

Collection
Science and technique of democracy, No. 41

Venice Commission

Organisation of Elections by an Impartial Body

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Council of Europe Publishing

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The European Commission for Democracy through Law (Venice Commission) is an advisory body on constitutional law, set up within the Council of Europe. It is composed of independent experts from member states of the Council of Europe, as well as from non-member states. At present, more than fifty states participate in the work of the Commission.

**THE RELATIONSHIP BETWEEN THE INDEPENDENT SWEDISH
ELECTION AUTHORITY AND THE GOVERNMENT, INCLUDING
ISSUES OF COMPOSITION AND FUNCTIONING AS WELL AS OF
ACTIVITIES AND COMPETENCES OF THE ELECTION
AUTHORITY**

Ms Kristina LEMON
Senior Administrative Officer, Election Authority

Introduction

The Swedish central election authority (the Election Authority) became an independent authority as late as 1 July 2001. However, the function and tasks of the central election authority have existed since the beginning of the 1970s, but as an incorporated department within another state authority. The reasons for establishing an independent authority were the belief that electoral matters required a separate budget and a specific administrative system as well as an advanced IT/data support system. It was furthermore considered that electoral matters in themselves entailed such fundamental democratic values as to claim an official organisational framework of their own.

This paper will deal with the relative independence of the Swedish central election authority, providing both an introduction into the extent of the authority's independence as well as giving an account of the government's control mechanisms of the authority's activities. The word "relative" is used to illustrate tension between the independence provided by law and other regulations to Swedish state authorities and the government's obligation to direct the performances of the actors representing "the state".

In order to understand the administrative and legal framework within which the Election Authority functions, a brief introduction into the Swedish system of state administration in general will be presented. Thereafter, the tasks and responsibilities of the Election Authority will be outlined, providing relevant connections and references to the state administration system. In conclusion, the report will highlight a few ambiguities concerning the relation between the government and the state authorities, with special references to the Election Authority and its role as an independent authority.

The Swedish system of state administration – a brief introduction

Sweden is governed through a system of parliamentary democracy and all public power is exercised under the law. The Instrument of Government, which is a part of the Swedish Constitution, gives Parliament the power of legislation and the government is accountable to Parliament in all its activities. The government rules the country but is required to implement the decisions made by Parliament and must submit new or amended legal acts for their scrutiny.

The government as a whole is responsible for all government decisions. And although numerous routine errands are in practice decided by individual ministers and only formally approved by the government as a whole, the principle of collective responsibility is reflected in all government work.

The Swedish model of state administration is founded on a long tradition of a relatively small government office with a large number of state agencies/authorities coming under the individual ministries. The government office, together with the state authorities, comprises the Swedish state administration. The government is the policy-making body within the state administration and as such supervises as well as conducts follow-ups of the activities of the state authorities.

Each ministry within the government office has specific responsibility areas and the state authorities under each respective ministry implement the policies of the government.

In addition to being the implementing bodies of the government's policies, the state authorities are also obliged to enact the policies and implement the laws decided by Parliament. The state authorities receive their funding through the annual state budget decided by Parliament.

All authorities hand in an annual report to the government including information about costs, revenues and results. Based on the annual report, the government follows up and evaluates the activities of the authorities. The annual report, together with the budget request handed in to the government by the authority, forms the foundation for next year's state budget and the document placing appropriations at the disposal of the authorities.

The general activities of the state administration are stipulated in law, which is decided by Parliament. Furthermore, there are certain control procedures under Parliament with specific tasks to examine the government and its implementing bodies. The State Audit Institution scrutinises the complete activities of the state to ensure that the state resources are used in an optimal manner and by an efficient state administration. A parliamentary ombudsman makes sure that the state authorities and their staff comply with existing laws and statutes, following up on complaints from the general public and the Parliamentary Standing Committee on the constitution holds a specific task to scrutinise the government and its work. The whole state administration is therefore subject to a quite comprehensive democratic control system.

The government's control mechanisms of the state authorities

Powers

The government is empowered by the constitution to rule the country under the control of Parliament and in accordance with the law. To be able to do that in an efficient manner the government is given the power to issue ordinances with instructions to the state authorities. These ordinances contain general administrative provisions on how each specific authority should execute its responsibilities reflecting the government's long-term policies, but also provide references to the laws concerned and other relevant regulations governing the

authorities' individual activities. The ordinances with instructions to the state authorities provide the legal framework within which each authority will implement the government's policies. Each state authority has its own special ordinance with instructions.

Furthermore, special instructions are given to the state authorities by the government on a regular basis through its annual document placing appropriations at the disposal of the authorities. The budget of the state authorities is decided on an annual basis by Parliament through the official state budget, but the appropriations document will also contain, apart from financial information, the specific objectives of the authority as well as special tasks and obligations to report on those areas of focus reflecting the government's present political priorities.

Limitations

There are, however, limitations to the extent of which the government may rule the activities of the state authorities through ordinances and documents of appropriations. One such limitation is, as mentioned above, the fact that the activities of the state authorities are mainly laid down in law, which is decided by Parliament. Neither the government as a collective body, nor any individual Cabinet Minister is allowed to intervene or decide on individual matters concerning the exercise of public authority. The authority is independent to the extent that it can decide on individual situations affecting persons and other legal subjects and in the actual application of the law. Through the parliamentary control of the power of legislation, the government must submit to the will of the people enacted by parliament decisions on legal acts. If the government is of the opinion that a state authority is wrong in its application of law, the government must present a proposal for the amendment of that law before Parliament.

The parliamentary control instances constitute another type of limitation, ensuring that the government as well as the authorities comply with existing laws and regulations. A constitutionally protected principle of public access to official documents will furthermore make possible close examination of the government and its authorities by anyone interested, providing public and media insight into the state's activities. Certain appeal systems of an administrative nature may also serve as an impediment for the government to use its control powers in an unrestrained manner.

The Swedish Election Authority

The Swedish Election Authority is the central election authority in the country responsible for planning and co-ordinating general elections and national referendums. The authority is formally under the Ministry of Justice, but constitutes an independent state authority in its handling of individual matters and its application of relevant laws and regulations.

The main tasks and responsibilities of the Swedish Election Authority are stipulated in the Elections Act, which provides detailed provisions on the whole election procedure including mandate distribution, allocation of seats and appeals in electoral matters.

In accordance with the election results, the Election Authority is responsible for:

- the distribution of seats between the parties in Parliament as well as the 19 Swedish seats in the European Parliament;
- the allocation of seats between candidates to Parliament as well as to the 19 Swedish seats in the European Parliament.

The Election Authority is also responsible for:

- the development and support of the computerised part of the electoral system;
- the distribution of the preliminary and the final electoral results on the Internet;
- information to the public regarding when, where, and how voting is to be carried out;
- the production of manuals and guidelines to regional and local election authorities, and
- the production of voting material, such as electoral rolls, voting cards, ballot papers, envelopes, forms, etc., used for the elections.

It should be noted in this context, that the tasks and responsibilities given to the Election Authority are to a large extent non-political. Before the establishment of an independent election authority it was discussed whether or not this new authority should be responsible for enhancing voter turnout. However, in line with the fact that the authority has no responsibility for political parties,¹ the task to enhance voter turnout was not given to the authority. The task to enhance voter turnout was, and still is, considered a highly political issue and therefore a task for the political parties and to some extent the government. The creation of incentives for people to vote must ultimately lie in the hands of the political parties.

The Ordinance with Instructions for the Election Authority

The Ordinance with Instructions for the Election Authority regulates the fact that the Swedish Election Authority is the central administrative authority for elections and national referendums and that it should fulfil the tasks and responsibilities given to the authority by law or ordinance. It is also stated that the Election Authority may issue supplementary regulations needed for its application of certain listed laws (for example, the Elections Act and the National Referendums Act). In addition, the ordinance provides details concerning decision-making procedures and the organisational structure of the authority.

The Swedish Election Authority is organised as follows:

The Election Authority is governed by a board consisting of a chairman and four members. The government appoints all members of the board for a specific period of time. An administrative office performs the daily work, and the activities are governed by an administrative director appointed by the government for a specific

¹ There are no rules governing the political parties' activities in Sweden. Furthermore, there are no obligatory registration procedures to participate in a Swedish election. The only registration procedure in force for parties is a voluntary option to register the party denomination against misuse.

period of time. Neither the members of the board nor the administrative director are politically appointed.

The Election Authority has 12 employees, all of whom are civil servants employed after demonstrating their competence in open competition on the labour market. No employee of the Election Authority is politically hired, which forms a guarantee that the administrative decisions are made without political bias. There is a specific legal act (The Act on Public Employment) regulating, among other things, disciplinary liability for state employees in performing their duties.

The supplementary provisions mentioned in the ordinance mainly constitute handbooks and guidelines produced by the Election Authority for the regional and local election authorities. These handbooks contain advice and guidelines on how to put the regulations in the Elections Act into practice. See Appendix 1 for more information about the regional and local election authorities.

The government's appropriations document

The government's appropriations document for 2005 contains the funds available to the Election Authority for this fiscal year and provides directives on how the funds should be divided between the authority's activities. The overall objective of the authority, to safeguard and deepen democracy, provides the framework, within which the government has issued three other objectives, which may change from year to year depending on the government's political focus and priorities at the time.

The objectives for the Election Authority for 2005 are:

- to monitor the national and international development of electronic voting as well as the work to enhance knowledge of the voting procedure to the electorate;
- to carry out the election to the Sami Parliament² with maximum reliability and efficiency; and
- to carry out the general elections in 2006 with maximum reliability and efficiency.

All three objectives contain a duty to report back to the government, either in the annual report or as a special report.

The appropriations document for the Election Authority also contains a special task reflecting the government's present interest in the situation of young persons, requesting the authority to present youth indicators to shed light on their specific circumstances within the electoral process.

² The Sami Parliament is a specially elected assembly for the indigenous people in Sweden.

Ambiguities

In view of the above, it becomes evident that there is tension between the government's obligation to control the activities of the state authorities and the state authorities' will and ability to act independently. Even though law regulates most of the state authorities' activities, the government will (and should!) through ordinances and appropriations documents make sure that the government's as well as Parliament's political agenda becomes implemented.

The laws decided by parliament have a basic function to the effect that they enable the authorities to make administrative decisions without the interference of the government – to guarantee fair handling of individual matters in accordance with the law. On the other hand, the government needs tools to be able to ensure that the authorities actually implement the political will of the government and Parliament.

In the case of the Election Authority this tension becomes especially sensitive, since it lies in the very nature of the authority's function to be politically non-biased in the handling of tasks and the application of law. It is important that the authority receives high public confidence so that there can be no doubt that elections and referendums are carried out in a trustworthy manner.

Within the duties of the Election Authority, to prepare and co-ordinate elections and national referendums, are the tasks to make both democratic insight and civic influence possible, and to give legitimacy to the elections. Decisions made and measures taken by the Election Authority are, therefore, important parts of the reliability of the whole electoral process.

Concluding remarks

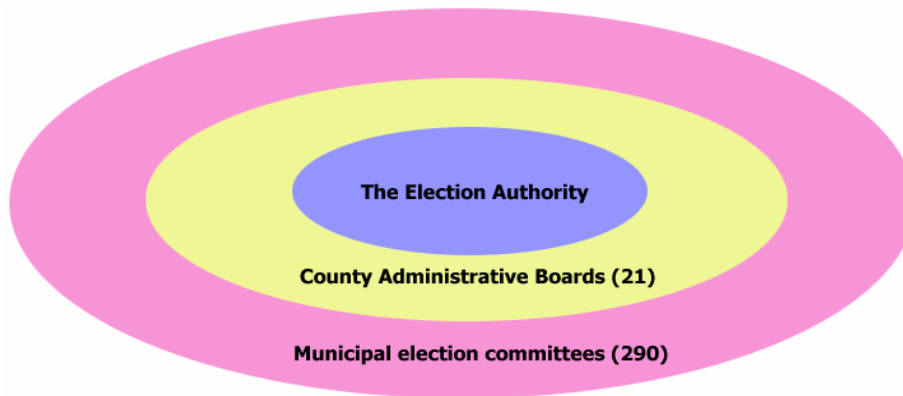
The Swedish state administration represents one model out of many to combine democratic governance with an efficient administrative system. This model has resulted in an administrative apparatus where both politics and the exercise of public authority come under the same fundamental forms of government: representative democracy, a state governed by law and a framework giving the ability to act.

These three forms of government are in themselves desirable objectives, but can hardly be managed together. Compromises must constantly be made and there is no ideal solution to find the perfect balance. There are at present a great variety of administrative models in force throughout the world and one of the working methods of a democracy is to hold open discussions and learn from each other. Openness, debate and review constitute efficient tools for enhancing democracy.

