



## **INTERNATIONAL ELECTION OBSERVATION MISSION Republic of Bulgaria – Parliamentary Elections, 5 July 2009**

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### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

**Sofia, 6 July 2009** – Following an invitation from the Government of the Republic of Bulgaria, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) to observe the 5 July 2009 parliamentary elections on 12 June. From 3 July, the Parliamentary Assembly of the Council of Europe (PACE) deployed an Ad Hoc Committee for the Observation of Parliamentary Elections in Bulgaria. The OSCE/ODIHR LEOM and the PACE Ad Hoc Committee formed an International Election Observation Mission (IEOM).

These elections are assessed for their compliance with OSCE commitments and Council of Europe standards for democratic elections, as well as with Bulgarian legislation. This statement of preliminary findings and conclusions is delivered prior to the announcement of final results, and the expiry of deadlines for possible complaints and appeals. The final assessment of the elections will depend, in part, on the conduct of these remaining stages of the election process. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The delegation of the Parliamentary Assembly of the Council of Europe will present its report at the next plenary session of the Assembly in September.

The IEOM did not conduct a comprehensive and systematic observation of election day proceedings, but visited a limited number of polling stations.

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### **PRELIMINARY CONCLUSIONS**

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The 5 July 2009 parliamentary elections in the Republic of Bulgaria were generally in accordance with OSCE commitments and Council of Europe standards; however, further efforts are necessary to ensure the integrity of the election process and increase public confidence. The parliamentary elections provided voters a broad choice in a visible and active election campaign demonstrating respect for fundamental freedoms. Nevertheless, late changes to the election system, concerns about the effectiveness of law enforcement and the judiciary, as well as pervasive and persistent allegations of vote-buying, negatively affected the election environment.

Although the Election Law is overall conducive to holding democratic elections, the fact that significant changes to the Election Law were introduced shortly before the elections without a wide consensus was not in accordance with good practice. One of the amendments, the introduction of the majoritarian element in the electoral system, compromised the principle of the equality of the vote due to a significant variation in population size of the majoritarian constituencies.

The Central Election Commission (CEC) worked in a generally professional manner, although some decisions underscored weaknesses inherent in the work of a temporarily constituted CEC. Confidence in the CEC was significantly affected by what were perceived as politicized decisions related to the denial of the registration of the opposition Blue Coalition. After a court

overturned the CEC's decision, party and candidate registration was overall inclusive, providing voters with distinct political options.

During the campaign, parties and candidates were able to promote their views to voters freely. A wide range of views was also available through the media, especially through televised debates, talk shows and other campaign programmes, enabling voters to make an informed choice. However, public television offered only limited news coverage of contestants' campaign activities, due to its interpretation of ambiguous Election Law provisions. As a result, its news programmes covered the activities of public officials extensively, many of whom were also candidates, thus giving them an advantage over their opponents.

The immunity guaranteed in the Election Law for registered candidates or proxies resulted in the release from pre-trial detention of individuals facing charges for serious crimes. Candidate immunity and allegations of vote-buying and intimidation dominated campaign discourse and campaign coverage in the media. Confidence in the ability of law enforcement agencies and the judicial system to eradicate vote-buying remained low, notwithstanding recently adopted legal provisions that criminalize this practice. Some arrests were made shortly before election day, in connection with alleged vote-buying in the European Parliament elections.

The legal requirement that only the Bulgarian language may be used to campaign, as well as the absence of voter information in minority languages, may limit the ability of some members of national minority groups to understand the election rules and to participate effectively in the election process. Minority communities remained vulnerable to potential intimidation, vote-buying attempts and so called controlled voting.

The framework for election complaints and appeals includes expedited and timely deadlines. However, it lacks important elements, including a realistic possibility to contest the election results, that would provide for a fully effective means of redress against decisions. There appears to be a lack of confidence among election stakeholders in the effectiveness and the impartiality of institutions deciding on complaints and appeals. Regulations that theoretically could provide for more transparency and accountability in the campaign finances are undermined by the lack of enforcement provisions.

Overall election day appeared to proceed in a calm and orderly manner, with a relatively high turnout. There were reported cases of attempted fraud involving absentee voting.

