

European standards and good practices for conducting a democratic and fair electoral process – is Bulgaria falling behind?

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Council of Europe's standards for free and fair elections

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Council of Europe is the main European watchdog for democracy and human rights. The right to participate in and to be elected through free and fair elections is a “classical” right which, however, remains in the centre of civil rights also nowadays.

Along with the societal and technological developments, peoples of Europe enjoy new opportunities and also face new challenges. The concept of free and fair elections is not an exception in this respect.

The Council of Europe and, in particular, its Parliamentary Assembly has dealt with this issue on many occasions. The Parliamentary Assembly has played a key role in standard-setting on elections, which has served as a basis for improving national electoral legislation and for drafting such legislation in some eastern and south-eastern European countries.

Contribution of other Council of Europe bodies should be mentioned. Ten years ago the European Commission for Democracy through Law (Venice Commission) drew up the Code of Good Practice in Electoral Matters. The Council for Democratic Elections on regular basis considers various aspects of electoral legislation and practices.

My brief presentation will be based on the most recent relevant PACE Resolution 1897 (2012) “Ensuring greater democracy in elections”.

The Assembly believes that genuinely democratic elections are decisive for ensuring that the will of the people is respected in the shaping of the legislature and government at all levels and that elected bodies are effectively representative.

Nowadays citizens seem to have less and less confidence in the institutions of democracy. Therefore, it is even more important to enhance the democratic character of elections and thus reinforce the link between the expression of the people and the actual outcome of the vote.

Domestic electoral legislation in most European states, as a rule, meets formal criteria for “free and fair” elections. However, numerous violations do occur - mainly due to a lack of political commitment, usually on the part of the ruling political parties, to ensure full and effective implementation of the law and a level playing field to all candidates. Besides, the most serious violations tend to occur in the pre-electoral period and are thus more difficult to detect.

PACE has accumulated substantial election observation experience over the past twenty years, during which it has observed more than 140 parliamentary and presidential elections, involving almost 2,000 of its members. Major problems recorded in the course of these missions are as follows:

- misuse of administrative resources;
- lack of clarity and transparency in funding election campaigns and political parties;
- unequal access to the media and lack of media impartiality;
- dependence and non-neutrality of the electoral administration;
- threats, pressure, violence and intimidation carried out against candidates or voters, arbitrary detention of opposition candidates and supporters;
- inaccuracy of electoral registers which likely to lead to electoral fraud;
- restrictions on the right to stand for election, including excessive registration requirements for candidates and political parties;
- vote buying, ballot box stuffing, falsification of electoral protocols and other irregularities during vote counting;
- ineffective procedures for election complaints and appeals.

The Assembly considers that measures to improve the democratic character of elections should respond to three main imperatives.

1. foster participation:

- electoral registers should be drawn in such a way that as many voters as possible register
- as many political options as possible must be made available in line with the principle of political pluralism
- electoral system must adequately reflect the opinion of the people and the political composition of the electorate, as well as take into account geographic distribution, gender and ethnicity
- mechanisms to promote the balanced representation of women and men in elected bodies at all levels must be introduced
- delimitation of constituencies should facilitate the effective participation of minorities in the election process and thus promote minority representation as a factor guaranteeing interethnic peace and stability
- ensuring freedom of political debate in the media and equal access of all candidates and political parties to, and impartiality of, the public service media

2. ensure transparency:

- elections should be organized by independent and impartial bodies
- adequate resources should be made available for the effective registration of voters and efficient organisation of the ballot
- composition of electoral commissions must be politically balanced and their functioning transparent throughout the electoral process
- legislation on campaign funding and party financing should regulate the origin of funding, set a limit on expenditure and also enable all voters to have access to data on the nature and amount of campaign and party spending
- the presence of international observers should be facilitated, their accreditation procedures should be simple and easily accessible

3. strengthen supervision:

- ensuring effective, transparent and accessible complaints and appeals system in order to reverse the culture of impunity for election-related offences and enhance public confidence in the electoral process
- supervision should be assigned to a judge, access to courts should be facilitated through simplified, free procedures involving short but reasonable time frames
- severe but proportionate penalties should be applied in cases of fraud, manipulation or cheating.

To conclude, I would like to stress that, besides standard-setting, the PACE has developed certain mechanisms for monitoring of member states' compliance with these standards. In particular, substantial attention is paid to ensuring free and fair elections in the context of the Assembly's procedure of examination of the honouring of obligations and commitments by member states. Bulgaria is still at the stage of post-monitoring dialogue, therefore, this procedure might be relevant. Besides, as already mentioned, the Assembly, in cooperation with the OSCE and other international bodies, takes active part in election observation.

Therefore, deficiencies in the conduct of elections cannot remain a purely internal matter of the European states. Effective international mechanisms can – and should – be employed to fix these deficiencies.