APPENDIX 1

The Swedish election administration

The Swedish Election Authority is a part of the Swedish election administration, which is divided into three levels; a central, a regional and a local level. All major tasks of the election administration are stipulated in the Elections Act, providing detailed provisions of the areas of responsibility for each specific level. The Swedish election administration can be illustrated as follows:



There is no hierarchy between the three levels, since each level holds its specific responsibilities in accordance with the Elections Act. The Election Authority has no power to direct and control the activities of the regional and local election authorities. They are in themselves independent to the same extent as the central election authority and may as such exercise their own application of the law. The role of the central election authority is to provide guidelines and assistance in their performances of the electoral duties stipulated in law.

The Election Committee is the local election authority in each municipality. There are 290 municipalities in Sweden and they enjoy a considerable degree of autonomy. The municipalities are responsible for providing a large part of the public service to its inhabitants and have a right to levy taxes in accordance with the constitution. As the local election authorities, the municipal election committees appoint electoral officers, ensure that polling stations are provided and are responsible for the first and preliminary counting of votes. The municipalities bear the costs for electoral officers and polling stations.

The Election Review Board settles appealed decisions. The Board consists of seven members led by a chairman who is required to be, or must have been, an ordinary judge and may not be a Member of Parliament. The remaining members of the Board are appointed by Parliament.

**COMPOSITION AND FUNCTIONING OF THE ELECTORAL
ADMINISTRATION IN BOSNIA AND HERZEGOVINA**

Mr Suad ARNAUTOVIC
Member, Election Commission

Introduction

Bosnia and Herzegovina (BiH) has had a central state Election Commission since 2001, when the permanent Election Law was passed. Out of seven members of the Election Commission, until 30 June 2005, three members are representatives of the international community in Bosnia and Herzegovina, for example: the Head of the OSCE Mission and the Deputy Head of the OSCE Mission to Bosnia and Herzegovina, and the Senior Deputy High Representative in Bosnia and Herzegovina. From 1 July 2005, these three international members will be replaced by three new national members, to be appointed by the Parliament of Bosnia and Herzegovina. Out of the current four members of the Election Commission, two were appointed by the High Representative in Bosnia and Herzegovina, and two by the Parliament. In Bosnia and Herzegovina, the work on changes and amendments to the Election Law are ongoing. It is the aim to make changes and amendments to the Election Law by the end of 2005, and thus to create the preconditions for the upcoming general elections, to be held on 1 October 2005, and also be in accordance with the provisions of the amended Election Law.

The following text describes the structure and competence of the Election Administration in Bosnia and Herzegovina which is in line with the valid legislation.

I. Authorities responsible for the conduct of elections¹

The competent authorities responsible for the conduct of elections in Bosnia and Herzegovina are the election commissions and the polling station committees.

The basic principle of these institutions is independence and impartiality. Members of election commissions and polling station committees shall be persons eligible to vote and with appropriate expertise and experience in the administration of elections.

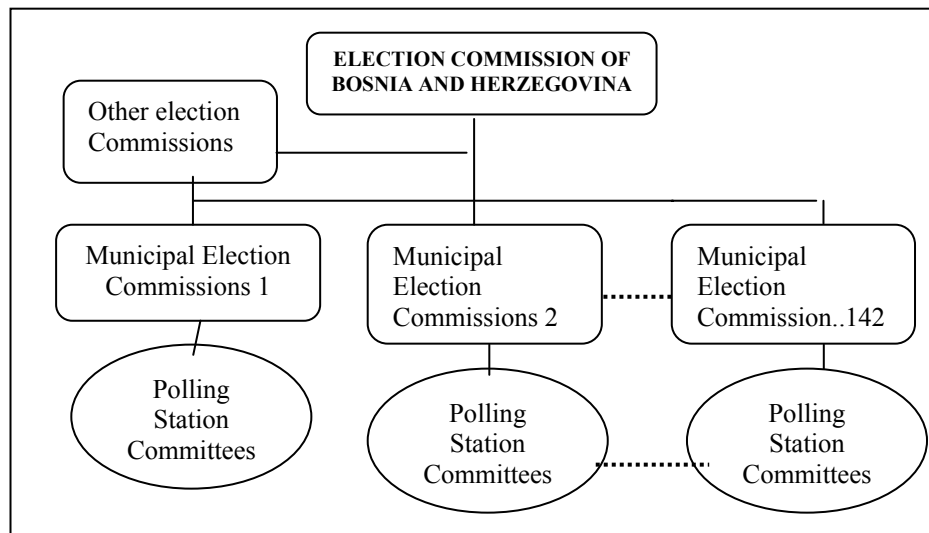
¹ The description of competences of the Election Administration has been made on the basis of the Election Law of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina, Nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04 and 25/04. All additional information on the work of the Election Commission of Bosnia and Herzegovina are available on the official web page www.izbori.ba.

The competent authorities responsible for the conduct of elections in Bosnia and Herzegovina are:

- The Election Commission of Bosnia and Herzegovina, as central state election body;
- entity and cantonal election commissions;
- municipal election commissions;
- polling station committees.

The mandate of election commissions shall be five years and one member may not be elected more than twice to the same election commission.

Polling station committees shall be created during the year of the elections to be held in Bosnia and Herzegovina.



Scheme 1: Organisational scheme of the electoral administration

II. Election Commission of Bosnia and Herzegovina

The Election Commission of Bosnia and Herzegovina was established in November 2001, when it took over the competence for the conduct of elections from the Provisional Election Commission,² which in turn was under the control of the OSCE Mission to Bosnia and Herzegovina, and based on Annex III of the General Framework Agreement for Peace in Bosnia and Herzegovina.³

The Election Commission of Bosnia and Herzegovina is composed of seven members of which four members are national experts in the field of elections and

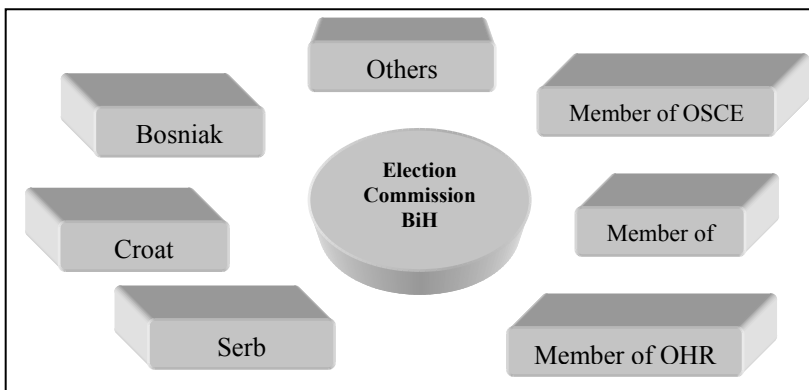
² The Provisional Election Commission was established by the OSCE on the basis of the Annex III of the General Framework Agreement for Peace in Bosnia and Herzegovina aimed at adopting and establishing a programme for elections in Bosnia and Herzegovina.

³ The General Framework Agreement for Peace in Bosnia and Herzegovina was initiated in Dayton on 21 November 1995, and signed in Paris on 14 December 1995.

of three international members. The national members of the Election Commission are selected from the citizens, namely one Bosniak, Serb and Croat respectively, that is, one representative from the rank of each constitutional peoples of Bosnia and Herzegovina, and one representative from the rank of Others.⁴

The international members of the Election Commission of Bosnia and Herzegovina are selected from international organisations, notably, two representatives from the OSCE to Bosnia and Herzegovina⁵ and one representative from the OHR BiH.⁶

The other international members of the Election Commission of Bosnia and Herzegovina are Ambassador Douglas Davidson (OSCE), Ambassador Werner Wnendt (OHR) and Ambassador Victor Tkachenko (OSCE).



Scheme 2: Composition of the Election Commission of Bosnia and Herzegovina

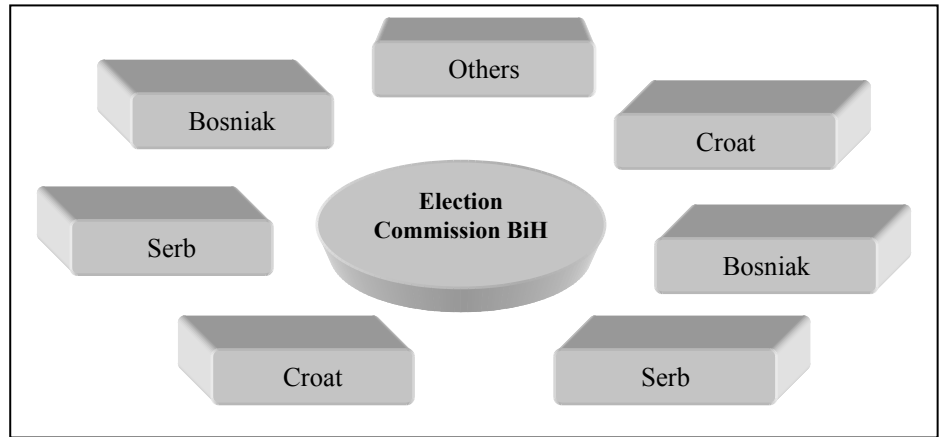
The above-mentioned composition of the Election Commission of Bosnia and Herzegovina, including three international members, will be valid until 30 June 2005. At this point, the international members will be replaced by domestic members under the principles established in line with the recent changes and amendments to the Election Law of Bosnia and Herzegovina.

The permanent composition of the Election Commission of Bosnia and Herzegovina will be as follows: seven domestic members, two representatives from the rank of each constituent peoples in Bosnia and Herzegovina and one representative from the rank of Others.

⁴ By the Constitution of Bosnia and Herzegovina, Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina equal rights are guaranteed to all constitutional peoples and to the group of Others.

⁵ The OSCE Mission was established in Bosnia and Herzegovina in December 1995, in accordance with the mandate as set forth in the General Framework Agreement for Peace in Bosnia and Herzegovina, aimed at providing assistance to the transition country by promoting development of democratic political institutions at all levels.

⁶ OHR BiH – The Office of the High Representative and Special Representative of the EU was established to monitor the implementation of the civilian part of the Peace Agreement.



Scheme 3: Composition of the Election Commission of Bosnia and Herzegovina after 30 June 2005

The main tasks and duties of the Election Commission of Bosnia and Herzegovina are to:

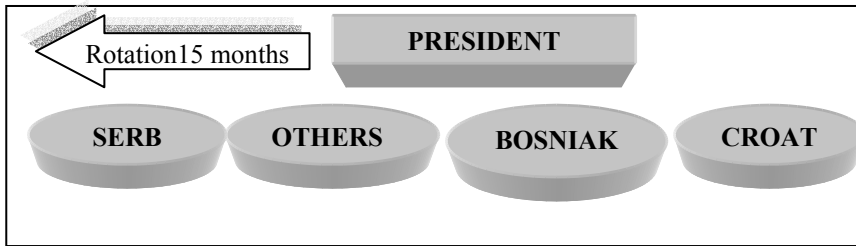
1. co-ordinate, oversee and regulate the lawful operation of all election commissions and polling station committees in accordance with Election law;
2. issue administrative Regulations for the implementation of the Election law;
3. propose a budget for the Election Commission of Bosnia and Herzegovina and the Secretariat and report on its spending;
4. be responsible for the establishment, accuracy and maintenance of the Central Voters Register for the territory of Bosnia and Herzegovina;
5. certify the participation of political parties, coalitions and independent candidates for all levels of elections in Bosnia and Herzegovina;
6. verify and certify the lists of candidates for all levels of elections in Bosnia and Herzegovina;
7. be responsible for the timely printing, distribution and security of ballots and forms for all levels of elections in Bosnia and Herzegovina;
8. define the contents and the form of the ballot for all levels of elections in Bosnia and Herzegovina;
9. verify, certify and publish election results for all levels of elections in Bosnia and Herzegovina;
10. issue certificates to persons who receive mandates;
11. notify an election commission or polling station committee should it not comply with or violates a provision of this law and order the remedial action required to be taken by the competent body;
12. publicise all Rules of Procedure, Regulations and election results, voter information and all other information necessary for the implementation of the

Election Law and all electoral laws, in the Official Gazettes and the media, both inside and outside Bosnia and Herzegovina as appropriate;

13. conduct all election activities for the elections of the members of the Presidency of Bosnia and Herzegovina and the members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina;
14. review the termination of a mandate of an elected official by the competent body of authority at all levels in order to ensure that the elected official's mandate was terminated in accordance with the law and, should a member resign, that it is of his or her own volition;
15. report annually to the Parliamentary Assembly of Bosnia and Herzegovina on the state of the electoral administration, the implementation of Election Law and any proposed amendments to the Election Law; and
16. perform all other duties as authorised by law.

The work of the Commission shall be carried out through sessions chaired by the President of the Commission.

