

**ANALYSIS OF EARLY PARLIAMENTARY ELECTIONS OF  
2008 AND OF THE REGULAR PRESIDENTIAL AND  
MUNICIPAL ELECTIONS OF 2009 – SHORTCOMINGS AND  
PROBLEMS IDENTIFIED PER PHASES OF THE  
ELECTORAL PROCESS IN THE REPUBLIC OF  
MACEDONIA**

*Tanja Karakamisheva*

**1. Voter Registration and Voters' List Update – Shortcomings and Problems Observed (2008 Early Parliamentary Elections)**

1. The Final Report of the Citizens' Association MOST notes problems with the Voters' List<sup>1</sup>. The same conclusion is drawn in the final version of the OSCE/ODIHR report, which stresses that in 8% of the polling stations visited by the OSCE/ODIHR observers there were persons who were not allowed to vote because they were not on the Voters' List.<sup>2</sup>

**Institutional Response to Problems Observed**

1. According to Article 41 of the Electoral Code of the Republic of Macedonia, before amendments and supplements were passed, the Ministry of Justice maintains the Voters' List according to the Register of Citizens in the form of a voter register using automatic magnetic medium data processing.

The Ministry of Justice has not responded to all remarks addressed to it and noted in the abovementioned reports on 2008 early parliamentary elections by initiating a serious procedure for establishing the accuracy of data contained in the Voters' List, but it has continually repeated its legal obligations of recording, adding and deleting data in the Voters' List ex officio based on data from registries, records of residence and registered citizens in the Republic of Macedonia.

2. The issue of Macedonian citizens living and working abroad, for which a considerable debate has been opened as to how many they are and whether they really use their electoral rights, or someone else does that on their behalf, is still a topical issue no one from the state institutions wants to talk about.

3. With the amendments and supplements of the Electoral Code, the State Election Commission undertook the obligation to maintain the Voters' List of the Republic of Macedonia. To that end a special coordination body has been formed for the implementation of activities regarding the takeover of the Voters' List from the Ministry of Justice by SEC, composed of members of the Ministry of Justice, SEC members and members of the State Statistical Office, upon the proposal of the Government of RM. This body has the task of

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<sup>1</sup> In this context see the corrigenda of the Law amending and supplementing the Electoral Code ("Official Gazette of the Republic of Macedonia", No. 148/2008, No. 155/2008, and No. 163/2008).

<sup>2</sup> Kambovski, Penal Law – special part, third edition, Skopje, 1997, pp.139

preparing an Action Plan for the transfer of power for maintaining the Voters' List from the Ministry of Justice to SEC.

### **1.1. Voter Registration and Voters' List Update – Shortcomings and Problems Observed (2009 Presidential and Municipal Elections)**

1. OSCE/ODIHR reports continue to make remarks on the Voters' List, particularly regarding its accuracy with regard to electors living in the Republic of Macedonia and especially with regard to electors living outside the Republic of Macedonia<sup>3</sup>.

#### **Institutional Response to Problems Observed**

1. From the moment of taking power to maintain the Voters' List, the State Election Commission is expected to seriously begin overcoming the problems related to it in order to improve the accuracy of data. There is an additional need for this because of the possibility foreseen by law for elections to be organised in Electoral Districts outside the territory of RM too.

2. For the next electoral cycle SEC will have to be prepared to coordinate the electoral process outside the country too.

3. SEC will also have to determine a concrete methodology for registering persons in the Voters' List, that is, to take a stance on whether it will maintain only one Voters' List for all citizens of RM irrespective of whether they live in or outside RM, or it will maintain additional Voters' Lists for persons who do not live on the territory of RM but have an electoral right based on the Macedonian citizenship they hold.

4. In the meantime, operational and technical support to this SEC task is provided by the UNDP project on the Voters' List that is to determine the guidelines and the European standards that refer to maintaining and updating the Voters' List.

### **2. Nomination Procedure (2008 Early Parliamentary Elections) Shortcomings and Problems in the Nomination Procedure**

1. A number of problems were noted in 2008 early parliamentary elections nomination procedure and the procedure for confirming candidate lists:

a) six lists of the Macedonian United Forces - All Macedonian Workers' Party did not have notary verified statements accepting the nominations.

b) the confirmed list of candidates for the election of Members of Parliament in Electoral District No. 6 submitted by VMRO-People's Party did not open a giro-account annotated "for election campaign" within 48 hours after the confirmation of the list,

c) similarities between the names and surnames of the candidates on the candidate lists of the Social Democratic Party of Macedonia and the names and surnames of the leaders of the candidate lists of the Coalition "Sun" and

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<sup>3</sup> See: 2008 Early Parliamentary Elections, **Final Report of the Citizens' Association MOST**, Skopje, 2008, (pp. 17). ).

d) on the candidate list for the Electoral District No. 2 of the VMRO-DPMNE-led coalition there was a candidate who had been sentenced to at least six years' imprisonment by an effective court verdict.

### **Institutional Response to Problems Observed**

1. Regarding the first situation, by a decision the State Election Commission rejected all six lists of the party Macedonian United Forces - All Macedonian Workers' Party due to incomplete documentation.

2. Regarding the second situation, by a decision the State Election Commission annulled the already confirmed list because the VMRO-People's Party had not respected the legal deadline of 48 hours after the confirmation of the list of candidates for opening a giro-account annotated "for election campaign", according to Article 71, paragraph 1 and 2 of the Electoral Code.

3. Regarding the third situation, the State Election Commission concluded that the candidate lists of the Social Democratic Party of Macedonia had met all legal conditions due to which there were no legal grounds for list annulment.

4. Regarding the fourth situation, SEC made a decision to confirm the candidate list explaining that the Constitutional Court of RM had taken a stance that this could not be a condition for an elected function.

### **2.1 Nomination Procedure (2009 Presidential and Municipal Elections)**

#### **Shortcomings and Problems in the Nomination Procedure**

1. For the presidential elections seven nominations for president were submitted and accepted by SEC. Several potential candidates had remarks about the system of collecting signatures, qualifying it as restrictive and difficult.<sup>4</sup>

2. For the municipal elections, Municipal Election Commissions and the Election Commission of the City of Skopje received a total of 374 nominations for mayors, 364 out of which were accepted. Also, 703 lists of candidates for municipal councilors were submitted to the Municipal Election Commissions and the Election Commission of the City of Skopje, 702 out of which were accepted.

3. The practical application by electoral bodies of the provision of the Electoral Code which foresees that a person standing for election shall not be convicted by an effective court decision to an unconditional imprisonment sentence of more than six months occurred as a problem again, particularly for Municipal Election Commissions due to the lack of clarity on how long such convicted person would not have the right to stand for election. The nomination of Rufe Osmani for mayor of the municipality of Gostivar was an example.

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<sup>4</sup> See: Early Parliamentary Elections 1 June 2008, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, 20 August, 2008, (pp. 10).

## Institutional Response to Problems Observed

1. Acting upon the lawsuits of the submitters of the lists of candidates for mayors against the decisions of MECs, the Administrative Court of the Republic of Macedonia:

a) overruled the decision No. 06-98/4 of 11.02.2009 made by the MEC from Gostivar by which the Commission rejected the list for mayor of the municipality of Gostivar, a group of electors A.A. and confirmed the list of the candidate for mayor of the municipality of Gostivar submitted by the submitter of the list a group of electors A.A. Evaluating the legitimacy of the decision challenged, the Administrative Court found that it was unlawful and that the law had been violated to the prejudice of the plaintiff where MEC Gostivar had wrongly established that the conditions of Article 7, paragraph 2, indent 4 of the Electoral Code were not met by the candidate for mayor Rofi Osmani. MEC had not taken into account the provisions of the Law on Amnesty as well as Article 544, paragraph 1 of the Law on Criminal Procedure<sup>5</sup>;

b) overruled the decision No. 1103-21/7 of 17.02.2009 made by MEC Krivogashtani and confirmed the list of the candidate for mayor of the municipality of Krivogashtani submitted by the submitter of the list Party of United Democrats of Macedonia. The Administrative Court found that MEC Krivogashtani had wrongly established that the conditions of Article 7, paragraph 2, indent 4 of the Electoral Code were not met by the candidate Venko Stomnarski, against whom at the moment of deciding upon his nomination there had not been an effective court decision for an unconditional imprisonment sentence lasting for more than 6 months, which had been grounds for rejection of the list of the candidate by MEC Krivogashtani<sup>6</sup>;

c) rejected the lawsuit as illicit of the submitter of the list Begzat Useini of Zajas for the acceptance of the nomination of Djavaid Rushani for mayor of the municipality of Zajas. After reviewing the lawsuit and the files of the cases, the Administrative Court found that the lawsuit was illicit due to the fact that, as evident in the files of the case, candidate Djavaid Rushani had submitted to MEC Zajas a written submission – an addition to the documents for nomination for mayor, but MEC had not made a decision on the submission submitted,

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<sup>5</sup> See: Statement of Preliminary Findings and Conclusions by the OSCE Mission on the Presidential and Municipal Elections, second round, 5 April 2009 (pp.2), where **the need for Voters' List revision** is highlighted, as well as the report of the Council of Europe: Observation of the Presidential Election in "The Former Yugoslav Republic of Macedonia" (22 March and 5 April 2009), (pp. 3). The Council of Europe report highlights the very small difference between the number of the population, 2,022,547 inhabitants, (according to Official data from the Population Census conducted by the Statistical Office in 2002) and the number of electors with the right to suffrage registered in the Voters' List, 1,792.082 electors (according to data from the latest changes in the 2009 Voters' List).