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## PRELIMINARY FINDINGS

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### Background

On 28 April, the President of the Republic of Bulgaria called parliamentary elections for 5 July, one month after the 7 June European Parliament elections. These were the first parliamentary elections after Bulgaria's accession to the European Union (EU) in 2007. The Constitution of Bulgaria stipulates that the parliament is elected for a term of four years.<sup>1</sup> The term of the outgoing parliament expired on 25 June. Although there was an initiative to amend the Constitution so as to hold the European Parliament and national parliamentary elections on the same day (7 June), it was rejected by parliament. The EU and Bulgaria have established a Co-

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<sup>1</sup> The Constitutional Court in 2001 elaborated that each elected parliament shall serve full four years since the day of its election.

operation and Verification Mechanism to “help Bulgaria remedy certain shortcomings in the areas of judicial reform, the fight against corruption and organized crime”.<sup>2</sup>

## Legal Framework and Electoral System

The primary legislation for the conduct of the parliamentary elections is the Law on Election of Members of Parliament (hereafter Election Law), adopted in 2001 and most recently amended in April 2009. The legal framework for elections also includes the 1991 Constitution (last amended in 2007), the Law on Political Parties (last amended in January 2009), the Criminal Code, organic laws on the courts, and codes of procedures. Furthermore, the Central Election Commission (CEC) issues instructions and decisions to clarify some legal provisions and assist officials administering elections. Following the April 2009 amendments to the Election Law, the elections for the 240-seat National Assembly were held according to a new mixed electoral system: 31 Members of Parliament (MPs) were elected by a majoritarian (first-past-the-post) system and 209 MPs by proportional representation. Parties and coalitions that pass a countrywide four percent threshold are eligible to receive proportional representation mandates.

The Election Law is generally conducive to holding democratic elections, although there are some issues, especially related to the adjudication of complaints and appeals (see Complaints and Appeals section below). In addition, a major concern is that the 31 constituencies for majoritarian representation, each electing one MP, considerably differ in population size.<sup>3</sup> An MP elected by majoritarian vote in the largest constituency will represent almost four times as many persons as an MP elected by majoritarian vote in the smallest one. This compromises the principle of the equality of vote guaranteed by the Constitution and enshrined in OSCE commitments and Council of Europe standards. The issue was challenged in the Constitutional Court by 70 Members of Parliament, but the challenge was rejected in an evenly split vote.<sup>4</sup>

The introduction of the majoritarian component of the election system shortly before the elections led to inconsistencies in the law. In the majoritarian races the margin of victory could potentially be a very small number of votes. There are no legal provisions that would allow for a candidate or a proxy to challenge the results or for a recount of votes in such a case.<sup>5</sup> In addition, absentee voters are allowed to choose any of 31 constituencies for casting their vote, including in the majoritarian races, undermining the purpose of the majoritarian system.

In an effort to combat alleged widespread vote-buying, this practice has been criminalized, punishable by imprisonment of up to six years. In addition, by law, all campaign materials shall include a prominent warning that vote-buying is a crime. Many interlocutors expressed a lack of confidence in the capacity of the law enforcement bodies to implement these provisions in an effective and neutral manner. The Prosecutor General informed the OSCE/ODIHR LEOM that of 100 initial cases, some 17 cases of alleged vote-buying, multiple voting and intimidation in the European Parliament and current parliamentary elections were under investigation.<sup>6</sup> Shortly before election day, police and prosecutors announced that a number of people had been arrested for vote buying in the context of the European Parliament elections.

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<sup>2</sup> Interim Report from the Commission to the European Parliament and the Council, On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, 12 February 2009, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0069:FIN:EN:PDF>

<sup>3</sup> The single mandate constituencies are the same as those for the proportional representation races,

<sup>4</sup> Six of the 12 Constitutional Court judges voted to accept the challenge, and six voted against.

<sup>5</sup> The CEC stated that DEC can order recounts at PEC level in some specific cases, such as when the numbers in protocols do not reconcile; however, this is not defined in the Election Law.

<sup>6</sup> Some 77 cases were initially dismissed as groundless, one investigation was suspended due to the candidate immunity of the accused, one case reached out of court settlement, two cases were closed for lack of evidence and two cases are still before the court.

The application and interpretation of the Election Law provision that grants immunity to candidates and proxies resulted in release from pre-trial detention or suspension of prosecution of persons facing charges for serious crimes. The initial intention of the provision appears to have been to shield candidates from politically-motivated investigations. However, OSCE/ODIHR LEOM interlocutors, including the Prosecutor General, stated that the provision has been misused by some individuals to escape from, or to defer potential sentences by becoming candidates.

### **Election Administration**

Elections in Bulgaria were run by a three-tiered election administration, headed by the CEC. There are 31 District Election Commissions (DECs) and some 11,403 Precinct Election Commissions (PECs). According to the Election Law, responsibility for the administration and organization of elections is shared between the Ministry of Administration and the CEC in cooperation with regional and municipal executive bodies. The Ministry of Foreign Affairs was responsible for coordinating out-of-country voting at 274 PECs in 59 countries. The final number of voters on the voter's lists was 6,884,271.