Out of the domestic members, the Election Commission will elect a President whose mandate will last for 15 months.



Scheme 4: Rotation of the Presidency of the Election Commission of Bosnia and Herzegovina

The members of the Election Commission from the rank of Bosniak, Croat and Serb peoples, respectively, as well as from the rank of Others are to be appointed by the House of Representatives of the Parliamentary Assembly following the procedure of a public vacancy announcement.

The members of the Ad hoc Commission for Selection and Nomination propose the candidates for the Election Commission. In accordance with the Election law, the candidates for the Election Commission shall be legal experts with experience in conducting elections and/or experts for elections.

The Ad hoc Commission for Selection and Nomination is composed of seven members of which two are appointed by the President of the High Judicial and Prosecutorial Council from among the members of the Council,⁷ three are appointed by the Administrative Commission of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina from among the members of the Commission,⁸ and two are appointed by the President of the Election Commission from among the members of the Election Commission. The constituent peoples, that is, two Bosniaks, two Serbs, and two Croats and one from the rank of Others must be represented in the Ad hoc Commission for Selection and Nomination.

Nationality	Administrative Commission of the PA of BiH	The High Judicial and Prosecutorial Council	Election Commission of BiH
Two Bosniaks	1	1	
Two Serbs	1	1	
Two Croats	1		1
One Others			1

Table 1: Composition of the Ad hoc Commission

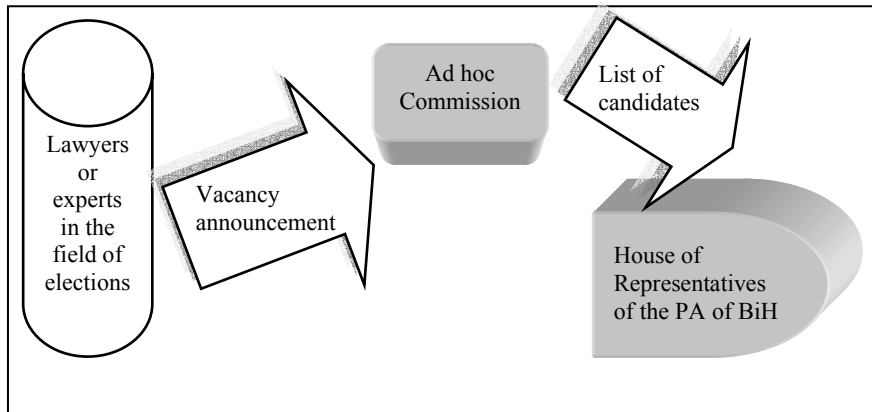
In accordance with the Rules of Procedure to be passed by the Election Commission of Bosnia and Herzegovina, the Ad hoc Commission carries out the procedure for announcement and appointment of candidates for members of the Election Commission. A decision on the appointment of nominees for the Election Commission shall be made by a two-third majority vote.

Following the procedure conducted by the Ad hoc Commission, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina appoints the members of the Election Commission from the list of candidates. If this list is not submitted to the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina within 30 days prior to the expiration of the mandate of the members of the Election Commission, the House of Representatives of the Parliamentary Assembly proposes and appoints the members of the Election Commission.

⁷ The High Judicial and Prosecutorial Council of Bosnia and Herzegovina was established under the Law adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 3 June 2004. The HJPC is composed of 15 members. Its basic competence is to appoint judges and prosecutors, to determine the number of judges and prosecutors, and to conduct disciplinary proceedings against judges and prosecutors.

⁸ The Administrative Commission of the House of Representatives is established on the basis of the Rules of Procedure on the Work of the Assembly and has in total nine members. The basic duties of the Commission are to consider the administrative matters of the House of Representatives of the PA of Bosnia and Herzegovina in accordance with the Rules of Procedure.

In the event a member of the Election cannot perform his/her duties as set forth in Article 2.15 of the Election Law, the Election Commission shall notify the House of Representatives thereof. The House of Representatives shall in this case appoint a new member who is of the same constituent peoples including Others as the previous member. A new member shall be appointed from the list of nominees submitted by the Ad hoc Commission for Selection and Nomination of Bosnia and Herzegovina.



Scheme 5: Selection of members of the Election Commission of Bosnia and Herzegovina

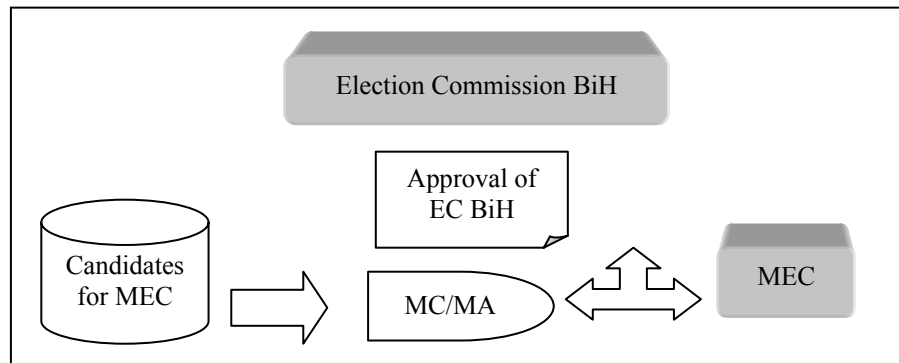
III. Municipal election commissions

The members of the Municipal Election Commission shall be appointed by the Municipal Council/Municipal Assembly, subject to the approval of the Election Commission. Amongst the members of the Municipal Election Commission, the Municipal Council/Assembly shall appoint the President, subject to the approval of the Election Commission.

A Municipal Election Commission consists of between three and five members. The Election Commission shall determine the number of the Municipal Election Commission members in accordance with the number of the registered voters and the size of a municipality and may also use other criteria.

A member of the Municipal Election Commission can be: the President of a regular court, the Secretary of the Municipal Council/Municipal Assembly, persons professionally employed in municipal administration and other persons if they meet the requirements established under the Election Law.

Apart from the above-mentioned requirements to be met by the members of the municipal election commissions, the Election Law provides that the composition of the Election Commission or polling station committees should be multi-ethnic, in order to reflect the representation of the constituent peoples, also including Others, in the electoral unit for which a competent body for the conduct of elections is established, while taking heed of the last census conducted at state level.



Scheme 6: Method of selection of members of the Municipal Election Commission

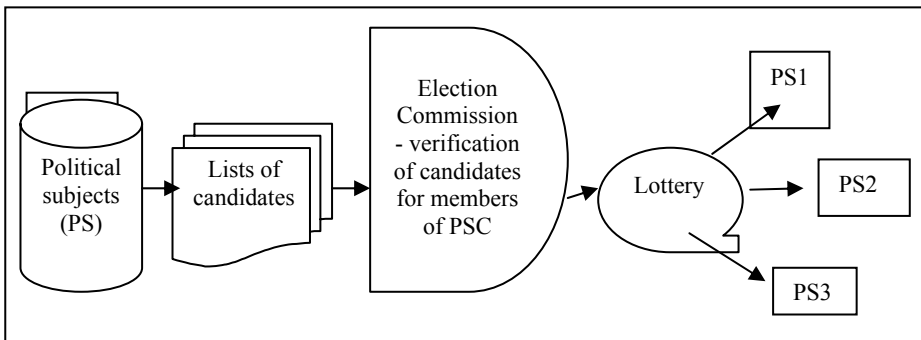
The main tasks and duties of the Municipal Election Commission are to:

1. ensure that all candidates' lists for a Municipal Council/Municipal Assembly are made in accordance with the law, and forward them to the Election Commission of Bosnia and Herzegovina for its approval;
2. monitor the work of competent municipal bodies for the administration of the elections, including the process of voter registration;
3. designate polling stations in the territory of the municipality for voting on all levels of authority in Bosnia and Herzegovina;
4. appoint and train the members of the polling station committees;
5. ensure the security of, and deliver to the polling station committees the polling material for voting at all levels of elections in Bosnia and Herzegovina;
6. notify voters of the information necessary for the administration of elections, as directed by the Election Commission;
7. be responsible for the technical arrangements at the polling station and any other technical preparations for the elections;
8. be responsible for the proper conduct of the counting of ballots at polling stations and municipal counting centres;
9. compile the results of elections from all polling stations in the municipality, separately for each body for which elections were administered, and forward the results to the Election Commission; and
10. perform all other tasks as authorised by law and by the Regulations of the Election Commission.⁹

⁹ Those responsibilities are mentioned in article 2.13 of the Election law of Bosnia and Herzegovina.

IV. Polling station committees

In addition to the Election Commission, the polling station committees are an important segment of the electoral administration. The Municipal Election Commission appoints polling station committees for each election. Depending on the number of voters registered for a specific station, three or five members of the polling station committees will be appointed, as well as the deputies. During the process of the appointment of the polling station committees, the political subjects play an important role since they propose members of the polling station committees to the Election Commission. The basic requirement to be met for a list of candidates, is that they are verified for elections in a given municipality. A maximum of one representative per political subject can be found in the composition of the polling station committees at the polling station. Places and representation of the members of the polling station committees shall be made by the lottery.



Scheme 7: Manner of the selection of members of the polling station committees

In Bosnia and Herzegovina, in 142 municipalities, 4 065 polling station committees were nominated for municipal elections held on 2 October 2004.

V. Other election commissions

The Election Law of Bosnia and Herzegovina provides also for the establishment of the entity and cantonal election commissions.¹⁰ However, recent experience shows that they do not have a role in the implementation of the elections which can justify the purpose of their existence. The competence of these commissions is established by the Election Commission of Bosnia and Herzegovina. Apart from the above-mentioned problem, notably its function, there is also a problem because the majority of these commissions have not been established. Namely, the Election Commission of the Federation of Bosnia and Herzegovina has not been established, while the Election Commission of the Republika Srpska has been nominated, but it has not been active in practice, and the cantonal commissions have also not been nominated.

In the upcoming period, the Election Commission of Bosnia and Herzegovina should address the issue of a need for the existence of the entity election commissions and their role and significance in the electoral process, and should incorporate the solutions into the Election Law.

VI. Conclusion

The present Election Law of Bosnia and Herzegovina enables the central Election Commission, as a professional state body, to be independent and impartial. The Law envisages that lawyers and election experts can be appointed members of the Election Commission on the basis of public announcement. However, the Election Law does not provide for representatives of the ruling and opposition political parties to be members of the Election Commission of Bosnia and Herzegovina or the municipal election commissions. These representatives can monitor the work of the Election Commission, but cannot take part in decision making.

The work on changes and amendments to the Election Law of Bosnia and Herzegovina is ongoing in preparation for the upcoming general elections to be held in October 2006.

ELECTORAL ADMINISTRATION IN ARMENIA

Mr Garegin AZARYAN
Chair of the Central Electoral Commission, Armenia

The role of the commissions in the preparation, organisation and conduct of elections is vital. It is particularly important for new independent countries which do not have long term democratic traditions, such as Armenia, the current context of which includes democratic transition and constitutional and electoral reforms.

Ideally the credible electoral bodies should follow the following principles:

1. impartiality ;
2. professionalism ;
3. the participation of the representatives of candidates and political parties in the electoral body;
4. the opportunity for the implementation of the real electoral administration;
5. they should be transparent and predictable in their activities and the decision-making processes.

And finally these five principles should ensure that the activities of the electoral bodies and the decisions adopted by them, are clear and acceptable, in order to increase society's confidence in them.

Only if the above-mentioned principles are implemented, will the results of elections become acceptable and comprehensible to the voters. The amendments which were adopted recently to the Electoral Code of the Republic of Armenia are aimed at ensuring those principles. They constitute a new appointment model of the electoral bodies which was positively viewed by the Venice Commission.

By the example of the electoral system of our country let us try to analyse the issues of independence, transparency and impartiality of the electoral bodies and the issue of the organisation of the electoral administration.

In Armenia elections are administered by a three-tier election administration. The Central Electoral Commission (CEC), which is the first level of the electoral system, includes one member appointed by each of the parties that have factions in the National Assembly, two judges appointed by the Cassation Court and the Council of Courts Chairmen and one member appointed by the President of the Republic of Armenia.

On the second level of the electoral system, the Territorial Electoral Commission (TEC), CEC members appoint the members of TECs. One member of the CEC appoints one member of the TEC, and the judge members of the CEC appoint TEC members from amongst first instance judges.

The members of Precinct Electoral Commissions (PECs) are appointed from among the persons who passed special training courses and as a result of examination were certified, giving them the right to be engaged in the commissions as a PEC member.

The training of these citizens should be organised every year and the expenses should be covered by the special state budget line. As a result a special data bank of citizens will be formed, which will give the opportunity to involve persons who are aware of electoral procedures and electoral legislation in electoral administration.

