



CIVIL SOCIETY COALITION FOR FREE AND DEMOCRATIC VOTE
TRANSPARENCY INTERNATIONAL – BULGARIA

REPORT

FROM THE MONITORING OF THE ELECTION OF
BULGARIAN MEMBERS OF THE EUROPEAN
PARLIAMENT
AND
THE ELECTION OF MEMBERS OF THE 41ST NATIONAL
ASSEMBLY OF BULGARIA

PART I
**BUYING OF ELECTORAL VOTES AND
CONTROLLED VOTE**

Sofia
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INTRODUCTION

As the Bulgarian national chapter of the international anticorruption organisation Transparency International, for more than a decade Transparency International – Bulgaria (TI Bulgaria) has worked actively for prevention and fighting corruption in Bulgaria. Fighting political corruption is one of the areas in which TI Bulgaria has been working since the beginning of 2001, when a team of our experts for the first time monitored the financing of the presidential election campaign in Bulgaria. The monitoring exercise was based on a research methodology which included a series of legal analyses and public opinion polls leading to the development of a *Transparency Index for the funding of election campaigns* and a *Transparency Index for the funding of political parties*. These two indices were the first research tools that rendered it possible to gauge the tendencies related to political activities' funding in Bulgaria.

The monitoring of political parties carried out by Transparency International Bulgaria in the period 2001 to 2007 revealed that the transparency and control of the funding of political activities in Bulgaria still remain at extremely low levels¹. This conclusion is reinforced by the international survey of Transparency International (Global Corruption Barometer), which defines political corruption as one of Bulgaria's most serious problems.²

The absence of efficient control of the funding of political activities in our country has a twofold direct impact: it spills over the negative implications of political corruption in other spheres of social life and, at the same time, tangibly threatens to erode the democratic political system and fundamental political rights of Bulgarian citizens. This problem became painfully evident during the 2007 local elections, which exposed the first attempts at organised vote-buying and for injecting huge cash amounts of unknown origin into the candidates' election campaigns.

The analysis of the results obtained from the monitoring and surveys conducted during the recent years encouraged Transparency International – Bulgaria to initiate a broad public awareness campaign to uphold the integrity and democracy of the election process in Bulgaria.

¹ The lowest value of the index (1.82 points) relates to the 2007 local elections campaign, while the highest value (3.96 points) was observed during the 2007 presidential election campaign. The indices are based on a scale ranging from 0 (absolute absence of whatever transparency and control) to 10 (maximum transparency of and control on election campaign funding). Source: Transparency International - Bulgaria <http://www.transparency-bg.org/?magic=0.3.26.1.61>.

² During the past six years, the political parties and Parliament have been in the focus of the Bulgarian survey and have been identified by the public as the institutions most severely affected by corruption. Sources: Transparency International, http://www.transparency.org/policy_research/surveys_indices/gcb and Transparency International - Bulgaria, <http://www.transparency-bg.org/?magic=0.3.2.1>.

PART I

CIVIL SOCIETY COALITION “SAM IZBIRAM”

In the beginning of November 2008, TI Bulgaria together with other leading Bulgarian NGOs launched a public campaign to prevent vote-buying practices during the campaigns for election of Bulgarian Members of the European Parliament (MEPs) and of national MPs to the 41st National Assembly of Bulgaria (the Bulgarian Parliament). On November 24, 2008, the Civil Society Coalition for Free and Democratic Vote “Sam izbiram” (“I elect on my own”) was officially established and initially included nine organisations: Transparency International – Bulgaria, Open Society Institute - Sofia, Bulgarian School of Politics, European Institute, Green Balkans, Institute of Market Economy, Local Government Reform Foundation, Centre for Economic Development and Centre for Liberal Strategies.

The founders of the Civil Society Coalition for Free and Democratic Vote were united by a common goal: curtail the vicious practices associated with the buying of Bulgarian citizens' votes as well as increase the transparency and control of the funding of election campaigns.

The initial scope of the civic initiative against vote-buying practices included several key areas:

- formulate a set of proposals for amending the election laws (reflected in the Integrity Pact for Conducting Free and Democratic Elections in Bulgaria) and invite support for these proposals from all political parties represented in Parliament;
- undertake an advocacy campaign for parliamentary adoption of the legislative proposals as well as a broad public awareness campaign among Bulgarian citizens aiming to explain their rights and responsibilities as voters;
- carry out independent civic monitoring of the compliance with the proposed measures for fighting vote-buying practices as well as with the measures designed to ensure more efficient control of the funding of election campaigns.

During the process of analysing the results achieved and the challenges faced, the Civil Society Coalition extended the initiative to include independent monitoring of the election process. That was the fourth dimension of the activities of the Civil Society Coalition “Sam izbiram,” which monitored both the European Parliament elections held on June 7, 2009, and the 41st National Assembly elections, which took place on July 5, 2009.

INTEGRITY PACT FOR CONDUCTING FREE AND DEMOCRATIC ELECTIONS IN BULGARIA

Guided by the understanding that curtailing and preventing to the maximum extent the attempts to buy votes requires adequate and efficient legislation, the experts of the Civil Society Coalition focused their efforts on drafting a set of proposals for amending the election laws. For that reason namely, the Coalition experts analysed the deficiencies of both election

laws and implementation practices. The legal analysis was complemented by opinion polls and research on the successful approaches used by a number of European countries in ensuring fair and democratic elections.

The analytical and research efforts of the experts resulted in formulating a set of proposals for changes in both election laws and implementation practices. A series of meetings and consultations with representatives of the academic community and with parliamentary and non-parliamentary parties led to the formulation of a final document, which became publicly known as **Integrity Pact for Conducting Free and Democratic Elections in Bulgaria**³. The symbolic title of this document highlights the main reason behind its creation – become a tool for achieving integrity of the social and political life in our country.

The main objective of the Integrity Pact was to commit the political parties to the implementation of measures against vote-buying practices and to the conduct of election campaigns that are consistent with the principles of transparency, publicity and accountability.

The proposed document contains nine clauses, which provide that political parties undertake measures in the following areas:

- initiate, support and adopt legislative measures to address vote-buying practices as well as illicit pressure and control over voters (*Clause 1 of the Pact*: enhance the penalties for organised vote-buying practices, *Clause 2 of the Pact*: set up regional vote-counting centres; *Clause 3 of the Pact*: include anti-vote-buying messages in the campaign materials;
- introduce intra-party sets of measures against vote-buying practices (*Clause 4 of the Pact*: introduce internal rules in each party to forestall any buying and selling of votes, *Clause 6 of the Pact*: provide true access to the public register of election campaign donors);
- initiate, support and adopt legislative measures to ensure transparency and accountability of the funding of election campaigns (*Clause 5 of the Pact* enables the Civilian Coalition to perform independent monitoring on election campaigns and election processes; *Clause 7 of the Pact*: all revenues and costs related to election campaigns, the amount of which exceeds by two times the official minimum monthly salary, must be made only by bank transfers; *Clause 8 of the Pact*: all donations and expenses for election campaigns, the amount of which exceeds by two times the official minimum monthly salary, must be made only by bank transfers; *Clause 9 of the Pact*: authorise a special body to audit/verify whether the declared revenues tally with the actual costs incurred in the election campaign).

The Integrity Pact for Conducting Free and Democratic Elections was officially endorsed by 20 parliamentary and non-parliamentary parties. More than 50 NGOs also signed the Pact, thus becoming part of the Civil Society Coalition for Free and Democratic Vote and confirming their commitment to see to the compliance with the document they subscribed to.

The Pact was supported unconditionally by the following political parties: GERB, National Movement for Stability and Prosperity, Democrats for Strong Bulgaria, Union of Democratic Forces, Bulgarian Social Democratic Party, the United Peoples Party, Unified Agrarians,

³ The full text of the Integrity Pact for Conducting Free and Democratic Elections in Bulgaria, together with the signatures of the political parties and NGOs that have subscribed to the Pact, is available on the website of the Civil Society Coalition of for Free and Democratic Vote <http://www.samizbiram.bg/bg/social-agreement> and on the website of Transparency International - Bulgaria <http://www.transparency-bg.org/?magic=0.13.0.1>.

Political Movement 'Social Democrats', Order, Lawfulness and Justice, Union of Free Democrats, United Labour Bloc, Bulgarian Social Democrats and later by the Party of the Greens.

Other parties signed the Pact with special opinion. Thus, the Bulgarian Socialist Party (BSP), the Movement for Rights and Freedoms (MRF) and the parties in the LIDER coalition - St. George's Day Movement, VMRO-BND, Agrarian Peoples Union and LIDER – had special opinion concerning the clause on the establishment of regional vote-counting centres (Clause 2 of the Pact). BSP and MRF also disagreed with the clause on independent monitoring of election campaigns and the election process (Clause 7 of the Pact). The two parties had reservations concerning the investing of a special body with the authority to audit/verify whether the declared party revenues tally with the actual costs incurred in the election campaign (Clause 9 of the Pact). The parties in the LIDER coalition had reservations concerning the amount of donations that would require a bank transfer (Clause 7 of the Pact) as well as about the scale of the anti-vote-buying messages in the promotional materials relative to the total size (Clause 3 of the Pact).

CIVIC MONITORING OF THE COMPLIANCE WITH THE INTEGRITY PACT FOR CONDUCTING FREE AND DEMOCRATIC ELECTIONS IN BULGARIA

The proposed new model for ballot counting became the focal point of the debate held with the parliamentary and non-parliamentary parties. According to the analyses and estimates of the Civil Society Coalition experts and the academia, the idea for **establishing regional vote-counting centres** was one of the most efficient and realistic proposals, which would have neutralised and rendered inefficient the existing practices for buying of votes and exercising control on the voters (*Annex 2: Concept for Regional ballot counting centres*).

For that reason, in the framework of this debate, the Civil Society Coalition experts drafted and presented detailed proposals for amending the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly* aimed at establishing such regional vote-counting centres.

Representatives of the Civil Society Coalition participated as observers in the proceedings of the *Ad-hoc committee on amending the election laws* in the 40th National Assembly. This enabled them to evaluate with great accuracy how the political parties were complying with the commitments they undertook by signing the Integrity Pact for Conducting Free and Democratic Elections.

These observations on the compliance with the commitments laid down in the Integrity Pact provide grounds for making the following assessments⁴:

Clause 1 of the Pact: Introduce appropriate financial penalties for those who organise vote-buying activities in view of achieving both dissuasive and preventing effect (in the range of BGN 150,000 – 200,000).

The Bulgarian Criminal Code was amended to the effect of increasing the term of imprisonment and the financial penalties for vote buyers caught in the act to 5 years and BGN 10,000 – 20,000, accordingly. The term of imprisonment and the financial penalties for those

⁴ Detailed information on the measures undertaken by the political parties in pursuance of the commitments undertaken by virtue of the Integrity Pact for Conducting Free and Democratic Elections can be seen at the Initiative's web page <http://www.samizbiram.bg/bg/agreement-execution>.

who organise vote-buying activities were increased to 6 years and BGN 5,000 – 20,000 accordingly. Concerning this clause of the Pact, it can be concluded that changes have been made in the right direction and commitments have been honoured. In the future, efforts should be made toward efficient detection and prevention of these crimes.

Clause 2 of the Pact: Amend the election laws so that ballots are counted in regional vote-counting centres and not in the polling stations.

This proposal provoked heated debates in the National Assembly. During the discussion of the amendments to the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly*, the Civil Society Coalition experts drafted and presented to the MPs a detailed proposal concerning the implementation of this new mechanism for reporting the election results. The proposal did not obtain support from the parliamentary caucuses of Coalition for Bulgaria (led by BSP) and the MRF. This clause of the Pact was not fulfilled.

Clause 3 of the Pact: Oblige legally all candidates, political parties and coalitions that take part in the elections to include in all their promotional materials statements that vote-buying and selling is a crime. Such statements must be published on posters and campaigning materials and must occupy at least 20% of the area of all posters and cover pages of brochures/folders. All audiovisual promotional materials must contain this information in the form of an unequivocal and understandable voice message.

This proposal was adopted in the form of amendments to the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly*. The Civil Society Coalition for Free and Democratic Vote monitored the election campaign and established that the majority of the political parties complied with this legal obligation. It should be noted, however, that in the future there should be a mechanism for penalising those candidates who do not adhere strictly to the new legal provision.

Clause 4 of the Pact: Introduce internal party rules ensuring zero tolerance to vote-buying practices during the conduct of the election campaigns

The activities for ensuring compliance with the commitments laid down in the Integrity Pact included sending of letters to all political parties-signatories to the document and media monitoring to collect additional information. In the course of the election campaign, three parties (NMSP, GERB and the Union of Free Democrats) satisfied this commitment by adopting written rules. Many of the other parties made verbal statements that their policies and practices were compliant with this commitment.

Clause 5 of the Pact: Institutionalise the Civil Society Coalition as a body for independent monitoring of election campaigns and election processes.

The idea underlying this proposal of the Integrity Pact is to endow civil society organisations with a common cause to carry out official monitoring on the election campaigns and during the elections themselves to ensure maximum protection of the public interest and to act as guarantors for the conduct of fair and democratic elections. On account of the fact that the legislation was not changed to this effect, the Civil Society Coalition for Free and Democratic Vote authorised Transparency International – Bulgaria to monitor the European Parliament elections and the 41st National Assembly elections.

Clause 6 of the Pact: Set up a public register of election campaign donors and make this register publicly available online

This proposal was adopted, after some rephrasing, in the form of amendments to the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly*. The new legal provisions indeed oblige each party to keep a register of the donors contributing to its election campaign, but do not explicitly oblige parties to make these registers available online, i.e. to publish them on their respective websites. A review of the websites of the political parties in June 2009 found that not all parties have complied with this requirement. The website of GERB is the only one which provides information about the donors contributing to their election campaigns in 2009.

Clause 7 of the Pact: All donations and expenses related to election campaigns, the amount of which exceeds by two times the official minimum monthly salary, must be made only by bank transfers

The final adopted amendments to the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly* established the ceiling of transactions that do not necessarily need bank transfers at BGN 5,000. With regard to the disparity between the initial commitment (twice the size of the official minimum monthly salary) and the finally voted ceiling (ca. twenty-one times the size of the official minimum monthly salary), it should be concluded that this commitment has been met only partially.

