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STANDARDS OF ELECTRONIC VOTING”**

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REPORT

**“LEGAL REMEDIES IN THE ELECTORAL PROCESSES
IN THE REPUBLIC OF MACEDONIA”**

by

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Introduction

Elections portray the level of democracy achieved in one society. Democracy is consolidated if free and fair elections are accepted as the only legitimate mechanism for recruiting the people in public positions with power. Law and other legal provisions that regulate the elections play key role in that. Its role is particularly important in societies in transition where the new political and social institutions are not yet stabilized and fully functional. The legal regulations protect the legality and on the base of it the legitimacy of the election procedures and elections results.

The legal remedies for protection of the election process are most commonly directed towards the election administration and the courts.

The election administration has a central and most important role in preparing and conducting legitimate, fair and unbiased elections. Election administration may prevent the violation of the election rights and preserve the legitimacy of the election process in different phases of the preparation and conducting of elections.¹ If, however, certain irregularities and violation of rules do occur - due to the conflictual and sometimes gladiator's character of the elections - the administration should decide in an unbiased, legitimate and fair manner. But, there has to be a possibility to appeal these decisions in court.

In most European countries, court protection is a constitutionally guaranteed right. Court protection in election processes may be before the regular courts, but it could also be provided by the constitutional court, depending upon how the state has regulated this issue.

Using this presentation, we will try to point to the importance of legal remedies in election procedures through the example of legal protection in election procedures in the Republic of Macedonia.

1. Guarantees for Legal Protection of Election Procedures in International Legislation

The legal protection of human rights, and by that the right to elect and to stand for election, has been clearly determined in all significant international documents, including the Universal Declaration of Human Rights,² International Pact for Civil and Political Rights, European Convention on Human Rights, the document from the Copenhagen meeting at the OSCE Conference on Human Dimension from 1990,³ all the way to the Code of Good Practice of the

¹ France Grad, *Volitve in volilni sistemi*, p. 119, Ljubljana 2002.

² Article 7 of the Universal Declaration of Human Rights stipulates the general right that all people are equal before the law, and that everyone, without any discrimination, has a right to equal protection by law. Article 8 of this Declaration stipulates that everyone has a right to efficient legal remedies before the competent national courts for deeds violating the basic rights that belong to him according to the constitution or law.

³ At the second OSCE Conference on the Human Dimension, held from 5 to 29 June 1990, in item 5.1 of the Copenhagen Document it has been established that among the elements of justice necessary for the complete expression of the innate dignity, equal and inalienable rights of all human beings, are also the free elections, which would be held in reasonable periods by secret ballot or by equally free voting procedure, under conditions which in practice enable the free expression of the voters' opinion about the election of their representatives. Item 5.10 of the same document stipulates that each person will have effective compensation means for administrative decisions, in order to guarantee respect of the basic rights and provide legal integrity.

Venice Commission,⁴ as well as through the numerous resolutions, recommendations and declarations of the Council of Europe, OSCE and UN. For the member states of the European Convention for Protection of Human Rights and Freedoms, Article 3 of Protocol 1 is of particular importance. This Article clearly prescribes the right to periodical elections by free and secret ballot.⁵ Although some of these documents were enacted more than 50 years ago, still, the right to legal protection in reference to human rights, and by that the right to elections, has been strongly emphasized.

The Code of Good Practice in Election Matters of the Venice Commission dedicates an entire chapter (3.3) to the efficient appeal system. The Commission has established that a body for appeals should either be electoral commission or a court, but in any case there must be a possibility for a final appeal to the court. The appealing body must be competent in order to provide legal remedies for protecting the right to vote, including voters' lists and acquisition of the right to vote, correctness of the candidacy, following the rules for the election campaign and the election results. In addition, in item (e) of chapter 3.3 the Code stipulates that the appealing bodies must have power to annul elections in places where irregularities could have influenced the result. There needs to be a possibility to annul the entire elections, or only the results for one election district. In case of annulment, new elections would have to be held in that district. All candidates and all registered voters in that district have to be given the right to appeal. A condition of reasonable quorum may be introduced for the voters' appeals to election results. The deadlines for the appeals have to be short (3 to 5 days for the first-instance procedure).⁶

2. Legal Remedies in the Election Processes in the Republic of Macedonia

The bases for the legal protection in election procedures in the Republic of Macedonia have clearly been determined in the Constitution of the Republic of Macedonia,⁷ and precisely defined in the Law on Voters' List, Law on Election of Members of Parliament, Law on Local Elections and the Law on Election of President of the Republic of Macedonia.⁸

⁴ The Code of Good Practice in Elections was adopted by the Venice Commission on the 52nd session held in Venice on 18 and 19 October.

⁵ Protocol 1, Article 3 Right to Free Elections: the high signatory countries have bound to organize free elections by secret ballot in reasonable intervals, under conditions which enable the people to freely express their opinion about the election of the legislative body.

⁶ European Commission on Democracy through Law (Venice Commission) Code of Good Practice in Elections CDL-AD(2002)23 rev. 3.3. Efficient System of Appeals.