Analysing this method of formation of the electoral commissions it can be stated that on the first and second levels of electoral administration, that is in CEC and TECs, the above basic principles for the formation of commissions are ensured, however, the professionalism of electoral bodies and the possibility to implement valuable electoral administration is prejudiced. This is explained by the fact that in new independent countries with a lack of democratic traditions in its activities and decisions, the partisan member of the commission can be influenced by the viewpoint of his/her party, which will undermine the implementation of the electoral administration. Moreover, during elections non-professional electoral administration can cause doubts and uncertainty in society towards electoral administration. Consequently this can cast a shadow over any democratic elections as well as the results.

The changes of the method of formation of the electoral commissions, especially the adoption of judge members in the CEC, and the involvement of qualified and certified persons in the precinct electoral commissions are very important. We think that the future improvement of the electoral legislation should result in such a method of formation of the CEC when the members are appointed by the group of persons, who are trusted and well-known. For example the President of the Constitutional Court, Cassation Court Chairman, the Chairman of the Council of Courts Judges, the Chairman of the Bar Association, the President of the Academy of Science, Ombudsmen, etc. can be persons who form that group and who are not interested in the outcome of the elections. This group should appoint CEC members who will correspond to the requirements of the Electoral Code, for example, persons who are non-partisan, have a legal education, do not have convictions. Election commissions should have extended membership for representatives of political parties with the right of deliberative vote.

We think that with such a formation of the commissions their independence, professionalism and impartiality will be ensured as well as the possibility of implementing the electoral administration.

**TRANSPARENCY AND IMPARTIALITY: ACTIVITIES AND
COMPETENCIES OF THE ELECTORAL ADMINISTRATION IN
THE PRE-ELECTION PERIOD**

**Mrs Mirjana LAZAROVA TRAJKOVSKA
Judge of the Constitutional Court
Member of the Venice Commission
“The former Yugoslav Republic of Macedonia”**

Introduction

The elections should ensure the continuous legitimacy of the political power, in a peaceful manner and without greater conflicts between social groups and political parties. As a form of democracy, the elections must be understood as a form of voting through which the citizens decide immediately about the choice of candidates for a certain function or reach a concrete decision at a referendum. In such a context the citizens function as an electoral power.¹²

In addition to the citizens and the political parties, the non-governmental and governmental organisations, international organisations, journalists, each in their own way, participate in the creation of elections and in the progress or regression of the country in question's democracy. The manner in which each of these actors will play their role in the electoral process depends to a large extent on whether and to what extent each of them has understood their role in the chain of electoral actions. However, the knowledge that channeling the actions of all these electoral actors must have a certain legal framework, established in the national election legislation of the country, is unarguable. The established legislation represents the basis for the work of the electoral administration which will co-ordinate the activities in the pre-election preparatory period, during the day of the elections itself, but also following the release of the initial results, that is, until the completion of all electoral activities. The electoral administration is the main channeling force of the activities and events in relation to the elections.

The purpose of this paper is to underline the importance of the transparency and impartiality of the electoral administration prior to and on the day of the elections. The transparent and open implementation of the election laws guarantees the confidence of the voters in the electoral administration but also the confidence in the legitimacy of the elections. Thereby the electoral administration must show its own impartiality through its transparent work. In this paper we will review the influence of the political culture and public opinion as preconditions for transparent electoral administration. Through the example of the parliamentary elections of 2002 in “the former Yugoslav Republic of Macedonia” and the local elections of 2005 we will try to practically illustrate the importance of the principle of transparency and impartiality of the electoral administration.

¹ Svetomir Skaric, *Comparative and Macedonian Constitutional Law*, Matica Makedonska, Skopje, 2004.

1. Political culture, transparency and influence over public opinion

How much a society is democratic and open, depends first and foremost on the political culture. Jean-Jacques Rousseau said that: "In order to create the government of the people, the work is certainly useful, but I know one thing which is more useful – to raise the people to govern." According to Gabriel Almond and Sidney Verba, political culture is a network of orientations of the members of society towards the key political objects.

Democracy prefers that citizens be informed, be active in politics and influence it. The citizen who is poorly informed is disinterested, does not vote and is not interested in participating in politics.

As a factor which influences the political system, political culture influences the openness and impartiality of the electoral administration. It is a precondition also for the behaviour of the other participants in the electoral activities. One of the forms through which political culture manifests itself, in the work of the electoral administration, is the transparency of the latter in its relations with citizens. The possibility of influencing the formation of public opinion on elections and electoral activities is therefore possible.

It is therefore important to respect two important principles: the principle of free access to information for all citizens, and the principle of free broadcasting of information by the electoral administration. The principle of free access to information should make it possible for citizens to receive the necessary information on an equal basis and in the same way. The information must be timely, correct and clear. The principle of free broadcasting of information by the electoral administration ensures its impartiality and openness. This principle should make it possible to broadcast and distribute the information of the electoral administration without any censorship on all national television stations, radio stations, printed media and on the Internet.

The link between the individual and other citizens has psychological roots and is established among people who have the same or similar interests. The public is the social and political space in which public opinion functions. Public opinion is a common psychological but also ideological reaction of the members of a society through which they manifest approval, negation, support, denial of decisions or procedures of interest for the society. Public opinion exists also because of the fact that the awareness of the individual of his own personal interests and of the interests of those close to him in their attitudes and ideas has a tendency to expand, to be adopted and to become a law.¹³ As such public opinion has an attitude (positive or negative), intensity, degree of stability, form of expression, level of acceptance by the social community (widely accepted or not accepted). Therefore, one can say that the political public is determined by the right to active and passive participation in political life. The opinion of citizens is a controlling one by character, it controls the government, but in a way which implies a critical attitude

² Duvergeaux, Maurice, *Introduction to the Politics*, Belgrade, 1966, p. 70.

towards it. Therefore, the most important features of public opinion in democracy are: independently assumed attitudes, critical reasoning on the performance of general affairs, and evaluating or pointing out of the good and the bad in the exercise of power.

The electoral administration may influence the formation of public opinion, as to the importance of the elections, through its transparency attitude towards the public. Only a transparent approach to the media and citizens will create a realistic picture of the impartiality and of the professional work of the electoral administration. In the pre-election period it undertakes numerous activities and reaches a lot of decisions. If the citizens are informed about all these activities, this will help the public have a positive attitude towards the elections, and also the electoral administration. Public opinion must be based on confidence and respect for the electoral administration as a safeguard for legitimate and fair elections. To this end the public must be well versed in the activities and competencies of the electoral administration.

2. Transparency and impartiality: activities and competencies of the electoral administration

Acting transparently in the course of the entire process of elections is the obligation of the electoral administration towards the citizens and towards all active subjects in the elections. The transparency of the electoral administration does not only imply open and public plenary sessions of the election bodies. The electoral administration must be prepared to inform the public without delay about each of its actions and each of its activities. Due to the sensitivity of the election process itself and of all participants in the elections (voters, the elected, the monitors, the journalists) the activities of the electoral administration must be constantly in the public eye.

There are several forms through which the transparency of the electoral administration finds its expression:

- sessions of the Election Commission are generally open for the public;
- the electoral administration must issue press releases to the public information media on its decisions (particularly when their contents are of an informative and educational character);
- regular organisation of press conferences in the course of the preparation of the elections and particularly on the day of elections, and in the announcement of the initial and final results;
- the central electoral administration must create a web-page on which it will update the data on daily basis;
- the President of the electoral administration should not avoid interviews and public appearances, meetings with non-governmental organisations, meetings with the monitors prior – to the elections;
- preparation of educational material for the voters.

The sessions of the electoral administration (particularly of the Central Election Commission) must be open to the public information media. The session of the electoral administration will not be open to the public or media in cases about

personal data of the citizens in order to protect these data, but the citizens shall be informed of the outcome of the procedure. At the sessions of the Central Election Administration decisions are reached which determine the course of the elections (such as, for example, the schedule of activities of the State or Central Election Commission according to which all participants in the elections will plan their activities), instructions which should facilitate the work of the regional, municipal election commissions or of the election boards. Finally the citizens must have a clear picture of each step undertaken by the electoral administration, because the elections are the time when they are the ones making the decisions.

The electoral administration informs all interested parties on the concrete procedure and activities by public announcements, press conferences, the Internet, public appeals, etc. By addressing the citizens, the electoral administration may also call upon them to behave in a certain manner, to approve or condemn an event, which has an influence over the elections and the election process. Thus, for example, a few weeks before the organisation of the Parliamentary Elections in 2002 in the “the former Yugoslav Republic of Macedonia”, two policemen were killed in one of the election units which had produced a large number of displaced persons, and there was a danger that the citizens in those areas would not be able to freely exercise their right to vote. The State Election Commission addressed the public with an announcement in which it condemned every act of violence in the pre-election period, concluded that this incident did not contribute to the peaceful preparations and course of the election process. The State Election Commission called therefore for reasonable, peaceful and non-violent behaviour of all in the state.¹⁴

The central electoral administration will regularly organise press conferences during the preparation of elections, (particularly on the day of elections and in the process of publicizing the initial and final result), in order to allow journalists equal access to information and the possibility to receive a reply to all questions raised by the public.

The central electoral administration must create a web page on which it will update the data on a daily basis. A large number of citizens are Internet users and prefer to search for information through their computer. During the elections in 2002, 2004 and 2005 in the “the former Yugoslav Republic of Macedonia” it turned out that there were an increased number of visits to the web page of the State Election Commission. Journalists, as well as ordinary citizens, would like to retrieve information which they have previously received from the electoral administration.

It is desirable for the presidents of the electoral administration to accept invitations for interviews and public appearances. This is an opportunity to convey educational messages to the voters, as well as a chance to clarify various ambiguities and misunderstandings which are often encountered in the course of the election process. Besides, it is not rare that during the election process much misinformation is released which confuses the voters and creates distrust. Because the commissions at all levels are collective bodies, most frequently the statements

³ <http://www.dik.mk/par2002/press/s3.htm>.

and interviews are given by the president or the spokesperson of the Commission. Despite the frequent announcements of the spokesperson, it is still necessary for the president of the Commission to be present in the media.

The meetings with non-governmental organisations, representatives of international organisations or with representatives of monitoring missions are all transparent; allowing access to relevant information.

All participants in the pre-election process must have a clear image that every action which the electoral administration takes is based on law and is well conceptualised, having as its ultimate purpose the clear implementation of the law. The sense of security and stability in the preparation of the elections may be created only through open access to the participants in the elections, to both citizens and journalists.

One of the most important tasks of the electoral administration is the education of electoral administration, but also the education of the voters. For this purpose it is necessary to prepare video spots, audio messages, posters, flyers, postcards, etc. The messages must reflect the impartiality of the electoral administration. None of the educational materials can contain the colours or the symbol of the flag of any of the parties. The messages must be clear, unambiguous and simple (in order to be understood by every citizen, irrespective of the level of education).

The transparent acting of the electoral administration should be a form through which the administration, which prepares and carries out the elections, will prove and demonstrate that it is totally impartial and unrelated to any political party or other participant in the elections. In a large number of countries members of political parties are also represented in the electoral administration. The impartiality in the work should reflect their equal treatment of all participants in the elections, irrespective of their opinion. The electoral administration should prove and demonstrate that the professional, legal resolution of the obligations is above the partisan one. This means that the law should overcome the party interest when key decisions are reached, for example, when complaints and appeals are reviewed.

3. Transparency and impartiality of the Macedonian electoral administration: through the parliamentary elections of 2002 and local elections of 2005

On 15 September 2002 the fourth parliamentary elections in a row were held in “the former Yugoslav Republic of Macedonia”. The elections were held after the armed conflict and the signing of the Ohrid Framework Agreement in 2001. Only two and a half months before the organisation of the elections, the Assembly of “the former Yugoslav Republic of Macedonia” adopted three election laws: the Law on Election of Members of Parliament of “the former Yugoslav Republic of

Macedonia”, the Law on Voters’ List¹⁵ and the Law on Election Units for Election of Members of Parliament of “the former Yugoslav Republic of Macedonia”.¹⁶

In accordance with the new Law on Election of Members of Parliament of the “the former Yugoslav Republic of Macedonia” a new State Election Commission was established. The State Election Commission comprised of a President and Deputy President¹⁷ and of eight Members and the same number of Deputy Members (elected by the Parliament of “the former Yugoslav Republic of Macedonia”), had at its disposal 58 days from the day it had been constituted until the day of the elections. With the new election laws this Commission was faced with numerous novelties in relation to the previous regulations (for the first time elections were held during which the voting material and the ballot were printed in seven languages, some new forms of protection of the right to vote were introduced, as well as a new organisational structure of the electoral administration, etc.). Throughout the whole process of elections, the State Election Commission was completely open in terms of information of its work, which is witnessed in numerous reports of international and domestic monitors.¹⁸

At the Parliamentary Elections of 2002, 3 060 candidates on 135 candidates’ lists on which there were 53 political parties, or more precisely 26 political parties with independent lists of candidates, seven coalitions and five independent candidates, participated in six election units. The names of the bearer of the list and of the party, or respectively the coalition, were also written on the ballot in the language of the community to which they belonged. In practical terms this meant that besides the Macedonian language and alphabet, six other languages and alphabets were used (Albanian, Turkish, Roma, Vlach, Serbian, Bosniak). During these elections the voters who were serving their draft or were on a military exercise, in imprisonment or were in detention, displaced persons, the feeble and sick¹⁹ also voted.