Clause 8 of the Pact: Introduce penalties for political parties, coalitions, independent candidates and initiative committees that fail to submit financial reports in due time or submit incomplete reports

The commitment for legislative introduction of such penalties did not translate into legislative proposals from any of the parliamentary parties. An argument was raised during the discussion of the legislative amendments that the existing penalties in the *Political Parties Act* provide a sufficiently efficient mechanism for sanctions. It should be stressed that the funding of political parties and the funding of election campaigns are subject to two different regimes. Election campaigns have their specificities which, among other things, require additional rules for funding, for example regarding campaigns carried out by coalitions of political parties and initiative committees in favour of independent candidates. This gap in the legislation should be addressed in the future.

Clause 9 of the Pact: Set up a special body authorised to audit/verify whether the declared revenues tally with the costs actually incurred in election campaigns.

The adopted amendments to the *Law on the election of Members of the European Parliament* and the *Law on the election of Members of the National Assembly* extended the competences of the National Audit Office enabling it to verify whether the declared revenues correspond to the costs actually incurred in election campaigns. It should therefore be concluded that the commitment laid down in this clause of the Integrity Pact has been honoured.

Having in mind the long-term character of the objectives pursued by the Civil Society Coalition for Free and Democratic Vote, it should be emphasised that the campaign for amending the Bulgarian legislation and for adopting effective implementation measures will continue in the long run. It is important to highlight the need for:

- creating an Election Code to streamline the rules for carrying out elections in Bulgaria and cast the fundamentals of a professional electoral administration;
- efficient implementation of the rules laid down in the election laws and in the laws that govern the funding of political activities in Bulgaria.

ADVOCACY CAMPAIGN FOR FAIR AND DEMOCRATIC ELECTIONS

The other vector along which the Civil Society Coalition for Free and Democratic Choice directed its efforts was the conduct of a broad advocacy campaign designed to raise public support for the proposed legislative changes and an awareness campaign among Bulgarian citizens aimed at explaining their rights and responsibilities as voters.

The campaign was carried out under the logo “Sam izbiram” in the period January to July 2009 and included press conferences, discussions, production and countrywide broadcasting/distribution of a video clip, post cards and calendars. The initiative was supported by a vast range of print and electronic national and regional media which published interviews, analytical documents and messages from the Coalition.

An important element of the advocacy/awareness campaign was the launch of an official website of the civic initiative “Sam izbiram”. At www.samizbiram.bg citizens can find information about the initiative and its progress, results from opinion polls and analyses as well as various promotional materials of the campaign.

The Civil Society Coalition had a number of meetings and workshops with political parties, academia and media representatives, where participants discussed the proposed amendments to the election laws and the measures for ensuring integrity of the election process.

Representatives and experts of the Coalition initiated and subsequently became active participants in the broad public discussion on the issue of vote-buying and on the measures for curtailing this vicious practice. Vote-buying and controlled vote became the hottest issues discussed at all political talk shows and debates related to the forthcoming elections. Experts and representatives of the Civil Society Coalition were the main drivers of and contributors to this discussion by participating in a series of TV and radio programmes, by preparing analyses and publications for national print and electronic media and by partaking in meetings initiated by non-governmental organisations.

The idea about including in the parties' promotional materials messages to the effect that buying and selling of votes is a crime represents a genuine contribution to the practice of organising advocacy campaigns in Bulgaria. Having adopted this proposal, the political parties became yet another promoter of the Civic initiative and thus multiplied the effect of the campaign's key message.

ELECTION MONITORING

Based on the monitoring on the compliance with the clauses of the Integrity Pact and the subsequent expert analysis, the Civil Society Coalition has reached the conclusion that, at this point, the preconditions for effectively combating the established vote-buying schemes and the attempts to control the citizens' votes are not in place.

On account of the fact that two key proposals of the Integrity Pact were not adopted, namely introduction of a new regional vote-counting model and enabling the Civil Society Coalition to perform monitoring as an officially registered observer of the elections, it was decided to entrust the election monitoring responsibility to the main initiator of the campaign, Transparency International - Bulgaria. According to the current legislation, eligible to observe

elections are NGOs that are incorporated under the *Non-profit Legal Entities Acts*; however, this right does not extend to informal coalitions of NGOs.

Transparency International – Bulgaria was registered as an official observer of the European Parliament election and the 41st National Assembly election. TI Bulgaria was registered with Decision No. EP-125/12.05.2009 of the Central Election Commission (CEC) for the European Parliament election and, accordingly, with Decision No. NS-81/27.05.2009 of the CEC for the National Assembly election.

The registrations were made in accordance with the provisions of the *Law on the election of Members of the European Parliament* (paragraph 1, sub-paragraph 7 of the Additional Provisions) and the *Law on the election of Members of the National Assembly* (paragraph 1, sub-paragraph 5 of the Additional Provisions), which define the pool of people eligible to monitor the election process. According to these provisions, observers can be authorised members of Bulgarian NGOs, representatives of foreign parliaments and of the Organisation for Security and Co-operation in Europe (OSCE) as well as persons nominated by parties and coalitions that compete in the elections and who must be invited via the Ministry of Foreign Affairs.

TI Bulgaria monitored the European Parliament elections (which took place on June 7, 2009) and the 41st National Assembly elections (which took place on July 5, 2009) via an extensive network of observers who were deployed throughout Bulgaria and worked as volunteers. The monitoring force included representatives of NGOs, experts, researchers and students.

The European Parliament elections were monitored by 281 registered observers, who performed election-day monitoring in 14 electoral districts throughout Bulgaria.

The National Assembly elections were monitored by 481 registered observers, who performed election-day monitoring in all 31 election districts in Bulgaria.

The headquarters of Transparency International - Bulgaria in Sofia operated as a central monitoring coordination office during the campaign, including on Election Day. The HQ of TI Bulgaria also maintained a hotline on which our organisation was alerted to instances of vote-buying and exerting illicit control on voters and other electoral irregularities. During the election day these alerts were forwarded to the institutions which have the authority and competence to stop or investigate the reported irregularities or offences.

The scope of the monitoring exercise was defined in accordance with the election monitoring methodology. The venues, namely District Election Commissions (DECs) and Precinct Election Commissions (PECs, located in polling stations), were selected after an assessment of the risk for election process violations. The observers had accurately specified mandates with clearly defined authority and venues of monitoring. They were furnished with the documents required by law to certify their status of officially registered observers as well as with appropriate methodological guidance and forms for registration of offences during the election day. Shortly before starting their monitoring work, the observers were trained by experts and representatives of Transparency International - Bulgaria.

This report presents the key findings, conclusions and recommendations derived by Transparency International - Bulgaria after monitoring the European Parliament elections held on June 7, 2009 and the 41st National Assembly elections of July 5, 2009.

PART II

MONITORING OF THE ELECTION OF BULGARIAN MEMBERS OF THE EUROPEAN PARLIAMENT

Transparency International - Bulgaria carried out monitoring of the European Parliament election on June 7th 2009 under a methodology created particularly for that purpose and implemented through a network of 281 registered observers across the entire country. The observation was carried out with the assistance of volunteers from non-governmental organisations from across the country and representatives of the academia.

The total number of registered signals is 348, including 17 signals received via our telephone hotline and e-mail, 211 signals received from the monitoring in DEC's and 120 signals received from the monitoring in PEC's.

RESULTS FROM ELECTION-DAY MONITORING IN PEC'S

The results derived from the polling stations which we monitored demonstrate that most frequently (in 44.0% of cases) *perpetrators of the violations* were the chairman, secretary or members of the PEC. Activists of political parties and registered proxies of parties, coalitions or initiative committees came second with an equal share of violations. Each of these groups makes up 17.3% of the violations registered during the monitoring on Election Day. In the third place, or in 9.3% of the cases, the perpetrator is a political representative of a party, registered to participate in the election.

If we try to summarise the obtained data, in 43.9% of the cases the perpetrator of the violation is an individual who is a party activist or proxy of a political party, coalition or initiative committee, registered to participate in the election. In so far as that the members of the PEC are also representatives of political parties, it could be said that in a large portion of the cases the perpetrators of violations can be clearly identified and have a direct connection with the parties and coalitions, participating in the election.

The structure of the *organisational violations* in the polling stations/PECS differs from the complaints deposited in DEC's, according to the types of violations and signals. The organisational infringements represent a total of 50% of all registered violations of the work of the PEC's on Election Day. The most frequently registered infringement of the work of PEC's is incorrect addition of voters' details in the voting list and the allowance of one and the same person to accompany many voters with disabilities into the voting booth. The two types of violations each make up 13.3% of all registered deviations from the normal course of the Election Day in PEC's.

The next most frequent group of violations is related to the incorrect registration of voters, proxies and observers (11.7%), rapid decrease in the number or lack of ballots of a given political party, coalition or an independent candidate (10.0%), as well as late arrival or overall absence of the chairman, secretary or members of the PEC (also 10.0% of cases). Less frequently (in 5% of cases), there are infringements that have to do with incorrect placement

of ballots in the voting booth or with not allowing a proxy or an observer to vote despite their possession of proper documents.

In 25% of the cases, the registered violations represent *illegal advertisement and campaigning on election day*. In this group of offences there are three dominant types, each representing 26.7% of all registered violations. First, these is the presence of proxies or other representatives of political parties standing in close proximity to the polling station, or campaigning in front of the entrance to the polling station. The second group of offences concerns wearing of logos or symbols of political parties and coalitions, again by proxies or politicians, in the building where the election takes place. The third group of infringements is related to cases of campaigning in a foreign language.

Monitoring in the polling stations/PECs demonstrates that, in comparison to the three types of illegal advertisement and campaigning discussed above, the presence of campaign materials in proximity to the building where the station is located is relatively infrequent (registered in 20.0% of the cases).

Third among the signals for infringements in the polling stations and among the complaints submitted to DECAs are the instances of *attempts at vote control*. Ten percent of all violations registered in PECs have to do with controlled vote. The most frequently mentioned type of control is the presence near the polling station of individuals who observe or somehow register the behaviour of voters. Second, and mentioned in 27.3% of the cases, come instances of group voting of individuals who are neither in kinship nor friends. Observations from many places in the country indicate that this happens most frequently in the second half or even at the end of the Election Day. Third, or 13.6% of the offences, are instances of voters who have just exercised their right to vote being questioned for whom they voted. Of course, we here do not refer to public opinion polls, namely collecting data for exit polls. Compared to other types of registered offences, the presence of big number of vehicles with out-of-town registration plates used to distribute goods or to control the voters' behaviour was comparatively less frequent (in 9.1% of cases).

During the 2009 elections for European Parliament, systematic cases of control over the behaviour of voters via economic pressure were registered for the first time. According to the types of controlled vote registered by the observers in PECs, 4.5% of the cases include direct or indirect threats of dismissal from work as a form of pressure on the vote of Bulgarian citizens. This type of *corporate voting* cannot be reliably studied through research or observations based on statistical polls due to the specific conditions in which the phenomenon takes place. Cases of threats directed towards employees of private enterprises and carried out in favour of a certain political party were registered in regions that are relatively isolated and economically dependent on a single enterprise.

Among the registered types of controlled vote, there are three types of coercive voting based on economic dependence. The first type is related to the employees' desire to preserve their job. The second type occurs most frequently in rural regions and has to do with conditions for buyout of the agricultural produce. The third is related to the practice of usury. We have reason to believe that relatively large groups of voters were pressured to support one or another political party or coalition through networks of local money-lenders and through certain branches of regional and local structures of organised crime.

Direct *vote-buying* in the polling stations which we observed constitutes a relatively smaller portion of violations in the PECs. Most frequently, or in 37.5% of the cases, it is a matter of a direct offer of money to voters who enter the polling station. In 25.0% of the cases it is a matter of money distribution that takes place in immediate proximity of the polling stations or directly in front of it. The intent of vote-buying was publicly declared in another 25.0% of the

violations registered. Relatively less frequently, or 12.5% of the registered violations, the purchase of votes was carried out through the announcement of price discounts offered in exchange of voting in favour of a particular candidate or political party.

Organisational violations on election day	50 %
Illegal advertising or campaigning on election day	25 %
Vote-buying	6,7 %
Other forms of controlled vote	18,3 %

The specific configuration of symptoms delineating the presence of controlled vote regarding the attempts of vote-buying and the organisational violations demonstrate that in about 65% of all registered cases the violations are not a matter of lack of professionalism on behalf of the representatives of the election administration, but a matter of deliberate attempts to establish control over the behaviour of voters and/or to alter the election results.

RESULTS FROM ELECTION-DAY MONITORING IN DECS

The methodology of monitoring of Transparency International - Bulgaria was based on a comprehensive analysis of the complaints submitted during the day of the election to all 31 District Election Commissions. The comprehensive nature of the monitoring in DECs allows us to determine the predominant profile of the violations, which were not reviewed by the Precinct Election Commissions or have been simultaneously submitted at different levels of the electoral administration. The characteristics of the registered violations, which have become subjects of the complaints submitted in DECs on Election Day, provide a reliable database for conclusions regarding the violations that are related to the phenomena described here as controlled voting.

The organisational violations, subject of the complaints submitted to DECs, represent the most significant portion of violations of the electoral process. They make up 63.0% of all instances when the assistance of the electoral administration was requested. Analysis of the data received allows us to divide the specific examples into three categories.

The first category includes **violations** that can be almost entirely classified as caused by **lack of experience/preparation**, are of a purely technical nature and, at the very least; do not favour any political party, coalition or initiative committee. The lack of voting declarations for persons with disabilities and students; a transparent curtain of the voting booth, or incorrectly announced address of the polling station could be included in this category of infringements, which suggest a lack of preparation but not an attempt to influence the choice of the voters. The total relative portion of these infringements is only 3.7% of all complaints, submitted to DECs.

The second category of organisational violations, related to attempts for illegal influence on the electoral behaviour, include **infringements that contain both elements of incompetence and lack of experience as well as possible intent**. In that respect, typical examples are the late arrival, or overall absence of a chairman, secretary or members of the Precinct Election Commission; incorrect placement of the ballots in the voting booth; irregularities in writing

the election protocol or the allowance of a member of the committee or proxies to stand close to the voting booth at a distance that is less than the distance allowed by the law. This intermediary category of infringements forms about 40.4% of all violations mentioned in the complaints submitted to DEC.

The third category of organisational violations almost entirely concerns instances of **intentional actions, directed either towards control over the electoral behaviour or towards conscientious alteration of the vote**. Incorrect registration of proxies and observers; rapidly decreasing number or lack of a given party's ballots; incorrect write-in of voters; allowing one and the same person to accompany more than twice individuals with disabilities into the voting booth; allowing voting with personal identification documents which are not in line with the requirements; counting of ballots in the absence of observers or proxies; taking stamped documents outside of the electoral section; as well as other infringements have a direct relation to establishing control over the election results.

