post letters, at Turkish

---

<sup>32</sup> Yazici, 2011.

<sup>33</sup> Matt Golder, 'Democratic electoral systems around the world, 1946–2000' [2005] 24(2005) Electoral Studies 103–121

<sup>34</sup> Kılıç, 2014.

<sup>35</sup> The Guardian, 2015.

<sup>36</sup> OSCE, 2014.

<sup>37</sup> Robert Elgie, 'Turkey – Law on presidential election' (Turkey – Law on presidential election, 23 February 2012) <<http://www.semipresidentialism.com/?p=92>> accessed 26 April 2016

<sup>38</sup> Zeynep Kadirbeyoglu, 'Turkey: Voting from abroad in 2015 general elections' (Turkey: Voting from abroad in 2015 general elections, 6 August 2015) <<http://eudo-citizenship.eu/news/citizenship-news/1437-voting-from-abroad-in-turkey-s-general-elections-2015>> accessed 26 April 2016

representations abroad and at the borders. The Supreme Court found the postal voting to be against anonymity, while there was no sufficient infrastructure for electronic voting. Therefore, voters became able to cast their ballots either at the borders, or at Turkish representations in other countries.<sup>39</sup>

### 3. Electoral management bodies

The highest election management body of Turkey is the *Supreme Board of Elections* (Yüksek Seçim Kurulu) which was established by the 1961 Constitution. It is responsible for conducting the elections from the beginning to the end; it carries out investigations, makes final decisions, examines all complaints and objections concerning electoral matters. It is also required to collect electoral records of candidates to the Grand National Assembly and of the presidential position.<sup>40</sup> As it was mentioned before, from 1995 this organ is responsible for the organisation of elections abroad as well, including referendums from 2008. Regardless of the place of casting the ballot, the main aim of this organ is to ensure that elections are conducted in a fair way.

To follow the principle of independency, executive and legislative organs of Turkey are not allowed to exercise any control over the electoral process. Therefore, the Supreme Board of Elections executes all its duties independently; it is the organ to make decisions on the eligible parties and candidates and it is the one announcing the final results. As it will be discussed in a later chapter, its duties apply also to the period following the election by handling complaints.<sup>41</sup>

The SBE is also the only official and most reliable source of information during the elections. After getting the results from the local *Provincial Election Boards*, the *Supreme Board of Elections* announces the names of the elected officials, the number of valid votes, the number of voters, the results of political parties and all the relevant data. This is executed through radio, television and the Official Gazette to ensure that everyone gets informed.<sup>42</sup>

Including the *Supreme Board of Elections*, the Turkish election administration is a four-level system. The SBE is followed by 81 *Provincial Election Boards* (PEBs), 1067 *District Election Boards* (DEBs), and 175 006 *Ballot Box Committees* (BBCs). From all these, the SBE is the only permanent body, as it is the main conductor of election procedures. It has 11 members who are judges, elected for a six-year term. They are elected by two different bodies – the General Board of the High Court of Appeals appoints six, while the General Board of Council of State appoints five members. The 11 members then elect a chairperson and a vice president by the absolute majority of secret ballots.<sup>43</sup> To ensure political representation, eligible parties can delegate non-voting members to the SBE.

The PEBs are lower level organs that operate in each province. These have three members who are senior judges of the area, and as PEB representatives, are appointed for a two-year term. Just like in the case of the SBE, political parties that previously

---

<sup>39</sup> Kadirbeyoglu, 2015.

<sup>40</sup> Constitution of the Republic of Turkey 1981.

<sup>41</sup> IFES, '2015 Grand National Assembly Elections' (Elections in Turkey, 1 June 2015) <[http://www.ifes.org/sites/default/files/2015\\_ifes\\_turkey\\_grand\\_national\\_assembly\\_elections\\_faq\\_final.pdf](http://www.ifes.org/sites/default/files/2015_ifes_turkey_grand_national_assembly_elections_faq_final.pdf)> accessed 20 April 2016

<sup>42</sup> IFES, 2015.