⁴ The Law on Election of Members of Parliament of “the former Yugoslav Republic of Macedonia” and the Law on Voters’ List were published in the “*Official Gazette of the Republic of Macedonia*”, No.42/2002.

⁵T The Law on Election Units for Election of Members of Parliament of “the former Yugoslav Republic of Macedonia” was published in the “*Official Gazette of the Republic of Macedonia*”, No.43/2002.

⁶ For the first time in “the former Yugoslav Republic of Macedonia” the President and Deputy President of the State Election Commission were appointed by the President of “the former Yugoslav Republic of Macedonia”. Prior to their appointment, the President asked for an opinion on the proposed candidates from the leaders of the four largest Macedonian political parties, signatories to the Ohrid Framework Agreement (VMRO-DPMNE, SDSM, DPA and PDP). Only after the consensual acceptance of the proposed candidates the President of the State appointed by a Decision the President and Deputy President of the State Election Commission.

⁷ As an illustration of the openness of the State Election Commission towards the interest of the public in these elections, one should note the fact that the President of the State Election Commission gave over 50 interviews to the domestic and foreign media, in the pre-election process.

⁸ The State Election Commission prepared several instructions for these categories of voters, the primary purpose of which was to assist the regional and municipal election commissions to make it

In addition to other activities related to the preparation of the elections, the State Election Commission paid particular attention to the education of the voters.²⁰ The State Election Commission prepared a 35-minute film which showed the procedures for voting during election day. The film was shown at 44 state and local television stations in the country. In the course of the week prior to the elections, the short film was shown more than 100 times. Although initially intended only for the members of the electoral administration, it became an important part of the campaign for the education of the voters and the whole public at large. The intention of the State Election Commission in showing this film, was to constantly influence the members of the election boards to renew the already assumed activities and educational procedures. However, the citizens also showed an active interest in this film and it actually had a dual educational role.²¹

In addition to this film, the State Election Commission prepared a campaign aimed at informing the voters. The title of this campaign was “Your Vote is Your Right” and it was marked with a logo which showed a stylised image of a voter with a ballot.

The public information campaign of the State Election Commission targeted all the active agents in the elections and had the following intentions:

- to raise the awareness of the voters in “the former Yugoslav Republic of Macedonia” on the voters’ rights and to help them to fully understand and use them;
- to inform the voters on the changes in the voting procedures which came about with the new election laws;
- to reduce the uncertainties and doubts concerning the voting process;
- to educate the voters on the right to vote personally and secretly;
- to inform the voters on the changes in the voting procedures which resulted from the changes of the election laws;
- to build confidence in the integrity of the election process, in the efficiency of voting and in the legitimacy of the election results.

In order to achieve the above, the following items were printed and distributed through the daily newspapers:

- the brochure “Twelve things which the voters should know”;

possible for these particularly vulnerable groups of voters to exercise their right to vote one day prior to the elections.

⁹ The members of the State Election Commission held special training seminars for each of the regional election commissions, while for all 34 municipal election commissions, the State Election Commission organised meetings at the seat of the State Election Commission. Especially trained educators (with the assistance of IFES) trained and educated 2 974 election councils.

¹⁰ The State Election Commission published for the education of the election boards a Handbook for the Election Boards, which covered all activities during the elections through text and illustrations.

- a flyer with information on the procedure and manner of voting of internally displaced persons;²²
- a leaflet which showed the steps in the voting process;
- a special leaflet which described the measures of protection in the voting procedure entitled “measures against deception”;
- a special leaflet which emphasised the importance of voting personally and secretly;
- postcards addressed to the voters who have been exercising their right to vote having reached 18 years of age.

The posters which were put up at visible places in the inhabited places in the country were as follows:

- a poster which shows the steps in the voting procedure;
- a poster which shows the measure for decreasing possible forgery during the elections’ day;
- a poster for personal and secret voting.

The following were produced and broadcasted regularly:

- a radio spot on the date, time and type of elections;
- a radio spot on the use of invisible ink;
- a radio spot on personal and secret voting;
- a television spot on the date, place and type of elections;
- a television spot against the use of force on the elections’ day;
- a television spot on the steps in the voting procedure;
- a television spot on the use of invisible ink;
- a television spot on personal and secret voting.

All printed information materials and all spots were produced in several languages, for example, Macedonian, Albanian, Roma, depending on the municipality in which they were distributed and broadcasted.

Moreover, these elections were followed by more than 701 domestic journalists and 146 foreign journalists who had requested and had been issued with accreditations for following the elections.²³ More precisely these elections were followed by 15 domestic television stations and 19 foreign television stations, six domestic and eight foreign radio stations, 20 domestic daily and weekly newspapers and 18 foreign daily and weekly newspapers and three domestic and 12 foreign information agencies.

¹¹ During these elections the electoral administration made it possible for 4 351 internally displaced persons (accommodated in reception centres and families in various towns in “the former Yugoslav Republic of Macedonia”) to vote.

¹² Following a decision by the State Election Commission, the domestic journalists did not need an accreditation to follow the parliamentary elections in 2002. For these reasons the number of 701 domestic journalists includes only those journalists who applied for and obtained an accreditation although they did not need it.

The 3 779 domestic and 1 015 foreign monitors and 818 interpreters were issued accreditations for monitoring of the elections. The President of the State Election Commission met delegations of foreign and domestic monitors on several occasions and held several lectures of an informative character on the course of preparation of the elections.²⁴

“The former Yugoslav Republic of Macedonia” spent on these elections 91 564 851.50 denars or the total of €1 501 063.14. On the informative educational campaign “Your vote is your right” the total of 15 744 913 denars or €258 113 were spent.²⁵ The experience remains that the transparent and impartial work of the electoral administration made it possible for 1 218 014 registered voters out of the total of 1 664 296 registered voters to participate in the elections.²⁶

As a result of the impartiality and transparency of the electoral administration, the assessment of OSCE/ODIHR in its final report was that the elections were implemented in accordance with the international standards on democratic elections.²⁷

The local elections of 2005, different to the parliamentary elections of 2002 were monitored by more domestic and less foreign monitors, as follows: 5 192 domestic monitors and a total of 393 foreign monitors. This information may be considered as positive, as it is a significant improvement if there is an interest among the domestic public to follow the regularity of the elections. Also, the large involvement of the non-governmental organisations means strengthening of civil awareness of the place and role of elections in a democratic society.²⁸ Ten foreign journalists were accredited from two television stations, one radio station and three information agencies, while the number of domestic journalists was not recorded as it was not necessary for them to be accredited in order to follow the local elections. A larger number of press conferences were held. The State Election Commission prepared several television and radio spots whose purpose was to influence the voters in an educational and informative manner.

The electoral administration organised education of the election bodies, but also of the voters through posters, flyers, video and radio spots at these elections as well.

¹³ <http://www.dik.mk>.

¹⁴ Elections of Members of Parliament of “the former Yugoslav Republic of Macedonia”, report of the State Election Commission prepared in cooperation with IFES, p. 57.

¹⁵ The turnout at these elections was 73.18%.

¹⁶ The final report of the Mission for Monitoring of the Elections of OSCE/ODIHR, “the former Yugoslav Republic of Macedonia”, Parliamentary Elections, 15 September 2002, Warsaw, 20 November 2004.

¹⁷ The 5 192 accredited domestic monitors were representatives of 15 non-governmental organisations (for more information visit <http://www.dik.mk>).

Given that most of the activities of the local elections, unlike the parliamentary elections are implemented and concentrated at local level, it was normal for public attention to be focused on the Municipal election commissions. But, it seems that the journalists, politicians and the public at large concentrated all of their expectations on the State Election Commission. There are two reasons for this: first, during all previous elections, the State Election Commission was part of the electoral administration, which by co-ordinating the work of the electoral administration communicated with the public at large, and thus this was expected and second, the municipal election commissions were unprepared to be open towards the public. The municipal election commissions appeared to have expected that the State Election Commission would bear the responsibility for informing and communicating with the public. It seems that it is indispensable during future elections to train the electoral administration at municipal level to be more open towards the public and to be more transparent in its work.

4. Impartiality of the electoral administration supported by transparency in the work

One of the main prerequisites for successful elections is the confidence in the electoral administration. The electoral administration at all levels must leave an impression with the citizens of being a professional, impartial, efficient and fair administration. It must have a good knowledge of electoral legislation, and to apply it regularly and in a timely fashion.

The Code of Good Practice in Electoral Matters of the Venice Commission²⁹ in its Chapter 3.1 – Organisation of Elections by a Non-partisan Body, established that a non-partisan, independent body must be responsible for the application of the election law. Where there is no tradition of independent administration in relation to those who have political power, independent, non-partisan commissions must be organised at all levels, from the national down to the polling station level.

Therefore, a prerequisite for successful, fair and democratic elections is a non-partisan, impartial electoral administration. In some European countries, the central electoral administration is either totally professionalised or a small part of it is (most frequently the administration which supports the work of the central electoral administration), while the remaining members of the electoral administration are either elected or appointed for a certain time period.

In most of the countries in Europe, the largest part of the electoral administration – election boards are established immediately before the elections and consist of either civil servants, volunteers, or in the worst case, of members proposed by political parties. Naturally the manner in which the electoral administration is

¹⁸ The Code of Good Practice in Electoral Matters was adopted by the Council for Democratic Elections at its 3rd meeting (16 October 2002), adopted by the European Commission for Democracy through Law at its 52nd Plenary Session (Venice, 18-19 October 2002), approved by the Parliamentary Assembly of the Council of Europe at its 2003 session (First part), approved by the Congress of Local and Regional Authorities of Europe at its Spring Session 2003.

constituted influences the impartiality of its work. It can hardly be expected that members of election councils who are proposed by political parties will work in an equally impartial way on the day of elections as an electoral administration comprised of civil servants. The only way to ensure impartial acting in all cases is the education and transparent work of the electoral administration. The education has not only to build the capacity of the members of the electoral administration on the course of election activities and on legal provisions, but also to awaken the feeling of responsibility to the voters.

The electoral administration must not allow itself to act in a manner, which will arouse suspicion and mistrust among the voters.

It is a matter of course that in cases when the electoral administration will not act in accordance with the election laws, that penal provisions are foreseen. Thus, for example, in the Criminal Code of “the former Yugoslav Republic of Macedonia” there is a whole chapter, which contains the crimes against elections and voting (Chapter 16). In Article 159 of this Code, a sentence to imprisonment of up to one year is foreseen for “a member of an election board, Election Commission, board for implementation of a referendum or other official who in the performance of his duty in relation to elections or voting, with an intent to disable another person to exercise the right to vote, will unlawfully not inscribe him in the voters’ list or in the candidates’ list, or will delete him from the voters’ list or the candidates’ list, or shall deprive the voter in another manner of the right to elect, to be elected or to vote”.

But certainly sanctioning the electoral administration should be the ultimate “tool” one should resort to in a democratic society. Therefore the building of an impartial electoral administration must initiate at the very beginning, even at the point of the legal definition of the place and role of the electoral administration. It must be an independent body. Besides the already mentioned importance of the need for the members of the electoral administration to be professionals and not party appointees, in order to ensure impartiality the electoral administration should have its independent budget. It should propose the budget itself, directly to Parliament and not through the government.

Certainly there is no bigger proof of the impartial work of the electoral administration than the transparency of its work. The transparent approach to the work strengthens the confidence in the electoral administration and reaffirms its impartiality. Therefore, the transparency should exist in each segment. Simultaneously, the citizens are interested in the preparatory and organisational activities of the electoral administration, but their attention is mostly focused on the day of the elections. The active voter must be informed when and where he will vote, and if his right to vote is threatened and violated during the voting process he must know to whom he can complain. The election Boards and Election Commission must be fully open to the public on the day of elections by allowing the journalists to be present at all times and wherever they request. The journalists may also be present during the counting and summing up of the initial results, during review of the complaints and appeals. The electoral administration through public information will continuously inform the citizens on the turn out of voters, on their voters’ rights. Especially on the day of elections the electoral

administration must have an answer to each question. It is unacceptable to work behind closed doors.