These infringements not only show a lack of knowledge or lack of experience in the application of election regulations, but directly influence the final version of the election protocol. **In this sense, even when these attempts take the form of organisational violations by PECs, there is enough reason to state that *there exist systematic attempts for illegitimate influence over the final election results in the Precinct Election Commissions.***

The second group of reasons and motives for complaints to DEC includes *illegal advertisement and campaigning on election day*. It makes up 17.1 % of all complaints that were analysed. The most common type of violation concerns proxies or representatives of political parties standing in close vicinity or campaigning in front of the polling station. Second (with 27.0% of the examined complaints) come cases when campaign materials were found near the polling station (less than 50 metres from the entrance of the building where the polling station is located). Thirdly, there are instances when proxies or politicians in the polling station wear or carry logos or symbols of political parties or coalitions they represent. These instances make up 16.2 % of registered complaints. Comparatively smaller is the portion of cases about campaigning in a foreign language (10.8%).

The third group of motives and complaints to DEC includes *other types of controlled vote*. These make up 10.6% of all complaints that were submitted. Two types of violations are the most common reasons for submission. In the first place, with 21.7% of all examined cases, there are two groups of infringements: mass presences of automobiles with out-of-town registration plates in the town or village or in front of the polling station, on the one hand, and the private transportation of groups of voters to the polling stations, on the other hand.

The second group of infringements concerns taking ballots out of the polling station. This type of violation, which is directly related to the carrying-out of what have become "classical" schemes of vote-buying and controlled vote, is present in 17.4% of the complaints submitted to DEC. The portion of violations regarding illegal compilation of lists with personal identification data of voters by unauthorised people in front of the station is 13.0% of all registered complaints. Although less than in the local elections of 2007, there are registered cases of beatings of voters (4.3% of complaints submitted to DEC include such type of event), as well as threats of physical violence over opponents or voters (8.7% of the cases).

Signals of *vote-buying* represent 9.3% of the motives for all complaints submitted to DEC. According to these complaints, the most frequently mentioned types is distribution of money in front of the polling station or in proximity to it – such are 45.0 % of the instances described. In the second place, mentioned in 20.0% of cases, are examples of payments of long delayed salaries or other rewards immediately before the election. Distribution of food or

other products in exchange of voting is the third most frequently mentioned (in 15.0% of the cases) form of direct vote-buying.

Measures taken to remedy the violations described in the complaints registered by TI Bulgaria make up the last portion of the collected data. Most frequently, what DEC's did was give directions for remedy of the infringement (in 45.0% of all violations registered in the complaints). The second most frequently implemented measure, which responds to the most common organisational infringement, is the appointment of a new chairman, deputy chairman, secretary or members of PECs where the incumbents have not appeared (17.5%). In 15.8% of the violations, the DEC has ordered enforced police presence or an inspection by the competent authorities. In 9.2% of the cases, the violations cited in the complaints have contributed to an investigation by the district attorney.

Though indirectly, the relatively high portion of cases where actions of the competent authorities were needed for the remedy of the infringement underscore the very importance of such instances. Unlike numerous examples of signals directed to the media (which can be attributed to the election campaign), the present analysis of complaints constitutes valid and reliable information about the types and the scope of the phenomena generally referred to as controlled voting.

Organisational violations on election day	63%
Illegal advertising or campaigning on election day	17.1%
Vote-buying	9,3 %
Other forms of controlled vote	10,6 %

SIGNALS FOR IRREGULARITIES IN THE ELECTION PROCESS

In the period May 17 to June 5, 2009, a total of **17 signals** were received on the free telephone hotline of the Centre for Legal Advice to Victims of Corruption of TI Bulgaria regarding the European Parliament election. The signals were about various violations of the electoral law or procedures and can be most generally divided into several groups, depending of the essence of violations:

I. Organisational violations on election day (5 signals):

- incorrect addition of data into the voter list – 1 (Kyustendil);
- errors in the voter lists - 3 (adding of ineligible citizens to the voter lists - municipality of Mineralni Bani, village of Shiroka Polyana; a deceased person is in the voter list – Kyustendil; missing citizens in voter lists – Kardjali);
- disappearance of ballots of a certain political party – 1 (village of Dolni Vode, near Assenovgrad)

II. Illegal campaigning on election day (8 signals):

- campaigning in favour of a political party – 6 (Dobrich, Varna, Pleven, Dolni Bogrov, Gorna Oryahovitsa);
- transportation of voters – 1 (village of Krumovo, municipality of Tundja).

III. Vote-buying (2 signals):

- vote-buying – 2 (Aytos).

IV. Other forms of controlled vote (2 signals):

- voting of a social worker instead of a patient at a social care facility – 1 (Silistra);
- voting in the presence of representatives of a political party and a polling agency – 1 (village of Bradvari, near Silistra).

PART III

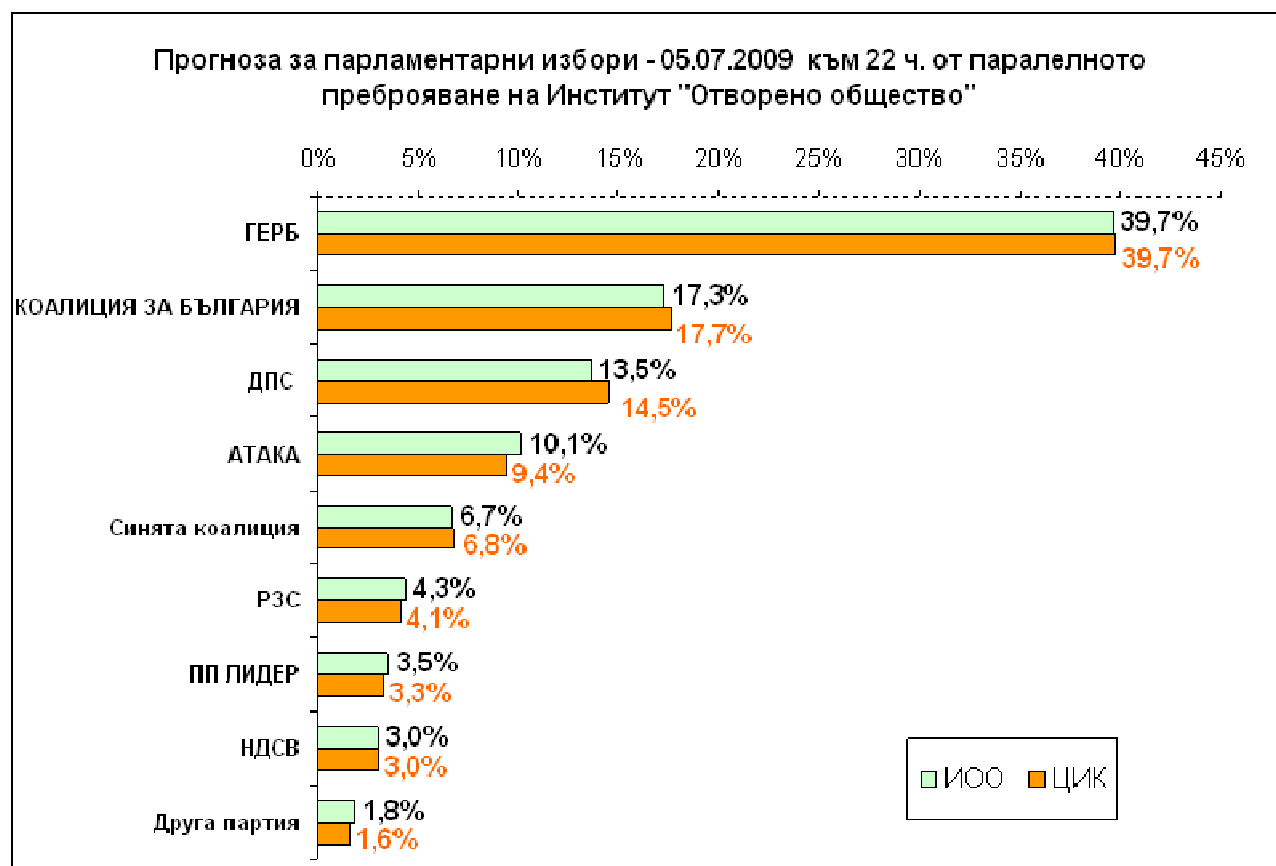
MONITORING OF THE ELECTION OF BULGARIA'S 41ST NATIONAL ASSEMBLY

RESULTS FROM ELECTION-DAY MONITORING IN PECs

The sociology department and survey network of Open Society Institute – Sofia conducted a monitoring of the Election Day, July 5, commissioned by Transparency International – Bulgaria. The monitoring was carried out on a national representative sample of 133 polling stations. The sample has a two-tiered stratification according to region and place of living (city-village).

A total of 51,952 people who cast their vote were included in the monitoring. According to the voter lists, voter turnout in this case was 59.9%. When compared to the official turnout data provided by the Central Election Commission, CEC (60.2%), this leads to the conclusion that the monitoring results eliminate any possible hypothesis about “phantom” voters who may have been added to the voter lists after the end of the Election Day.

Another hypothesis, about a possible interchange of the polling station protocols with counterfeit ones on their way from PECs to DEC or from DEC to CEC, can also be refuted. The results of the parallel vote count announced by Open Society Institute – Sofia at 10 p.m. on July 5, 2009, are almost identical to the final results announce by CEC. The differences are far below the standard statistical error.



In the polling station monitored by the team, 126 violations were observed in 50 polling stations, i.e. there were violations in 37.3% of the stations. According to their type, violations can be classified as follows:

Organisational violations on election day	47.2%
Illegal advertising and campaigning on election day	18.9%
Vote-buying	3.9%
Other forms of controlled vote	29.9%

The most common violation is late arrival or failure to appear of a chairman, secretary or member(s) of a PEC (25.2%), which in several cases has led to a delay in the opening of the polling station or to opening of the polling station without a PEC quorum. From the other forms of controlled vote, the most common violation is the presence of more than two proxies of a certain party – 35.5% of all violations of this type. Signals about vote-buying were received for only 4 polling stations, and in one of them attempts were made by two different parties.

If we look at the geographic distribution of violations, it is noteworthy that the relative share of violations in the Southwest planning region (44.1%) is substantially bigger than the share of polling stations from that region in the sample – i.e. it can be held that there is concentration of election violations in Southwest Bulgaria. In Northwest and North Central Bulgaria the opposite phenomenon is observed – considerably smaller share of violations than the share of polling stations.

Planning region	Share of polling stations in sample	Share of violations
Northwest	12.0%	5.5%
North Central	14.3%	6.3%
Northeast	15.8%	11.0%
Southwest	26.3%	44.1%
South Central	18.8%	19.7%
Southeast	12.8%	13.4%

Violations take place more often in towns and cities than in villages. In 68.9% of village polling stations and 59.1% of town or city polling stations no violations were registered. However, it is important to make the provision that violations in towns or cities are greater in number yet less serious (late arrival of a PEC member), whereas violations in villages are less in number but can have significant (for example, opening of election day with unsealed ballot box in the village of Gurkovo).

Apart from the geographical location and the type of settlement, the size of the polling station also matters for the occurrence of violations. If the observed polling stations are divided in several categories according to the number of registered voters in them, it can be seen immediately that the smallest polling stations have the fewest violations. In 78.8% of the

polling stations with 135 to 520 voters there are no violations. The shares of violations in the other three categories are similar. It should be noted that in polling stations with 701 to 847 voters the share of stations with violations is smaller, but the average number of violations in the polling stations with violations is bigger than the numbers in the other categories of polling stations.

Number of voters in polling station	No violations	At least one violation	Average number of violations per polling station
135-520	78.8%	21.2%	2.3
521-700	54.5%	45.5%	2.5
701-847	61.8%	38.2%	2.9
848-1361	54.5%	45.5%	2.4

The close average numbers of violations per polling station, however, represents different kinds of violations. In polling stations with 848 to 1,361 registered voters, one-third of the violations are late arrival or failure to appear of member(s) of the PEC. The share of late arrival in the smallest polling stations is 25%, while the other substantial share in them belongs to other small organisational violations (19%). As opposed to the smallest and the biggest polling stations, in polling stations with 521 to 700 voters and 701 to 847 voters, other forms of controlled vote take up the second most important share (19% and 16%, respectively) after late arrivals (21.6% and 19%, respectively).

In 64.6% of the violations registered by the observers, the violation is such that it cannot be concluded in favour of which political party it has been made. Here it is important to underline that a large portion of the violations are unintentional and can be explained with the administrative incompetence of PEC (not being acquainted with the law) or with the overlooking of legal procedures in order to shorten voting time and the time for processing the election results. In practice, violations were made in favour of almost all political parties, as follows:

There are geographical patterns in the occurrence of violations for the various parties. The violations in favouring the Movement for Rights and Freedoms (MRF) are concentrated in Northeast and South Central Bulgaria and fall within “other forms of controlled vote.” Violations favouring the LIDER coalition are concentrated in Eastern Bulgaria (Northeast and Southeast region) and the Southwest region and are linked with “other forms of controlled vote.” Violations in favour of Coalition for Bulgaria are concentrated in the Southwest and Northwest regions and are above all related to campaigning on Election Day. Violations favouring GERB are concentrated in the Southwest and South Central regions and involve presence of larger number of proxies and campaigning on Election Day. The number of violations for the rest of the parties is too small for a relevant analysis to be made.

SUMMARY OF RESULTS

Election-day violations were observed in a significant number of polling stations across the country. Nevertheless, most of the cases involve small procedural or organisational violations.

Almost two-thirds of the violations cannot be classified as being in favour of some political party.

As relative share, attempts at vote-buying correspond to the data obtained from the pre-election sociological surveys conducted by Open Society Institute – Sofia about the readiness of voters to sell their vote and vote for a given political party.

Attempts to buy or control the citizens' vote were concentrated primarily in medium-sized polling stations with around 500 to 900 registered voters. Regarding small polling stations, this can be explained with the fact that in them vote-buying requires big organisational resources, but at the same time brings in too few votes in the aggregate pool of votes. Regarding large polling stations, it can also be explained by the need for big organisational resources, but here at the same time there are no guarantees of encompassing all voters in the concrete polling station.

There was no forging of protocols with added up names of “phantom” voters or deceased persons after the end of the election day, nor supplanting of the polling station protocols with counterfeit ones during the transportation from PECs to DECes or DECes to CEC.