<sup>43</sup> Ömer Ulukapi, 'Judicial Systems in General and Branches in Turkish Judicial Systems' [2014] 3(4) The Macrotheme Review

reached the best results in the municipal elections can appoint additionally one delegate as a non-voting member of the PEB.<sup>44</sup>

The DEBs have seven members and are chaired by the senior judge of the electoral district – who is, according to the law, chosen by lot. The remaining six seats are reserved for four representatives appointed by political parties and two civil servants.<sup>45</sup> During the past years, the composition of the DEBs has faced many difficulties. The main problem is that political parties usually do not appoint enough delegates, while their vacant seats are often not filled with civil, local resident representatives. The number of seven members is aimed at ensuring plurality, therefore the SBE had to address this practical problem. Because of this, while the law still prescribes seven seats to be filled, the SBE allowed four as a minimum number.<sup>46</sup>

BBCs operate based on the same principle as the previous ones – these have five political and two civil members. Despite the recent developments, only 21 per cent of the members were female during the last elections.<sup>47</sup> BBCs are assured with expertise from many sides, aiming elections that are conducted in a professional manner. The chairperson of every such body and also one additional member receives training that are conducted by DEBs, based on the SBE's materials – for example videos and different types of printed issues. Political parties also prepare their own delegates for taking their position, contributing with an other point of view to the effective and diverse work of the BBCs.<sup>48</sup> There are other spheres of cooperation between these organs – the BBCs decide the location of polling station in accordance with the DEBs, while DEBs deliver the votes to the PEBs.

#### 4. Safeguards of free and fair elections

Free and fair elections are ensured in many different ways which aim to make the electoral process more transparent and available for everyone. One of these elements are the rules applying to campaign activities – the diversity of campaigning is still the main indicator of Turkey's active political life. Before every election, political issues dominate the whole media environment, just like printed outlets, television channels, and as a tendency in the last few years, social media sites.<sup>49</sup> This way, all the information on elections reach every social group, from the youngest to the oldest, from the provincial to the one living in the capital.

Officially, campaign period starts when the candidate list is finalized and ends the evening before the elections, at 6 p.m. The campaigning process itself is not strictly regulated<sup>50</sup>, in many cases the *Law on Presidential Elections* just refers to the *Law on Basic Provisions*. This contains rules regarding campaigning rallies, placement and distribution of campaign materials and also media campaigning.<sup>51</sup>

Stricter rules are applied ten days prior to the election, which is called *electioneering period*. Restrictions are in connection with the allocation of free airtime

---

<sup>44</sup> Council of Europe, 2015.

<sup>45</sup> Council of Europe, 2015.

<sup>46</sup> OSCE, 2015.

<sup>47</sup> Hurriyetdailynews.com, 'Turkey again at ballot boxes for knife-edge election, five months on' (Turkey again at ballot boxes for knife-edge election, five months on, 31 October 2015) <<http://www.hurriyetdailynews.com/turkey-again-at-ballot-boxes-for-knife-edge-election-five-months-on.aspx?PageID=238&NID=90561&NewsCatID=338>> accessed 4 May 2016

<sup>48</sup> OSCE, 2015.

<sup>49</sup> Council of Europe, 2015.

<sup>50</sup> OSCE, 2014.

<sup>51</sup> IFES, 2015.

in the media.<sup>52</sup> There is also a ban imposed on the use of state resources for campaigning, and candidates are not allowed to organize or contribute to events in any way that are related to publicly funded services.<sup>53</sup>

Just like in the aforementioned case, campaign financing is neither regulated in details. There are only certain restrictions on the amount and nature of donations. The main source of these rules is the *Law on Political Parties* – it prohibits political parties and candidates to accept donations from anonymous sources, foreign states, natural and legal persons, and international organizations. It is important to note that most of the rules apply only to political parties, while individual candidates have more freedom concerning their finances. For example, unlike individual candidates, political parties are not allowed to accept donations from corporations that have government contracts.<sup>54</sup>

