

## ELECTORAL CODES AND CRITERIA FOR CONDUCTING ELECTIONS – A COMPARATIVE REVIEW ON MACEDONIAN AND BULGARIAN CASE

**Abstract:** Electoral code of democratic states is considered a vital document for conducting elections within the state, defining all legal aspects and criteria for implementing electoral procedures. Through the years, these documents are usually subject to various amendments and additions, depending on the overall social or political circumstances.

More precisely, electoral codes define the legal frame of entire election process at all levels and accurately describe the election bodies and their competences for successful implementation of elections.

The aim of this essay is to analyse and compare electoral codes of North Macedonia and Bulgaria, with focus on the competencies and activities of electoral bodies, in order to provide conclusions and recommendations towards more efficient functioning of electoral bodies.

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### Author information:

#### Dragana Ruseska

Master of Political management on the Faculty of Law  
„Justinianus Primus“, Republic of North Macedonia

✉ [Ruseska.d@gmail.com](mailto:Ruseska.d@gmail.com)

🌐 Republic of North Macedonia

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## I ntroduction

Electoral law is the legal instrument used to develop the majority of electoral topics that are relevant for a nation. Electoral laws are enacted by ordinary legislators (legislative branches of government, chambers, congresses, assemblies, parliaments) in order to develop the general principles established by the Constitution.<sup>1</sup>

This type of documents is usually focused on the legal framework of election processes, including the competencies of each electoral body. Thus, electoral laws precisely define the organizational aspect of each electoral process, through criteria and regulations for conducting elections on each governing level.

In order to closely analyse election criteria within one state, it is appropriate to compare legislation with other state's experience, for the purpose of determining better practices and recommendations regarding more efficient implementation of election legislative framework.

Therefore, this essay presents a comparative analysis of election legislation in the cases of Republic of North Macedonia and Republic of Bulgaria, focused merely on the aspect of organization of the election processes, regardless of the election models in the mentioned states. The purpose of this essay is to briefly analyse and compare institutional and organizational capacities in these two cases, through the prism of election bodies, precisely focusing on municipal election commissions.

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<sup>1</sup> The Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/1f/1fa/1fa03/1fa03c> , accessed on 27th November 2019

## Defining election legislation

Elections are the defining institutions of modern democracy.<sup>2</sup> Throughout the years, and even starting from the point of view of Duverger, political parties serve to organize elections<sup>3</sup>, and at the same time their representation is of utmost importance to ensure democratic values of the process.

In Ancient Greece, citizens were selected for public office by lotteries, in order to increase the chances of ordinary, poor citizens being successful,<sup>4</sup> and thus paving the way for reaffirming Greece as the “cradle of democracy”.

According to the European Commission for democracy through law (Venice Commission) and as it is determined in the “Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the commonwealth of independent states”, while conducting fair elections, there are assured:

- a) the universal and equal suffrage;
- b) equal possibilities for every candidate or every political party (coalition) to participate in the election campaign, including the access to mass media and means of telecommunications;
- c) a fair and open financing of elections, election campaign of candidates, political parties (coalitions);
- d) honesty when voting and counting of votes, full and swift communicating of the results of voting with an official publishing of all results;
- e) organisation of the election process by impartial electoral bodies, working openly and publicly under an effective monitoring by public and international bodies;
- f) a quick and effective examination by courts and other bodies invested with the power to do so of complaints about violations of voting rights and freedoms of citizens, candidates, political parties (coalitions) within the time-period framework of relevant stages of the election process, provision for the citizen’s right to apply to international judicial bodies for protection and restitution of their voting rights and freedoms in accordance with the procedure stipulated by the norms of the international law.<sup>5</sup>

Macedonian Electoral Code as an official document has been subject to various changes and editions, since year 2006 and until last year’s referendum.

As quoted in Macedonian Electoral Code, this Code shall regulate the manner, conditions and procedure for election of the President of the Republic of Macedonia, election of Members of the Parliament of the Republic of Macedonia, election of Members of the Council of the Municipality and the Council of the City of Skopje, and election of Mayors of the municipalities and Mayor of the City of Skopje, the manner of and procedure for registering the right to vote, maintaining the Voter List, determining the boundaries of the electoral districts and determining, changing and publishing the polling stations as well as the conditions for the functioning of polling stations.<sup>6</sup>

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<sup>2</sup> Katz, Richard S., 1997: *Democracy and Elections*, New York, Oxford University Press, pp.3

<sup>3</sup> Grofman, B., Lijphart, A., 2003: *Electoral Laws and Their Political Consequences*, New York, Algora Publishing, pp.20

<sup>4</sup> Cartledge, P., 2006: *Ostracism: selection and de-selection in ancient Greece*, History&Policy, Policy Papers, <http://www.historyandpolicy.org/policy-papers/papers/ostracism-selection-and-de-selection-in-ancient-greece> , accessed on 27th November 2019