APPENDIX

Polling stations where attempts at vote-buying were registered:

Polling station No. 26 – 25th Multi-mandate Election District (MED) Sofia (Ilinden municipality)

Polling station No. 28 – 23 MED Sofia (Studentski Grad, polling station for disabled persons)

Polling station No. 57 Dimitrovgrad, Southeast Bulgaria

Village of Lyublen (near Targovishte, Northeast Bulgaria)

Polling stations with the most violations:

Polling station No. 28, 23rd MED Sofia (Studentski Grad, polling station for disabled persons):

- Allowing intoxicated persons to vote;
- Immediately before the ballot count, a party proxy is added to the list so that he/she can attend the count (LIDER party);
- No documents were demanded from disabled voters which certify their condition;
- One voter presented an international passport as an ID document instead of an ID card;
- Distribution of food in exchange for voting for a certain party (GERB party);
- A proxy distributed water in big office packages to voters (LIDER);
- Absence of proxies of some political parties;
- The PEC chairman helps voters fold the ballots before stamping the second seal.

Polling station No. 103, Burgas:

- More than two proxies of a certain party in the polling station (LIDER party);
- A person identifying himself as a legal solicitor threatens the PEC chairman;
- Signs on the badges identifying from which political party the persons are;
- A ballot is not stamped and subsequently annulled;
- A PEC member explains how to mark the ballot;
- Presence of uniformed police officers in the polling station;

- PEC members use their mobile phones during the ballot count;
- Conflict between PEC and a representative of party LIDER: physical threats;
- An observers takes part in the stockpiling of ballots during the ballot count;
- More than two proxies in the polling station (NMSP party);

Polling station in the village of Lyublen (near Targovishte, Northeast Bulgaria):

- The mayor is present around the polling station and urges people to vote over the telephone;
- The mayor promises to cover transport expenses for voting;
- Preliminary stamping of ballots;
- Checking in a list wheter a given person has voted;
- Political party posters in close vicinity of the polling station.

Polling station No. 57, Dimitrovgrad:

- The mayor of Dimitrovgrad does not grant access to the polling station to an independent observer;
- Four PEC members fail to appear;
- Proxies campaigning in proximity to the polling station;
- Voters announcig readiness to sell their votes;
- Group voting of people who are not in kinship.

Polling station No. 48, 23rd MED Sofia (Krasno Selo):

- Mineral water with brand saying BSP;
- PEC chairman arrives late and the polling station opens with a 30-minute delay;
- PEC member mentions names of political leaders;
- Taking a voter list out of the polling station (the Blue Coalition);
- Denial to add a person with a regular absentee voting certificate to the voter list.

RESULTS FROM ELECTION-DAY MONITORING IN DECS

The monitoring methodology of Transparency International - Bulgaria is based on thorough investigation of the complaints received on Election Day in all 31 District Election Commissions. The exhaustive nature of the monitoring in DECs allows us to determine the dominant profile of violations which were not addressed or solved by the PECs or were simultaneously submitted at different levels of the election administration. The registered violations, contained in the complaints filed to DECs on Election Day, provide a reliable basis for conclusions concerning phenomena designated here as controlled vote.

The relative share of complaints about *organisational violations* on the day of the National Assembly elections is 50.2%. This is the largest group of violations, which contain signs both of incompetence and of intentional effort to sap the integrity of the electoral process.

The most common organisational violation is late arrival or overall absence of members of the PECs (14.4% of all registered organisational violations). The second largest organisational violation is voting with large number of absentee voting certificates (7.2%) and incorrect registration of proxies or observers.

Illegal advertising and campaigning on election day covers 34.9% of all complaints filed to DEC. Most frequently indicated is the presence of campaigning materials in the vicinity of polling stations (16.2%), followed by the presence of proxies or other political party representatives in front of polling stations (5.0%) and campaigning in a foreign language.

The complaints referring to concrete examples of *vote-buying*, just as during the European Parliament election, form a small relative share. Among them, the most common is cash distribution in front of the polling station or in close proximity to it. This is followed by payment of long-delayed wages or other remunerations.

Among the *other forms of controlled vote*, the most common are compiling lists with the names and personal data of voters; the presence of unauthorised persons observing the voters' behaviour; and taking ballots out of the polling stations.

Organisational violations on election day	50,2 %
Illegal advertising and campaigning on election day	34,9 %
Vote-buying	7,3 %
Other forms of controlled vote	7,6 %

SIGNALS FOR IRREGULARITIES IN THE ELECTION PROCESS

Regarding the elections for Members of the 41st National Assembly of the Republic of Bulgaria, between 26.06.2009 and 05.07.2009 a total of 111 calls were received on the toll-free line of the Advocacy and Legal Advice Centre at Transparency International – Bulgaria referring to various violations of the electoral law or procedure which can most generally be divided into several subgroups, depending on the nature of the reported violations:

I. Organizational violations on Election Day:

- Inadequate number and location of polling stations – 2 (Germany, France - Marseilles);
- Earlier opening of polling district – 1 (Silistra);
- Failure to secure a voting booth – 1 (Varna);
- Delay in opening the polling station – 1 (Stara Zagora)
- Incorrect entry of voter names in the voting register (entry of an unrealistically large number of voters at one address – Veslets St. in Sofia – 1 (Sofia);
- Entry of deceased persons in the voting register – 1 (Radomir);
- Failure to post voter lists at the usual places – 1 (Sofia);

- Violations related to election stationery (transparent envelopes and ballots made of carbon paper) – 6 (Sofia, Stara Zagora, Pernik, Varna, Kalotina);
- Voting with ballots having with one seal only (instead of the required two) – 1 (Sofia);
- Handing to voters two ballots of the same type (instead of one proportional, one majoritarian) (– 1 (Varna);
- Pronouncing personal data of voters out loud - 2 - (Gotse Delchev, Rousse);
- Incorrect folding of ballots – 1 (Galabovo)
- Voting of large groups of citizens with absentee voting certificates (election tourism) – 10 (Sofia, Plovdiv, Varna, Troyan, Gulubovo, Boboshevo, Separeva Banya, Preslavtsi village in the vicinity of Silistra, Lovech, Kyustendil, Brezovo, Vratsa, Loukovit, Kamenar village near Varna, Belgium);
- Suspected voting with counterfeit absentee voting certificates – Yagoda village in the vicinity of Silistra;
- Refusal to enter in the voting register persons with regular personal documents who were in the voter lists for the previous election of Members of the European Parliament – 6 (Pernik, Trustenik village in the vicinity of Pleven, Sofia, Plovdiv, Varna, Bourgas);
- Incorrectly announced address of polling stations – 4 (Kurdjali, Varna, Gabrovo);
- Denial of access to proxies of a certain political party – 3 (Silistra, Bourgas, Gulubovo);
- Taking out an incomplete protocol of results from election day – 1 (Blagoevgrad);
- Closure of polling district in spite of the presence of voters wishing to cast their vote – 3 (Kazanluk, Sofia);
- Problems for disabled persons to vote – 2 (Kozloduy, Sofia);
- Lack of good organisation leading to queues in front of the polling stations – 2 (Sofia, Kiten).

II. Illegal campaigning on Election Day:

- Propaganda on local radio and TV stations – 2 (Plovdiv, Svishtov);
- Electioneering by mayors of respective settlements on election day – 2 (Suedinenie, Vratsa);
- Materials with stickers of certain political parties – 2 (Sofia);
- Promises for tangible improvement of living standards upon voting for a certain candidate – 1 (Krousha village).

III. Vote buying:

- Distribution of money near polling stations – 21 (Sofia, Pleven, Kyustendil, Assenovgrad, Veliko Turnovo, Sandanski, Haskovo, Stara Zagora, Roman municipality in Vratsa region, Rousse, Krichim, Pazardjik, Etropole);

- Offering voters money at the entrance of the polling stations – 1 (Sofia);
- Distribution of food and fuel coupons in return for commitment to vote for a certain political party – 3 (Sofia, Septemvri, Vakarel);
- Incurring of voters' electricity bills in return for voting in favour of a certain political party – 1 (Devin);
- Temporary employment in return for commitment to vote for a certain political party – 1 (Kitka village, Krousha village in Varna region).

IV. Other forms of controlled vote

- Threats of using physical force on citizens appealing against vote buying – 1 (Sofia);
- Compiling lists with personal data of voters – 2 (Kyustendil, Rotterdam);
- Distribution of ballots with marked vote near the polling stations – 6 (Pernik, Varna, Loukovit, Rousse, Gotse Delchev, Sofia);
- Mass presence of vehicles with registration plates different from the local ones – 2 (Krichim, Sofia);
- Transportation of groups of voters to polling stations – 6 (Silistra, Krichim, Kaspichan, Etropole, Plovdiv, Cherven Bryag);
- Collection of personal ID cards of voters – 1 (Baniska village, Rousse region);
- Questioning about the cast vote – 1 (Sofia);
- large number of invalid ballots – 1 (Sofia)
- Issuance of address cards with a retroactive date – 1 (Dolni Okol village, Samokov).

With regard to the alerts received at the Advocacy and Legal Advice Centre from victims of corruption, the legal team undertook actions in two directions:

I. Approaching the Central Election Commission and the District Election Commissions regarding received signals from voters and observers which call for actions to be undertaken for the elimination of violations.

In this context, letters were sent to CEC regarding signals about problems with the voter lists (unfounded inclusion in the prohibitive voter lists of persons against whom no such actions should not have been undertaken), as well as about problems with ballots (part of the ballots were printed in an ink which leaves traces when a filled ballot is folded). Regarding the second problem, CEC sent instructions to DEC and the PEC these ballots to be counted as valid.

Regarding other concrete signals, letters were sent to the respective DEC. The adequate reaction of DEC of the 29th Electoral Region – Haskovo, should be noted. This DEC undertook actions to eliminate a violation regarding an officially registered observer of Transparency International - Bulgaria (the observer had been chased away by the mayor of

Dimitrovgrad on the grounds that he had no right in the polling station). A representative of DEC Haskovo made an inspection and gave instruction for the elimination of the violation. The DEC of 10th Electoral Region – Kyustendil, was approached regarding the presence of a considerable number of proxies of LIDER party in polling station in the town of Dupnitsa. There is no information about subsequent actions. The DEC of 27th Electoral Region – Stara Zagora, was approached regarding the registered problem with the ballots (part of the ballots were printed in an ink which leaves traces when a filled ballot is folded). DEC took action by referring to CEC with a request for instructions.

II. Secondly – and complying with the cooperation agreement concluded between Transparency International – Bulgaria and the Inspectorate Directorate at the Ministry of Interior – the legal team of the Centre approached law-enforcement officials with a total of 22 reports of vote-buying, which came from across the entire territory of the country and which contained concrete data which could serve as a basis for launching investigation by the respective state authorities.

According to information from the Inspectorate Directorate at the Interior Ministry, until August 19, 2009, a total of 21 investigations were carried out based on these alerts involving officials of 11 Interior Ministry regional directorates (Sofia, Sofia City, Lovech, Rousse, Plovdiv, Pazardjik, Kyustendil, Pleven, Varna, Vratsa and Smolyan).

On the basis of the materials collected in the course of the investigations, two pre-trial procedures were launched (in Varna and in Levski), one of which (in Levski) ended with an opinion for termination, while the other is still subject to investigation for a crime pursuant to Article 325 of the Criminal Code - hooliganism.

Checks have been conducted of many individuals and motor vehicles, both among those reported by citizens on the free hotline of the Centre and those established additionally; memoranda of police warning were handed to six individuals for non-compliance with the established order; and 14 individuals were served penalties for established violations of labour law.

To date, there is information that 16 of the 19 checks launched (with the exception of the pre-trial procedures) have been completed, with refusal to launch pre-trial proceedings on one of the following grounds:

- Lack of sufficient data for opening pre-trial procedure (unconfirmed information, lack of incriminating evidence or cash on the checked persons) – 8 cases;
- Established untruthfulness of the information given – 2 cases;
- Objective and factual circumstances which do not show evidence of crime, established beyond reasonable doubt - 6 cases.

The incoming information from the Interior Ministry is indicative in several directions:

- The interaction between state institutions and NGOs regarding prevention and fighting violations is possible and can produce good results;
- It is still exceptionally difficult, not so much to establish as to prove, by the means and mechanisms of the current the Code of Criminal Procedure, this type of perpetrations detrimental to public interest, mostly because of the following circumstances: the information is received *post factum*; the mutual interest in completing the crime for both the giving side and that receiving the pecuniary benefit; the fact that the subject of crime – cash – is ubiquitously used and without the use of special surveillance means it is difficult to establish the purpose of the money found on the suspects; as well as the reluctance of witnesses of such actions to sacrifice their anonymity.

PART IV

INDEX OF THE CONTROLLED VOTE

The monitoring of the election of Bulgarian MEPs and the election of MPs in Bulgaria's 41st National Assembly was carried out according to a methodology of Transparency International – Bulgaria which aims to register verifiable indicators for vote-buying, illicit control over the voters' free will, as well as other indicators for election violations endorsed in the practice of international monitoring organisations (organisational and technical violations, illicit campaigning, etc.)

METHODOLOGY OF THE MONITORING

The controlled vote is an instrument of political corruption in the electoral process. It consists of a series of actions coercing voters into supporting a certain candidate. Vote-buying is only one manifestation of controlled vote, which covers all means of influence and illegitimate pressure on the voters' free choice.

The composite character of the “vote-buying” phenomenon suggests the use of various research tools in the compilation and registration of information about election process violations. A essential part of the illegitimate practices for impingement on the right to free and secret vote are not subject to direct registration via quantitative research methods. Therefore, the **monitoring agenda** includes co-administration of several methods of registration and analysis:

- *Secondary analysis* of the compiled data on vote-buying from the last six years: from local elections (2003), parliamentary elections (2005), presidential elections (2006), European Parliament and local elections (2007), as well as partial elections which took place in-between;
- *Network analysis of corruption risk*, which determines the degree of corruption risk in the existing legislative, judicial and institutional environment;
- *Comparative analysis* of the decisions taken by the Central Electoral Commission (CEC) in the pre-election period and during election day in the 2007 European Parliament election and the 2005 Bulgarian parliamentary elections;
- *Public opinion survey* on electoral participation and vote-buying practices in the period January – July 2009;
- *Documentary analysis* of complaints filed on election day to the District Election Commissions (DECs) in the 2009 elections for European Parliament and National Assembly;
- *Log monitoring and registration* of the violations and complaints submitted on election day to the Precinct Election Commissions (PECs) for the 2009 European Parliament and National Assembly elections;
- *Study of cases* of progress and results of the pre-trial investigation into the signals for vote-buying and offences against the political rights of Bulgarian citizens.