According to the Constitution, political parties are entitled to public finances if they obtained at least three percent of the national votes – before the amendments in March 2014, this limit was 7 percent. This funding is allocated in proportion with the share of votes.<sup>55</sup> Overall campaign finances, including private donations and spending must be declared in the political parties' *annual financial reports* and in the individual candidates' *tax declarations*. This way, the data is not publicly available during the campaign.<sup>56</sup> These party or individual reports are later overseen by the Constitutional Court, which examines the possible breaches. In case of violation, there are several possible sanctions – these can vary from a simple warning to the dissolution of political parties.<sup>57</sup>

To ensure impartiality, truthfulness and accuracy during campaigning, the broadcasting rules aim to undo restrictions on the freedom of expression.<sup>58</sup> They provide candidates the opportunity to inform the public about their program and tell their opinion about the other candidates. In the meantime, it is not legal to campaign abroad,<sup>59</sup> and only since the amendment in 2014 it is possible to campaign in other languages than Turkish.<sup>60</sup>

Apart from the campaigning, for ensuring fair elections it is important to have the legal opportunity to file complaints and appeals against any kind of possible fraud. Because of this, the legal framework provides various remedies – political parties, voters eligible to be elected, as well as partisan observers and candidates can express their discontent with the lawfulness of elections. It is important to note that in the meantime, civil society organizations have no such right and there is no regulation concerning possible breaches during the campaigning.<sup>61</sup>

As it was mentioned before, the main organ to ensure fair election processes, the SBE is assigned to carry out the investigations and to make final decisions on all irregularities, complaints and objections. As it is the main guarantee of electoral justice,

---

<sup>52</sup> IFES, 2015.

<sup>53</sup> Balamir G. Coskun and A. Di Gregorio, 'Turkey after the parliamentary elections of 7 June 2015 Some reflections on the political and institutional framework' (Turkey after the parliamentary elections of 7 June 2015 Some reflections on the political and institutional framework, 2015) <http://www.dpce.it/wp-content/uploads/2015/11/A5-Balamir-Coskun-Di-Gregorio.pdf> accessed 13 April 2016

<sup>54</sup> IFES, 2015.

<sup>55</sup> IFES, 2015.

<sup>56</sup> Council of Europe, 2015.

<sup>57</sup> Coskun and Di Gregorio, 2015.

<sup>58</sup> Council of Europe, 2015.

<sup>59</sup> Coskun and Di Gregorio, 2015.

<sup>60</sup> Coskun and Di Gregorio, 2015.

<sup>61</sup> OSCE, 'Statement of Preliminary Findings and Conclusions' (Republic of Turkey – Early Parliamentary Elections, 1 November 2015, 1 November 2015) <<http://www.osce.org/odihr/elections/turkey/196351?download=true>> accessed 10 April 2016/1



its decisions cannot be appealed to any authority.<sup>62</sup> Of course, not all appeals go straight to this highest level body, most decisions are ruled on the closest level to the possible breach.<sup>63</sup> These decisions can be contested always on the next level – from the BBC to the DEB, from the DEB to the PEB, and from the PEB to the Supreme Board of Elections.<sup>64</sup> This is supposed to ensure that complaints are addressed as quickly and definitively as possible, by organs that oversee the problem locally as well. Since the constitutional changes in 2010, it is now possible to file individual petitions to the Constitutional Court within the scope of the European Convention on Human Rights.<sup>65</sup> For this, the individual has to prove that she has exhausted all the available legal remedies and also that her fundamental rights were breached.<sup>66</sup>

There are two main forms to challenge the elections results: filing an objection or a complaint. Complaints can be filed against procedures conducted by election boards, while objections are stated or written challenges to results of elections or ruling of complaints already handed in.<sup>67</sup> The SBE decides case by case whether it intends to publish the appeals with a deadline of 7 to 10 days, so such reports are not always available for the public.<sup>68</sup>

In the meantime, public control of the elections is executed by political parties, individual candidates and a limited number of international delegations which are all allowed by the law to observe them. Civil society organizations can also apply at the SBE to have this right, but these applications are usually not accepted.<sup>69</sup> Observation by international organizations is allowed but still faces some difficulties; to overcome these, a stricter application of the 1990 OSCE Copenhagen Document is advised by international organizations to be followed.<sup>70</sup>

The main organization dedicated to election observation, the OSCE was invited for the first time to participate in the Turkish elections in 2002.<sup>71</sup> Since then, its is present at all similar events, ensuring the lawfulness of the electoral process and providing Ankara with reports and recommendations after every occasion. For some years now, the Council of Europe is also present at the elections.