The CEC is a temporary body appointed by the President in consultation with the parties and coalitions represented in the National Assembly and European Parliament. The CEC consists of 25 members and, by law no party may have a majority. Several OSCE/ODIHR LEOM interlocutors expressed concern that the CEC is actually dominated by the ruling coalition. Although information on which parties nominated CEC members is not formally published, the present CEC leadership appears to include fewer representatives of the opposition parties than during the previous parliamentary elections. Nonetheless, the CEC sessions were generally run efficiently, and all members could voice their opinions.

In an improvement on previous elections, OSCE/ODIHR LEOM observers could attend CEC and DEC sessions. CEC sessions remained closed to party proxies and media. The CEC was well organized, met all legal deadlines and published its decisions on its website in a timely manner, though in some cases its conclusions were not classified as decisions and thus not published and subject to appeal.

General confidence in the impartiality of the CEC appeared to have been significantly affected by what has been characterized by some OSCE/ODIHR LEOM interlocutors as a series of politicized decisions taken in May 2009, regarding the denial of registration of the opposition Blue Coalition, which was later overruled by the Supreme Administrative Court.

Late introduction of significant changes in the Election Law gave the CEC additional challenges to address in a short time, including administration of the new majoritarian elections, an electronic voting pilot project, and provision for mobile voting.<sup>7</sup> Furthermore, its temporary nature and the lack of institutional continuity<sup>8</sup> caused additional difficulties, as illustrated by the late amendments to important guidelines just ten days prior to election day, and after completion of DEC training.<sup>9</sup>

The 31 DECs were appointed by 19 May, and by law mirrored the composition of the CEC. DECs were trained by the CEC and were generally well prepared. Party proxies are allowed by

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<sup>7</sup> Electronic voting was piloted in nine polling stations in Sofia.

<sup>8</sup> The election administration is constituted anew for each separate election, the CEC having been appointed by the President on 28 April.

<sup>9</sup> These included guidelines for indicating acceptable ballot markings and manner of folding of ballots.

law to observe DEC sessions. DEC members were responsible for appointing approximately 80,000 PEC members in consultation with the parties and coalitions. Some DEC members expressed concern that the PECs in some cases might fail to follow all procedures and complete result protocols correctly (Pazardzhik, Pleven, Vratsa, Kardzhali DEC members). This was related to the persistent problem of high PEC member turnover, caused in part by the lack of experienced members nominated by parties and insufficient remuneration.

The use of Absentee Voting Certificates and out-of-country voting were perceived by some interlocutors as possible mechanisms for multiple voting. The Civil Registration and Administrative Services Department of the Ministry of the Regional Development (GRAO) will conduct a complete verification process of the signed voter lists after the elections. If it detects possible fraudulent activities, such as multiple voting, the only remedy available would be the prosecution of perpetrators.

The CEC launched a voter education program well in advance of election day, including three TV spots explaining electoral deadlines, voting procedures, mobile voting and absentee voting in a clear and concise manner. Five domestic observer groups were accredited by the CEC.

### **Election Campaign**

The lists of 14 political parties and four coalitions running in all or some of 31 multi-mandate constituencies included 4,288 candidates. The majoritarian constituencies were contested by 357 candidates, offering voters a broad choice. The expectation that the majoritarian element in the election system would encourage participation of independent candidates was not realized, as only four such candidates were registered.

Political parties and coalitions engaged in a diverse election campaign that gained in visibility and activity as the 21-day campaign progressed. While government parties, led by the Bulgarian Socialist Party (BSP), stressed their success in economic development and stability, their opponents pointed out that Bulgaria's financial aid from the EU was cut in 2008 due to government's inability to combat corruption.

The anti-corruption rhetoric of those in opposition sharpened after the party Citizens for European Development of Bulgaria (GERB) released footage from a Movement for Rights and Freedoms (MRF) campaign event, in which the MRF leader claimed a decisive role in decisions on how public money is distributed. MRF representatives told the OSCE/ODIHR LEOM that the statement had been "taken out of context". They also claimed that their campaign offices in five towns had been vandalized as a result. Electoral malpractices such as vote-buying and intimidation, as well as granting of immunity to campaign to individuals facing serious criminal charges, dominated the campaign discourse and campaign coverage in the media.

Several legal provisions regulating campaign finance aim to enhance transparency and accountability. These include an obligation to publish the list of donors, a ban on corporate donations, and requirements to account for the origin of donors' contributions. However, none of these or other provisions, such as the ceiling on the campaign expenditures, are enforced or their violation sanctioned. The National Audit Office (NAO) is tasked with verifying political party finance reports. It confirmed to the OSCE/ODIHR LEOM its intention to carry out a full financial audit of political parties and coalitions, including crosschecks of their contractual partners for the year 2009. The report would be published by the end of the year. However, the NAO admitted that there are no sanctions in cases of violations or illegal financing.