In the co-application of these methods in terms of overall assessment of the integrity of the electoral process, the following main **categories of analysis** are used:

- Electoral map of violations registered in previous elections;
- The relative share of voters, falling into the corruption risk area;
- Controlled vote mobilisation coefficient;
- Probability assessment of the relative share of the controlled vote among voters taking part in the elections;
- Index for establishing the controlled vote.

The electoral map of the registered violations of electoral law, pertaining to vote-buying and other forms of controlled vote, determines the critical areas in which there are systemic prerequisites for political corruption in the electoral process.

The relative share of voters, falling into a political corruption risk area in the electoral process, is used to determine the scope of variation of the controlled vote manifestation.

The mobilisation coefficient regarding this relative share of voters at risk is determined by the number and character of the registered complaints.

The mobilisation coefficient determines **the probability assessment of the relative share of the controlled vote** among voters who participated in the election.

The overall value of the **Index** is calculated on the basis of quantitative and qualitative data gathered using the above methods relative to the registered mobilisation coefficient. The Index's value, as well as that of all other indices used by the world anticorruption network Transparency International, varies from 0 (highest degree of controlled vote) to 10 (highest possible degree of freedom of the vote).

Such assessment research methodology of political corruption in the electoral process is developed and implemented for the first time in Bulgaria and in the practice of Transparency International. Its consistent application in two consecutive national elections shows a high degree of reliability and sustainability of the results produced.

The reliability of this new tool for determining the integrity and freedom of vote allows for the assessment and comparison of the influence of different factors on the right to personal political choice. The use of this instrument makes possible a summarised presentation of the results of electoral process researches which are different in nature and scope, if the necessary guarantees for reliability, credibility and democratic representation are present.

The selection and integrated application of those research methods provides possibilities for verification and reliability control. The high level of standardisation in the methodology's application makes its usage appropriate in the conduct of national and international comparative studies of political corruption in the electoral process.

RESULTS

The secondary analysis of the data on electoral law violation portrays a high degree of persistence of specific violations as well as repeatability of places with highest occurrence of violations. On the basis of this analysis, an *electoral map* of violations was made, comprising vote-buying and offences against the political rights of Bulgarian citizens, as well as

typologies of the most frequent violations of electoral law related to political corruption in the electoral process.

Following the application of the **network analysis of corruption risk**, relatively high levels of risk of political corruption in the election process were registered:

- Presence of concerted actions aimed at exercising illegitimate pressure on the free will of Bulgarian voters during the preparation and conduct of the European Parliament and National Assembly elections;
- Concentration of significant financial and organisational resources, which were put to use during the election campaign;
- In the period from end-2008 to the actual holding of the European Parliament and National Assembly elections, an increase in political pressure was registered by the ruling majority on the activities of government bodies and the independent media;
- The activities of the legislature and the executive were aimed at altering electoral rules in the last possible minute without the necessary degree of publicity and transparency.

The secondary, **comparative analysis of the decisions taken by the CEC** on complaints regarding vote-buying and other forms of controlled vote submitted during the election campaign period and on election day in the European Parliament and National Assembly elections (in 2007, 2009 and 2005 and 2009, respectively):

- Corroborates the relevance of the electoral map of violations which were referred to in the complaints to CEC;
- Shows high degree of re-occurrence of the motives behind the complaints filed to the electoral administration;
- Registers certain dynamism in the number of filed complaints and the respective CEC decisions. The total amount of complaints in 2009 has grown;
- Provides the necessary information for a possible subsequent *assessment of the effectiveness of the actions taken by election administration*.

The results of a **public opinion survey** on electoral participation and vote-buying, conducted from November to December 2008 by the National Centre for the Study of Public Opinion (NCSPO) and commissioned by Transparency International - Bulgaria, show that, responding to a direct question, 4.0% of the surveyed state they would accept money in exchange for voting in favour of a certain political party.

A second NCSPO survey, conducted from February to March 2009, showed that 7.1% of the respondents did not care whether the election results were falsified or not. As in the first poll, the social profile of those who declared a high level of acceptance of vote-buying practices was dominated by people with elementary or lower education, representatives of the Roma community and young people aged 29 years or lower who live in smaller settlements.

A public opinion survey conducted by Open Society Institute – Sofia in the period March-April 2009 draws a more detailed picture of attitudes toward vote-selling. According to 11.7% of the respondents, vote-buying is a normal way to attract voters, while for another 3.5% it is a “European practice”. When directly asked, 4.8% of the surveyed stated that they would take money in exchange for voting for the political party which offered it to them, and 14.1% indicated that they would take the money but vote by conviction. Another 5.5% of the respondents said they would take the money and not vote at all.

An express survey by the NCSPO, held at the end of May and completed on June 1, 2009, showed that already 12.2% of the voters have expressed readiness to vote in exchange for payment. More than half of them (6.4%) declared they were ready to sell their vote, but only to a party with which they sympathise, while 5.8% said that they would vote for any party offering money.

Notwithstanding the various research tools used in the above public opinion surveys, the results indicate a specific mobilisation of voters who declared their readiness to vote in exchange for payment. If at the end of 2008 the “hard core” of people ready to sell their vote is around 4.0%, on the eve of the European Parliament elections this figure reached almost 6.0%. At the same time, the periphery of those voters who would accept money or other form of “payment” (job offering, guarantee for the buyout of agricultural produce, etc.) for voting in favour of a political party is expanding rapidly.

Based on these studies, the relative proportion of active voters who would participate in schemes of vote-buying or controlled vote was determined. Its value is 12.2% of all Bulgarian citizens who are eligible to vote and are permanent residents of the country.

PROBABILITY ASSESSMENT OF THE PROPORTION OF CONTROLLED VOTE IN THE ELECTION FOR BULGARIAN MEMBERS OF THE EUROPEAN PARLIAMENT AND BULGARIAN NATIONAL ASSEMBLY

As a proportion of the number of voters who took part in the European Parliament election (set by CEC at 2,601,677 people), this figure represents slightly more than 425,000 voters, or 16.4% of the total number. *The mobilisation coefficient relative to the total share of voters who expressed in one degree or another readiness to sell their vote equals 53% of the share of voters within the risk area.*

In the National Assembly election, the registered mobilisation coefficient was higher, or 65% of the share of voters at risk. At the same time, the higher voter turnout reduced the total relative weight of the controlled vote on the final election results. Thus, *notwithstanding the higher mobilisation for controlled vote, its weight dropped relative to the European Parliament election from 16.4% to 14.5%.*

The specific social structuring of voters within the corruption risk area suggests a higher level of mobilisation among some of them compared to the rest. Most likely, full mobilisation of this specific segment of the Bulgarian electoral body is not possible, but this figure reflects the wide pool which is likely to be the object of pressure when violating the right to free choice.

Risk assessment based on the secondary analysis of vote-buying in previous elections shows convincingly that the election districts and settlements, where the concentration of vote-buying had been highest, recorded high electoral activity. Based on that, as well as on the final survey results on election day, the Index of the registered controlled vote was produced.

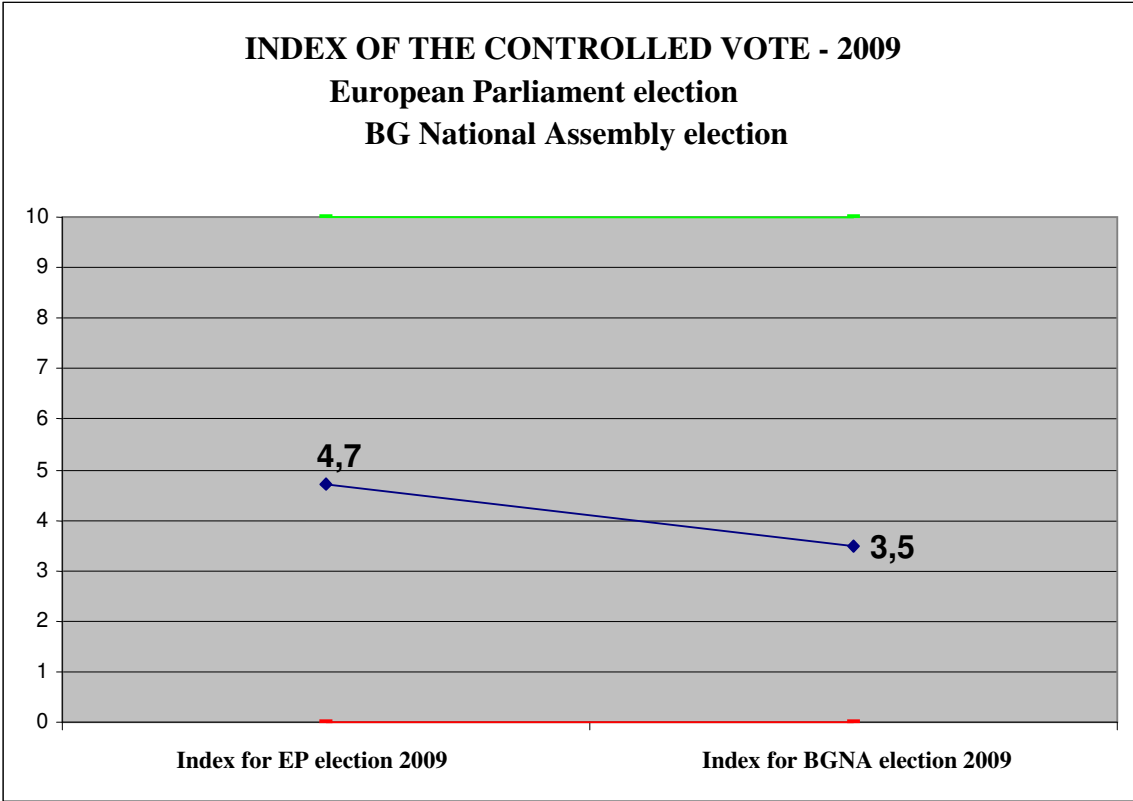
INDEX OF THE REGISTERED CONTROLLED VOTE

The value of the Index of the registered controlled vote is determined on the basis of the summary of the analysis of complaints submitted to DEC and the registered violations

observed in the polling stations and PECs on Election Day. The ratio between the registered manifestations of vote-buying and controlled vote, on the one hand, and the assessment of its mobilisation level derived from the sociological surveys, on the other, form the basis of this measurement of the degree of integrity and freedom of the electoral process.

The derived value of Index of the registered controlled vote in the European Parliament election in Bulgaria is **4.7** on a scale of 0 (completely controlled vote) to 10 (wholly guaranteed vote freedom). This value remains in the area of high corruption risk (relating to all values below 5.0). Key significance for the final value of the Index has the range of offences involving the activities of the electoral administration in fighting the attempts at vote-buying and control over the voters' behaviour.

The value of the Index for the National Assembly election is lower due to the higher coefficient of mobilisation. *In this vote, it was 3.5* on a scale of 0 (completely controlled vote) to 10 (wholly guaranteed vote freedom). The lower registered value raises concerns about the integrity and transparency of the election process.



CONCLUSION

A comprehensive monitoring of the nature of complaints on violations in the electoral process is conducted for the first time in Bulgaria. Apart from the character of the controlled vote, the analysis of the compiled information allows for the investigation of the activities of the election administration. The registered trends and the analysis of the controlled vote will help build a comprehensive platform for amendments to the election law, facilitating the restriction and neutralisation of political corruption in the electoral process.

The high degree of public focus on the issue of vote-buying apparently has led to a change in the strategies of the mediators in the acquisition of legitimate political influence and electoral presence. The recorded forms of controlled vote in the complaints filed to DEC and PECs show that there is a reorientation to other forms of engendering dependency and securing illegitimate advantage that are based mainly on economic and social dependence in the context of growing public concern and the development of the economic crisis.

The parallel observations on the course of the election campaign show that relatively new players active in influence peddling acquire an increasingly critical role in the realisation of corruption schemes in the election process. On the one hand, those are representatives of local structures of the organised crime; on the other hand, those are proxies and activists of political parties, who are becoming more and more important in vote-control and vote-buying.

The analysis of the obtained data confirms the relevance of the proposals of the Civil Society Coalition for Free and Democratic Vote for amendments to the electoral law. Substantial part of the violations in the electoral process are caused by lack of political will to build a reliable legal framework, which in turn suggests the building of specific administrative capacities in the election administration.

The specific geographic occurrence of vote-buying and controlled vote requires a reassessment of the effectiveness of the institutions engaged in safeguarding the political rights of Bulgarian citizens. The low level of social competence contributes to the emergence of conditions favourable for a persistent corruption of the vote of Bulgarian citizens.

In the past European Parliament and National Assembly elections, for the first time cases were registered of systematic control over the behaviour of voters with the instruments of economic coercion. This form of *corporate vote* is not subject to reliable registration via surveys or observation based on statistical sampling methods due to the specific conditions in which it exists. The districts where threats were registered toward private company employees to support a certain political party were relatively isolated parts of the country where one big company was the decisive generator of growth, income and employment.

Among the identified types of controlled vote, at least *three forms of coercion, based on economic dependence*, are discernible. The first of these is associated with saving one's job. The second occurs most often in agricultural areas and is related to the buyout of agricultural produce. The third is the most widespread among the Roma community and is related to the practice of loan-sharking. We have reasons to believe that networks of local loan-sharks and regional and local structures of the organised crime exerted pressure on relatively large groups of voters to support one or another political party or coalition.

The effective response to these forms of controlled vote requires a much higher degree of coherence in the activities of investigators and the law enforcement, as well as reaffirming the inter-institutional team principle in the investigation of such crimes against the political rights of Bulgarian citizens. In this respect, the measures taken by the Chief Prosecutor of the Republic constitute a step in the right direction, but to date the criminal law practice involving such charges remains scarce.

RECOMMENDATIONS

The substantial number of organisational irregularities and violations on election day requires much more attention to be paid to the selection procedures, activities and control of the Precinct Election Commissions (PECs). Determining their composition and ensuring the

necessary level of competence of their members constitutes a crucial factor in reducing the incidence of vote-buying and controlled vote. The results of this report and the election-day monitoring call for the CEC to engage more seriously in the control over the formation of PECs and the training of their members.