As it was seen before, there are still issues that raise the question of transparency – for example the fact that the financial side of campaigning is overseen in the end of every year, while no information is accessible during the elections and the campaigning period. To fix these deficiencies, the „*Action Plan on Increasing Transparency and Enhancing Good Governance in the Public Sector*” was accepted in 2002 which aims to stop corruption by introducing disciplinary and criminal sanctions against public officials involved in such matters. It also aims to modernise the auditing system of campaign financing.<sup>72</sup>

---

<sup>62</sup> Consulate General Republic of Turkey, ‘Political Parties + Election System’ (About Turkey State + Policy, 8 September 2006) <<http://www.turkishconsulategeneral.us/abttrkey/govt/elec.shtml>> accessed 15 April 2016

<sup>63</sup> OSCE, 2015/1.

<sup>64</sup> IFES, 2015.

<sup>65</sup> IFES, 2015.

<sup>66</sup> OSCE, 2014.

<sup>67</sup> IFES, 2015.

<sup>68</sup> OSCE, 2015/1.

<sup>69</sup> IFES, 2015.

<sup>70</sup> OSCE, 2015.

<sup>71</sup> OSCE, ‘OSCE/ODIHR Assessment Report’ (Republic of Turkey Parliamentary Elections, 3 November 2002) <<http://www.osce.org/odihr/elections/turkey/16346?download=true>> accessed 6 April 2016

<sup>72</sup> U4 Anti-Corruption Research Centre, ‘Overview of corruption and anti-corruption in Turkey’ (Overview of corruption and anti-corruption in Turkey, 17 January 2012) <<http://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-turkey/>> accessed 26 April 2016

In January 2015 it was introduced a new package called *Public Transparency Package* to combat corruption and enhance transparency, which can have a basic effect on the country's election system. The program aims to implement European Union norms in state institutions, including politics, economy and media.<sup>73</sup> The package has provisions regarding election and campaign financing as well. According to the plan, all the donations to political parties will be listed in an online system so that it can be accessible for all.<sup>74</sup>

The initiative has been postponed since then, but once implemented, it will mean a radical change in the election process. It also indicates the raised need for a transparent and just system in the past decades, and can enhance the fairness of elections in a long term.

---

<sup>73</sup> Merve Aydogan, 'Gov't introduces transparency reform package to combat irregularities' (Gov't introduces transparency reform package to combat irregularities, 14 January 2015) <<http://www.dailysabah.com/politics/2015/01/14/govt-introduces-transparency-reform-package-to-combat-irregularities>> accessed 13 April 2016

<sup>74</sup> Aydogan, 2015.

## *Central Election Commission of Ukraine*

### **1. Electoral system**

#### ***Parliamentary elections***

Parliamentary elections were organized in Ukraine in 1990, 1994, 1998, 2002, 2006, 2007, 2012 and 2014.

The election threshold was 4% at the election of 1998 and 2002, 3% at the election of 2006 and 2007, and 5% at the election of 2012 and 2014.

Elections to the *Verkhovna Rada* (national parliament) of Ukraine held in 1990 and 1994 were conducted on the basis of equal and direct suffrage, by secret ballot under alternative vote. Elections were carried out according to the majority system (*"first-past-the-post"*), with a stipulated mandatory voter turnout, absolute majority vote and the possibility of repeat voting.

The 1994 election to the *Verkhovna Rada* of Ukraine of the second convocation was the first election held under a *multi-party system*. The right to nominate MP candidates was assigned to Ukrainian citizens eligible to vote. This right was exercised both directly and through political parties and electoral blocs registered in accordance with the law, as well as through labor groups. Similarly to the election of 1990, at the 1994 election 450 single-mandate electoral districts (constituencies) with a nearly equal number of voters were set up throughout Ukraine. This design took into account the administrative division of Ukraine and the areas where ethnic minorities were living. The election was to be declared null and void if the voter turnout failed to reach 50% of the total number of voters included in the voters' lists in the given constituency, or if all candidates registered in that constituency had been withdrawn. To be elected, a candidate had to obtain the support of 50% of the voters included in the voters' lists. A second ballot was held when necessary, and if it also failed to determine the winner based on the same conditions, a new election was called (this regulation led to constant understaffing of the *Verkhovna Rada* of Ukraine of the first and second convocations).