The only place where the public is not allowed to have access through the camera and photographic lens of the journalists is behind the screen of the voting place. No one has the right to violate the right to secrecy of voting. Also statements must not be taken from voters in the voting place. This must be done outside.

The impartiality of the electoral administration influences significantly public opinion on the electoral administration but also on the elections. When it comes to the electoral administration of “the former Yugoslav Republic of Macedonia”, the issue of participation of judges in the electoral administration³⁰ and of the incompatibility of the judicial function and the function in the election bodies were raised on several occasions. These judges, in accordance with the legislative regulations, were appointed upon the proposal or with the agreement of the political parties. The appointments of judges in the electoral administration in this way, contributed to the fact that a large number of judges avoided involvement in the electoral administration or raising the issue of their impartiality because the political parties propose them or agree to their involvement in the election process. “The former Yugoslav Republic of Macedonia must overcome this problem in order to preserve the dignity of the judicial function, but also to observe the principle of impartiality to the end.

Conclusions

Political culture strongly influences the openness and impartiality of the electoral administration, and among other issues it finds its expression through transparency and impartiality of the electoral administration. It seems to be necessary to work constantly through continuous education on the electoral administration in order to create and build on political culture. Through public relations with the citizens, the electoral administration will influence the position of public opinion on the elections and election procedures.

In order to build public opinion in relation to the activities and competencies of the electoral administration as being transparent and impartial, it is important to respect two important principles: the principle of free access to information published by the electoral administration for all citizens; and the principle of free broadcasting of information by the electoral administration.

The electoral administration must accept the journalists as “co-workers” in the election process. They seek information, and the electoral administration must be prepared to offer them information and response to all their dilemmas and questions at all times. Otherwise, the journalists in their quest for information will use various sources of information which are not always correct and bona fide. On the other hand, the journalists must always respect the journalists’ code on

¹⁹ For example, in the electoral administration during the parliamentary elections in 2002, a total of 244 judges from various courts were appointed as Presidents, Deputy Presidents, Members and Deputy Members in the Election Commissions at all levels.

impartial and fair information which will allow everybody access to objective and correct information.

The election laws must be unambiguous and consistent. The place and role of an impartial and transparent electoral administration should be clearly determined. The method of appointing bodies for implementation of elections must provide for the establishment of non-partisan electoral administration. Although in principle I believe that it is unacceptable to merge the functions, however, the judges who would eventually be a part of the electoral administration should be elected or appointed without any party influence.

The criticism of the public, non-governmental organisations, international organisations and analysts which was expressed in public, must be accepted by the electoral administration as grounds for seeking better solutions in its approach and behaviour during the next elections.

Finally, the electoral administration must have its own independent budget which will not be created by the executive power and which will allow conditions for transparent work. Financial independence is a pre-condition for an impartial electoral administration.

**TRANSPARENCY AND IMPARTIALITY OF THE ELECTORAL
ADMINISTRATION ON ELECTION DAY: THE IMPORTANCE OF
THE MANAGEMENT OF THE ELECTIONS AND THE ROLE OF
THE ELECTORAL ADMINISTRATOR**

Mr Charles LASHAM
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Introduction

In recent decades there has been an explosion of democracy throughout the world: Latin America in the 1980s; the fall of the Berlin Wall in 1989 and the spread of democracy throughout Central and Eastern Europe, the dismantling of the Soviet Union and other openings in Africa (Namibia and South Africa) and Asia (Cambodia and East Timor). According to the United Nations Development Program Human Development Report 2002, 57% of us live under democratic governments. It seems that a day does not go by without elections being mentioned in the electronic or print media.

I have had the privilege of observing elections in over 30 countries, some of them immediately following conflict or after regime change. In preparing this paper I looked back on some of the early elections I witnessed elections in Namibia, Bulgaria, Romania, Estonia, El Salvador, Guatemala and Sierra Leone. These were exciting times.

In some “first time” elections the administration of the election day activities was administered by the international community thus ensuring the impartiality of the election process. While this is useful and necessary, it should not in my view be a regular feature of a democracy’s election management process.

As we all know there is no single political system or electoral method suited to all nations. We should not seek to question a state’s sovereign right to choose its own political, social, economic and cultural systems. When it comes to the political system, the chosen system must give the people the opportunity to express their will through periodic elections conducted on the basis of equal suffrage and secret ballot. The ballot must be cast in secret and it must remain secret. No individual’s ballot should carry more weight than the next person’s vote.

International and domestic observers should look carefully at the run-up to the election, access to the nomination process, access to the media, bias towards the incumbent and other areas sometimes described as the level playing field. Then of course there is the day of the election and the counting of the votes on or immediately following that day. In my opinion there is an over-emphasis on the polling and count activities. Observers, particularly international observers, tend to arrive just a few days before the election, deploy to their designated area and make their assessment based on polling and count activities. There is sometimes a race to get the first statement to the media on whether the election should have the “free and fair” endorsement.

I am not underestimating the value of election day and count observation. Greater value needs to be given to pre-election issues and the immediate aftermath of the election, particularly in relation to the acceptance of the result.

How then do you ensure the transparency and impartiality of the electoral administration on election day? I would argue that there are a number of forces that come into play here that can take us to the position where we can ensure such transparency and impartiality. It involves the constitution and the electoral law; the appointment of the electoral management body (EMB); the functioning of that body in an independent way; the training of the EMB and the appointment of staff used to conduct the election. In short, the management of the elections is the important role played by the electoral administrator.

The Constitution and the electoral law

The establishment of the system of democracy is often found in the constitution of that country as is the establishment of an electoral management body. The electoral law sets out the processes for genuine, regular elections conducted on the basis of equal suffrage and the electoral management body makes regulations or decrees on a regular basis right up to the day of election to deal with the fine detail associated with the administration of the election.

Electoral laws need reviewing from time to time. For example it is universally accepted that at the age of 18 an individual should be entitled to vote. As times change, countries examine whether the voting age should be reduced. Voting at the age of 16 is one suggested change.

Changes in society and changes to the way we live our day to day lives may persuade legislators to be more liberal in the way we cast our vote: individually on election day; individually over a number of days; individually a week or more in advance of the election (advance voting); individually by post; by proxy whereby someone votes on your behalf; by postal proxy; with the use of a friend at the polling station if one is in need of assistance; using a mechanised system; by touch screen computer; by telephone; by telephone messaging; over the Internet.

These are some of the accepted ways of casting a vote. Twenty years ago some of these methods would have been unacceptable or impossible. Laws need to take account of changes in the way we carry out our daily business. They need to be flexible and evolve as society evolves.

Appointment of the electoral management body

Different countries administer their elections in different ways. The formation of national election management bodies is a common practice and one recommended by the international community to developing democracies. In the past, as someone responsible for pre-election assessments, I have found myself recommending the formation of national electoral management bodies only to be reminded that the country where my organisation is based, the United States of America, and the country of my birth and residence – the United Kingdom, both did not have

national electoral management bodies. Points well made. I am pleased to say that in the UK there is a National Electoral Commission, more of a policy-making body than an implementer of elections, with a heavy dependence on returning officers at the local government level to administer the day to day activities of the electoral process. In the USA, local political officials run elections at state and county level. Some of these officials are elected; others are appointed.

There are different methods used for the appointment of the members of electoral management bodies: nomination by the president; representatives selected from the judiciary; nominations from political parties represented in the legislature; nominations from parties securing a certain percentage of the vote at previous elections; a mix of judges, political appointees and representatives of civil society; by public advertisement for people of outstanding character interested in becoming commissioners.

A lot will depend on the maturity of the democracy concerned and the level of trust the players have in those responsible for the administration of elections. In new or transitioning democracies there is frequently a lack of trust among the political players; all will want a stake in the new election body. Commissions at the national, regional, constituency and polling place level will often have representatives of the major parties contesting the election. I witnessed one election in Bulgaria where there were nine members of the polling place commission representing political parties drawn by lot to serve on the commission under the "independent" chairmanship of a local schoolteacher. Compare that to any election in the UK where one will find two people in the polling station, seconded (generally) from local authority staff with no particular political affiliation. At the end of polling the transportation of the ballot box in countries in transition is likely to be witnessed by members of the commission, party agents and any civil society representatives present, often with a police presence. The transportation of the ballot box in developed democracies where the level of trust in the system is high, is a low key affair with just one of the poll workers putting the box in the back of the car and proceeding unaccompanied to the designated spot for the delivery of the box.

There are different categories of national electoral management bodies throughout the world. An electoral management body may be a permanent body, an independent national election commission, a government ministry responsible for elections, a decentralised body, or a temporary commission established for a particular election. Different types of electoral management bodies exist throughout the world.

In South Korea, for example, election management committees are established, with the Central Election Management Committee being appointed for a six-year term. The nine members of the committee are selected as follows: three by the president, three by the National Assembly, and three designated by the chief justice of the Supreme Court. In some countries, the national electoral commission may not undertake all the duties detailed below. In Bulgaria and Iceland, for example, the compilation of the electoral register is the responsibility of the national census bureau or its equivalent. Electoral disputes may be left to the judiciary to determine, particularly at the appeal stage.

It is interesting to read reports of western organisations following their observation missions or technical assessments of a developing democracy's electoral process. As mentioned earlier in drawing attention to improvements that can be made in the country's electoral administration, these organisations recommend the establishment of a permanent electoral commission. They suggest that one way of reducing problems of registration, increasing voter turnout, and bringing professionalism into the electoral process is to create a permanent electoral management body. This recommendation is given despite the fact that the officials often come from countries where there is no permanent national electoral management body. The argument offered is that permanent bodies can devote more time and energy to training staff and to encouraging citizen awareness of and participation in elections. It may also be easier for a permanent body to build on the achievements of a previous election, rather than starting from the same point each time.

If it is agreed that there should be some form of electoral management body to ensure the achievement of democratic goals, consideration must be given to the aims of such a body. The electoral management body should be a neutral and balanced mechanism, able to carry out its duties in an impartial manner. The question then arises whether it should be established under the constitution or by statute. There is a strong argument for the electoral management body to be a constitutional body, rather than a mere statutory body, in order to prevent the government of the day from changing the components of the electoral management body by parliamentary procedures.

All electoral management bodies should be impartial. But what should the administrative type do? What should the supervisory body supervise? According to G. Goodwin-Gill in *Free and Fair Elections: International Law and Practice* (Geneva: Inter-Parliamentary Union, 1994, p. 88), the electoral management bodies' aims should be to:

- ensure that those responsible for the administration of the election are trained and act impartially;
- ensure that coherent voting procedures are established and made known to the voting public;
- ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers, as appropriate;
- encourage parties, candidates and the media to accept and adopt a code of conduct to govern the election campaign and the election period;
- ensure the integrity of the ballot through appropriate measures to prevent double and multiple voting and fraud;
- ensure the integrity of the process for counting votes;
- announce the election results and facilitate any transfer of authority.

The functions of the electoral management body could include the following:

- compilation and update of the voters register or list;
- delineation of constituency and other boundaries;

- promotion of civic and voter education;
- registration of political parties;
- registration of candidates at elections;
- organisation of elections;
- training of election officials, political parties and candidates;
- printing of ballots;
- procurement of equipment, etc.;
- monitoring expenditures of candidates;
- determining complaints, disputes and challenges.

Independence of the electoral management body

The independence of the electoral management body is crucial for the success of any election. If the electoral management body is perceived as not being independent then there is little chance of the electoral administration on election day being perceived as transparent and impartial.

A report from the observers on the 1990 elections in the Dominican Republic sums up the important role the Election Management Body has to play and the standards expected of it:

“The consolidation of democracy requires that the institution that manages the electoral process be independent, competent, and perceived as completely fair by all the candidates and parties participating in the electoral process.”

Training of the EMB and election staff

An election is a huge, complex and costly event involving large numbers of people all of whom should be accountable to the law and fully aware of their responsibilities in the electoral process. Successful elections do not happen without preparation and planning.

Training is essential for permanent and temporary staff. There are a variety of ways of providing training. Training programs for permanent staff need to reflect the career development potential of those staff and meet the training needs, which are best identified in staff performance and review interviews. Programs also need to be prepared to cover changes in legislation or working practices and for the introduction of new technology or processes.

The position with temporary staff is usually more simple. They are likely to undertake a specific electoral task, such as vote counting or working at a polling site, so training can be targeted to this task and the timing of the training can be fixed so as to ensure the impact covers the electoral process period. As with all training, there should be continual review and feedback on the effectiveness of the training program and the extent to which it is achieving the desired objective. A quality, well-delivered and interesting training session at the right time will inspire and motivate electoral staff; a dull and poorly prepared session will have the opposite effect.