There is a visible tendency of multiplication and sophistication of the forms of exerting pressure on the political will of the Bulgarian citizens. An upgrade in the levels of competence and access to information is needed for investigating agencies dealing with offences against the political rights of Bulgarian citizens. An essential part of these efforts should be coordinated with the authorities overseeing the accountability, publicity and transparency of political parties' activities and election campaign financing.

Further efforts and administrative capacity are needed in carrying out inspections of the elections' conduct and fairness. The legislative decision ruling that members of the PEC must enter the voters' Unique Civic Numbers in the voter lists upon voting may create problems in verifying their authenticity. No effective mechanisms still exist for the sanctioning of violations made by the election administration and the proxies and activists of political parties who compromise the fairness and freedom of the vote.

The established practice for creating joint inter-institution teams comprising representatives of the investigating authorities and headed by the respective district prosecutor's offices and specialised units investigating corruption and crimes against the political rights of Bulgarian citizens, is the most effective form of combating political corruption in the electoral process. Their capacity should be increased in order to ensure the necessary degree of coordination and consistency of their actions.

The character of the "controlled vote" phenomenon suggests not only the conduct of preliminary investigations and observations on election day, but also a careful analysis of the situation immediately after the announcement of election results, when the peddling with electoral influence actually concludes.

PART V

PROSPECTS FOR LEGISLATIVE IMPROVEMENT

COMPLIANCE OF BULGARIAN LEGISLATION WITH INTERNATIONAL ELECTION STANDARDS FOR CONDUCTING ELECTIONS

1. INTRODUCTION

1.1. International standards

The instruments of international law quoted in this section have been adopted by the European Union (EU), the Council of Europe (CoE), the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations (UN).

The EU, CoE and UN are legal persons under international law. The OSCE participating States have agreed that the OSCE is not a legal person under international law.

EU, CoE and UN treaties, conventions and covenants, or more generally, treaties are legally binding under international law if signed and ratified by the member States. If so, they become part of national legislation.⁵ However, enforcement can still be delayed until the official publication of the respective ratification documents. If ratification is still pending, conventions are not legally binding, although if signed by the respective government, the latter takes the obligation not to undertake steps running contrary to the convention's provisions or defeating its objectives.

Declarations of the UN General Assembly are part of customary or "soft" international law, which also includes case law, and are politically binding. UN and CoE comments and commentaries represent authoritative interpretations of the respective provisions of international law and describe good practices.⁶ The OSCE documents are politically binding for participating States, which is reinforced by the fact that all decisions of the OSCE are taken by consensus and generally follow provisions of international law.

1.2 Bulgarian Constitution and International Law

Bulgaria is a full-fledged member of the EU, CoE, OSCE and UN. In this context, the Constitution of Bulgaria stipulates⁷ that: "The international treaties ratified in line with the constitutional order, published and enforced for the Republic of Bulgaria, represent part of the domestic law. They take priority over such provisions of domestic law which may contradict

⁵ In some cases, international law can be directly applicable; alternatively, States could incorporate the treaty provisions into domestic legislation.

⁶ Handbook for European Union Election Observation, Second Edition, European Commission, 2008; Section 2.2, p.16.

⁷ Article 5(4).

them.” Therefore, compliance with international law is a key element of the rule of law in Bulgaria.

1.3 Bulgarian Elections after 1989

In the period between October 1991 and November 2007, elections in Bulgaria have been conducted in an overall compliance with international standards and good electoral practices. While there has always been room for improvement of the legal framework for elections, the Central Election Commission (CEC) was able to institute a practice that was conducive to the conduct of generally transparent and accountable elections and enjoyed public confidence in the election process. This was also recognised by international election observers, notably in the 2001 Final Report of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).⁸

Notwithstanding this positive assessment, after 2001, a negative tendency related to an ugly phenomenon publicly referred to as “vote-buying” emerged. Initially, “vote-buying” was intended to mean paying inducements⁹ to voters, close to or on election day, in exchange of them casting their vote for particular parties. As the State largely ignored this development, its scale increased and inducements diversified. This was noted by OSCE/ODIHR observers in their later reports.¹⁰

Prior to the 2006 election for President and Vice-President, “vote-buying” was criminalised, but enforcement failed to meet public expectations. Although criminal penalty provisions were later amended and enhanced on a few occasions, the scale of “vote-buying” increased threatening the fundamentals of democracy. This was often wrongfully related to “disillusion” of voters with the established “political model” in Bulgaria. Prior to the July 5, 2009, parliamentary election, civil society intensified its efforts in fighting “vote-buying”.

2. KEY INTERNATIONAL STANDARDS

2.1 European Union standards

Key to full-fledged membership of a State in the European Union are the so called political criteria, also known as the Copenhagen Criteria of 1993. The Copenhagen Criteria require “... stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”. For the European Council to decide to open negotiations for accessions, the political criteria must be satisfied.

2.2 Council of Europe standards

⁸ Available at http://www.osce.org/documents/odihr/2001/08/1411_en.pdf.

⁹ Initially, inducements included small amounts of cash or/and “free lunch” such as grill and beer.

¹⁰ For example, the OSCE/ODIHR Final Report on the 2006 presidential election available at http://www.osce.org/documents/odihr/2007/02/23404_en.pdf.

The CoE Convention for the Protection of Human Rights and Fundamental Freedoms¹¹ (CPHRFF) enshrines a number of individual rights and freedoms and provides for international judicial machinery for their protection – the European Commission and Court of Human Rights. The Convention was drafted on the basis of the UN Declaration of Human Rights. It came into force in 1953 and is now binding for all member states of the Council of Europe. Bulgaria ratified the Convention, which entered into force in Bulgaria on September 7, 1992.

The Additional (First) Protocol to the (CPHRFF), which was signed in March 1952, adds the following to the list of fundamental rights protected under the Convention: the right to the enjoyment of property, the right to education and the right to free elections by secret ballot. This Protocol is in force in all member States except Andorra and Switzerland (which has signed it).

The CPHRFF established¹² that “In the determination of his civil rights and obligations or [...], everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.” In addition, it sets forth¹³ that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Furthermore, in accordance with Article 3 of the First Protocol to the CPHRFF,¹⁴ “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” It was thus established that the right to free elections is a human right.

In 2002, the CoE Commission for Democracy through Law (the Venice Commission) published Code of Good Practice in Electoral Matters.¹⁵ This Code covers a broad range electoral issues reflecting on current good practice and possible admissible exception in special circumstances. According to the Code, European tradition in the conduct of democratic elections is based on five pillars: (a) universal suffrage; (b) equal suffrage; (c) free suffrage; (d) secret suffrage and (e) direct suffrage.

2.3 Organisation for Security and Cooperation in Europe standards

The landmark 1990 OSCE Copenhagen Document¹⁶ includes commitments with regard to a broad spectrum of human rights issues. Notably, in Paragraph 2, it emphasises that “[...] the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950, available at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-9014916D7A/0/EnglishAnglais.pdf>. It would appear that this convention is often referred to as the “European Convention on Human Rights”.

¹² Article 6.1.

¹³ Article 13.

¹⁴ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952, available at the website of the Convention.

¹⁵ Available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

¹⁶ Document of the Copenhagen Meeting of the Second Conference on the Human Dimension of the CSCE, Copenhagen, 5-29 June 1990, available at www.osce.org/odihr/1990/06/13992_en.pdf.

providing a framework for its fullest expression.” Specific commitments undertaken with regard to the conduct of elections are listed in Paragraph 7, and these are largely based on UN and CoE international law.

A key element of the OSCE/ODIHR human dimension mandate is the promotion of democratic elections. By virtue of Paragraph 8,¹⁷ the OSCE/ODIHR has been bestowed by the OSCE participating States with a unique mandate for election observation. This paragraph represents the first and only intergovernmental agreement on providing a standing invitation for election observation, whereby participating States observe each others elections.

The objective of election observation, in the OSCE context, is to establish whether a given election process complies with the OSCE Commitments¹⁸ in accordance with the 1990 OSCE Copenhagen Document, identify areas for possible improvements of the process and provide recommendations to achieve these improvements.

2.4 United Nations standards

Article 1 of the 1948 Universal Declaration of Human Rights¹⁹ states “[...] All human beings are born free and equal in dignity and rights” and in article 21(3) that the “will of the people shall be the basis of the authority of government. [...]”

The International Covenant on Civil and Political Rights (ICCPR) guarantees fundamental civil and political rights, without distinctions²⁰ such as race, colour, language, religion, national or social origin. The ICCPR entered into force on 23 March 1976, after a sufficient number of UN Member States had ratified the Covenant. Bulgaria ratified the ICCPR on 21 September 1970.²¹

Key to this report is Article 25 of the ICCPR, which stipulates:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be **by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;**

¹⁷ Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”

¹⁸ In particular, Paragraphs 6, 7 and 8 of the 1990 OSCE Copenhagen Document. However, analysis of compliance is not limited to the implementation of these specific commitments.

¹⁹ Available at <http://www.un.org/Overview/rights.html>.

²⁰ Article 2.

²¹ According to http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec. Ironically, it would appear that Bulgaria was one of those UN Member States which contributed to reach the minimum number of ratifications to enforce the ICCPR.

(c) To have access, on general terms of equality, to public service in his country.

Good practice for the implementation of the ICCPR has been introduced through the General Comments to the Covenant. Relevant to the considerations below are points 20 and 21 of General Comment 25 adopted at the 57 Session of the UN Human Rights Committee on 12 July 1996.²² Due to the importance of these provisions with regard to the key concerns related to the 5 July 2009 parliamentary elections in Bulgaria, Sections 3.2 and 3.3, they are reproduced in full text:

ICCPR General Comment 25

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. **States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process.** Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. **The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another.** The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

3. BULGARIAN ELECTIONS IN 2009 AND KEY INTERNATIONAL STANDARDS

3.1 Adoption of the Law on Election of People's Representatives (the election law)²³

The Law on Election of People's Representatives was finally adopted less than 3 months before the election. The Parliament introduced amendments to the election law in late April 2009. Amendments included key issues such as the introduction of a new electoral system²⁴ which became a point of deep political controversy.

Amendments were introduced by a parliamentary majority comprising the people's representatives elected on the tickets of the Bulgarian Socialist Party (BSP)²⁵ and Movement for Rights and Freedoms (MRF). The parliamentary opposition did not support the new system.

²² Available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?).

²³ Law on Election of People's Representatives, Official Gazette, N 31/2009, enforced on 24.04.2009.

²⁴ The formula implemented to transform votes cast for parties and candidates into seats in Parliament

²⁵ One representative of the BSP voted against the new electoral system.

The adoption of important changes in the electoral system, less than three months before election day and without broad political agreement on the substance of the amendments falls short of good electoral practice.²⁶ It erodes public confidence and raises concerns related to political intentions to secure victory before the contest has started.

3.2 Secrecy of the vote and “vote-buying”

Both the Constitution²⁷ and the election law²⁸ reproduce a part of Article 25(b) of the ICCPR, Section 2.4 This is in partial compliance with the international standard. However, the Bulgarian legislation remains silent with regard to the guarantees for the expression of the free will of the voters, as required by the ICCPR.

The secrecy of the vote is a subject of broader interpretation referring to the secrecy of political choice in the overall election process, rather than the act of voting alone. This is the way to understand point 20 of General Comment 25, which requires that voters should be protected from “any form of coercion or compulsion to disclose how they intend to vote”. This requirement reveals the need of State guarantees, including a provision in the Constitution, for the free expression of the will of the voters, which would exclude “vote buying”. Regrettably, at the early stage of the electoral campaign, there were political parties (including among the incumbents) refraining from clear commitments to fight “vote buying”.

According to non-governmental organizations and the media, voters were not protected in line with the requirements of the UN Human Rights’ Committee. There were reports about cases of:

- (a) Collection of personal data including through (copies of) identity documents to be used illegally on Election Day,
- (b) Direct payment (including free beer and grill) in return of promises for specific voting and/or proof for such voting (e.g., through mobile phone pictures of the marked ballot) and
- (c) Coercion through economic means at the location of employment under the disguise of “kind request for support” by the employer of the company.

The latter reminds of electoral campaigns at the places of work in the very early 1990-ies.

The State criminalised²⁹ some modalities for “vote buying”. However, this ugly phenomenon continues to erode the fundamentals of democracy. The State also introduced in the election law the requirement³⁰ that the text “Buying and Selling Votes is a Crime” be included in campaign posters and other materials.

Regrettably, “vote deals” are difficult to prove and they affect predominantly economically vulnerable segments of the population that are unlikely to have heard a lot about the ICCPR. Moreover, there is a fine line between the more general “trading with influence” and the usual

²⁶ CoE Venice Commissions’s Code of Good Practice in Electoral Matters, II.2.b, page 10.

²⁷ Article 10.

²⁸ Article 2.

²⁹ Section 3.III of the Special Part of the Criminal Code.

³⁰ Article 58 (2).

political campaigning, based on the so called “campaign promises” anticipated to perform well in a given election.

Penalty provisions could be broadened and language could be made more precise. Consideration could be given to introduce a “fast” process in hearing alleged “vote buying” cases. Law enforcement agencies remain in debt to society.

In the fight against “vote-buying” law enforcement agencies could consider to make use of legal provisions included in legislation that is not directly related to elections. For example, Article 11 of the Law on Bulgarian Identity Documents provides that “No one shall give or accept as deposit or use or provide for use by others a Bulgarian identity document of another person”. This provision offers the opportunity, in some cases, to penalize the collection of voters’ personal data, relieving the law enforcement from looking for proofs of “vote buying” in the context of material gains. It would suffice to equalize the sanctions for violating the above provision with the sanctions envisioned in Section 3.III of the Criminal Code.

3.3 Electoral System

According to international law, the choice of an electoral system is a sovereign matter as long as such choice is in line with Article 25(b) of the ICCPR. The Constitution of Bulgaria does not specify the type of the electoral system, leaving this issue to be addressed by the election law.

Since 1991, the election system in Bulgaria was based on proportional representation with regional closed party lists and a 4% eligibility threshold calculated State wide. Legal provisions allowed independent candidates to run as well. In this context, the previous electoral system complied with international standards. The system in use between 1991 and 2009 was one of the best systems in the context of ensuring proportional representation, although when a regionally strong party passed the 4% threshold it got most of its seats in the geographical region of its support.

The April 2009 amendments to the election law stipulated that 31 people’s representatives were to be elected by majoritarian representation in single-seat electoral districts³¹ and 209 people’s representatives were to be elected by proportional representation from candidate lists of political parties and coalitions, registered in multi seat electoral districts.³² The law also tasked³³ the Central Election Commission to determine the number of seats in the multi seat electoral districts on the basis of a **uniform norm of representation** for the entire State depending on population numbers.