The 2006 elections and the by-election held in 2007 were conducted on the basis of a *proportional system*. Deputies were elected in multi-member constituencies under closed electoral lists. For the purpose of election, the territory of Ukraine was divided into 225 *territorial national constituencies* and an *overseas constituency* including all out-of-country election precincts.

Candidates were nominated by political parties and electoral blocs of political parties.

Candidates outside a political party or a bloc were not entitled to run for MP mandates. A threshold of 3% was set for the distribution of MP mandates between the parties/blocs (which was calculated on the basis of the total number of the submitted ballots, including invalid ballots and votes cast against all candidates).

Elections to the *Verkhovna Rada* of Ukraine in 1998, 2002, 2012 and 2014 were conducted according to the *mixed (proportional-majority) electoral system*. The total number of deputies was – as at the previous convocations – 450. Of this, 225 MPs

were to be elected by proportional representation in *the nationwide multi-member constituency* under electoral lists of political parties (closed party lists). In 1998 and 2002 candidates from *electoral blocs of parties* could also be elected on the basis of a proportional system in the nationwide multi-member constituency. The other 225 MPs were to be elected by simple majority vote (of the relative majority) in *single-mandate constituencies*.

During the 1998 election, the right to nominate MP candidates was exercised by the citizens of Ukraine either in the form of self-nomination, or nomination by political parties (electoral blocs of parties), or nomination by public assemblies and labor groups. In 2002 nomination by parties (blocs) and self-nomination, while in 2012 and 2014 party nomination and self-nomination dominated.

No election threshold was established for an MP candidate to win the mandate in a single-member constituency. Moreover, no mandatory percentage of the voter turnout was stipulated for recognizing the election as valid. A second ballot was to be held in case of an equally large number of votes received by two or more MP candidates. The election would be declared null and void if all MP candidates registered in the given constituency had been withdrawn.

Based on the proportional element of the election system, the voter was also entitled to vote for a list as a whole and for a list of only one political party (bloc of parties), or even to refuse to support any party (bloc of parties). Positions of the candidates on the list were determined by the nominating political party (bloc of parties). This priority order could not be altered after the registration of the listed MP candidates by the Central Election Commission (CEC). At the elections of 2012 and 2014, the options for voting against all candidates were removed from the ballot papers. MP candidates from a political party (bloc of parties) were considered to be elected according to their position in the list. At the elections of 1998 and 2002, the right to participate in the distribution of mandates was only assigned to the candidates included in the electoral lists of the parties (blocs) that had received at least 4% of all votes cast. At the parliamentary elections of 2012 and 2014 the threshold for the parties was raised to 5%. For the distribution of mandates between the parties passing the 4% (5%) threshold, *the electoral quota* (the number of votes required to obtain one MP mandate) was introduced. The quota was calculated by dividing the total number of votes cast for the lists of political parties (blocs) in the multi-member constituency by the number of accessible MP mandates in that constituency. The mandates were distributed between the parties' electoral lists proportionally to the number of votes cast for the candidates included in the parties' electoral lists.

At the 1998 election, candidates had the opportunity to run simultaneously for a party (bloc) list and in a single-mandate electoral district (constituency).

### ***Presidential elections***

The presidential election campaigns in Ukraine took place in 1991, 1994, 1999, 2004, 2010 and 2014. The President of Ukraine is elected by the citizens of Ukraine for a term of five years on the basis of universal, equal and direct suffrage, by secret ballot. The same person may not serve as president for more than two consecutive terms. All presidential elections were conducted under the *majority system* — by the majority vote of the *absolute majority* in the ballot (second ballot) of 1991 and 1994 and the majority vote of the *relative majority* starting from the election campaign of 1998. As an exception, at the presidential election in 2004 a *repeat ballot* (the so-called third round) was held between the winners of the previous round in accordance with the decision of the Supreme Court of Ukraine and a special law adopted by the Parliament.