<sup>6</sup> See: Report on the Preliminary Findings and Conclusions of OSCE and ODIHR on the Presidential and Municipal Elections, first round, 22 March, 2009 (pp.6), as well as the request in the form of a proposal of the potential candidate for the presidential elections, Mrs Slagjana Taseva, addressed to SEC for the prolongation of the deadline for collecting signatures. See: SEC Notification No. 09-22012 of 09.02.2009 regarding the proposal for the prolongation of the deadline for collecting signatures registered under No. 09-220/1 of 02.02.2009.

against which the plaintiff-the list submitter could press lawsuit to the Administrative Court within 24 hours of the receipt of the decision<sup>7</sup>;

d) rejected the lawsuit of the submitter of the list Djavid Rushani of the village of Zajas against the decision of MEC Zajas No. 01-31/2 of 06.02.2009 since the lawsuit had been lodged by an unauthorised person<sup>8</sup>;

e) rejected the lawsuit of the submitter of the list of candidate for mayor of the municipality of Chashka against the decision of MEC Chashka of 20.02.2009, since the decision of MEC had been valid considering that within the deadline determined the submitter had not removed the shortcomings based on the MEC non-binding recommendations<sup>9</sup>;

f) accepted the charge of the submitter of the list for mayor of the City of Skopje and overruled the decision of the Election Commission of the City of Skopje No. 54 of 15.02.2009. Notably, acting upon the documentation submitted by the submitter of the list of candidate for mayor of the City of Skopje, People's Movement for Macedonia with candidate Janko Bachev, and in accordance with the notification of MoI, the Election Commission of the City of Skopje made a decision establishing that the proposed candidate had not met the conditions for election laid down in Article 7, paragraph 2, indent 4 of the Electoral Code. The Administrative Court assessed that the decision challenged was unlawful and that the law had been violated to the prejudice of the plaintiff. According to Article 107, paragraph 1, point 6 of the Criminal Code it is foreseen that criminal prosecution may not be initiated later than two years after the perpetration of the criminal act for which, according to the law, an imprisonment sentence of up to one year or a fine may be imposed<sup>10</sup>.

2. Acting upon the lawsuits of the submitters of the lists of candidates for members of municipal councils against the decisions of MECs, the Administrative Court of the Republic of Macedonia:

a) terminated the procedure upon the lawsuit of the Party for European Future – PEI against the decision of MEC Ohrid No. 01-13/2 of 14.02.2009 which had rejected the list of candidates for members of the council due to plaintiff's dropping the lawsuit registered under URP No. 126/2009 and URP No. 127/2009<sup>11</sup>;

b) dismissed the lawsuit as illicit of the submitter of the list of candidate for members of the council of the municipality of Tetovo – Party for Unity of the Roma of Macedonia against the decision of MEC Tetovo No. 66/4 of 17.02.2009; MEC Tetovo by the decision challenged rejected the list of candidates for members of the council of the municipality of Tetovo of the Party for Unity of the Roma of Macedonia explaining that the submitter had not delivered a confirmation that the party was registered in the court register of political parties of the competent court. The Administrative Court found that the MEC decision challenged was lawful<sup>12</sup>;

c) accepted the charge of the submitter of the list of candidate

<sup>7</sup> See: URP No. 125/2009, <http://www.upraven.sud.mk/?q=node/70>.

<sup>8</sup> See: URP No. 141/2009, <http://www.upraven.sud.mk/?q=node/71>.

<sup>9</sup> See: URP No. 128/2009, <http://www.upraven.sud.mk/?q=node/73>.

<sup>10</sup> See: URP No. 122/2009, <http://www.upraven.sud.mk/?q=node/64>.

<sup>11</sup> See: URP No. 147/2009, <http://www.upraven.sud.mk/?q=node/68>.

<sup>12</sup> See: URP No. 140/2009, <http://www.upraven.sud.mk/?q=node/67>.

for members of the council of the municipality of Dolneni, group of electors I.A. and overruled the decision of MEC Dolneni. The Administrative Court found that MEC Dolneni had wrongly established that the conditions of Article 7, paragraph 2, indent 4 of the Electoral Code had not been met because the Commission had not taken into account the provisions of the Law on Amnesty and Article 544, paragraph 1 of the Law on Criminal Procedure. The act of quashing the conviction takes place after the completion of the legal deadline irrespective of whether and when it is established by a decision and the deletion from the penal records is completed. In this particular case the legal deadline for deletion from penal records passed due to the completion of the deadline of 10 years of the day the sentence was pardoned, that is when the Law on Amnesty entered into force<sup>13</sup>;

d) dismissed the lawsuit of the submitter of the list of candidate for members of the council of the municipality of Sveti Nikole against the decision of MEC Sveti Nikole No. 02-29 of 17.02.2009 as illicit and pressed by an unauthorised person.<sup>14</sup>

### **3. Election Campaign and Media Presentation (2008 Early Parliamentary Elections)**

#### **Shortcomings and Problems in the Organisation and Conduct of the Election Campaign as well as in the Procedure for Media Presentation of Election Candidates**

1. A violation was observed of Article 186 of the Electoral Code, destruction of election posters (flags of political parties) during pre-election rallies of political parties as well as several violations of public peace and order.

2. The first serious problem that occurred during the election campaign in the last elections, and it was a recurrent problem in all previous parliamentary and other elections, is the early start of the election campaign through early media presentation of the candidates of party lists before the citizens. This violates Article 74 of the Electoral Code, which states that the election campaign begins 20 days before the day determined to hold the elections and must not last during the last 24 hours before the election day and on the election day.

3. Disrespect for the legal obligation for equal access to presentation of candidates' election programmes as well as violation of the proportionality principle according to the number of candidate lists established. Here, it should be mentioned that before its self-dismissal, the Assembly of the Republic of Macedonia had not made a decision on the rules for equal access to media presentation upon the proposal of the Broadcasting Council, thus violating Article 75, paragraph 3 of the Electoral Code of RM. The Broadcasting Council adopted Guidelines on Media Presentation.

4. Violation of the campaign silence, particularly on 31 May and 1 June, but also during the re-run in some polling stations on 14

<sup>13</sup> See: URP No. 126/2009, URP No. 127/2009, <http://www.upraven.sud.mk/?q=node/69>.

<sup>14</sup> See: URP No. 145/2009, <http://www.upraven.sud.mk/?q=node/74>.

and 15 June by a number of media<sup>15</sup>.

5. The municipalities and the City of Skopje did not respect the legal obligation for designating the places where placement of posters is allowed without any compensation for each list submitter individually.

6. In several cases a violation was recorded of Article 84 of the Electoral Code, which refers to funds spent during the election campaign outside the limit allowed and determined for each campaign organiser. Note is made of the incompleteness of party financial reports, imprecision and lack of clarity in items contained in the reports and unreality in amounts showed as spent compared to campaign costs really spent.

On the other hand, approved discounts in media presentation, in certain cases of up to 90%, which their providers and beneficiaries are not legally obliged to register, relativise the legal obligation and make it very difficult to analyse how much money exactly was spent for that purpose during the election campaign.

### **Institutional Response to Problems Observed**

1. MoI submitted only one misdemeanour claim to Basic Court Tetovo for the violation of Article 186 of the Electoral Code due to destruction of election posters (flags of political parties) on a place determined for their placement before a properly scheduled rally. Eight more misdemeanour claims were submitted to basic courts: Tetovo, Gostivar, Kumanovo, Struga and Shtip, for the violation of public peace and order of the Law on Misdemeanours against Public Peace and Order, of the Law on Firearms and the Law on Road Traffic Safety. 18 persons who were perpetrators or accomplices in the perpetration of these misdemeanours were accused. These misdemeanours were committed during the election campaign and on the voting day mainly on the territory of Tetovo and Gostivar (six cases), and in Shtip, Struga and Kumanovo only one case in each.

2. Regarding the early start of the election campaign through early media presentation of the candidates of party lists before citizens, there is no data about an institutional response, that is, an institutional reaction in order to punish the persons (the media) that started the campaign early. The State Election Commission took the stance that this was not a case of early start of the campaign but candidates' political activity.

3. In accordance with the obligations laid down in Article 74 of the Electoral Code, the Broadcasting Council of RM monitored the media coverage of the election campaign during the early parliamentary elections in 2008<sup>16</sup>.

4. Regarding the violations of the Law on Broadcasting Activity<sup>17</sup> and the bylaws adopted based on that law, and in

<sup>15</sup> See: URP No. 146/2009, <http://www.upraven.sud.mk/?q=node/72>.

<sup>16</sup> See: URP No. 139/2009, <http://www.upraven.sud.mk/?q=node/65>.

<sup>17</sup> **More details in the information of the Broadcasting Council of the Republic of Macedo-** **nia** given at a press conference on 26 June 2008. On 31 May the campaign silence was violated by MTV1, MTV2-Albanian Programme, Macedonian Radio-First Programme, TV Sitel, TV Shutel of Skopje, TV Zdravkin of Veles, TV Kiss of Tetovo, TV Gurra of Kichevo and TV Nova of Gjevgjeliija. On 1 June, the election

accordance with the monitoring conducted during the early parliamentary elections in RM in 2008, the Broadcasting Council of the Republic of Macedonia imposed a total of 118 measures, 45 out of which were imposed according to the Law on Broadcasting Activity, and issued 132 non-binding recommendations according to the Guidelines on Media Presentation. The following misdemeanours were established as the most frequent ones: a) exceeding the funds allowed for political advertising, b) misusing programmes not linked to elections for the purposes of the election campaign, c) allocating more time than allowed for political advertising, d) improper publication of data of public opinion polls and the like.

5. The Agency for Electronic Communications pressed 28 charges for the violation of the campaign silence according to the provisions of the Electoral Code, 12 out of which ended with first instance court decisions.

In eight court decisions fines were imposed on the legal entity in the amount of 200.000 denars, in two a fine on the legal entity in the amount of 210.000 denars, in one a fine on the legal entity in the amount of 100.000 denars, in one a fine on the legal entity in the amount of 300.000 denars, as well as 8 court decisions for a fine on the responsible person in the medium in the amount of 10.000-30.000 denars<sup>18</sup>.