Electoral processes are governed by law and the application of the law must be consistent. This idea alone is sufficient reason for a major training program. The need for consistency of decisions is a thread which should run through and be an integral part of the program. Not all electoral decisions are clear cut, however. One area which frequently causes controversy is whether a ballot paper should be declared invalid or not. The decision is difficult enough with proper training; without it, the electoral manager may find that two members of the staff faced with the same markings on a ballot paper have made different decisions at different count centers. The training program should be designed to ensure this problem does not occur. Training for consistency is one way of doing so. In any cascade training system, areas where this type of problem can occur should be highlighted and the correct approach stressed.

Appointment of staff

The type of staffing arrangements used to facilitate the work of the national election body will depend on the temporary model used. An independent body may use temporary staff recruited for the specific purpose of assisting the members of the election body. A judicial or government ministry model may have the luxury of being able to second civil servants from their normal duties to assist the national electoral body on a temporary or permanent basis. Whatever the model, it is clear that a chief electoral officer (CEO) needs to be appointed, who has the role of carrying out the decisions of the national election body, if there is one, and who is assisted by a staff organised in a way that is structured to facilitate the efficient discharge of their duties.

In the Commonwealth of Dominica, the chief electoral officer is appointed by the president following consultation with the national electoral commission. In Uganda, the interim electoral commission had an active chairman who oversaw administrative arrangements and was assisted by a team of officers and employees with responsibilities for many aspects of the electoral process.

The chief electoral officer should be a judge, senior lawyer, top civil servant, some other top professional, or an individual with a wealth of experience in the field of elections. The person appointed to the position should be known for their personal integrity and leadership capability. Although there have been cases where the individual was not a citizen of the country for which they were working, it is more likely that the constitution or electoral law would prevent a foreigner from occupying this highly sensitive position. Whoever the CEO is, the person should have finely-tuned management and political skills, and the first job should be to review or introduce a management structure that reflects the particular needs of the country in delivering effective electoral administration.

Any structure should have regard to the separate and distinct functions undertaken prior to, during and after the election. The structure should include

Logistics or Operations Division. responsible for the procurement and distribution of election materials, identification of voting sites and the creation of timetables for the different functions at election time.

Information Technology Division. responsible for planning and developing computerised information systems for the national election body when such technology is to be used. There may be funding constraints, and it needs to be borne in mind that state-of-the-art equipment may not be necessary or even suitable in some developing democracies. It is important that this division be up-to-date with the latest technological advancements and that staff be qualified and experienced. Computerised voter registration systems, computerised voting and counting systems, electronic transmission of results, and in remote areas, high-frequency radio transmission of results should all be on the agenda for this division.

Human Resources Division. responsible for the recruitment and training of election staff centrally and throughout the country.

Finance Division. responsible for the production of timely budget estimates, management of funds, making payments to suppliers and staff and reporting on the use of funds.

Legal Division. may be responsible for drafting new election laws and procedures and interpreting the law for the national body to determine its position on legal challenges and complaints.

Civic and Voter Education Division. useful in new or developing democracies and particularly when changes in methods of voting or new election systems are introduced. This division handles the design of posters and other civic and voter education material and delivers programs throughout the country via media, distribution of materials, production of videos or touring theatres to get its message across.

There could also be a separate media office to handle relations with domestic and international journalists, which could be parallel to voter education under a broader public information division. In some cases, the media office also publishes a newsletter and oversees a library or research office. Some election bodies now also have international relations offices to handle observer matters, requests for external assistance, and general relations with counterpart organisations in other countries.

The type of staffing arrangements will be dependent on the model selected for the national electoral body. It is clear that the chief electoral officer should be appointed at a level high enough to attract the quality and experience required to carry out the functions of this important position. This person should be appropriately graded, equivalent to a judge or senior civil servant.

A temporary national election body will engage temporary staff. A permanent body has the opportunity of employing permanent staff but may choose to use temporary staff or a suitable mix of the two. It is recommended that permanent staff be supplemented by temporary staff at peak periods of activity.

Each division will seek differing skills, such as lawyers and experienced executives for the legal division, trainers and teachers for the civic and voter education division, accountants for the finance division, computer professionals for the

information technology division, and so forth. The chief electoral officer will need to quickly appoint key staff to assist with recruitment of other staff to the various positions in each of the divisions. Good employment practices should be adopted, although it is recognised that this may not always be possible. Pay scales, conditions of service, ordering of office equipment, office administration, petty cash, and so on, although perhaps considered minor issues, all need to be put in place to contribute to the successful organisation of the election administration process.

Appointment of staff in developed democracies is a problem. One often hears of the difficulties in recruiting appropriately experienced staff in the USA and UK. In Nigeria, where I am currently working closely with the Independent National Electoral Commission, ad hoc staff are blamed for the failures on election day.

If we are to have elections that are considered free and fair the administration of the elections must be of the highest standard, run by trained impartial and independent electoral administrators. In the UK election officials working in the polling stations have to declare that they have not worked for any particular candidate at the elections. Similar requirements were made in Poland's election law where it stated that no person appointed to a commission may stand as a candidate, act as an agent or observer or engage in political canvassing. It is understood that election staff will have opinions and they will cast their vote using their own political preferences but that must not be brought into the polling station.

I served as one of the UK's 11 Regional Returning Officers for the administration of elections to the European Parliament. I was also a parliamentary returning officer. I recall one election when I was summoned to a particular polling station by a labour parliamentary candidate because one of my polling staff allegedly had a photograph of Margaret Thatcher, the then conservative Prime Minister, on the desk where the votes were being issued. This was going too far and I immediately visited the station to discover that a national newspaper, being read by the poll worker, had a photo of Mrs Thatcher on the front page. An inadvertent mistake I was assured but something considered totally unacceptable. By the time the message got to me, the newspaper image of Thatcher had developed into a colour framed photograph. Chinese whispers at their best.

Electoral associations

One additional way to ensure the transparency of the election process and the success of election day is to allow electoral administrators to form and join electoral associations. Examples of these include the Association of Electoral Administrators (UK) formed in 1987, the Association of Central and East European Elections Officials (ACEEEO) formed in 1990, [Association of Election Officials in BiH \(AoEOBiH\)](#) 1999, [Association of African Election Authorities \(AAEA\)](#), [Electoral Institute of South Africa \(EISA\)](#) 1996, [IACREOT](#) (USA) 1971.

These associations provide training, professional expertise, standards for electoral administrators and can act as effective lobbyists for the electoral professional.

Charles Lasham, Country Director IFES-Nigeria contributed to the Electoral Management sections of the UN-IFES-IDEA Administration and Cost of Elections Project (www.aceproject.org).

**ELECTION COMMISSIONS, TRANSPARENCY AND RECENT
ELECTION-RELATED DEVELOPMENTS IN AZERBAIJAN**

Mr Mazahir PANAHOV
Chair of the Central Election Commission of Azerbaijan

Introduction

Democratic elections are the basis for progressive development of state and civil society in every country. The Constitution of the Republic of Azerbaijan adopted in referendum in 1995, determined major directions for the conduct of transparent and democratic elections. It provided a legal framework for elections conducted in a free and regular manner by secret and personal voting on the basis of general, equal and direct suffrage in Azerbaijan. One of the goals of the leadership of the Republic of Azerbaijan was to make progressive steps in the field of elections. An obvious example of this is the Election Code of the Republic of Azerbaijan adopted in May of 2003. The Election Code was prepared in close co-operation with OSCE/ODIHR and the Venice Commission of the Council of Europe. It was stated in the joint final assessment of the above-mentioned international organisations that the Election Code provides a comprehensive framework for the conduct of elections and referendums and, in most respects, meets international standards.

Election commissions

In the Republic of Azerbaijan, within the authority considered by the Election Code of the Republic of Azerbaijan, election commissions carry out the preparation and conduct of elections (referendums), the aggregation of the results of voting and elections, the realisation and protection of citizens' suffrage and also supervise its adherence. Election commissions are independent in their activities and within their rights provided by law, they do not depend on state bodies or other institutions. Decisions and acts adopted by election commissions are obligatory for state bodies, municipal authorities, candidates, political parties, non-governmental and other public organisations, as well as incumbents. Interference of the above-mentioned organisations or their officials in the activity of election commissions is not permitted. Persons intervening or influencing the work of election commissions bear administrative or criminal liability in accordance with the Criminal Code or the Administrative Offences Code of the Republic of Azerbaijan.

The system of election commissions in the Republic of Azerbaijan is set up of the following commissions:

- Central Election Commission (15 members);
- Constituency Election Commissions (9 members);
- Precinct Election Commissions (6 members);

Permanently functioning Central Election Commission leads the activity of election commissions and its decisions are obligatory for lower election commissions.

The term of office for all election commissions is five years and they are organised on the basis of a multi-party principle that is characteristic for our modern society and they are made up of independents and representatives of eight political parties, that is, the New Azerbaijani Party which is the ruling party and the opposition parties – Musavat, Azerbaijan Popular Front Party, Azerbaijan National Independence Party, Azerbaijan Democratic Party, Civil Solidarity Party, Azerbaijan Liberal Party and Azerbaijan Communist Party.

The Central Election Commission consists of 15 members elected by the Milli Majlis (Parliament). Six members of the Central Election Commission represent the political party that holds the majority of seats in the parliament and which nominates them, that is, the government party; three members represent the political parties who have a minority in the parliament, that is, opposition parties represented in the parliament; three members represent four opposition parties which have participated in 2000 parliamentary elections nation-wide, but are not represented in the parliament as have not passed the threshold but collected the majority votes in comparison; three members represent independent members of the parliament elected in single-mandate constituencies. Constituency and precinct election commissions are lower branches of the election administration system, are also formed on the basis of the same principle. Though election commission members are nominated by political parties, they shall not be political party members. No one can dismiss a member of the election commission until his/her own request for retirement.

A session of the Central Election Commission is considered authorised when at least 10 members are present and decisions are adopted by a two-third majority of votes in open ballot. Adopted decisions are signed by the CEC Chairman (representing the ruling party) and two Secretaries (one representing independents and other opposition parties). The Central Election Commission is entrusted to prepare and conduct presidential and parliamentary elections as well as referendums and local elections.

In order to improve the professional level of Constituency and Precinct Election Commission members, the Central Election Commission implements a wide range of educational and training projects during the pre-election period.

Transparency

One of the important factors of elections is to ensure transparency in the preparation and conduct of elections and one of its main indicators is the observation of elections by local and international observers. Elections conducted in Azerbaijan were always open for observers. So that in the 2003 presidential elections, approximately 1 000 international and 43 000 local observers observed the election process. Azerbaijani citizens having active suffrage are entitled and provided with all conditions to observe elections and the accreditation procedure is quite simplified. It is therefore enough for citizens intending to observe, just to

apply to the relevant election commission. Mass media representatives are entitled to observe the whole process without any accreditation being required. Furthermore, another step put forward for ensuring transparency in the election process is the use of numbered ballot papers and numbered carbonated protocols for the results, as well as transparent ballot boxes in the two latest elections (2003 presidential and 2004 municipal elections). In order to make the activity of the election commissions transparent for the interested parties, registered candidates and their authorised representatives, agents of political parties or political party blocs have the right to observe meetings of the election commissions, as well as all procedures implemented on election day and to get copies of the decisions adopted by the election commissions and other electoral documents (except voter lists, de-registration cards for voting, ballot papers and signature sheets), as well as observing the implementation of other election procedures by election commissions. Mass media representatives have the rights referring to observers.

Activities taken by the CEC to ensure transparency in elections also include announcing election results and the consideration of filed complaints. For example, in 2003 presidential elections, preliminary results of voting from precincts were put up on the CEC website within five hours after the voting was over and publicised for local and international publicity. Consequently, protocol information of 5 144 precincts of constituencies was posted on the CEC website within twelve hours. It was also emphasised in the report of OSCE/ODIHR Final Report on the 2003 presidential elections and it says: "The CEC took a welcome decision to publicise election results by precincts as they were received on election night, by immediately posting each precinct result on the CEC website. This gave an unprecedented degree of transparency to the tabulation process."

According to the Election Code, constituency election commissions forwarded results' protocols of constituency election commissions to the CEC within forty-eight hours. Following the checking of accuracy of the information on protocols, the commission discussed the issue of election results at its session of October 20, 2003 and invalidated voting results of 694 precincts of 115 constituencies because of errors on the protocols of some lower election commissions and filed complaints, some of which were sent to the Office of the Prosecutor General of the Republic of Azerbaijan.

The CEC had the same approach in the December 2004 municipal elections. The results of elections conducted in 2 730 municipalities were posted on the CEC website within nearly fifteen hours. By examining the election documents and received complaints, the commission invalidated election results in 135 municipalities, adopted decisions on inappropriateness of nine Constituency Election Commission chairpersons for their posts because of their faults and 50 precinct election commissions were dismissed, that is, 300 members of these commissions were dismissed from their posts and some documents were sent to the Office of the Prosecutor General of the Republic of Azerbaijan.