The presidential elections in Ukraine are carried out in the sole *nationwide single-mandate constituency*, including the entire territory of Ukraine, and an overseas (out-of-country) constituency. Currently permanent territorial units (constituencies) are used for the preparation, organization and maintaining the presidential elections in Ukraine.

The candidate for presidency obtaining more than half of the votes cast on Election Day is declared the elected President of Ukraine. If none of the candidates for presidency obtain the above number of votes, the voting shall be repeated between the two candidates who won the most votes. In the second round, the candidate receiving more votes is considered to be the elected President of Ukraine.

If the ballot paper for the repeat voting shows only one name, the candidate is considered the elected President of Ukraine if she has received more than half of the votes cast. If upon the second voting both candidates for presidency have scored the same number of votes, or if the second voting held with a single nominee failed to gather more than half of the votes of the participating electorate, the CEC shall declare the election of the President of Ukraine null and void.

## **2. Stability of the electoral laws**

Since 1990, eight *parliamentary election campaigns* (including three by-elections) under a total of six different electoral laws have been held in Ukraine. Of those, only the election campaigns of 2006, 2007, 2012 and 2014 took place under the same electoral laws, while between these elections and during their preparation the electoral laws have been modified a record number of times. Specifically, the *Law On Election of the People's Deputies of Ukraine* adopted in 2011 (currently in effect) has been amended on more than 10 occasions. In order to ensure a certain degree of stability of the electoral legislation, in 2005 a legislative attempt was made to ban introducing changes to the electoral law later than 240 days before the election. However, this restriction in practice was gradually loosened, and subsequently completely leveled.

In Ukraine, six *presidential election campaigns* (including two by-elections) have been held under two electoral laws – the one adopted in 1991 (amended four times), and the other adopted in 1999 (currently in force), which, including its new edition (2004), has been amended on 32 occasions.

The changes implemented in the electoral legislation governing the organization and conducting of the presidential and parliamentary elections in Ukraine were adopted by the Ukrainian parliament less than a year prior to the relevant election.

Thus, it can be said that Ukraine shows instability in terms of electoral legislation, and its most variable aspect is the electoral system. The main factor underlying the frequent changes in the electoral system is political expediency, which in practice results in a situation when, basically, each next election in Ukraine is held under a *substantively new electoral law* (or a new edition thereof). Conducting each subsequent parliamentary and/or presidential election in Ukraine under a new electoral law, as well as introducing significant changes thereto shortly before or even in the course of the election process has a negative effect on the appropriate practice of electoral management bodies and the exercise of electoral rights as far as the electoral legislation is concerned.

## **3. Electoral Management Bodies**

The Commission is a permanent special collegiate authority entitled to organize and conduct the elections of all levels in Ukraine, as well as nationwide and local

referendums, empowered to function as custodian of *State Voter Register* and ensure its maintenance and operation in accordance with the law.

The Commission operates taking into consideration the principles of the rule of law, legality, independence, objectivity, competence, professionalism and collegiality in addressing and resolving problems, the reasonability of its decisions, transparency and publicity.

The independence of the Commission is ensured by the fact that it exercises its powers independently, irrespective of other state authorities, local self-government bodies, their officials and officers. The Commission and its members shall only act as based on the laws, within the powers and in the manner envisaged by the Constitution of Ukraine and other legal provisions. Any intervention of other authorities, officials or officers, citizens or their associations in the matters relating to the powers of the Commission is inadmissible, except for cases stipulated by the laws of Ukraine.

Members of the Commission are appointed by the *Verkhovna Rada of Ukraine* based on the proposal of the President of Ukraine. The proposal of the President of Ukraine shall take into account recommendations by parliamentary factions and groups set up by the Verkhovna Rada of Ukraine during its current term. Nomination for the positions within the Commission shall be previously discussed in the parliamentary factions and groups, and appointment shall be based on the conclusion of the appropriate parliamentary committee. The Commission shall consist of 15 members, each appointed for the term of 7 years. The Chairman, two Vice-Chairmen and Secretary of the Commission shall be elected from among the members of the Commission.