⁷ The Constitution of the Republic of Macedonia was published in Official Gazette of the Republic of Macedonia no. 52 dated 22 November 1991, while the Amendments were published in no. 1 dated 10 January 1992, no. 31 dated 2 July 1998 and no. 91 dated 20 November 2001.

⁸ The Law on Voters' List and the Law on Election of Members of Parliament were published in Official Gazette of the Republic of Macedonia no. 42/2002; the Law on Local Elections was published in Official Gazettes no. 46/96, 48/96, 56/96, 12/2003, 35/2004, 42/2004, 52/2004 and 60/2004), while the Law on Election of President was published in Official Gazettes no. 20/94,48/99 and 11/2004).

The Constitution of the Republic of Macedonia guarantees the right to appeal and the right to protection of the freedoms and rights determined by the Constitution before the courts and the Constitutional Court of the Republic of Macedonia.⁹

In this paper we will pay particular attention to the Law on Election of MPs, as chapters VII and X of this Law determine the legal remedies, the form of legal protection, the bodies from which legal protection is expected solicited, as well as the deadlines for acting upon the legal remedies. In the other election related laws, legal solutions are either similar, or they refer to the provisions of this Law.

3. Legal Protection of the Legitimacy of the Election Procedure

The occurrences in the election procedure are complex and require authoritative, urgent and precise decisions and actions. On Election Day, it is exceptionally important that voters are enabled to exercise their right to vote, without disturbing the principles of general, equal, secret and direct right to vote. Legal protection should, therefore, be determined in election laws in a way that it is clear, unambiguous and easy to understand and to implement.

Laws should be accessible to everyone to use legal terminology, which would be understandable both to the voters and the elected representatives. Since the deadlines for election procedures are short, the deadlines for acting upon the legal remedies should be short, as well. This means that both the administrative bodies and the courts must act fast, watch over the deadlines, while their decisions to be concise, well explained, and to build a stable and administrative and court practice. In the review of legal protection in the election procedure, it is important to follow the legal protection of the procedure for determining candidates, the legal protection from irregularities during the voting process, but also the legal protection of the electoral right in total.

a. Legal Protection of the Legitimacy of the Procedure for Determining Lists of Candidates

According to the Law on Election of MPs of the Republic of Macedonia, if the Regional Election Commission (REC) determines irregularities in the list of candidates,¹⁰ it shall reject the list submitted with a decision. A complaint against the decision of the REC may be filed with the State Election Commission (SEC), through the REC, within 24 hours following the receipt of the decision. The SEC is obligated to bring a decision upon the complaint within 24 hours following the receipt of the complaint. An appeal may be filed with the Supreme Court of the Republic of Macedonia, through the SEC, against the decision of the SEC within 24 hours

⁹ Article 12 of the Constitution of the Republic of Macedonia stipulates that the citizens of the Republic of Macedonia realize the authority through democratically elected representatives, by referendum or by other forms of direct democracy. Article 15 of the Constitution guarantees the right to appeal to individual legal acts passed in procedure of first instance before court, administrative body or organization, or other public authority institutions. Article 50 of the Constitution determines that each citizen may refer to the protection of freedoms and rights determined by the Constitution before the courts and the Constitutional Court of the Republic of Macedonia, in a procedure based upon the principles of priority and urgency. The citizen has a right to be familiarized with the human rights and basic freedoms, and to actively contribute, individually or with others, for their promotion and protection.

¹⁰ If it determines that the lists were not submitted on time, i.e. that the list submitters did not remove the irregularities and omissions found within 48 hours following the received warning by the Regional Election Commission.

following the receipt of the decision. The Supreme Court of the Republic of Macedonia is obligated to decide upon the appeal within 48 hours following the receipt of the appeal. As a result of the exceptionally short deadlines, submitting complaints and appeals by mail is not permitted.

It is evident that in the procedure for legal protection, in cases of irregularities and omissions found during the determining of lists of candidates, the deadlines are significantly shorter compared to any other procedure, whereas court protection is also provided, i.e. the final procedure ends with the decision of the Supreme Court of the Republic of Macedonia. An additional argument is that the determining of the lists of candidates is also connected to the start of the election campaign, but also to the fact that without correctly determined lists of candidates, the entire further course of election activities would be questioned.

b. Legal Protection of Election Procedures during Voting

The Law on Election of MPs¹¹ stipulates that the State Election Commission shall annul the voting at the polling station with a decision, in case the secrecy of voting was violated, if voting was interrupted for more than three hours and if the police has not responded to the request of the Electoral Board¹² to intervene, while there was a need for that and it influenced the conducting of the voting at the polling station. The SEC shall also annul the voting at the polling station in the cases when the number of ballots in the ballot box is bigger than the number of voters who voted, and that difference influences the election results on election district level; and if a person or persons voted for other person(s), while the number of those votes influences the voting results on election district level.