## Media

Bulgaria has a pluralistic media environment, generally enabling freedom of expression and offering voters a wide range of political views. However, many outlets remain strongly influenced by their owners, and there are questions about broadcast media's independence from political and economic influence.

Regular discussion programs and talk shows on both public and private broadcasters provided an opportunity for contestants to present their views. The publicly funded Bulgarian National Television (*BNTI*) offered voters an opportunity to compare contestants' views through six televised debates, special election chronicles and paid political advertising, provided equally to all registered contestants, as required by law. The CEC, which in cooperation with the Council for Electronic Media deals with media-related complaints, reported receiving no official complaint on media coverage of the campaign.

There is no provision for free airtime, and contestants must pay for almost all campaign programmes on public broadcasters, including debates. Although the prices adopted by *BNTI* were equal for all, they were rather high, which may have affected some contestants' ability to address the electorate; and thus did not facilitate a level playing field for all contestants.

The Election Law limits campaign coverage in public media to debates, campaign clips and election chronicles. While it does not specifically state that public media may not cover the campaign in its news programmes, the law is ambiguous in this respect and was interpreted narrowly. As a result, *BNTI* offered only limited news coverage of the contestants' campaign activities but did provide intensive coverage of the work of state officials. As many of these officials were also candidates, this coverage blurred the distinction between their official duties and campaign activities, thus giving them an advantage over their opponents.

During media monitoring of the three weeks preceding the elections,<sup>10</sup> *BNTI* devoted 55 per cent of its political and election prime time news coverage to the government (47 per cent) and the president (eight per cent). Of the government's coverage, 68 per cent was positive and 11 per cent negative in tone. While the activities of ministers of the BSP were mainly shown in a positive light, the activities of ministers from the MRF were often criticized.

In the coverage of political parties and coalitions, *BNTI* gave most time to the MRF (14 per cent). This coverage was mainly negative, especially in connection with the campaign speech of the party leader (see Election Campaign). The second most-featured political contestant was the ruling Coalition for Bulgaria, that included BSP (six per cent, mainly neutral and positive coverage). By comparison, the opposition GERB and Blue Coalition respectively received three and two per cent of the coverage, which was mainly neutral or positive in tone.

While there are no restrictions on news coverage of the campaign by private broadcasters, those monitored by the OSCE/ODIHR LEOM exhibited similar patterns of low electoral campaign coverage in their news. However, the two most popular private national TV channels *bTV* and *Nova TV* offered their viewers more balanced news coverage than *BNTI*. While both of these allocated the bulk of their coverage to the authorities, it was much less than *BNTI*. The tone of the coverage was also more balanced. However, independent opinions on the authorities' performance were generally absent in the news programs of all monitored broadcast media.

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<sup>10</sup> The OSCE/ODIHR LEOM media monitoring commenced on 14 June. It included *BNTI*, privately owned *bTV*, *Nova TV* and *Re:TV* and the daily newspapers *Trud* and *24 Chasa*.

Newspapers offered their readers more diverse views, with coverage of activities of a broad range of parties and coalitions, as well as analytical reports and features.

### Complaints and Appeals

A relatively small number of formal complaints were filed with the election administration, courts and executive authorities. The CEC received 15 formal complaints and appeals against DEC decisions, most of them related to the registration of parties and candidates and composition of PECs. In almost all cases the CEC upheld the DEC's decisions. However, the CEC does not have a written procedure for the complaint and appeal process. It is not clear on which criteria the CEC decides what constitutes a complaint and what is the appropriate form for its decisions. The lack of a formal decision from the CEC could render a potential court appeal against a CEC decision inadmissible. Nine appeals were filed with the Supreme Administrative Court, which is the competent body to receive appeals of the CEC decisions.<sup>11</sup> In the regions, a number of parties informed OSCE/ODIHR long-term observers that they were not fully confident that institutions dealing with complaints and appeals would do so in an effective manner.<sup>12</sup>

According to the Article 112 of the Election Law, the only way to challenge the election results is to appeal to the Constitutional Court within 14 days after announcement of the results by the CEC. However, according to the Article 150 of the Constitution, only a few institutions can initiate such a procedure with the Constitutional Court, including one-fifth of the parliament.<sup>13</sup> Given that the new Parliament would not have been formed by the prescribed deadline, there is no effective judicial procedure for challenging the election results

### Participation of National Minorities

According to the 2001 census, ethnic Turks comprise 9.4 per cent of the population and Roma comprise 4.7 per cent. However, the actual number of Roma is believed to be significantly higher.<sup>14</sup> The Constitution prohibits "political parties on ethnic, racial or religious lines". According to the Election Law, the election campaign shall be conducted in the official language, i.e. in the Bulgarian language, only. There did not appear to be official voter information or election materials provided in minority languages.