4 appeals were filed against first instance decisions to the Court of Appeal in Skopje, one out of which was dismissed with a decision on the grounds of it not being filed on time.

6. On the basis of the data stated in the 2008 Annual Report of the State Commission for Prevention of Corruption, and according to the data provided by the Broadcasting Council, it is noted that the two coalitions – organisers of the election campaign that were the only ones to have candidate lists in all six Electoral Districts exceeded several times the legally permitted limit on funds to be spent for the election campaign in accordance with Article 84 of the Electoral

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day, the silence was violated by TV Sitel, TV A1, TV Alsat M, Radio Kanal 77, TV Sky Net, TV BTR and TV MTM of Skopje, TV Nova of Kumanovo and TV Kiss of Tetovo, while on 14 June the silence was violated by MTV1, TV Alsat-M, Macedonian Radio-First Programme, and TV Kiss of Tetovo, and on 15 June, on the day of re-run in certain polling stations, the silence was violated by MTV1 and TV Kanal 5. The Council has notified thereof the Agency for Electronic Communications, which according to the Electoral Code has instituted several misdemeanour procedures against these entities.

See: Report on the work of the Broadcasting Council of the Republic of Macedonia for the period from 01.01.2008 to 31.12.2008, Skopje, March 2009, <http://www.srd.org.mk>.

<sup>18</sup> One month before the start of the campaign, the Council adopted Guidelines on Media Presentation for the early elections of the members of the Assembly of RM in 2008 ("Official Gazette of RM", No. 53/08), which lay down the conditions for access to the forms of media presentation, the duration of election presentation and the principles of fair, balanced and unbiased coverage of the elections and Guidelines on Campaign Silence for the early elections of the members of the Assembly of RM in 2008 ("Official Gazette of RM", No. 53/08), which specify the manner of information during the campaign silence and the forms of violations of the campaign silence in the broadcasters' programmes. See: Report on the work of the Broadcasting Council of the Republic of Macedonia for the period from 01.01.2008 to 31.12.2008, Skopje, March 2009, <http://www.srd.org.mk>.



Code<sup>19</sup>.

7. The State Auditing Office has still not prepared the audit report on election financing of political parties in the 2008 early parliamentary elections, almost one year after they were held.

### **3.1 Election Campaign and Media Presentation (2009 Presidential and Municipal Elections)**

#### **Shortcomings and Problems in the Organisation and Conduct of the Election Campaign as well as in the Procedure for Media Presentation of Election Candidates**

1. In 2009 presidential and municipal elections instances were noted of early campaigning through early media presentation of candidates before citizens. The election campaign lasted from 2 to 20 March 2009, which according to the opposition representatives was a violation of Article 74 of the Electoral Code, which states that the election campaign shall last for 20 days.

2. According to the OSCE Report on the Preliminary Findings and Conclusions, first round, there were tensions in several areas of the country, such as, for instance, Gostivar, Debar, Plasnica, Strumica and the municipality of Shuto Orizari in Skopje, where during the election campaign candidates brought strong accusations against each other.

Also, based on the findings contained in the OSCE Report, there were disturbing alleged claims for government's exerting pressure or intimidating citizens in relation to the elections. In this context there is also information about misuse of budget resources during the election campaign, about financing of election activities by budget resources, about pre-election employment of party staff in the state and public administration and the like<sup>20</sup>.

#### **Institutional Response to Problems Observed**

1. From the day the 2009 presidential and municipal elections were called, the Broadcasting Council **decided to institute misdemeanour procedures against six broadcasters and to give four non-binding recommendations for the guidelines on election media presentation** outside the period of the election campaign, in the period before SEC confirms the lists of candidates for president, that is, before the Municipal Election Commissions and the Election Commission of the City of Skopje confirm the lists of members of councils and lists of mayors<sup>21</sup>.

Notably, procedures were instituted due to established violations of Article 74, paragraph 1 and Article 181, paragraph 2 of the Electoral Code of RM, that is, due to violation of the deadline for

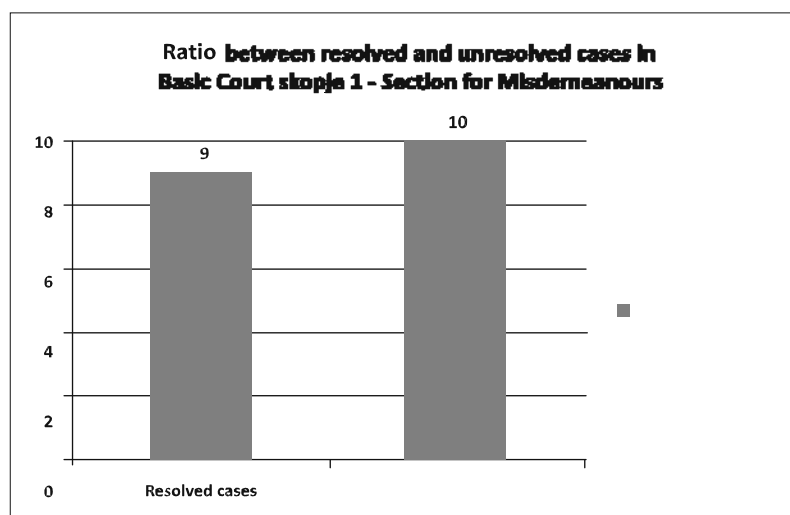
<sup>19</sup> See: Law on Broadcasting Activity ("Official Gazette of RM", No. 100/05, No. 19/07, 103/08 and 152/08).

<sup>20</sup> See: Annual Report on the work of the State Commission for Prevention of Corruption for 2008, particularly regarding the work on cases related to 2008 early parliamentary elections

<sup>21</sup> See: Report on the Preliminary Findings and Conclusions of OSCE and ODIHR on the Presidential and Municipal Elections, first round, 22 March 2009 (pp. 7 and 8).

the start and completion of the election campaign, as well as due to violation of Article 80, paragraph 4 of the Law on Broadcasting Activity, that is, because broadcasting companies which had decided to cover elections had not adopted their own rules on the basis of the principles of self-reliance, autonomy and editorial independence as well as because they had not published the rules on media coverage of elections on their programmes.<sup>22</sup>

2. In most cases, the accused are absolved because the court does not consider the actions committed misdemeanours according to Article 119, point 1 and 2 of the Law on Misdemeanours. In misdemeanour No. 4849/09-O the legal entity accused was punished with a fine of 3.000 Euros in denar equivalent value of 180.000 denars, whereas regarding case 5533/09-O the legal entity was punished with a fine of 2.000 Euros in denar equivalent value of 123.600 denars, and the natural person accused was punished with a fine of 400 Euros in denar equivalent value of 24.720 denars, as well as had to pay lump-sum costs for the conduct of the misdemeanour procedure of 2000 denars for the first accused legal entity and 1000 denars for the second accused natural person. For ten cases hearings are still ongoing<sup>23</sup>.

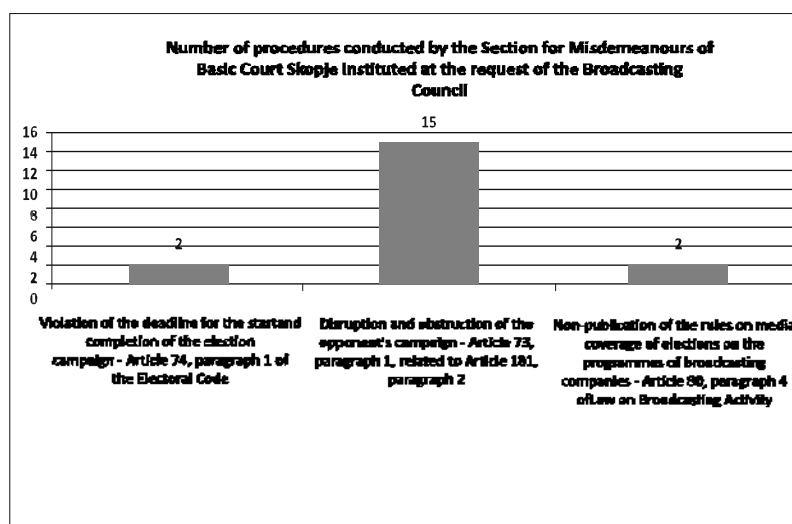


<sup>22</sup> See: OSCE Statement of Preliminary Findings and Conclusions, Presidential and Municipal Elections, 22 March 2009, (pp.6)

<sup>23</sup> According to information from the Broadcasting Council, election media presentation outside the election campaign period is registered in the programmes of Kanal 5 ("Milenko Nedelkovski Show"), Alsat M (for the programme "Contrast"), Sitel ("We" and "Black White Bumble-Bee"), Sitel 3 ("We"), A1 ("Faces") and TV Art of Tetovo ("In Focus"). The Broadcasting Council decided to institute misdemeanour procedures against these broadcasters before a competent court. Apart from misdemeanour procedures, the Council produced non-binding recommendations to Sitel 3 (for the programme "Sport Studio"), the Second Programme Service of MTV, Albanian Programme (for the programme "Coordinates") and Alsat M (for the programme ("The Road towards...").

See more details at:

<http://www.srd.org.mk/print.asp?ItemID=5C0775F121864640AFFED73F98978F>.



3. Although the OSCE Report on the Preliminary Findings and Conclusions, first round, as well as the Report on the Observation of the Presidential Elections of the Council of Europe praised the Broadcasting Council for its professionalism and effectiveness with a remark that the regulation adopted by the Council is contrary to the idea for free editing, the remark still remains that with its free interpretation of its own guidelines, the Council stepped outside the framework of the Electoral Code and took the role of a legislator.

4. During the election campaign, the Broadcasting Council issued a number of warnings, initiated a procedure against four broadcasters, as well as a court procedure against three broadcasters for violation of the campaign silence<sup>24</sup>.