The powers of a Commission member shall be terminated by the appropriate decision of the *Verkhovna Rada of Ukraine*. The powers of a Commission member may be terminated before the end of the term. Grounds for the early termination of powers could be the following: personal statement of resignation, reaching of the age of sixty-five, cessation of the citizenship of Ukraine, change of permanent residence to a domicile outside Ukraine, failure to comply with requirements on compatibility of duties stipulated by law, entry into force of a criminal court judgment against the Commission member, declaring the Commission member incapable, missing or dead, violation of the oath of office, inability to fulfill the mandate for health reasons, entry into force of the court judgment, according to which the Commission member is held liable for an administrative corruption offense related to her activity, stipulated by applicable law.

Shall any of the above circumstances arise, within 30 days of the onset thereof the President of Ukraine shall make an objection to the Parliament in order to terminate the powers of the Commission member concerned. Upon examination of the objection made by the President of Ukraine regarding early termination of powers of the Commission member concerned, the *Verkhovna Rada of Ukraine* shall take appropriate action.

No later than 30 days from the date of termination of powers of the Commission member, the President of Ukraine shall suggest to the parliament a candidate to fill the position of the dismissed Commission officer.

The work of the Commission is backed up by the *Executive Support Service*, the *Secretariat* and the *Custodian Service of the State Voter Register*.

The *Secretariat* of the Commission shall provide the organizational, legal, expert, analytical, information and reference, as well as technical support to facilitate the exercising by the Commission and its members of their powers envisaged by the law.



The aim of the *Custodian Service of the State Voter Register* is to ensure that the Commission can perform its functions as the Custodian of the State Voter Register. The Custodian Service of the State Voter Register together with the administration and management bodies of the State Voter Register shall provide for the maintenance of the Register and generation of voter lists for all kinds of elections within constituencies and election precincts.

The special collegiate bodies authorized to organize the preparation and conduction of presidential and parliamentary elections in Ukraine, as well as to ensure compliance and uniform application of the Ukrainian legislation are the *election commissions*. These include the *Central Election Commission*, as well as the *constituency/district* (with a mandate extending to the territory of the constituency/electoral district) and *precinct* (with a mandate extending to the territory of the precinct/polling station) *election commissions*. The district election commission set up by the CEC includes at least twelve members, while the precinct election commission set up by the relevant district election commission consists of a chairman, a deputy chairman, a secretary and 9-18 other members of the commission, as necessary. At the precincts with the number of voters under fifty people, the precinct election commission may include a chairman, a secretary and 2-4 other members, as necessary.

#### **4. Safeguards of free and fair elections**

Campaigning (performing any activity aimed at motivating the voters to vote for or not to vote for a particular MP/presidential candidate) may take place in any form and by any means, unless these contravene the Constitution and the laws of Ukraine. The possible forms of campaigning may be: electorate meetings, rallies, marches, demonstrations, pickets, public debates, discussions, “round tables”, press-conferences; placement of political advertisements, speeches, interviews, essays, videos, audio and video clips, as well as other publications and communications in both print and audio-visual (electronic) media; distribution of printed promotional materials or publications; the use of outdoor advertising media for the placement of printed campaign materials or political advertising; concerts, performances, sporting events, broadcasting of films, TV shows and various public events supported by the party – the subject of the election process or an MP/presidential candidate; public appeals to vote for or not to vote for the party – subject of the election process or an MP/presidential candidate; setting up campaign tents.

Political advertising includes the placement or distribution of election campaign materials in advertising media, as well as the use of symbols or logos of political parties – subjects of the election process; displaying information revealing the support of a public event by a party or a candidate; advertising of print media (newspapers, magazines, books), other goods and services using the names or images (portraits) of candidates and/or the names or symbols of political parties.

Parties and candidates are entitled to rent (on a contractual basis) buildings and premises of any types of ownership for holding meetings, rallies, debates, discussions and other campaigning public events.