Such violations of the election procedure influence immensely on the legitimacy of the election activities, as well as on the final result of the elections. This type of violations violates the basic principles of fair elections, disturb the stability of the election process and create mistrust with the voters.

An appeal to the Supreme Court of the Republic of Macedonia may be filed against the decision of the SEC, through the SEC, within 24 hours. The Supreme Court is obligated to act upon the appeal with 48 hours following its receipt, while the voting at the polling station, where voting was initially annulled, should be repeated in 14 days after the initial voting.

It is evident that the deadlines in this type of protection are also short, both in the administrative and court procedure, all in order to prevent prolonging of election activities and promptly announce the election results in public. The repeat voting, even in one election district only, may postpone the determining of the final results, but also to change the initially determined result, especially in the case of the proportional model.¹³

¹¹ Article 100 of the Law on Election of MPs.

¹² These cases have been determined in Articles 74,76 and 77 of the Law on Election of MPs.

¹³ During the 2002 parliamentary elections in R. Macedonia, even after the repeat voting in two polling stations in the 6th election district, were the final result for that district determined.

c. Protection of the Electoral Right

The Law on election of MPs determines that the procedure for protection of the electoral right is urgent.¹⁴ The complaints and appeals thereof are submitted to the competent bodies, through the bodies which decided previously.

The Law stipulates that each submitter of a candidates' list in the procedure for voting, summing up and determining results of the voting has a right to submit a complaint to the SEC. this complaint is filed within 48 hours after the irregularities were found. The SEC is obligated to decide upon the complaint within 48 hours following its receipt. The SEC decision may be appealed to the Supreme Court of the Republic of Macedonia within 48 hours following the receipt of the appeal. The appeal is filed through the State election Commission.

The such determined role of the State Election Commission, with deadlines longer than the deadlines of the REC, creates confusion with the submitter of the complaint, and he raises the question of when to file a complaint to the REC, and in which phase of the procedure to the SEC. in order to create diversity in the application of the Law, due to its vagueness in this part, the SEC prepared an Instruction to clarify the provisions of chapter X of the Law, before the beginning of the training of the RECs.

Each voter or submitter of a list of candidates, if he/she notices irregularities in the election procedure, may file a complaint to the REC within 48 hours. The REC is obligated to decide upon the complaint within 48 hours following its receipt. An appeal against the decision of the REC may be filed to the competent Court of Appeals within 48 hours following the receipt of the decision, through the REC. The Supreme Court of the Republic of Macedonia and the Courts of Appeals decide upon the appeals in a council consisted of 5 judges, selected by drawing lots. The Supreme Court of the Republic of Macedonia and the Courts of Appeals are obligated to bring a decision within 48 hours following the receipt of the appeal. The Supreme Court of the Republic of Macedonia and the Courts of Appeals may confirm or alter the decision.

d. Criminal Acts against the Elections and Voting

Apart from the election related laws, the legal protection of election procedures is also provided through the Criminal Code of the Republic of Macedonia.¹⁵ Namely, chapter XVI of the Criminal Code determines the criminal acts against the elections and voting, whereas the obstruction of elections and voting, violation of the electoral right, violation of the freedom of choice in elections, bribery during elections and voting, violation of the secrecy of voting, destroying election documents and election fraud have been legally sanctioned.¹⁶ These criminal acts do not only apply to elections, but also to the right to vote on referendum.

¹⁴ The protection of the electoral right in the Law on Election of MPs is defined in chapter X, Articles 105 to 108.

¹⁵ The Code was published in Official Gazette of RM no. 37/96.

¹⁶ Articles 158 to 165 of the Criminal Code of the Republic of Macedonia.

At the most recent local elections in Macedonia, criminal charges were brought against some members of Electoral Boards and they were subsequently punished, as a result of disregard of the Law on Local Elections and obstruction of elections and voting. The provisions of the Criminal Code need to provide sanctions of everyone (voter, candidate or election official) who will endanger the election process and prevent conducting fair and democratic elections, in manners determined with the provisions of the law.

4. Conclusions

The legal protection of election procedures has to be determined by law or laws, and the legal provisions thereof must provide complete protection of the constitutionality and legitimacy of the entire election process, but also protection of the electoral right of the individual.

Laws must be precise, clear and in accordance with international law. Laws must be accessible to everyone. Apart from the fact that they will be published, the accessibility will be ensured through constant education of both the voters and the elected officials.

The administrative bodies and courts must provide complete respect of the principle of legitimacy. The procedures for legal protection must be brought before them and must be completed within the deadlines set forth by the laws.

The decisions of the administrative bodies and the courts must be clear, precise, unambiguous, and they have to provide legal stability. Besides the statement, these decisions have to contain legal explanation, supported by facts.

The decisions of the courts are also source of the court practice, and should therefore be characterized by precision, stability and righteousness.

The transparency of the administrative bodies and courts, which decide upon complaints and appeals, is of special importance for fair and democratic elections. The election process must not be endangered and the procedures for legal protection of the voters and candidates must be ensured that the legal procedure has been justly completed.