Recent election-related developments

In order to conduct more democratic elections which are planned for autumn of this year in the Republic of Azerbaijan, regular and specific actions have been

taken. As one of these activities, the Executive Order by the President of the Republic of Azerbaijan “on improving election practice in the Republic of Azerbaijan” of 11 May 2005 is especially worthwhile. Namely this order encouraged a more democratic pre-election atmosphere in the country before the November 2005 parliamentary elections. In previous elections, observers claimed representatives of some local executive authorities interfered in the election process in some precincts. This issue is especially emphasised in the Order and it is stated that in the case of heads of central and local executive authorities or other state officials illegally interfering in the election process, they will bear very serious liability according to the legislation of the Republic of Azerbaijan. Central and local executive authorities are ordered not to admit, according to the Election Code of the Republic of Azerbaijan, prosecution of citizens because of their political affiliation after elections within their authorities, and in the case of finding such facts, to take necessary measures, according to the legislation of Republic of Azerbaijan, to hold persons having committed such actions, accountable according to the legislation of the Republic of Azerbaijan. Another issue stated in the Order is related to the conduct of exit polls and alternative counting. To this end, central and local executive authorities are ordered to create circumstances within their authorities, according to the Election Code, for implementation of exit polls and parallel counting which will be carried out by specialized public pollsters and not to interfere illegally in these processes. One of the duties put forward by the Order is for the relevant bodies to ensure equal access to mass media and to create equal campaigning possibilities for all the candidates pursuant to the Election Code.

ELECTORAL DISPUTES

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It is very heartening indeed to see the present-day interest in electoral operations, and this seminar is a further token of it. For a very long time the question was viewed as being of fairly secondary importance, one that belonged in the political “kitchen” as it were, a place where a legal specialist of any standing would venture only reluctantly if at all. This gave rise to the tradition of parliamentary assemblies – relying on their status as representative of the sovereign power – making their own determination as to the validity of their members’ mandates.

Fortunately it is now thought that since power is founded on suffrage, and parliamentary elections are very often also the election by universal suffrage of the Prime Minister and the government, the question of the sincerity of electoral operations has become central to the democratic process.

On that basis, all phases of the operation must be subject to law and consequently to judicial review, observance of the law being guaranteed ultimately by the intervention of a court called upon to rectify or even set aside. This applies to the fundamental principles, the ones defined by the Venice Commission as making up the European electoral heritage (free, equal, secret and direct universal suffrage); it is less straightforward to settle the polling method, concerning which great variety is permissible within the big families formed by majority ballots, proportional voting and mixed ballots, the sole stipulation actually being what mathematicians call constancy, that is the party polling the most votes should be the one which gains the most seats (mishaps excepted, and these have certainly occurred). Moreover, it is often though not always the case that, as in France, the Constitution itself prescribes the polling method.

But while the principles are determined and controlled in this way, the whole difficulty lies in their application. This requires a large number of players since on election day a country’s entire population turns out, everyone as voters and a few as organisers in the many polling stations, one per 1000 inhabitants often being the accepted norm. The difficulty is heightened by division into municipalities (for example in France, the 41 million constituents among the 61 million inhabitants are served by nearly 67 000 polling stations). Functional defects in this vast complex are inevitable, whether intentional, and that points to election fraud, or unintentional owing to misinterpretation of statutes and situations.

There too it is necessary to have an authority which restores the situation to what it should have been - a court, because this authority is generally a court - which determines these irregularities and their possible effects on the election outcome, by performing what my sociologist colleagues call “the construction of electoral

normality”. This is the subject to be discussed here, considering in turn the questions of access to a court and conduct of electoral litigation.

I. Access to a court

The first question is naturally which court has jurisdiction; the second is who can have and must have access to it in order to attain the goal of sincerity.

- Which court?

As has been said, the parliamentary tradition is for the House to make its own determination as to the propriety of its members’ election. This arrangement still survives, in essentials, in a number of countries viz. the Benelux countries, Denmark, Italy and the United States of America. It can be observed that for the former countries there are proportional ballots in which the irregularities, involving just a few votes, may not have much importance in terms of allocation of seats, and that in the case of the United States many elections (90% for the House of Representatives) are considered not much in dispute, meaning that the differences are considerable.

But this system inexorably produces the situation where the propriety of an election is determined by a political majority, and abuses can result. The most frequently cited example is the disqualification of many Poujadist (today they would be called populist) representatives by the French National Assembly as constituted after the elections of 2 January 1956 with the result that, amid a general outcry, this power was transferred to the constitutional court set up by the 1958 Constitution.

The constitutional court also has jurisdiction over parliamentary elections in Austria, Greece, Germany, Portugal and Spain, but in the last three countries intervenes at second instance after the ordinary court of law, a fairly satisfactory solution as it ensures two levels of judicial authority.

The “ordinary” court has jurisdiction in the United Kingdom, *common law* for all, and the administrative court in Finland (this also applies to European and local elections in France).

All these arrangements appear acceptable and are not known to cause any problem where they are employed; which one is chosen obviously depends on the domestic legal and judicial traditions which are not identical, nor should they be.

According to the documents which I consulted, the systems established in Serbia and Montenegro provide for an initial settlement by the local, national or federal electoral commissions with a possibility of appeal to a Supreme Court or Constitutional Court, which brushes aside any possible objection to commissions that are at once organiser and judge of elections (a criticism that could be levelled at the French system since it applies to the French Constitutional Council, at least in matters of referendums and presidential elections).

- Who is the petitioner?

One is torn between two inclinations here: to make the court very widely accessible by adopting the stance that, since democracy is everyone's concern, review of the democratic operation can be open to all. But this carries a risk of congestion because of habitual petitioners; there are people obsessed with electoral litigation and so its treatment may be superficial or else too lengthy in relation to another demand, the rapid investiture of the assembly with its definitive membership.

The most restrictive and generally accepted formula is to limit access to the court to those who have an interest in bringing action; unlucky candidates, and their interest is plain, or the voters of the constituency involved, which is reasonable at a practical level albeit arguable in theoretical terms since a member of parliament is often regarded as a representative of the Nation a whole whereas in reality he/she is elected in a given constituency.

The question may be raised whether a political party should, as such, be deemed to have an interest in bringing action: in all logic the answer should be yes because the strength of the party in parliament will stem from the number of sitting members it has. Nonetheless the answer is often in the negative, so telling is the fiction that candidacy is an individual act with the party intervening only in support.

Another question is the form of petition: free, within a certain time after election (ten days in France) or subject to the registration of a complaint on the record of the polling station concerned (this is our solution for referendum). I think this should be seen as only a fairly secondary question of form, the only real concern being that the right of appeal should be effective ie that the complaint or protest on the record should effectively reach the court responsible for assessing its merits.

Capacity to bring an appeal is apparently open in Serbia and Montenegro to any candidate and any constituent concerned, which is a satisfactory situation, subject to the foregoing observation about the remedy being effective and the electoral issue being joined.

II. The electoral dispute

Electoral justice presupposes detachment, not always self-evident as it strikes while the iron is hot, immediately after a sometimes hard-fought election campaign, and must comply with the general principles of equality of arms, normally secured by the principle of adversarial proceedings, nonetheless bearing in mind that the purpose of this justice is not to put down any illegality, which a criminal court also entertaining the case can do if necessary, but to make sure that the person holding the seat is really the one the voters wanted, so that it is a relative and not absolute type of litigation.

- Principle of adversarial proceedings

The importance which the European Court of Human Rights attaches to this principle is familiar, even though the Court has remained very circumspect as regards electoral litigation.

The importance of the principle in this context is readily understandable: confronting each other are a representative whose election is contested but who has been declared elected by the first reviewing authorities, and an unsuccessful candidate or a dissatisfied constituent who usually have cogent grounds to plead but cannot be taken at their word either.

This means that there is necessarily an investigation conducted by the court, whichever it may be, in an effort to determine the truth and significance of the facts reported to it. I do not have enough comparative material on that score, and shall confine myself to speaking of the French example.

Procedure before the Constitutional Council is wholly written: the Council receives the petition, verifies admissibility (time of submission, voter registered in the constituency, specific complaints, etc.) and notifies it to the elected representative who draws up a memorial in reply (generally with the assistance of a lawyer) contesting the facts held against him or her. This document is communicated to the plaintiff who can answer in turn (but without adding fresh complaints), which answer is notified to the defendant and so on, until it is clear that nothing further remains to be said. At that stage the investigation is finished; very seldom does it continue with a verification on the spot (possible in certain cases), and a hearing of the parties or their counsel is systematically refused since the proceedings are conducted solely in writing.

Once the investigation is completed the case-file is put in order by a deputy rapporteur (a member of the Conseil d'Etat or the State Audit Board) who presents it to an examining section (three members of the nine forming the Council) which produces a draft decision to be submitted to the Council's plenary assembly which will give its approval, possibly making an amendment on a given point or, but this is rare, choose to adopt the opposite position. The decision is finally notified to those concerned and published, not being subject to any appeal (the few attempts before the Strasbourg Court have been dismissed).

All this takes place in quite a short time: the simplest applications require about six months (because it is necessary to wait about four months for the decisions of the board responsible for auditing the election campaign accounts where there are financial complaints) and because the Council, even if not bound by any time limit, aims to have finished everything not later than a year after the election, which it was able to do in 2002-2003. This is facilitated by the actual subject-matter of the litigation.

- The relativity of the dispute

An electoral dispute is relative in that it does not have the absolute character which attaches, for example, to administrative proceedings where a significant

irregularity (although there may be a margin of discretion for the court) causes the act or decision at issue to be set aside.

In an electoral dispute, the important thing to ascertain is whether the person declared elected is the one who ought to have been elected, so the question is whether the irregularities complained of did or did not falsify the election outcome. To put it another way, the question of the election margin is an essential parameter (and this is particularly true of majority ballots). Let us suppose that in a constituency, 200 votes are contested and the investigation shows that they are indeed contestable. If the election was decided by a clear 1000 votes, the answer will be that the irregularity is regrettable (as the court sometimes holds in order to stigmatise a wrongful act) but cannot call the outcome into question; if, on the other hand, it hinged on a mere 100 votes, the court will find it doubtful and declare it void. Note that the Constitutional Council, though empowered to do so, has never reversed an election (by declaring the other candidate elected) whereas the Conseil d'Etat sometimes does so for (minor) local elections.

This means that the court will begin by establishing the truth of the complaints and evaluating the number of votes in dispute. This may be easy: 10 invalid proxies, 20 spoiled ballot papers, 15 voters who did not sign the register; one is in possession of definite figures. But it may be more difficult: the weight carried by a pamphlet distributed after the cut-off date, or by a mayor's call to vote for so and so, etc. - this is a matter of precedents and experience, and a degree of subjectivity is inevitable.

After an even approximate figure is placed on the disputed votes, the court makes what we call a hypothetical deduction by notionally subtracting these votes from the number which the elected candidate polled: if the total is still higher than the other candidate's, the election is validated; if lower, it is void. This can be summed up more elegantly with the following equations, where a and b are the number of votes gained by the elected person and his challenger, and x is the number of votes presumed not to be in order:

$a - x > b \rightarrow$ validation

$a - x < b \rightarrow$ invalidation

It will be readily acknowledged that everything depends on how x is calculated and that subjectivity may come into it. Conversely, however, a rigorous dispute procedure where any irregularity whatsoever leads to cancellation would be liable to render the entire election void because in every constituency, or even polling station, there are bound to be a few trifling irregularities. And this is no doubt a more alarming prospect than the former!

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That is the way of electoral justice: a court, a right to an effective remedy, keeping the rule of adversarial proceedings, and for the remainder the wisdom of the judges – who will be judged in turn by public opinion if any decisions appear misguided. I

fondly believe that in the established democracies the decisions of the court that deals with electoral disputes are seldom contested by anyone... except perhaps the person whom they adversely affect and who will be intent on saving face in readiness to hit back at the next election.

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After 15 years of democratic transition in Central and Eastern Europe, the organisation of elections which are in conformity with the principles of the European electoral heritage is still a major challenge. In fact to ensure the effectiveness of these principles (universal, equal, free, secret and direct suffrage) a certain number of procedural guarantees must be respected.

Firstly, elections must be organised by an impartial body in an independent and transparent manner; this is the main message of this publication. The body in charge of organising the elections should be able to ensure, without any political manipulation, that the electoral process is carried out efficiently, from the pre-election period right up to the close of any dispute regarding the results.

Three aspects which are indispensable to the impartiality of electoral commissions and equivalent bodies were covered by the reports: independence with regard to the composition and functioning of the electoral administration; the transparency and impartiality of its competences; and finally, the transparency and impartiality of the electoral administration on election day and after the election.