The Turkish minority is perceived to be represented by MRF, a partner in the current and previous governments. Roma are not perceived to be associated with any single political party, their votes being contested by many parties.

Roma are considered the most vulnerable group when it comes to possible election irregularities, especially in connection with the widespread practice of vote-buying, and alleged incidents of direct pressure, threats, or so called controlled voting. This vulnerability is largely due to social exclusion, poverty and lower levels of education among much of the Roma population. Some interlocutors expressed concern that Roma are often portrayed as the source of problem with regard to vote-buying, thus reinforcing existing stereotypes. There were allegations that some forms of pressure are also directed against ethnic Turkish voters, including by MRF.

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<sup>11</sup> Out of these, four were not examined by the court, considering the appellants did not qualify for an appeal.

<sup>12</sup> Specifically in Stara Zagora, Lovech, Sofia, Plovdiv and Kardzhali.

<sup>13</sup> Others are the President, the Council of Ministers, the Supreme Court of Appeals, the Supreme Administrative Court and the Prosecutor General.

<sup>14</sup> According to the information provided by experts, civil society organizations, as well as by representatives of governmental agencies, the estimated Roma population is between 700,000 – 800,000, two times bigger than the official estimate.

## Participation of Women

There were 53 women in the outgoing parliament (22 per cent), a decrease by ten compared to the parliament elected in 2001. There are seven women who have ministerial status in the 22 member Cabinet. The percentage of women candidates on the party lists for parliamentary elections was 28 per cent and there were 71 women candidates among the 357 majoritarian candidates. Women from minority populations are generally believed to be poorly represented in political life.

## Election Day

The IEOM did not conduct comprehensive and systematic observation on election day, but IEOM observers did visit a limited number of polling stations and DEC's in several constituencies.

The atmosphere on election day was calm, and voting appeared to proceed in an orderly manner. The CEC reported voter turnout at just over 60 per cent, a significant increase as compared to the 7 June European Parliament elections (39 per cent). There were queues at many polling stations visited, which seemed to have been caused in part by the fact that there was frequently only one voting booth per polling station. PEC members in polling stations visited generally seemed familiar with the procedures and managed the process professionally. In the municipality of Dupnitsa, unauthorized individuals appeared to be interfering in the voting process in polling stations visited.

PECs faced difficulties in determining the authenticity of AVCs.<sup>15</sup> Several hours after the polls opened, and after reports that fraudulent AVCs were being used in some areas, the CEC adopted a decision on the verification of AVCs. Not all PECs were aware of this important decision in a timely manner. The Ministry of Interior reported that it started proceedings against four individuals on election day for possible involvement in vote-buying. Allegations of vote-buying continued to circulate throughout election day.

The counting and tabulation process appeared to be professionally conducted and provided for a prompt announcement of the preliminary election results. Although some procedural errors were observed during the count, these did not appear to have an impact on the process. IEOM observers were granted full access to the tabulation process at the DEC's, but it is not clear whether party proxies enjoyed similar access.

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## MISSION INFORMATION & ACKNOWLEDGEMENTS

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Following an invitation from the Government of the Republic of Bulgaria, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) on 12 June 2009, consisting of nine core team members based in Sofia, and eight long-term observers deployed throughout the country. Ambassador Colin Munro is the head of the OSCE/ODIHR LEOM.

On 3 July the PACE Ad Hoc Committee consisting of 12 parliamentarians and staff joined the OSCE/ODIHR LEOM. The PACE Ad Hoc Committee is headed by Prof. Tadeusz Iwinski (MP Poland).

The OSCE/ODIHR and PACE wish to thank the authorities of the Republic of Bulgaria for the invitations to observe the elections, the Central Election Commission for its co-operation and for

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<sup>15</sup> By law, AVCs were issued by municipalities prior to election day at the request of a voter, with no justification required. A voter with an AVC could vote in any polling station in the country.



providing accreditation documents, and the Ministry of Foreign Affairs for their assistance and co-operation. The OSCE/ODIHR LEOM and PACE also wish to express appreciation to representatives of other state institutions, election authorities, political parties and civil society organizations for their co-operation. However, PACE received the late invitation that affected the deployment plan.

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