5. At the beginning of the electoral process the State Commission for Prevention of Corruption adopted Rules and Positions according to the Law, as well as an operational work plan which contains the regime of behaviour with regard to the financing of elections and the disposal of public goods and resources, and basic rules for its acting.

According to the Law on Prevention of Corruption, in the part for the prevention of corruption in politics from the day elections are called, that is, from 10.01.2009, the State Commission has been working on a total of 369 cases and such acting lasts until the establishment of the newly elected authorities. In 194 cases<sup>25</sup>, the Commission came up with a non-binding recommendation and a request to implement the regime that applies to the election period.

<sup>24</sup> As follows: misdemeanour No. 1403/08, misdemeanour No. 1265/09, misdemeanour No. 3965/09, misdemeanour No. 3966/09, misdemeanour No. 3967/09, misdemeanour No. 3868/09, misdemeanour No. 3969/09, misdemeanour No. 3970/09, misdemeanour No. 4849/09, misdemeanour No. 4351/09, misdemeanour No. 5317/09, misdemeanour No. 5434/09, misdemeanour No. 5532/09-O, 5533/09-O, 5668/09-O, 6714/09-O, 6949/09-O, 6950/09-O, 7140/09-O.

<sup>25</sup> Information is received from the president of the Section for Misdemeanours of Basic Court Skopje 1 Skopje, judge Stanka Vezenkovska, for the purposes of the project. Notably, the information received contains one error, that is, it is stated that several procedures have been instituted due to a misdemeanour committed of the Law on Broadcasting Activity, according to Article 79, paragraph 4, and that paragraph does not exist in the Law. Probably judge Vezenkovska thought of Article 80, paragraph 4 of the Law on Broadcasting Activity.

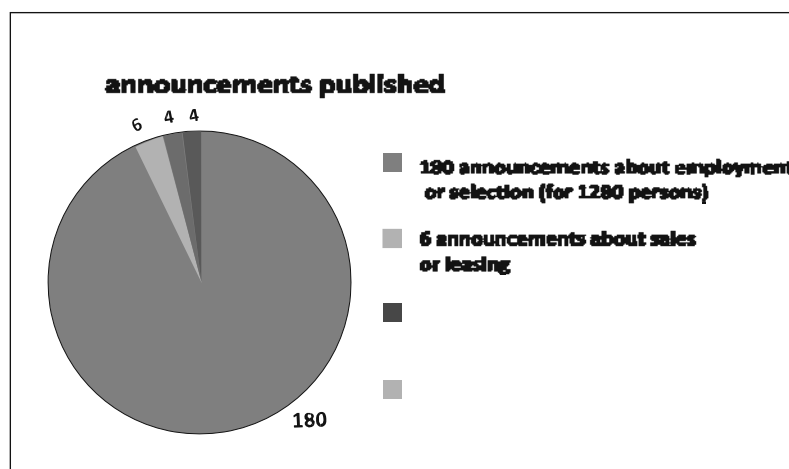
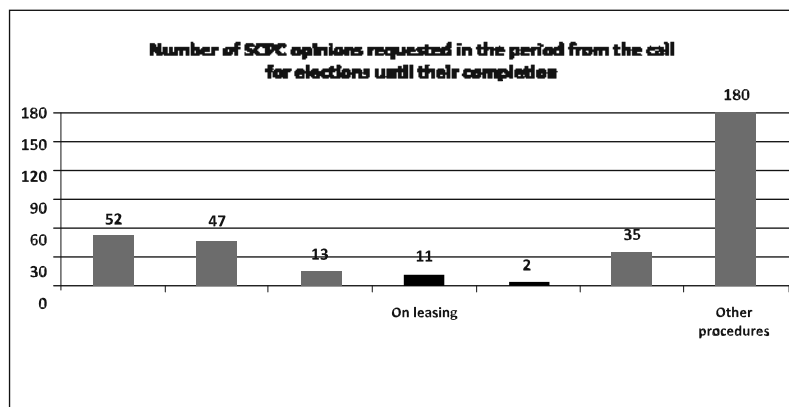
#### 4. Electoral Administration and Election Day (2008 Early Parliamentary Elections)

##### Shortcomings and Problems in Electoral Administration (SEC, MEC, EB) and Shortcomings and Problems on Election Day

1. According to the final report of the Citizens' Association MOST, its engaged observers notified that in 45 cases the Election Boards did not possess all necessary election material and 303 cases of late opening of polling stations, which, in fact, is an omission in the work of the Election Boards.

2. The following is noted as omissions in the work of the Election Boards: stuffing ballot boxes, burning and taking away voting material, voting on behalf of someone else, family and group voting, disrespect for the procedure of voter identification, etc.

3. Regarding the voting of electors who are serving their military service, imprisonment sentence or detention and of internally displaced persons, the observers of the International Election Observation Mission noted 5 cases where the Election Boards did not provide appropriate conditions for secrecy of the vote, that is, in 24% of the observations the rules for the voting process were not respected.<sup>26</sup>



<sup>26</sup> Ibid., (pp.10).

4. The State Election Commission did not institute misdemeanour procedures for the cases previously mentioned (early start of the election campaign, non-designation of places for free placement of posters and other type of election material by municipalities, etc.)

5. SEC did not manage to ensure maximum protection of electoral process participants when their rights were affected during the election campaign.

### **Institutional Response to Problems Observed**

1. SEC dismissed six presidents of the Municipal Election Commissions in Saraj, Lipkovo, Tetovo, Brvenica, Bogovinje and Gostivar because of serious election irregularities.

2. In the Election Boards where disruption to the electoral process was noted in the form of ballot box stuffing, SEC did not replace their members nor did it institute a procedure to punish the persons involved in the election irregularities.

3. MoI informed that 11 criminal charges were pressed against 12 MoI Officers, where based on the measures taken and the irregularities established, and upon the proposal of the Sector for Internal Control and Professional Standards, MoI:

a) adopted a decision for one person's termination of employment by dismissal without initiating a procedure before the Commission for Dismissal,

b) cancelled the employment contract of one person, a trainee

c) released from debts and dismissed from further engagement one person, a police reservist,

d) proposed that a procedure for establishing liability before the Commission for Dismissal is instituted against 26 MoI employees and

e) proposed that by a written decision 23 persons employed in MoI are distanced from their jobs and the Ministry until the completion of the procedure.

According to the data contained in the MoI notification, and based on data available to the Sector for Internal Control and Professional Standards, the disciplinary procedures have been completed, whereas for three persons a decision has been made on the termination of employment, and a disciplinary measure – salary reduction has been imposed on the rest.

4. The Agency for Civil Servants of the Republic of Macedonia informed that not a single disciplinary procedure was instituted where the violation of the Official duty falls within the area of election irregularities. The Agency keeps records only of proposals for disciplinary procedure initiation submitted by the authorities of Article 3, paragraph 2 of the Law on Civil Servants, and not of misdemeanour and criminal charges pressed against civil servants.<sup>27</sup>

<sup>27</sup> Cases that non-binding recommendations refer to are presented graphically. Based on feedback received, the Commission concluded that in 120 cases non-binding recommendations were implemented (the procedure was terminated or brought to a halt). According to information from the Commission, during the election period a total of 138 authorities and institutions requested the opinion from the State Commission for Prevention of Corruption with regard to the regime of behaviour in

#### **4.1 Electoral Administration and Election Day (2009 Presidential and Municipal Elections)**

##### **Shortcomings and Problems in Electoral Administration (SEC, MEC, EB) and Shortcomings and Problems on Election Day**

1. On 22 March 2009, 118 polling stations were not opened because of the heavy snowdrifts and inaccessibility of the polling stations for MECs to deliver the election material.

2. The State Election Commission faced a number of procedural problems and irregularities, which in the first round were noted at Municipal Election Commissions and Election Boards level<sup>28</sup>. According to the findings of the Council of Europe Report, the conduct of voting in the two electoral cycles was evaluated as bad or very bad in 8% of polling stations in areas where the Albanian population is predominant, that is, in 3% of polling stations in areas where the Macedonian population is predominant<sup>29</sup>.

3. Although the election day in the first election round went generally peacefully, without violence and major incidents, OSCE observers noted numerous procedural irregularities, such as: family voting, limited number of cases of serious violence, ballot box stuffing, and the like<sup>30</sup>.

4. On the election day in the second election round OSCE observers noted very few cases of serious problems, so their evaluation of the voting in the second round was more positive than in the first round. There were no reports on cases of violence or major incidents, although tensions were recorded in places where there was a tight electoral race between two mayor candidates. However, as in the first round, in the second election round too cases of family voting were noted in 13% of the polling stations in areas where the Albanian population is predominant. Two cases were recorded of ballot box stuffing in Gostivar and Sopishte. In 3% of the polling stations visited by OSCE observers, the ballot boxes were not appropriately sealed, while in 6% of the polling stations the secrecy of the vote was not appropriately ensured<sup>31</sup>.

##### **Institutional Response to Problems Observed**

1. Taking account of the results of the work of most members

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the period from the adoption of the Decision for calling elections until the completion of the elections. The requests are also presented graphically. In 39 cases the State Commission found indicia for violations of the regime, where in 30 cases the Commission acted upon complaints and notifications from natural and legal persons, and in 9 cases upon its own initiative. In 4 cases the Commission had indicia for bribing electors and notified the Public Prosecutors' Office of RM thereof.

<sup>28</sup> See: Early Parliamentary Elections 1 June 2008, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, 20 August, 2008, (pp. 23).

<sup>29</sup> See: Notification of the Ministry of Interior No. 12-806/31 of 1.6.2009.

<sup>30</sup> See: Notification of the Agency for Civil Servants of the Republic of Macedonia, No. 07-10521/2, of 5.12.2008. Information with similar contents was received in relation to the elections in 2009.