<sup>5</sup> Council of Europe, European Commission for democracy through law (Venice Commission), Strasbourg, 22th January 2007: *Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the Commonwealth of independent states*, Article 10

<sup>6</sup> Electoral Code of the Republic of Macedonia, Consolidated Version translated and edited by IFES - Based on the Unofficial Version Drafted by the State Election Commission Professional Service (Official Gazette of the

Bulgarian Electoral Code has also been subject to amendments and changes since 2014, and an update of the English text of this Act is being prepared following the amendments in SG No. 29/8.04.2019, effective 8.04.2019.<sup>7</sup>

This Code establishes the terms, arrangements and procedure for conduct of elections in the Republic of Bulgaria, the disputing of the election results, as well as the terms and procedure for filling vacancies. This Code shall apply to elections of: National Representatives for a National Assembly; National Representatives for a Grand National Assembly; President and Vice President of the Republic; Members of the European Parliament for the Republic of Bulgaria; municipal councillors; municipality mayors, borough mayors and mayoralty mayors.<sup>8</sup>

### **Comparison of state electoral codes from the aspect of election organization**

Considering the aspect of election organization, it is important to first determine bodies responsible for conducting elections and therefore analyse the aspect of organization through their structure and responsibilities.

In Macedonian case, bodies responsible for administering the elections are:

- The State Election Commission,
- Municipal Election Commissions and the Election Commission of the City of Skopje,
- Election Boards, and
- Election Boards for conducting the polling at the diplomatic – consular offices of the Republic of Macedonia (hereinafter “DCOs“), or the consular offices.<sup>9</sup>

In the case of Republic of Bulgaria, election bodies are the following:

- Central Election Commission
- Constituency Election Commissions
- Municipal Election Commissions
- Section Election Commissions<sup>10</sup>

The aim of this essay is to focus on municipal election commissions since they are responsible for organizing elections at the level of municipalities and units of local self-government, as a kind of micro electoral bodies.

Regarding the structure of municipal election commissions, in Macedonian case the Municipal Election Commission i.e. Election Commission of the City of Skopje shall be composed of a president and four members<sup>11</sup>, whereas in Bulgaria, the parties and coalitions represented in Parliament shall nominate members of the municipal election commission, including a chairperson, deputy chairperson

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Republic of Macedonia No. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18 and 27/19)

<sup>7</sup> Election Code of the Republic of Bulgaria, Promulgated, SG No. 19/5.03.2014, effective 5.03.2014, amended, SG No. 35/22.04.2014, effective 22.04.2014, SG No. 53/27.06.2014, SG No. 98/28.11.2014, effective 28.11.2014, SG No. 79/13.10.2015, effective 1.11.2015, amended and supplemented, SG No. 39/26.05.2016, effective 26.05.2016, SG No. 57/22.07.2016, effective 22.07.2016, SG No. 85/28.10.2016, effective 28.10.2016, supplemented, SG No. 97/6.12.2016; amended with Judgment No. 3/23.02.2017 of the Constitutional Court of the Republic of Bulgaria - SG No. 20/7.03.2017; amended, SG No. 85/24.10.2017, SG No. 94/13.11.2018, amended and supplemented, SG No.102/11.12.2018, effective 1.01.2019, SG No. 17/26.02.2019, SG No. 21/12.03.2019, effective 12.03.2019

<sup>8</sup> Election Code of the Republic of Bulgaria, Articles 1 and 2

<sup>9</sup> Electoral Code of the Republic of Macedonia, Article 17

<sup>10</sup> Election Code of the Republic of Bulgaria

<sup>11</sup> Electoral Code of the Republic of Macedonia, Article 34

and a secretary, according to the number of voting sections within the territory of the municipality as follows:

1. for municipalities with up to 150 voting sections: up to eleven members;
2. for municipalities with more than 150 voting sections: 13 members;
3. (amended, SG No. 39/2016, effective 26.05.2016) for boroughs in the cities subdivided into boroughs: 27 members;
4. (amended, SG No. 39/2016, effective 26.05.2016) for Sofia Municipality: 39 members<sup>12</sup>

It can be stated that Bulgarian approach in organizing municipal election commissions' structure is rather useful and productive, considering the fact that the scope of work of these commissions is different depending on the number of voting sections they cover.

For instance, in Macedonian case, there is a same structure and the same number of members in the municipal election commission in Municipality of Aerodrom, which covers 93 voting sections, and in Municipality of Bogdanci which covers 12 voting sections.

Considering that municipal election commissions are responsible for establishing election boards, as well as organizing and supervising their work, the above-mentioned example shows that one municipal election commission can have even 7 times more extensive work than another commission.