The newly introduced electoral system created two problems related to compliance with international standards:

Problem 1

Two different categories of seats were created in the National Assembly, which were unequal in terms of definition and numbers of represented citizens:

- 209 seats, allocated to the multi seat electoral districts (MSED) on the basis of a **uniform norm of representation**, and

³¹ Article 6 (2).

³² Article 6 (3).

³³ Article 23 (1) 12.

- 31 seats for which such a norm does not apply and each majoritarian people's representative represented between three and twelve times more citizens than any representative elected by proportional representation.

There is no unitary State with established democratic traditions, where there is a unicameral parliament comprised of two categories of seats unequal in terms of representation.

Problem 2

Votes cast for candidates in the single seat electoral districts have different weights (up to four times), in the various districts and were therefore unequal. This fact runs contrary to Article 25 (b) of the ICCPR in the context of point 21 of the General Comments on this article, Section 2.4. Further to that, the Council of Europe's Venice Commission recommends difference up to 15% between individual single seat electoral districts.³⁴ Finally, this violates Paragraph 7.3 of the 1990 OSCE Copenhagen Document.³⁵ Such inequality creates a potential for people's representatives elected from a given single seat electoral district to claim that they represent more citizens compared to other representatives and are, consequently "more equal" than their colleagues. This hypothesis further underscores the concerns raised by Problem 1.

For example, the Central Election Commission³⁶ allocated to multi seat electoral district N 3 (Varna) 12 seats and for multi seat electoral district N 5 (Vidin) - 3 seats, in line with the uniform norm of representation provided for by the law. This meant that the population of district N 3 was approximately four times more than that of district 5. However, the respective single seat electoral districts N 3 and N 5 were to return one people's representative each through majoritarian representation. Consequently, the weight of electors' votes in single seat electoral district N 3 was four times less than in single seat electoral district N 5 with regard to the majoritarian election.

The April 24, 2009, amendments to the election law with regard to the election system run contrary to international standards, such as Article 25(b) of the ICCPR, Paragraph 7.3 of the 1990 OSCE Copenhagen Document and the Code of Good Electoral Practice of the Council of Europe's Venice Commission in relation to the equality of suffrage.

Furthermore, some amendments to election law, which are a consequence of the introduction of the 31 single seat electoral districts, do not comply with unwritten principles of a majoritarian election. Illustrative examples include (a) the possibility to vote away from one's polling station including in another single seat electoral district with an absentee voting certificate for the majoritarian election and (b) the principle of filling vacancies opened by a people's representative elected via majoritarian election by a candidate from the party list. In addition, the constitutional provision that people's representatives represent the entire people rather than their own electorate, Article 67 (1), may not be in full compliance with the principles of majoritarian elections.

It is regrettable that the political sponsor of the new electoral system that runs contrary to international standards, Bulgarian obligations under international law and good electoral practice was the Head of State. He insistently argued about the need of majoritarian representation on the basis of any single seat electoral districts, disregarding credible proposals for the introduction of majoritarian elements in the existing system offered by domestic electoral experts.

³⁴ The CoE Venice Commission's Code of Good Practice on Electoral Matters, Chapter 2, p.6.

³⁵ [...] The participating States will [...] guarantee universal and equal suffrage to adult citizens. [...]

³⁶ Decision HC-10/06.05.2009.

3.4 Decision of the Constitutional Court

Following the final adoption of the election law, 70 members of Parliament filed a request to the Constitutional Court to declare “unconstitutional” a series of provisions constituting some of the amendments to the election law. Key requests included (a) abolishment of the newly introduced 8% eligibility threshold for coalitions of political parties which the complainants considered to run contrary to the constitutional principle of political pluralism, (b) abolishment of the newly introduced 31 single-seat electoral districts coinciding geographically with the respective multi seat electoral districts which violated the equality of passive suffrage, as well as a series of provisions resulting from these single seat electoral constituencies, and (c) abolishment of some provisions regulating the replacement of elected members of parliament in cases where their seats remained vacant.

The Constitutional Court decided³⁷, on 12 May 2009, to

- (a) Declare “unconstitutional” the newly introduced 8% eligibility threshold for coalitions of political parties. One Justice stated a dissenting opinion on this issue.
- (b) Decline the request to abolish the newly introduced 31 single seat electoral constituencies and the provisions resulting from this amendment, as six Justices supported the request while the remaining six Justices did not support it.
- (c) Decline the requests for abolishment of provisions regulating filling vacancies in Parliament. Five Justices signed dissenting opinions with regard to this request.

While the introduction of the 8% eligibility threshold by the parliamentary majority was politically motivated, the implementation of different thresholds for single political parties and for coalitions is in place in a number of States in Europe, including EU Member States. It does not appear to run contrary to international standards in the context of the available legal instruments.

With regard to the newly introduced 31 single seat electoral districts, the decision of the Court raises concerns as it does run contrary to international standards, notably the requirement for the equality of the vote provided for by the ICCPR, the 1990 OSCE Copenhagen Document and the CoE Venice Commission’s Code for Good Practice in Electoral Matters. In this respect, the Court failed to protect fundamental civil and political rights of Bulgarian citizens. Disregard for international standards is tantamount to disrespect for the rule of law, in violation of the EU Copenhagen Criteria of 1993 which threatens the EU membership of Bulgaria.

3.5 Disputing the Legality of the Election

The ICCPR requires³⁸ that “Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

³⁷ Decision on Constitutional Case N 5 of 12 May 2009.
³⁸ Article 2.3(a).

Further to that, the CPHRFF provides³⁹ for protection of the right to a fair trial “[...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Finally, the CoE Venice Commission’s Code of Good Practice in Electoral Matters provides⁴⁰ that “[...] the appeal body in electoral matters should be either an electoral commission or a court. [...] In any case, final appeal to a court must be possible.”

The Bulgarian Constitution stipulates that⁴¹ the “legality of the election may be challenged at the Constitutional Court in a manner determined by a law” and that⁴² “the Constitutional Court acts by the initiative of at least one fifth of the people’s representatives, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General.”

The election law stipulates⁴³ that “The candidates for people’s representatives and the central boards of the parties and coalitions contesting the elections can dispute the legality of the election through the institutions indicated in article 150 (1) of the Constitution of the Republic of Bulgaria at the Constitutional Court within 14 days of the announcement of the results by the Central Election Commission.”

The election law does not include a specific provision for appeal against the decision of the CEC announcing the election result. In this context, an administrative decision is not subject to a judicial review. This runs contrary to the CPHRFF, the Venice Commission’s Code for Good Electoral practice and the 1990 OSCE Copenhagen Document.⁴⁴

There are circumstances, where a potential complainant⁴⁵ may not be in a position to address the Constitutional Court in line with Article 150 (1) of the Constitution, even if there might be sound reasons to dispute the legality of the election. Such complainant must rely on the agreement of a State institution or at least 48 members of (the new) Parliament to support the appeal.⁴⁶

The understandable approach to minimize spurious appeals against electoral results declared by the CEC creates a potential to unreasonably restrict the right to justice, in contravention to the ICCPR and the CPHRFF.

3.6 Election Administration

Generally, there are no international standards about particular arrangements for the composition of the election administration. There are several principal modalities for the composition and performance of central election administration bodies. Any of these can work in an environment where there is clear political will to conduct elections in line with international standards and good practice.

³⁹ Article 6.1.

⁴⁰ Article 3.3.

⁴¹ Article 66.

⁴² Article 150 (1).

⁴³ Article 112.

⁴⁴ Paragraph 5.10.

⁴⁵ For example, a political party of lesser influence in the run-up to a given election or an independent candidate.

⁴⁶ At the time of writing, the Constitutional Court has accepted to consider an appeal of a political party presented in the new Parliament against the official election results of the 5 July 2009 parliamentary elections. However this appeal was submitted to the Court by the Prosecutor General.

Point 20 of General Comment 25, underscores the need of an “independent” election administration; however, there is no further elaboration on the adjective “independent”. The general understanding, expressed also in the CoE Venice Commission’s Code of Good Practice in Electoral Matters, is that the election administration must perform its obligations with regard to the implementation of the law in a professional and efficient manner, and be free from undue interference by the classical branches of power.

There are a limited number of cases when the Bulgarian CEC has departed from professionalism and efficiency. However, during these elections, there was a feeling that at times the CEC worked under the political control of the outgoing authorities. For example, all spokespersons of the CEC were related to the outgoing parliamentary majority; in most cases one could see on TV those spokespersons who were nominated as CEC members by the BSP. In addition, the computer processing of the electoral results was tasked to a company, the management of which was directly connected to the BSP. This augmented the impression, that the elections were conducted by the BSP. Such facts are a source of concern as almost two decades of good practice might have been challenged in these elections.

3.7 International Election Observers

Paragraph 8 of the 1990 OSCE Copenhagen Document represents a political commitment of all OSCE participating States to invite observers from all other participating States to observe their elections. It is an unwritten rule based on well established practice, that CoE Member States also invite parliamentarians from the CoE Parliamentary Assembly to observe national elections.

Until the 5 July 2009 parliamentary elections, Bulgaria has always respected its commitments to invite observers and has welcomed them in Bulgaria. It is regrettable, that for these elections, messages came from the Head of State and from representatives of the BSP that Bulgaria did not need election observation as a European Union Member State. While observers from both the OSCE and CoE did arrive to Bulgaria in the run up to the elections, the demonstrated attitude of the Head of State is a point of concern, as it tended to neglect Bulgaria’s political commitment to both organisations.

4. CONCLUSION

The July 5, 2009, parliamentary elections in Bulgaria failed to meet several international standards and good practices. This challenged the rule of law in Bulgaria, which on its turn meant non-compliance with the EU Copenhagen Criteria of 1993 and cast a shadow on Bulgaria’s EU membership.

While some amendments to the election law reflected good electoral practice from the recent past, others introduced serious shortcomings risking the reputation of the State as a Member State of the European Union.

Most notably, the election law provided for an electoral system that ran contrary to Article 25(b) of the ICCPR due to failure to ensure equality of passive suffrage.

Further to that, the legal framework does not provide for guarantees for the secrecy of the vote and the free expression of the will of the voters. This was compounded by the implementation of the law that failed to prevent “vote buying”, despite provisions of the Criminal Code that treat “vote buying” as a criminal offence.

In addition, the legal framework does not suffice for ensuring efficient legal remedies for complainants against official election results.

The late adoption by Parliament, without broad agreement, of important amendments to the legal framework including to the electoral system fell short of good electoral practice. This eroded public confidence in the electoral process, feeding suspicions of intentions to “ensure victory before the start of the game.”

Some aspects of the performance of the Central Election Commission induced perceptions of political bias of the Commission in favour of the then sitting executive, and cast a shadow on its independence and political impartiality.

Although Bulgaria received international observers in line with its political commitments, the process was marred by controversial messages delivered by the Head of State and senior representatives of the then parliamentary majority.

ANALYSIS OF STATUTORY INSTRUMENTS FOR SANCTIONING VOTE-BUYING: APPLICATION AND PROSPECTS FOR DEVELOPMENT

Preventing and fighting the various forms of controlled vote, which has been threatening the normal conduct of the election process and has been rocking the confidence of citizens in the legitimacy of state power and governance as well as in the authorities capacity to secure free and democratic development of public and political processes, without doubt requires comprehensive familiarity with and an impartial analysis of the electoral laws and procedures, as well as open identification of the weaknesses in the statutory instruments and the opportunities to eradicate them.

In a number of cases, however, pointing out measures adequate in scope to improve electoral legislation and even their adoption by the legislature as well as the existence of a political will for change are insufficient for a comprehensive prevention and termination of possible forms of encroachment on the free exercise of citizens' political rights.

That is why the measures to sanction the perpetrators of violations of the established legal order are of no less significance in guaranteeing the legal and democratic proceeding of the election process.

This category of mechanisms of influence aims to have a deterring effect on all citizens by indicating to them that, in the case of legally prohibited action, they are subject to sanctions provided by the law, as well as individual sanctions with respect to persons who have already perpetrated an act harmful to the public.

The analysis of the sanctioning measures of influence requires a theoretical analysis of the sanctioning institutions existing to date, pointing out both the achievements and the weaknesses in their provisions and discussing the main problems and difficulties in their application.

* * *

The public relations within which the free and normal exercise of the political rights of Bulgarian citizens, acknowledged and guaranteed by the Constitution and the laws of the country, and more specifically the passive and active suffrage, receive their legal defence from various sanctioning institutions which could, most generally, be divided into two main groups – criminal and extra-criminal measures of influence.

The penal protection of the discussed category of public relations is realised by means of designating a number of acts with a relatively high degree of menace to society as crimes - in Chapter III, Crimes against the Rights of Citizens; Section III, Crimes against the Political Rights of Citizens in the Special Part of the Criminal Code (CC) and the provision of sanctions for the perpetration of these criminal actions.

The review of the penal provisions established by the above-mentioned part of the Criminal Code allows specification of criminal acts against the political rights of citizens in several sub-groups, on the basis of different classification criteria.

Thus, in view of the peculiarities of public good protected by criminal law, the penal provisions pursuant to Chapter III, Section III of the Special Part of the CC can be subdivided into:

A. Provisions ensuring protection from publicly dangerous encroachments on the electoral rights of citizens (those pursuant to Article 167 – 169a CC) and

B. Provisions providing protection from publicly dangerous encroachments on other political rights of the citizens provided under the Constitution (that pursuant to Article 169b CC).

The first large group of texts that qualify the various crimes and the sanctions for their perpetration, which will be the subject of discussion in the present section, allow an internal grouping on the basis of various additional criteria.

Depending on the nature of the constitutionally acknowledged and guaranteed by the laws of the country suffrage, these are:

A. Crimes against active suffrage (the first listed under Article 167 (1) and under Paragraph (2) and (3), under Article 167a and under Article 169 CC) and

B. Crimes against passive suffrage (the second listed under Article 167 (2) and under Article 169a CC).

Depending on the manner of negatively influencing the citizens' right to vote, chosen by the perpetrator, we distinguish:

A. Criminal influence on citizens by means of deceiving them or causing untrue notions with respect to facts and circumstances from objective reality (under Article 167 (1) and under Article 169a CC);

B. Criminal influence on citizens by means of applying physical or mental force on individuals that motivates them to exercise their right to vote in a certain manner or abstain from voting (under Article 167 (1) and under Article 169a CC);

C. Criminal influence on citizens by means of offering or providing unearned material benefit (the so-called vote-buying and selling) – under Article 167 (2) and (3) and under Article 167a CC.