<sup>31</sup> See: Final List of Unopened Polling Stations 22.03.2009, <http://www.sec.mk>.

of the Municipal Election Commissions during the 2008 early parliamentary elections, on its session held on 22 and 23 January 2009, the State Election Commission adopted a Decision amending the decision on the appointment of presidents, members and their deputies of Municipal Election Commissions, which replaced the overall composition of ten MECs, and in 19 MECs made partial changes in the composition<sup>32</sup>, based on previously adopted decisions on the dismissal of previous presidents, members and deputies of MECs or of certain members.<sup>33</sup>

2. On 5 April, the day of the conduct of the second round, the first round of elections for mayors and councilors in municipal councils was held in 124 polling stations, in 118 because they were not opened due to the snow storm, and in 6 polling stations because voting there was annulled when deciding on complaints. According to SEC the number of voters registered in these polling stations was not large enough to influence the results of the presidential elections, but could influence the results of the mayoral and councilor elections in 23 municipalities<sup>34</sup>.

3. The State Election Commission took certain steps to overcome procedural problems and irregularities in the period between the two election rounds by adopting practical guidelines on the work of MECs and EBs on the election day as well as clear guidelines on the prevention of family voting and proxy voting. SEC also provided additional training for several MECs, which in turn provided training for EBs.

4. After taking measures and activities due to unprofessional acting of police Officers with regard to the implementation of the electoral process, the Sector for Internal Control and Professional Standards of MoI proposed compulsory measures for ten police Officers, as follows:

a) a compulsory measure initiating a procedure for establishing liability is imposed on five persons,

b) distancing from employment until the completion of the disciplinary procedure is imposed on two police Officers due to their arriving in the polling station without being called, exchanging comments with citizens and preventing other police Officers tasked to secure the polling stations in the first round of elections from performing their Official tasks,

c) other disciplinary procedures are instituted against two police Officers because they left the polling station, that is, one police Officer while performing his Official task-securing the polling station was under the influence of alcohol,

d) a compulsory measure of salary reduction is imposed on two persons who did not perform their task of the quality and in the manner foreseen, whereas the measure of written warning is imposed on three persons,

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<sup>32</sup> See: Report Ad Hoc Committee of the Bureau of the Parliamentary Assembly, Observation of the Presidential Election in the "FYROM" (22 March and 5 April 2009), (crp.6), <http://assembly.coe.int>.

<sup>33</sup> See: OSCE Report on the Preliminary Findings and Conclusions on the Presidential and Municipal Elections, first round, 22 March 2009, (pp. 3).

<sup>34</sup> See: OSCE Report on the Preliminary Findings and Conclusions on the Presidential and Municipal Elections, second round, 5 April 2009, (pp.9).

e) two police Officers are warned in writing for not requiring a confirmation for intervention from the president of the Election Board, and one police Officer is warned in writing due to his unprofessional and improper behavior towards the citizens.<sup>35</sup>

## **5. Voting and Electoral Right Protection as well as Problems in the Procedure for Calculating Votes and Establishing Election Results (2008 Early Parliamentary Elections)**

### **Shortcomings and Problems in the Voting Procedure and Electoral Right Protection as well as Shortcomings and Problems in the Procedure for Calculating Votes**

1. In the elections held on 1 June 2008 complaints were lodged to SEC by: DPA (a total of 15), DUI (a total of 13), Sun Coalition for Europe (a total of 1), TMRO (a total of 1), and the Coalition VRMO-DPMNE (a total of 28).

Complaints were lodged due to violations of the Electoral Code in the voting procedure in 376 polling stations, mainly due to violations of the secrecy of the vote, ballot box stuffing, voting on behalf of someone else, family voting, but also because more ballots were found in ballot boxes than the number of electors who had voted.

2. In the re-run of the elections of 15 June 2008 complaints were lodged to SEC by: DPA (a total of 16) and DUI (a total of 8)<sup>36</sup>, in these complaints too main irregularities are violations of the electoral right in the form of violation of the secrecy of the vote, voting on behalf of someone else, group voting, ballot box stuffing, and the like.

3. In the re-run of the elections of 29 June 2008 complaints were lodged to SEC by the Party for Democratic Prosperity (a total of 4) due to the election irregularities already mentioned.

4. In 111 polling stations the count of votes was assessed by OSCE observers as bad, that is, very bad in 15% of the polling stations visited.

5. Also in the MEC where these 111 polling stations are found bad or very bad tabulation of election results was observed.

### **Institutional Response to Problems Observed**

1. SEC acted upon all complaints lodged and adopted decisions, where it should be stressed that the legal deadlines for adopting decisions were exceeded.

2. SEC annulled the results in 197 polling stations, 38 out of which were annulled ex officio, whereas the results in the remaining polling stations were annulled for the following reasons: because of incorrect or unsigned protocols by EB members, because of voting on

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<sup>35</sup> See: State Election Commission, Decision amending the decision for appointment of presidents, members and their deputies of MECs ("Official Gazette of the Republic of Macedonia", No. 10/2009).

<sup>36</sup> See: Decisions on the dismissal of the president, members and their deputies of 10 MECs ("Official Gazette of the Republic of Macedonia", No. 9/2009).



behalf of someone else, because of inequality between the number of voters who had voted and the number of ballots in ballot boxes, and the like. In most polling stations where SEC established irregularities in the count of votes as well as in the tabulation and establishment of results, this authority annulled the votes by a decision.

It is indicative that in the complaints and appeals procedure regarding the voting in the first round of elections, when reviewing election materials out of 100 polling stations, SEC found irregularities in 94, most frequently committed by one person voting more times<sup>37</sup>. The most frequent evidence for such irregularities were the copies of the Voters' Lists, where several voters who had allegedly exercised their suffrage were signed with the same signature, and in certain cases the number of ballots used did not correspond to the number of voters who had exercised their suffrage. In all these cases, although there were grounds for suspicion for perpetrated criminal acts, the electoral bodies did not report the acts.

3. After the SEC decisions on the vote of 1.6.2008, three political parties lodged appeals to the Supreme Court of the Republic of Macedonia, as follows: DPA lodged 76 appeals against SEC decisions due to irregularities in the vote (the most frequently noted irregularities in the appeals are group and family voting, voting on behalf of someone else, public voting, ballot box stuffing, and the like). DUI lodged appeals demanding the annulment of voting in four polling stations, and TMRO lodged an appeal against the decision on their complaint referring to Electoral Districts 5 and 6<sup>38</sup>.

The Supreme Court of RM worked in four councils upon the appeals of the political parties, and three of the four councils of the Court confirmed almost all decisions made by SEC, rejecting one only. As opposed to them, the fourth council altered 11 SEC decisions on the annulment of election results<sup>39</sup>.

4. With regard to the repeated vote of 15.06.2008, DPA lodged 13 appeals for 110 polling stations, requesting alteration of SEC decisions on the annulment. DUI lodged 4 appeals. With regard to these appeals, the Supreme Court of RM confirmed all SEC decisions and annulled additional three polling stations based on DPA appeals, which together with the two previously annulled polling stations of ED 1, were sufficient to have an influence on one mandate due to which there had to be a re-run.

5. Regarding the repeated elections of 29 June 2008 in 15 polling stations in ED 1 and ED 6, the party PDP lodged 4 appeals against SEC decisions to the Supreme Court of RM because of inequality on the number of electors who had voted and the number of ballots in ballot boxes in several polling stations in the Electoral District 6, as well as due to group voting, voting without appropriate documentation, use of threat during the vote by party activists, forging protocols of Election Boards, and the like<sup>40</sup>. All four appeals were

<sup>37</sup> See: Decision of the State Election Commission, <http://www.sec.mk>.

<sup>38</sup> See: Notification of the Ministry of Interior No. 12-806/31 of 1.6.2009, (pp. 2).

<sup>39</sup> See: <http://www.sec.mk:90/index.php/prigovoriresenija/-01062008>,  
<http://www.sec.mk:90/index.php/prigovoriresenija/-15062008>,  
<http://www.sec.mk:90/index.php/prigovoriresenija/dik2906>

<sup>40</sup> See: Early Parliamentary Elections 1 June 2008, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, 20 August, 2008, (pp. 21).

dismissed by the Supreme Court of RM as groundless, that is, the Court confirmed the SEC decisions previously adopted.

### **5.1 Voting and Electoral Right Protection as well as Problems in the Procedure for Calculating Votes and Establishing Election Results (2009 Presidential and Municipal Elections)**

#### **Shortcomings and Problems in the Voting Procedure and Electoral Right Protection as well as Shortcomings and Problems in the Procedure for Calculating Votes and Establishing Election Results**

1. In 2009 elections OSCE again reported as negative family voting, particularly in the municipalities where ethnic Albanians are predominant, then proxy voting (33%), one person “assisting” more voters (41 cases), attempt to influence electors (46 cases), intimidation of electoral Officers and electors (8 cases), several apparently identical signatures on Voters’ Lists (19 cases) and multiple voting (7 cases)<sup>41</sup>.

2. MOST observers too noted numerous cases of voting on behalf of someone else, irregularities in the implementation of the voting procedure, cases of family voting, group voting, omissions in Voters’ Lists, voting without UV lamp thumb checking and colourless spray application, violation of the secrecy of the vote, as well as significantly higher percentage of illiterate voters in urban areas compared to previous electoral processes<sup>42</sup>. In these elections, according to the MOST preliminary statement, in a number of polling stations citizens were not allowed to declare which type of elections they wanted to vote in, that is, they were forced to sign in the two Voters’ Lists and to vote both for the presidential and the municipal elections.

3. The vote count was negatively assessed in 14% of the polling stations visited by OSCE observers in the first round of elections. In every five observers on the ground, one notified of significant procedural errors<sup>43</sup>. As in the first round of elections, in the second one too, OSCE observers notified that the basic procedures for the reconciliation of election results were not followed, particularly before ballot boxes were opened, and transparency was not provided regarding the possibility for observers to observe how data about the election results were entered<sup>44</sup>.