Regardless of the financial compensation they receive, it should be considered that all commissions face the same legal deadlines and therefore it would be more appropriate to allocate obligations and responsibilities to larger number of members within commissions that have a greater scope of work.

Moreover, members of voting sections face similar situation, since there are voting sections with 1000 registered voters that have the same number of members and afterwards receive the same amount of financial compensation with voting sections that, for instance, have only 20 registered voters.

In terms of financial compensation, it is important to address the legal criteria for engagement of members of municipal election commissions. For instance, in the case of Bulgaria, members of the municipal election commission shall be excused from the official duties or labour duties thereof for the time necessary for participation in the commission. During that time, the said persons shall use an unpaid service leave which shall be assimilated to the length of employment-service or civil-service seniority or, at their request, the paid annual leave to which they are entitled.<sup>13</sup> On the other hand, in Macedonian case, members of municipal election commissions are released from permanent job responsibilities during a certain period of time needed for organizing, preparing and conducting elections, in coordination and consultation with the State election commission. According to the state legislation, this situation is regulated in a manner that members receive their regular salary, whereas for their engagement in municipal election commission they receive additional financial compensation, taking in consideration that their engagement is overtime and rather demanding, according to the timetable set by the State Electoral Commission.

These previously mentioned criteria refer to organizational aspects of elections, through the prism of municipal electoral commissions analysed as bodies responsible for conducting elections. In fact, all mentioned criteria cover the period before elections, or more precisely the preparing period. At the same time, it is important to analyse aspects of the course of elections itself, in order to determine differences in the cases of North Macedonia and Bulgaria and therefore create recommendations for more efficient implementation.

It is notable that according to the Election Code of Bulgaria, voters shall vote from 7:00 hours until 20:00 hours<sup>14</sup>, whereas in the case of North Macedonia, the timeframe is from 7 am to 19 pm. This

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<sup>12</sup> Election Code of the Republic of Bulgaria, Article 76

<sup>13</sup> Election Code of the Republic of Bulgaria, Article 84

<sup>14</sup> Ibid, Article 220

is one of the most remarkable differences in organizational aspect of elections, but supposing that would be implemented in Macedonian case, could it make any difference in terms of voter turnout?

If we analyse voter turnout within latest presidential elections held in North Macedonia, it becomes clear that voter turnout is the highest in the period from 10 am to 13 pm, which means that most voters go to the election polls at that time, whereas in the rest of the day fewer people go out in a period of two hours as the turnout is measured (comparing the increases of voter turnout every two hours). Hence, even if we assume that time specified for voting is extended for an hour (until 8 pm instead of 7 pm), that would not make a very significant impact on the turnout, especially considering that in the last few hours turnout usually increases by about 5%, while in the peak it increases by 15%.<sup>15</sup>

Regarding the right to vote, it is important to review the procedure of exercising the legally guaranteed right to vote, or more precisely the procedure of determining validity of the voter documentation.

In Macedonian case, the voter shall prove his/her personal identity with an ID card or a travel document<sup>16</sup>, while in Bulgaria in the cases where the validity of the internal (green) passport or the identity card has expired or the said passport or card is damaged, destroyed, lost or stolen or in a process of being issued, the voter shall be admitted to voting if he or she presents a certificate of issuing of personal documents.<sup>17</sup>

This is particularly useful for a certain category of citizens, that for instance, in the period before elections have moved to another place of residence or for other reason are undergoing a procedure for changing their personal documents, or at the period turn 18 years old and acquire the right to vote. Therefore, Bulgarian practise of enabling voting with a certificate of issuing personal documents is useful in practice, since it opens wide opportunities for citizens to exercise their right to vote. Namely, it is crucial for each democratic society to allow every single person to exercise his/her right to vote.

## Conclusion

Through the prism of comparing election legislation in the cases of Republic of North Macedonia and Republic of Bulgaria, this analysis showed that certain Bulgarian experiences could be reflected and adapted in Macedonian case, thereof enabling more effective functioning of the preparation process and the implementation of elections itself, such as adapting the number of members of municipal election commissions according to the number of voting sections in municipalities, or loosening the procedure for verifying the validity of the voter at the voting itself.

In the end, the purpose of applying foreign experiences within the election process and procedures is not only to enable more effective functioning in this area, but also to strengthen democratic and European integration processes of the very country.

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<sup>15</sup> State Election Commission of the Republic of Macedonia, Presidential elections 2019, <https://rezultati-prvkrug.sec.mk/mk-MK/1/t6>, accessed on 27th November 2019

<sup>16</sup> Electoral Code of the Republic of Macedonia, Article 108

<sup>17</sup> Election Code of the Republic of Bulgaria, Article 263

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