Depending on the specific character of the subject of criminal influence we distinguish:

A. Encroachment by individuals exercising their right to vote (under Article 167a and under Article 168 CC);

B. Encroachment by individuals engaged in the organisation and conduct of elections (under Article 169 and under Article 169c in relation to Article 169a CC);

C. Encroachment that can be perpetrated by any penally liable person (under Article 67 and under Article 169a CC).

Of course, these classifications do not cover comprehensively the variety of cases of crime provided by the law in view of their objective and subjective features, but they allow a possible systematisation.

After several consecutive amendments of Bulgarian criminal law (respectively with the Act on Amending and Supplementing the Criminal Code, promulgated, State Gazette No. 103/2004, No. 75/2006, No. 85/2007 and No. 19/2008), now Chapter III, Section III of the Special Part of the Criminal Code provides for the following main types of criminal encroachment on the citizens' right to vote:

A. Criminal obstruction of exercising active or passive suffrage by means of violence, deception, threat or in some other unlawful way (under Article 167 (1) and under Article 169a CC).

This includes the cases of limiting the freedom of movement of the voter so that he/she could not exercise the right to vote, physical or mental coercion with respect to the person so that he/she would exercise the right to vote in a certain manner, giving misleading information with respect to the procedure and conditions for exercising the right to vote or the nature of the election process, or the qualities of the candidate, illegal refusal to allow a person to vote et al.

It should be pointed out that the provisions concerning the criminal actions discussed are relatively precise with respect to legislative technique, but inasmuch as observation of the election process showed that in most of the cases it was precisely officials from the respective election commissions who obstructed the opportunity of citizens to exercise their right to vote, it seems relevant to provide enhanced criminal liability with respect to these persons by reference to the provision of Article 167 CC in the existing provision of Article 169c CC.

B. Criminal inducement to exercise active voting rights to the benefit of a certain candidate by means of illegal material benefit (the so-called vote-buying) – under Article 167 (2) and (3) CC.

The said articles of the law provide for a penalty for anyone who offers or provides to another material benefit for the purpose of persuading him/her to exercise the right to vote to the benefit of a particular candidate, as well as for anyone who organises the offering or provision of material benefit to another with the same objective.

The quoted provisions were adopted in order to provide legal protection of the category of public relations discussed from a phenomenon which is becoming increasingly popular – and, regrettably, important from the point of view of election outcome - with every consecutive election, more specifically the offering or provision of cash or services with an equivalent in cash in order to motivate Bulgarian voters to exercise their right to vote in favour of a certain candidate.

Although they are relatively novel for Bulgarian penal legislation, the sanctions provided under Article 167 (2) and (3) of CC already reveal a certain limitation in comparison with the scope and forms of expression of the phenomenon with respect to which they aim to provide preventive action. This makes it necessary to adopt measures for improving the wording of the provisions in several directions:

- **to provide for criminal liability also in the cases in which the benefit is provided *after* the exercising of voting rights and because those rights are exercised to the benefit of a certain candidate or political formation;**
- **to make provisions for responsibility in the cases when voters are promised, offered or provided with benefits of non-pecuniary character;**
- **to expand the scope of the provisions, including not only illegal soliciting to vote to the benefit of a certain candidate, but also to the benefit of a certain political formation, in the objectives liable to be penalised;**
- **to provide for, as an additional sanction, confiscation of the subject of the crime to the benefit of the state;**

- to narrow the applicable field of the encouraging provision under Article 167 (4) CC, the application of which should be related to the conduct of the criminal perpetrator; this would ease the process of proving the crime.

C. Criminal exercise of active right to vote. Here we have the cases of requesting or receiving material benefit in order to vote for a certain candidate (under Article 167a CC), as well as of exercising the right to vote without existing conditions thereof (under Article 168 CC).

These cases of criminal action will probably find an ever-increasing field of application in view of the growing negative trends of citizens expecting to benefit in return of their vote (the so-called vote-buying) or to participate in the so-called election tourism.

In our opinion, only the provision of Article 167a CC is in need of improvement in the following sense:

- to also provide for criminal liability in the cases when the benefit is requested or received *after* the exercising of the right to vote and because that right has been exercised to the benefit of a certain candidate or political formation;

- to provide for liability in the cases in which voters request or receive benefits of non-pecuniary character;

- to expand the scope of the provisions, including not only voting to the benefit of a certain candidate but also to the benefit of a certain political formation;

- to provide for, as an additional sanction, confiscation of the subject of crime in favour of the state;

- to narrow the applicable field of the encouraging provision under Article 167 (2) CC, the application of which should be related to conduct of the ; this would ease the process of proving the crime.

D. Violation of the secrecy of voting or modifying election results by an official or a person who is member of an election commission (under Article 169 CC).

The disposition of the criminal law provision under review covers the most frequently encountered violations of election laws and procedures perpetrated by persons engaged in the organisation and conduct of elections.

At the same time, there are violations of electoral laws and procedures perpetrated by members of election commissions, which reveal a relatively high degree of menace to society but still have not been made incriminatory.

In addition to unfounded preventing of voters from exercising their right to vote and the earlier closure of polling stations, which could be included in the disposition of Article 167 (1) CC, other such cases involve: inclusion of voters in the voter lists without meeting the conditions for that; taking election papers out of the polling stations; conscious warping of the vote of the electorate by vitiation or incompleteness of the factual steps required for due exercise of the right to vote, et al. At that, it seems relevant to fill in this gap in electoral legislation by expanding the applicable field of the provision of Article 168 CC.

A general recommendation to the criminal legislator should also include differentiation of penalties provided for perpetrated crimes against the political rights of citizens according to the character and degree of public hazard of the incriminated acts.

Currently, with the sole exception of Article 169c CC, the crimes under Chapter II, Section III of the Special Part of the Criminal Code are punishable by imprisonment of up to three years or other, lighter penalties, which in the larger number of cases conditions the mandatory

relieving of their perpetrators (in case they have not been sentenced to date) from criminal liability by the imposition of administrative penalties. This reduces the preventive effect of the criminal law provisions under consideration and discourages the investigating authorities and citizens to cooperate for revealing these crimes and their perpetrators. The crimes are not grave in the sense of Item 7 of Article 93 CC, and this is an obstacle to the use special surveillance means for revealing them (argument from Item 1 of Article 12 (1) of the Special Surveillance Means Act).

* * *

Along with the punitive measures intended for the perpetrators of publicly hazardous encroachments on the normal conduct of the election process and the legal exercising of citizens' right to vote, **the acting legislation provides for other types of measures.**

In the first place, there is the possibility provided under Chapter X of the *Law on the Election of Members of the National Assembly* with respect to individuals who have breached the provisions of the law and can also be subject to administrative penalties. The provision of Article 116 of the Law is a blank-form one and consequently has a maximum broad field of application, while the sanctions provided for perpetrators are relatively heavy and would have a serious preventive and corrective effect. Quite unfoundedly, however, this channel for quick and effective sanctioning of perpetrators is still neglected by the administrative penal authority.

In the second place, there is the possibility the property (after amendments to the law) or whatever has been acquired after the crime to be confiscated in favour of the state under the procedure of Article 53 of the CC, regardless of whether the criminal liability of the perpetrator has been realized or not. This would preclude the possibility to benefit from the perpetrated criminal action.

* * *

In conclusion, it should be noted that even now there are provisions for large-scale protection of public relations, which guarantee the free and normal exercise of the political rights of Bulgarian citizens, acknowledged and guaranteed by the Constitution and the laws of the country. Those provisions need insignificant improvement mainly in view of broadening the scope of their application.

Therefore, it is not the state of legislation but the level of detected delinquency and the problems in proving these crimes that obstruct the applicability of the sanctioning provisions discussed.

These lies in several directions:

- **there is still lack of good and prompt interaction between the institutions commissioned with revealing and investigating this category of publicly detrimental encroachments, as well as between them and the NGOs, which the citizens, having greater confidence in them, could contact with information about violations;**
- **there is no effective use of evidential sources like undercover officials and special surveillance means;**

- a large portion of the signals (including those received by Transparency International - Bulgaria) are still anonymous or are submitted by persons who do not want information about their identity to be made known to the competent state bodies because of fear of leakage of information and corruption in their structures, as well as subsequent possibility of arbitrary acts;
- the number of persons who would address the institutions with such signals is still relatively small because usually vote-buying is to the benefit of both sides in the process; the cases in which reports about such acts come from political opponents of a certain party in order to undermine its prestige are not few either;
- people still think that these and other types of crimes will be liable to investigation and their perpetrators will be sanctioned without their own active involvement in alerting to the violations and proving the crimes;
- it is exceptionally difficult to determine the guilty official as that person is usually part of a collective body (District Election Commission, Precinct Election Commission), with other persons, possible witnesses, frequently dependent on the perpetrator who stops them from making information about the violations known.

Nevertheless, in the past elections there was a clearly visible trend of increasing control over the election process on the part of the institutions, of more timely reactions to the received alerts, as well as of involvement of an increasingly larger number of organisations, including from the nongovernmental sector, in the fight against this particularly dangerous political phenomenon.

CONCLUSION

The civic initiative for fair and transparent elections, “Sam izbiram ’09,” attained results commensurate with the best achievements of civil society in Central and Eastern Europe. In Bulgaria the independent civic activity aimed at correcting the institutions of power is still seen as doomed idealism. It has become so important – particularly in the years of post-communist transition – that civil organisations constantly prove to the public that they have the potential to change the society and the state and should be actively supported by ordinary citizens.

The first serious achievement of Coalition “Sam izbiram” was our success in persuading the society that the democratic system is in peril and that only mass voting can neutralise that peril. Relatively large-scale vote-buying can essentially alter election results only when voter turnout is low. Not accidentally, vote-buying in Bulgaria emerged and spread as a phenomenon above all at local elections. Relatively fewest people vote at local elections – about 30 percent – and vote-buying in relatively small scale can often dramatically change final results.

But the declining share of active voters in Bulgarian political life is far from being typical of local elections only. Disillusioned by the results of the post-communist transition and the political elites’ cynical approach to the needs of society, fewer and fewer Bulgarian citizens have been venturing to the ballot box in the decade after 1999 (when for the first time the portion of the disillusioned and unwilling to vote crossed the 50 percent threshold). The relatively low share of active voters facilitated the newly born Bulgarian politico-economic oligarchy in the achievement of its basic goal – the formation of weak, pliable coalition governments of brokers of oligarchic interests, helping the effective plundering of the state’s national resources. In the eve of the 2009 election season the propaganda of the oligarchic elite focused on the suggestion, “Boycott the elections – there is no alternative at the elections.” This clever “opposition” strategy of the ruling Triple Coalition and the oligarchs backing it pursued the validation of the old principle “Everyone is dirty in politics.”

An election result deriving from less than 50 percent of the voters would certainly be favourable to the oligarchic status quo – it would produce a parliamentary majority and a government formed by three or four parties whose differences could be easily manipulated from behind the scenes in favour of the oligarchic interests. Coalition “Sam izbiram” clearly and explicitly sent a systemic message to society – the means to the rehabilitation of democratic representation in politics is mass voting. This message of ours had an impressive success – over 60 percent of Bulgarian voters cast their ballots in the July 5 parliamentary election, which created the conditions for the formation of a government with discernible political face and backed by a very large number of citizens.

The second big achievement of the Civil Society Coalition was the drawing of a clear borderline in the public conscience between, on the one hand, the legitimate behaviour of parties and citizens in the democratic political system and, on the other, the practices of vote-buying and pressuring voters by threats and other means violating their civic freedoms. Society during oligarchic post-communism can be characterised by growing cynicism toward the fundamental values and principles of the democratic political system. The buying and selling of votes, which has been expanding over the last decade, is based particularly on this cynic approach to the citizen and his/her state. One of the key interpretations “legitimising” the buying and selling of votes is the promotion of the “market principles” in politics. The

way we buy and sell bread, soap, clothes or cars we also buy and sell votes. The market sets the rules. For Coalition “Sam izbiram” the fundamental goal was to separate the market from the democratic process. Unlike firms on the market, we all as individuals are equal in our right to political representation. Voting is an act of civic obligation and responsibility, not a market transaction. If the market were omnipotent – including with respect to politics – then democracy itself would be useless: all democratic institutions would be formed automatically, following supply and demand logic. The personal civic will in the act of voting is sacred and is not subject to buying, forcing or appropriation. We never grew tired of reiterating these simple truths about the democratic system so that they could reach each and every Bulgarian citizen. We do not claim to have pushed the cynical market view on politics out of the society’s conscience, but we definitely changed the way of thinking of a great number of people. The rest is a battle going on into the visible future.

The third big achievement of the Civil Society Coalition “Sam izbiram” is the compromising and partial thwarting of the merger between illegitimate private and oligarchic interests and the process of political representation. The spread of vote-buying practices over the last decade led to an effective substitution of the principle of public representation by one of appointment of representatives of the oligarchic clans and organised crime to the posts of city councillors, mayors and MPs – and that happened in many parts of the country and at many layers of government. This practice of creeping corporate authoritarianism was about to terminally conquer the state and it would have done so, had the powers of the oligarchic status quo won the election. Today we don’t have the certainty that this practice will be ended, but we do have the tangible victory of the majority of citizens over the attempt their free will to be traded for the will of the mafia and the oligarchy. The battle for fair and transparent civil representation shall not be a single-act performance – it will continue and be part of the efforts to consolidate and develop Bulgaria’s democratic system.

Last but not least, the Coalition attained significant results in the devising and deployment of a civic strategy to support democratic representation, to fight organised corruption in the election process. This strategy is applicable in all societies who are faced by similar challenges. The practical results of our campaign are acquiring a strategic value-added in the context of the global endeavours to expand the domain of representative democratic governance.



CIVIL SOCIETY COALITION FOR FREE AND DEMOCRATIC VOTE



TRANSPARENCY INTERNATIONAL – BULGARIA

REPORT FROM THE MONITORING OF THE ELECTION OF BULGARIAN MEMBERS OF THE EUROPEAN PARLIAMENT AND THE ELECTION OF MEMBERS OF THE 41ST NATIONAL ASSEMBLY OF BULGARIA

PART I: BUYING OF ELECTORAL VOTES AND CONTROLLED VOTE

Sofia, September 2009

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