4. With regard to the first round of elections held on 22 March 2009, 86 requests were submitted to SEC, 74 out of which were treated as complaints, whereas 12 were treated as notification or complementation to complaints. Complaints were lodged by 16 authorised candidate list submitters, 3 out of which by a group of electors, and 13 by political parties or coalitions. Complaints

<sup>41</sup> See: Early Parliamentary Elections 1 June 2008, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, 20 August, 2008, (pp. 26).

<sup>42</sup> See, *ibid*, (pp.26).

<sup>43</sup> See appeals No. 1930/3, 1931/3, 1932/3 and 1933/3 of 29.06.2008 on the Official SEC website.

<sup>44</sup> Report on the Preliminary Findings and Conclusions of OSCE and ODIHR, first round – 22 March, 2009 (pp.13).

requested the annulment of voting in 233 polling stations, whereas 10 complaints requested the annulment of voting in all polling stations in 10 municipalities. The complaints lodged by authorised list submitters were mainly about violations of the voting procedure, as well as about the tabulation and establishment of voting results.

In the first round of elections, the authorised submitter of the list of the party SDSM lodged 22 complaints, the major part of which, a total of 20, referred to irregularities observed in the voting procedure as well as in the procedure for tabulating and establishing the results of the mayors lists<sup>45</sup>.

VMRO-DPMNE lodged 11 complaints for irregularities observed in the voting procedure as well as in the procedure for tabulating and establishing the results of the mayors lists<sup>46</sup>.

The party Demokracija e Re – Party for New Democracy lodged 9 complaints, most out of which were lodged due to violations in the voting procedure, that is, due to noted family voting, lack of use of UV lamps, obstructing authorised representatives to monitor the work of the Election Boards<sup>47</sup>, whereas a small part of them refer to violation of the results tabulation procedure.

The parties VMRO-DP and TMRO-VEP lodged 4 complaints in the first round of elections, three out of which refer to irregularities in the counting procedure for members of the councils of the municipalities of Kisela Voda, Butel and Centar, whereas one complaint refers to irregularities in the nomination procedure, that is, one person is found on two councilor lists<sup>48</sup>.

The Party for Full Emancipation of the Roma – PCER lodged only one complaint<sup>49</sup>. The party Democratic Union for Integration-DUI lodged 3 complaints, two out of which refer to irregularities in the results tabulation procedure, whereas one refers to voting

<sup>45</sup> See: MOST Preliminary Statement on the Second Round of Presidential and Municipal Elections, second round, 6 April 2009, [http://camost.org/index.php?option=com\\_content&task=view&id=117&Itemid=2](http://camost.org/index.php?option=com_content&task=view&id=117&Itemid=2).

<sup>46</sup> Stated in the Report on the Preliminary Findings and Conclusions, first round of elections- 22 March, 2009 (pp.13).

<sup>47</sup> Stated in the Report on the Preliminary Findings and Conclusions, second round of elections, 5 April 2009, (pp.9).

<sup>48</sup> See: Complaints in the first round of elections lodged to the State Election Commission

[http://www.sec.mk:90/2009/index.php?option=com\\_content&view=article&id=76&Itemid=2](http://www.sec.mk:90/2009/index.php?option=com_content&view=article&id=76&Itemid=2)  
After the first round of elections, in one complaint lodged, the submitter of the list for mayor of the municipality of Dolneni from SDSM stated as a basis for the complaint observed family and group voting (complaint No. 2161-1 SDSM), one complaint is lodged due to delayed opening of the polling stations by one hour, where the voting in that polling station is not prolonged by one hour but is closed in 19 hours (complaint No. 2171-1 SDSM), one complaint is lodged due to mobile phone use during voting as well as other observed irregularities during the voting (complaint No. 2176-1 SDSM). The remaining complaints refer to the procedure for tabulating and establishing the results of the voting for mayors lists in Aerodrom, Kochani, Vinica, Demir Kapija, Berovo, Gjorche Petrov and Dolneni, as well as for the councilor lists in the municipalities of Tetovo and Jegunovce.

See:

[http://www.sec.mk:90/2009/index.php?option=com\\_content&view=article&id=76&Itemid=2](http://www.sec.mk:90/2009/index.php?option=com_content&view=article&id=76&Itemid=2)

<sup>49</sup> Complaints refer to mayor lists of VMRO-DPMNE in the municipalities of Zelenikovo, Makedonski Brod, Veles and Strumica, as well as to councillor lists in the municipalities of Dojran and Centar.

irregularities in the polling stations 2467 and 2468<sup>50</sup>. The party Democratic Party of Albanians-DPA lodged 7 complaints, 5 of which refer to family voting and unlawful police presence, whereas one complaint refers to delayed start of the voting. One complaint refers to irregularities in the procedure for tabulating and establishing the results<sup>51</sup>. The Liberal Party of Macedonia lodged 3 complaints, 2 of which refer to irregularities in the voting procedure, results tabulation and establishment, whereas one complaint refers to the protection of an elector's electoral right<sup>52</sup>.

A group of independent submitters lodged 8 complaints, 5 of which refer to irregularities in the procedure for tabulating and establishing the results, one complaint refers to family voting and group voting, one complaint is lodged by a President of EB and one complaint in the form of a request to review the election material in all polling stations in the municipality<sup>53</sup>.

The Party for Movement of the Turks in Macedonia- PDT lodged 4 complaints, 3 of which refer to irregularities in the procedure for tabulating and establishing the results, whereas one complaint refers to a request to conduct voting in polling station 2353, where voting did not take place due to the storm<sup>54</sup>.

The Democratic Party of the Turks in Macedonia lodged 4 complaints, 3 of which refer to irregularities in the procedure for tabulating and establishing the results, whereas one complaint refers to the repetition of the vote in the polling station 2353<sup>55</sup>.

The Party for European Future-PEI lodged only one complaint due to irregularities in the procedure for tabulating and establishing the results<sup>56</sup>.

The Party for United Democrats of Macedonia – PODEM lodged one complaint due to irregularities in the procedure for tabulating and establishing the results<sup>57</sup>.

The Union of the Roma in Macedonia-SRM lodged two complaints, one of which due to voting on behalf of someone else, whereas one because of irregularities in the procedure for establishing the results<sup>58</sup>.

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<sup>50</sup> Complaints No. 2092-1, 2093-1, 2094-1, 2101-1 and 2102-1 refer to cases of family voting in the polling stations, lack of use of UV lamps, removal of authorised representatives from the polling stations by the Election Boards, whereas complaint 2138-1 takes as legal grounds irregularities in the procedure for tabulating and establishing the results.

<sup>51</sup> According to the allegations in the complaint this is about ordinal number 15 in the councilor lists of the municipality of Aerodrom of the party VMRO-NP and ordinal number 41 in the councilor lists of the City of Skopje by the same party. See complaint No. 2073-1, <http://www.sec.mk:90/2009>

<sup>52</sup> Complaint No. 2074-1, in which the submitter of the list of councillors in the municipal ties of Tetovo, Bitola, Kichevo and Kumanovo complains that on the lists the emblem of their party is replaced with the emblem of the United Party for Emancipation of the Roma

<sup>53</sup> See complaints No. 2075-1, 2115-1 and 2141-1.

<sup>54</sup> See complaints No. 2091-1, 2120-1, 2121-1, 2122-1, 2123-1, 2124-1, and 2125-1.

<sup>55</sup> See complaints No. 2129-1, 2129-2, and 2130-1.

<sup>56</sup> See complaints No. 2076-1, 2107-1, 2126-1, 2127-1, 2148-1, 2185-1, 2197-1 and 2210-1.

<sup>57</sup> See complaints No. 2097-1, 2145-1, 2146-1, 2147-1

<sup>58</sup> See complaints No. 2105-1, 2142-1, 2143-1, 2144-1.

The Party for Democratic Prosperity-PDP lodged 4 complaints, all of which due to irregularities in the procedure for tabulating and establishing the results<sup>59</sup>.

The party People's Movement for Macedonia-NDM lodged one complaint due to irregularities in the procedure for tabulating and establishing the results<sup>60</sup>.

**5. After the second round of elections held on 5 April 2009, according to Article 148, paragraph 1 related to paragraph 2 of the Electoral Code, 97 complaints were lodged to SEC by 9 authorized candidate lists submitters, that is, two authorized submitters-a group of electors and seven authorized submitters-political parties and coalitions.**

Complaints requested the annulment of voting in 234 polling stations, whereas two complaints requested the annulment of voting in all polling stations in two municipalities. Complaints were lodged to SEC by the following parties and independent lists: VMRO-DPMNE lodged 45 complaints, SDSM 5 complaints, Party for European Future-PEI lodged 27 complaints, Social Democratic Union-SDU 2 complaints, Democratic Union for Integration 13 complaints, Democratic Party of Albanians-DPA 1 complaint, VMRO-NP 1 complaint and 3 complaints were lodged by a group of electors<sup>61</sup>.

Most of the complaints lodged by VMRO-DPMNE refer to irregularities in the voting procedure, as well as irregularities in the procedure for tabulating and establishing the results for the election of mayor in the municipality of Ohrid, the municipality of Karposh, the municipality of Brvenica, the municipality of Karbinci (for councilor list too), the municipality of Makedonski Brod and the municipality of Novo Selo<sup>62</sup>.

Complaints lodged by SDSM refer to irregularities in the voting procedure for the election of mayor in the municipalities of Staro Nagorichane, Berovo, Karbinci, Cheshinovo and Obleshevo and Resen<sup>63</sup>.

Complaints lodged by PEI refer to irregularities in the voting procedure as well as in the procedure for tabulating and establishing the results for the election of mayor in the municipality of Struga<sup>64</sup>.