The legislation also *establishes restrictions on election campaigning*. According to these, the following actions are prohibited: placement of campaign materials and political advertising on buildings and premises of state authorities, authorities of the Autonomous Republic of Crimea and bodies of local self-government, enterprises, institutions and organizations of state and municipal ownership; placement of political advertising in the same block with commercial or public service announcements;

placing political advertising media on the outer surfaces and inside of public transport vehicles (including taxis); placement of political advertising inside and outside the premises and buildings of subway stations, bus and railway stations, ports and airports, as well as distribution of election campaign materials, including political advertising, through transport broadcast media or other passenger information networks and systems, including information boards in the premises of subway stations and subway trains, bus and railway stations, ports and airports, as well as inside the public vehicles; placement of pre-election campaign materials, political advertising – including messages about the progress of the election process – on the objects of cultural heritage (monuments of architecture), as well as in places where they impede the traffic safety.

The law also prohibits to broadcast political advertising, particularly: to include pre-election campaign materials of political parties, including political advertising, into information TV and radio programs (news releases); to interrupt transmission of election programs of political parties by advertising goods, works, services and other messages; it further prohibits regional (local) television and radio broadcasting channels of state and municipal ownership from blocking the transmission of election campaigning events broadcast on national channels by broadcasting their own programs; it also prohibits to conduct election campaigning in foreign mass media operating on the territory of Ukraine.

Efficient implementation of the *constitutional rights of the citizens* to participate in the management of public affairs, as well as the right to elect and be elected to the position of head of state and to bodies of state power is impossible without ensuring the *right to appeal* against the actions/inaction and decisions of the subjects and other participants of the relevant election process.

The legislation of Ukraine provides both *administrative and judicial means* of protection and restoration of suffrage-related rights and interests of the subjects of the election process. Any participant of the election process (a candidate, a party – subject of the election process, a candidate trustee, an official observer, the election commission, a voter whose personal suffrage-related rights or legally protected interests regarding participation in the electoral process are infringed) is entitled to submit a claim (petition) to the relevant election commission or to file a lawsuit at any stage of the election process.

Resolution of the cases related to the parliamentary or presidential election process shall be delegated to the competence of administrative courts. A decision made by the *Court of First Instance* upon review of the case related to the election process may be appealed in the *Court of Appeal*. Decisions, actions or inaction of the CEC as regards establishing the results of the presidential or parliamentary elections in Ukraine, can be appealed in the *Higher Administrative Court of Ukraine*, whose decision is final and binding.

The *publicity and openness of the election process* are stipulated and ensured by the relevant electoral law and include: informing the citizens about the composition, location and working hours of the election commissions, on the place and time of the voting and on the fundamental voter rights; ensuring access to the voters' lists, information about the candidates and the rules of filling out the ballot papers; promulgation of the voting and election results. Decisions of the election commissions and executive authorities concerning the implementation of the voters' rights shall be communicated to the citizens via print media (or made public in any other way). Decisions of the CEC and the district election commissions related to the election process and representing public interest shall be published on the official website of the Commission.

The information contained in documents submitted to the Commission for the registration of candidates is public information. Detailed information on each nominated candidate, including the surname, first name (names) and middle name (if any), full birth date, nationality (including indication of the residence time in Ukraine), position (profession), employment, party affiliation, place of residence, the presence or absence of a criminal record, shall be made available on the official website of the Commission. No other information about the candidates shall be disclosed.

The *costs related to the preparation and conduction of elections* shall be covered exclusively by the State budget of Ukraine and from the sources of campaign funding of the candidates. According to the law defining the procedures for exercising and ensuring the universal right of a citizen to access information in possession of the power entities, access to information on the allocation of the budget funds shall not be restricted. Therefore, information on the financing of the elections shall be open to public.

The laws regulating the election of the President of Ukraine and the people's deputies of Ukraine require that the interim and final financial statements on the receipt and use of subsidies and donations by the election fund of the candidate for a certain period shall be made public. This also concerns analysis of financial reports published on the official websites of the respective party (if available) by the *Commission and the National Agency for the Prevention of Corruption*.