Complaints lodged by Democratic Union for Integration- DUI refer to irregularities in the voting procedure, that is, cases of family voting, multiple voting by one and the same person, lack of use of UV lamp, as well as to irregularities in the procedure for tabulating and establishing the results for the election of mayor in the municipality of Tetovo<sup>65</sup>.

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<sup>59</sup> See complaint No. 2106-1.

<sup>60</sup> See complaint No. 2139-1.

<sup>61</sup> See complaints No. 2159-1 and 2160-1

<sup>62</sup> See complaints No. 2186-1, 2187-1, 2188-1 and 2189-1

<sup>63</sup> See complaint No. 2194-1.

<sup>64</sup> See [http://www.sec.mk:90/2009/index.php?option=com\\_content&view=article&id=92&it](http://www.sec.mk:90/2009/index.php?option=com_content&view=article&id=92&it).

<sup>65</sup> See complaints from No. 2587-1 to 2630-1, and 2664-1. Most of the irregularities reported in the complaints refer to the procedure for tabulating and establishing the results by EBs and MECs, as well as numerous disruptions during the vote, such as lack of use of UV lamp during the vote, violation of the secrecy of the vote, agitation in polling stations, spreading political propaganda material, multiple voting by one

Democratic Party of Albanians-DUI lodged one complaint No. 2563-1, which points to irregularities in the voting procedure, such as violation of the secrecy of the vote, cases of family voting, cases of group voting, unauthorised presence of armed police in polling stations and the like.

The party VMRO-NP lodged 1 complaint No. 2505-1 due to irregularities in the voting procedure and the procedure for tabulating and establishing the results, whereas a group of electors lodged 3 complaints for the same reasons<sup>66</sup>.

**6. After the vote held on 19 April 2009**, according to Article 148, paragraph 1 related to paragraph 2 of the Electoral Code, 13 complaints were lodged to SEC, one by a group of electors and 12 by one coalition. The complaints requested the annulment of voting in 12 polling stations, one in the municipality of Zelenikovo and 11 in the municipality of Dolneni, whereas one complaint requested a re-count and that based on the re-count SEC tabulates and establishes the results of the voting in the municipality of Dolneni.

### **Institutional Response to Problems Observed**

1. Acting upon the complaints against the vote in the first round of elections, SEC considered all complaints lodged and decided as follows<sup>67</sup>:

- Annulled the vote in 6 polling stations (3 in Dolneni, 1 in Mavrovo and Rostuhse, 1 in Makedonski Brod and 1 in Studenichani);
- Did a recount of valid ballots for the election of members of the council of the municipality of Tetovo and in accordance with the results of the review corrected the final Protocol No. 21-G of MEC Tetovo;
- Did a recount of valid ballots for the election of mayor of the municipality of Makedonski Brod and in accordance with the results of the review corrected the final Protocol No. 21-B of MEC Makedonski Brod.

2. Unsatisfied with the decisions of SEC, authorised candidate lists submitters pressed 45 lawsuits to the Administrative Court within the legal deadline, as follows: the authorised submitter of the list of Demokracia e Re-Party for New Democracy pressed 9 lawsuits, the authorised submitter of the list of DUI pressed 1 lawsuit, the authorised submitter of the list of DPA pressed 5 lawsuits, the authorised submitter of the list of SDSM pressed 19 lawsuits, the authorised submitter of the list of VMRO-DP and TMRO-VEP pressed 3 lawsuits, the authorised submitter of the list of the Democratic Party of the Turks in Macedonia pressed

3 lawsuits, the authorised submitter of the list of VMRO-DPMNE pressed 2 lawsuits, the authorised submitter of the list of PODEM pressed 1 lawsuit and the authorised submitter of the list of a

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and the same person, and the like.

<sup>66</sup> See complaints from No. 2657-1 to 2661-1, *ibid*.

<sup>67</sup> Complaints refer to violation of Article 40, paragraph 2, points 2 and 3, Article 103, paragraph 1 and 7, Article 105 and article 109, [paragraph 1 and 2. See: http://www.sec.mk:90/2009/index.php?option=com\\_content&view=article&id=92&it](http://www.sec.mk:90/2009/index.php?option=com_content&view=article&id=92&it)

group of electors pressed 2 lawsuits<sup>68</sup>.

The Administrative Court confirmed all SEC decisions, that is, dismissed all charges pressed.

3. Regarding complaints to the vote in the second round of elections, SEC accepted two complaints and annulled the vote in one polling station in the municipality of Arachinovo (polling station No. 2337) and one polling station in the municipality of Struga (polling station No. 1872). All remaining complaints were rejected. Unsatisfied with the decisions of SEC, authorised candidate lists submitters pressed 39 lawsuits to the Administrative Court within the legal deadline, as follows: the authorised submitter of the list of Demokracia e Re-Party for New Democracy pressed 1 lawsuit, the authorised submitter of the list of DUI pressed 10 lawsuits, the authorised submitter of the list of DPA pressed 1 lawsuit, the authorised submitter of the list of PEI pressed 20 lawsuits, the authorised submitter of the list of VMRO-DPMNE pressed 4 lawsuits, the authorised submitter of the list of a group of electors pressed 2 lawsuits, and the authorised submitter of the list of the Coalition Together for Shuto Orizari pressed 1 lawsuit.

4. The Administrative Court confirmed all SEC decisions, that is, dismissed all the lawsuits pressed, except for the case of the lawsuits for the polling station 2337 where it amended the decision of SEC and confirmed the results of the vote held on 5 April 2009. Notably, based on the reviewing of the overall election material done and the decision challenged, the Administrative Court found that the SEC decision had not been based on a complete and properly established factual situation because it did not correspond to the facts and evidence of the election material. The Court did not find grounds for the annulment of voting of the polling station No. 2337 in the municipality of Arachinovo.

5. Regarding complaints against the vote held on 19 April 2009, SEC considered all complaints and rejected them as groundless. Unsatisfied with the decisions of SEC, authorised candidate lists submitters pressed 12 lawsuits to the Administrative Court within the legal deadline, as follows: the authorised submitter of the list of VMRO-DPMNE pressed 11 lawsuits, whereas the authorised submitter of the list of a group of electors-Zelenikovo pressed 1 lawsuit.

6. The Administrative Court confirmed all SEC decisions, that is, dismissed all the lawsuits pressed, except for the case of the lawsuits for the polling station 1475, the municipality of Dolneni, where it amended the decision of SEC and annulled the vote held on 19 April 2009.

7. It should be noted that SEC did not adopt all the decisions within the legally determined deadline, and it was also not always clear which moment the calculation started of the 48 hours for submitting complaints to SEC. This was particularly the case with the complaints referring to the tabulation and establishment of election results.

Although according to Article 151, paragraph 2 of the

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<sup>68</sup> See complaint No. 2534-1, as well as see complaints from No. 2570-1 to 2583-1, *ibid*.

Electoral Code, when deciding upon complaints based on facts referred to therein not contained in the protocol, SEC is obliged to review the overall election material, especially in cases where there is family voting, voting on behalf of someone else, violation of the secrecy of the vote, etc. the Commission did not review the election material even when these irregularities were contained in the protocols of the Election Boards.

There is also certain inconsistency in the reviewing of the overall election material, because it was decided whether to make a review or not on a case-to-case basis without strictly respecting the legal provision. Thus, for complaints lodged in the first round of elections, SEC decided to carry out a review of the overall election material only in 3 cases, while for complaints lodged in the second round of elections in 4 cases. Lack of quality and fully explained SEC decisions is also noted. Decisions are mainly explained by quoting the provisions of the Electoral Code.

8. The same remark regarding the quality of decisions may be made for the Administrative Court as well. In 99% of the cases, the Administrative Court followed the explanation of the decisions given by SEC without going into evaluation of the serious accusations contained in the lawsuits of the lists submitters, such as, cases of family voting, voting on behalf of someone else, violation of the secrecy of the vote, more ballots in ballot boxes by persons who voted, unsigned protocols by the members of the Election Boards, etc. Like the SEC, when deciding, it too limited itself to very restrictive evidence, which may have been insufficient to make well explained decisions.

## **6. Election Campaign Financing and Financial Reports (2008 Early Parliamentary Elections)**

### **Shortcomings and Problems in Acting upon Political Parties' Financial Reports on Election Campaign Financing**

1. In all financial reports submitted on the expenditure of funds for the election campaign, note is made of the imprecision and lack of clarity in items contained in the reports and unreality in amounts showed as spent in relation to campaign costs really spent.

2. Political parties and their coalitions received significant discounts on prices and the amount of the discount was determined individually (varying between 10-90% of the price declared). In practice this created unequal conditions for access to paid advertising of political parties and their coalitions, besides the obligation for an equal access of political parties to media presentation of their political programmes. Unfortunately, there is no provision in the Electoral Code of RM which foresees that all candidates, parties and coalitions should receive an equal price for equal time and audience when buying advertising time<sup>69</sup>.

3. According to the data contained in the Report of the SCPC, in the financial reports of the political parties published and submitted to SEC and the State Auditing Office it is evident that the election

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<sup>69</sup> See complaints No. 2533-1, 2541-1 and 2542-1.



participants show expenditure in the election campaign higher than their income. Conclusion 3 of the Report of the Commission further notes that this difference as well as the insufficiently precise types of income sources that campaigns were financed from cast a doubt that there are other financial sources besides the legally determined ones<sup>70</sup>.

### **Institutional Response to Problems Observed**

1. Regarding the campaign financing, in its report OSCE/ODIHR notes that there are no efficient control mechanisms<sup>71</sup> and that there is an impression that certain campaign organisers exceeded the legal limits. These findings are confirmed by the Conclusions of the session of the State Commission for Prevention of Corruption held on 5-6.08.2008.

2. Even besides this, SEC has so far not instituted an misdemeanour procedure for the violation of the provisions for election campaign financing according to Article 180 of the Electoral Code, nor has it initiated a procedure for criminal liability for the violation of Article 165-a of the Criminal Code.

3. The 2008 Annual Report of the State Commission for Prevention of Corruption it is noted that according to the data provided by the Broadcasting Council regarding the costs for paid political advertising in the electronic media during the election campaign (for real time for paid political programme) and from regular monitoring of printed media, the Commission concluded that the two coalitions – organisers of the election campaign that were the only ones to have candidate lists in all six Electoral Districts had exceeded several times the legally permitted limit on funds to be spent for the election campaign in accordance with Article 84 of the Electoral Code<sup>72</sup>.

4. The State Auditing Office has still not performed an audit of the political parties' financial reports, both on the current operations of the political parties and the financial reports on the election campaign for the 2008 early parliamentary elections.

### **6.1 Election Campaign Financing and Financial Reports (2009 Presidential and Municipal Elections)**

1. According to the amendments and supplements of the Electoral Code, Article 83-b, paragraph 2 lays down the obligation of the Minister of Finance to adopt a Rulebook on the register of donations, which lays down the form, content and manner of keeping

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<sup>70</sup> See the Report of the State Election Commission on the elections for members of municipal councils and the council of the City of Skopje and for mayors of the municipalities and for mayor of the City of Skopje in 2009, Skopje, May 2009 (pp. 20 and 21) as well as the Report of the State Election Commission on the elections for a president of the Republic of Macedonia, Skopje, April 2009. See: [http://www.sec.mk:90/2009/fajlovi/rezultati/konecni/izvestaj\\_do\\_Sobranieto\\_na\\_RM\\_za\\_pretsedatelskite\\_izbori\\_2009.pdf](http://www.sec.mk:90/2009/fajlovi/rezultati/konecni/izvestaj_do_Sobranieto_na_RM_za_pretsedatelskite_izbori_2009.pdf)

<sup>71</sup> See: [http://www.sec.mk:90/2009/index.php?option=com\\_content&view=article&id=78&Itemid=78](http://www.sec.mk:90/2009/index.php?option=com_content&view=article&id=78&Itemid=78)

<sup>72</sup> The conclusion corresponds to the OSCE Final Report on the Early Parliamentary Elections held on 1 June 2008 (pp. 15).

the register of donations. In accordance with this legal obligation, for the 2009 election campaign 40 registers of participants in this electoral cycle were delivered, including larger parties, that is, coalitions.

2. According to the Code, election campaign organisers should submit financial reports on the election campaign.

### **Shortcomings and Problems in Acting upon Political Parties' Financial Reports on Election Campaign Financing**

1. On these elections too there is a lack of a report on an audit performed of the political parties' financial reports by the State Auditing Office, although the Annual work Programme of the State Auditing Office for 2009, referring to Article 6, paragraph 1 of the Law on State Audit, and in accordance with the internal classification of entities for audit, envisages that for four political parties financed by funds from the budget of the Republic of Macedonia financial audit will be performed<sup>73</sup>.

2. It should also be noted that within the 2009 Annual Programme, the State Auditing Office has envisaged 65 audits of financial reports for 2008, while it still has not prepared a single audit report on the financing of the political parties in the Republic of Macedonia.

### **CONCLUSIONS AND RECOMMENDATIONS:**

**1. The State Election Commission, as well as all remaining election authorities, must strengthen and improve the personal, professional, expert, technical and educational capacity in all the phases of the electoral process.**

Before the conduct of the 2009 presidential and municipal elections the capacity of SEC was partly strengthened through the employment of new people in the services of the Commission, however, work still needs to be done on **strengthening the remaining aspects of SEC capacity**. This recommendation is linked to 1 September 2009, when SEC should become fully competent to officially maintain and update the Voters' List. Serious remarks about the accuracy of data contained in the Voters' List in several electoral processes in a row create the need for strengthening the capacity of SEC, which is supposed to overcome inconsistencies and fully remove them.

**2. The State Election Commission should work more intensively on organising training for the members of the lower election authorities in the long run and by involving more persons in this process.** In this sense additional training programmes should be developed, which should be implemented not immediately before the elections, but in a more relaxed period between two electoral cycles. Also, consideration may be given to the **revision of the training manual** so that it becomes more understandable and more accessible

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<sup>73</sup> See: Annual Report on the Work of the State Commission for Prevention of Corruption for 2008, March 2009 (pp.25).

for proper application.

**3. The State Election Commission should use more the legal competence for adopting guidelines on issues that are insufficiently specified in the Electoral Code.** For instance, some provisions, such as Article 7 of the Electoral Code, which refers to the prohibition of persons convicted to an imprisonment sentence of more than 6 months to stand for election, which posed problems in implementation, could be explained through guidelines by SEC so that there is a consistent application of the Electoral Code and improved legal security with regard to the protection of the passive electoral right. Also, with a view to facilitating the process of counting votes and improving trust in the elections result, and taking account of the large number of complaints in the 2009 elections stating that the election results were not properly counted, SEC could consider adopting guidelines and amending forms that would foresee that MECs count and enter the total number of ballots after the vote (number of valid, number of invalid and number of unused ballots) and compare it to the number of ballots received for that polling station (reconciliation of ballots).

**4. The State Election Commission should demonstrate readiness quickly and decisively to deal with all problems arising as a result of the work of the lower electoral authorities.** SEC should demonstrate such readiness also in dealing with the irregularities caused by the participants in the electoral process. The State Election Commission must not remain passive and fail to institute misdemeanour procedures in cases of evident violation of the legal provisions by election participants, particularly during the election campaign. And once again the need is reaffirmed for strict conferring of legal power for **SEC to conduct misdemeanour procedures and impose misdemeanour sanctions. It is also necessary for SEC to be legally determined as an misdemeanour authority.**

**5. The State Election Commission should have a database of all misdemeanour and disciplinary procedures instituted and completed, measures imposed and dismissals of electoral bodies.**

**6. In cooperation with political parties, the State Election Commission will have to work on improving the level of professionalism and party impartiality.**

Like in the early parliamentary elections, so in 2009 presidential and municipal elections there were numerous election irregularities which were also recorded by the media and were the subject of complaints, **SEC, however, in most cases did not go into reviewing the overall election material, but chose a selective, and most frequently party-motivated approach to reviewing evidence provided. In certain cases SEC members voted according to their party affiliation,** which was especially evident when they reviewed the complaints of the authorised list submitters who did not have their representatives in SEC. Their complaints were rejected as groundless besides serious allegations contained in the complaints for election irregularities observed. This remark is a step backwards in the quality

of the work on complaints in 2008 early parliamentary elections when SEC showed greater readiness to open the election material, take into account additional information from electoral bodies' members as well as the results of the polling stations which had a suspiciously high voter turnout.

**7. It is necessary to consider continuing the short deadlines envisaged by the Electoral Code for acting upon complaints by SEC, but also for acting upon lawsuits by the Administrative Court.** It should be noted that the Republic of Macedonia has the fastest procedure of deciding upon complaints, i.e. lawsuits, compared to all member states of the Council of Europe. In order to guarantee the effectiveness of the procedures upon complaints and lawsuits of SEC, i.e. the Administrative Court, they should be given the right to collect data about election irregularities on the field themselves.

**8. Regarding the work of the Administrative Court note is made of its intransparency during sessions when it decided upon lawsuits against SEC decisions.** Besides the legal obligation for public acting upon lawsuits, the Administrative Court decided to remain close to the public when deciding, except for publishing the contents of the lawsuits lodged and verdicts and decisions passed when the Administrative Court was transparent and open to the public.

**9. The Administrative Court should use all evidence, that is, the overall election material when acting upon lawsuits.**

The continuation of the practice of using a restrictive number of evidence and the selective approach towards them may have an unfavourable effect on the protection of electoral rights. The Court should also specify the procedure for election irregularities in a written document which would be available to all interested parties.

**10. The problems that arose in relation to the manner of acting of the Broadcasting Council** regarding giving guidance for presentation of potential election candidates, that is, candidates who still do not have an Officially confirmed nomination by SEC or MECs, **created the need for more precise definition of Article 74, paragraph 2 and 3 of the Electoral Code in order to define the period before the start of the election campaign.** According to the Electoral Code there is no provision that refers to the media presentation of potential candidates before the beginning of the election campaign. **There is an obvious need to fill in this loophole in the law.**

**11. Note is made of the increase in the number of notifications by citizens to OSCE and MOST observers due to threats and intimidation as well as dismissal from jobs unless they vote for a specific political party.** In the 2009 presidential and municipal elections too there were traditional forms of election irregularities, such as family voting, group voting, violation of the principle of the secrecy of the vote, ballot box stuffing, voting on behalf of someone else, etc. In order to reduce these election irregularities, besides state authorities, political parties must also be actively involved in order to foster political culture both in party members, activists, simpatisers,

and the like, and in the voters of the Republic of Macedonia.

**These election irregularities must not be tolerated by the state authorities.** They must be punished uncompromisingly according to the legal provisions of the Criminal Code of RM.

**12. Due to violations of the legal provisions on election campaign financing by the participants in the electoral process, a need is created once again for amendments in the legislation regarding the time when audit reports should be delivered to SEC and the determination of direct consequences for the election participant if the State Auditing Office noted unlawfull expenditure of funds during the campaign.** The Electoral Code should distinguish between sources of election campaign financing and regulate the issue of whether the party may be sponsored or may only use donations and, if so, in what form. The Electoral Code must also lay down a single form for the political parties' financial reports, both for the parties' current financial operations and for the financing during the election campaign.

**13. Considering the fact that the State Auditing Office acts very slowly and in certain cases does not act at all upon political parties' financial reports, it is necessary to foresee a legal obligation for auditing of party financial reports** by the State Auditing Office or by an independent, domestic or foreign auditing authority according to the recommendations of the Venice Commission of the Council of Europe.

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