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Observation of the presidential election in Bulgaria (6 and 13 November 2016)

Election observation report

Ad hoc Committee of the Bureau

Rapporteur: Mr Joseph O'REILLY, Ireland, Group of the European People's Party

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1. Introduction

1. On 29 July 2016, Ms Tsetska Tsacheva, President of the National Assembly of Bulgaria, invited the Parliamentary Assembly of the Council of Europe to observe the presidential election in Bulgaria, scheduled for 6 November 2016.

2. The Bureau of the Parliamentary Assembly, at its meeting on 26 May 2016, had decided to observe this election (subject to receiving an invitation) and had constituted an ad hoc committee for this purpose composed of 11 members (EPP/CD: 3; SOC: 3; ALDE: 2; EC: 2; UEL: 1) and the co-rapporteurs of the Monitoring Committee. On 24 June 2016, it appointed Mr Luís Leite Ramos (Portugal, EPP/CD) as its Chairperson. On 14 October 2016 it approved the revised list of members of the ad hoc committee and appointed Mr Joseph O'Reilly (Ireland, EPP/CD) as its Chairperson to replace Mr Leite Ramos, who could not participate in the mission. The list of members appears in Appendix 1.

3. In line with the co-operation agreement signed between the Parliamentary Assembly and the European Commission for Democracy through Law (Venice Commission) on 4 October 2004, a representative of the Venice Commission was invited to join the ad hoc committee as a legal adviser.

4. The ad hoc committee met in Sofia from 4 to 7 November 2016. The programme of the ad hoc committee's meetings is set out in Appendix 2. On election day, the Parliamentary Assembly delegation split into six teams and observed the vote in Sofia and its surroundings, as well as in the districts of Blagoevgrad, Plovdiv, Veliko Tarnovo, Montana, Vratza and Pernik.

5. The following day, the ad hoc committee held a press conference and issued a statement (Appendix 3).



2. Political background

6. The previous presidential election was held in Bulgaria on 23 (first round) and 30 October 2011 (second round). Mr Rosen Plevneliev won then with 52.6% of the votes. In May 2016, he announced that he would not be running for re-election.

7. The 2016 presidential election was held alongside a referendum on changes to the electoral system and political party funding. A petition for the referendum was initiated by one of the most popular TV show presenters in Bulgaria and managed to gather 673 481 signatures in favour of holding it. A check by the general directorate of the regional ministry established that 572 650 of the signatures were valid, with the minimum threshold for the holding of a referendum initiated by citizens being 400 000 valid signatures.

8. In May 2016, President Rosen Plevneliev referred to the Constitutional Court three questions out of a total of six questions proposed for the referendum. On 28 July 2016, the Constitutional Court of Bulgaria unanimously rejected the three questions referred to it despite all questions having been previously accepted by the parliament for a national referendum to be held in autumn 2016. The three rejected questions were about, first, whether to introduce online voting in elections and referendums, second, whether to reduce the number of members of parliament from 240 to 120, and third, on the election of the heads of regional directorates of the Interior Ministry through a majoritarian electoral system, requiring an absolute majority at the end of two rounds.

9. The three questions that remained for the 6 November referendum were about the introduction of a majoritarian system to elect members of parliament, the introduction of compulsory voting (even though the parliament had already legislated on this) and the reduction of the State subsidies for political parties and coalitions to one lev (about 50 euro cents) per valid vote.

10. The Constitutional Court rejected the question about reducing the number of members of the National Assembly from 240 to 120 on the grounds that deciding this was solely within the competence of a Grand National Assembly¹. The court held that for decisions taken in the referendum to be implemented, the matter must be in the competence of the body which decides on holding the referendum. The National Assembly could not commit to holding a referendum on issues which were in the jurisdiction of other authorities, such as a Grand National Assembly.

11. The Court pointed out that it found it necessary “to once again emphasise” that a national referendum is a powerful tool for the direct exercise of State power by citizens, significantly different from other forms of participation “and in no way is a kind of public opinion poll”. This meant that the National Assembly should strictly exercise the powers given to it by the Constitution and the law, to prevent people being misled and taking part in the voting without it being clear that the result of the referendum would not produce the legal consequences being sought.

12. In his approach to the Constitutional Court, President Plevneliev had said that the Constitution could not be circumvented by trying to allow parliament, which would have to implement the decision taken by referendum, to decide by a simple majority vote matters that were under the jurisdiction of a Grand National Assembly.

13. According to a decision of the Central Election Commission, voters would have to explicitly ask for the ballot paper for the referendum. In other terms, it meant that members of polling stations would not automatically deliver the ballot paper for the referendum to the voters unless it was explicitly requested by the voter.

3. Legal framework

14. The President and Vice-President are elected on the same ticket by popular vote for a five-year term (eligible for a second term).

15. The President appoints the Prime Minister candidate nominated by the party holding the highest number of seats in the National Assembly to form a government. Should the Prime Minister designate fail to form a government within seven days, the President shall entrust this task to a Prime Minister-designate nominated by the second largest parliamentary group. Should the new Prime Minister-designate also fail to

1. The Code provides for the possibility of electing a 400-member Grand National Assembly, which can be elected only for constitutional and other fundamental changes. The system for electing the National Assembly, including the number of constituencies, is equally applicable for the Grand National Assembly.

form a government within seven days, the President shall entrust the task to a Prime Minister-designate nominated by one of the minor parliamentary groups. Should the consultations prove successful, the President shall ask the National Assembly to elect the Prime Minister-designate. In the absence of an agreement on the formation of a government, the President shall appoint a caretaker government, dissolve the National Assembly and schedule new elections. In these instances, the President shall not dissolve the National Assembly during the last three months of his term of office.

16. The President is the Supreme Commander-in-Chief of the Armed Forces of the Republic of Bulgaria. He can exercise extraordinary powers in cases of emergency; he has the right to veto parliamentary decisions, but only once for the same bill.

17. The main piece of legislation governing presidential elections is the Election Code of 22 July 2016. In addition to the Constitution of Bulgaria and the Election Code, other pieces of legislation are relevant: the Direct Citizen Participation in State and Local Government Act, the Political Parties Act, the Local Self-government and Local Administration Act and the Administrative Violations and Sanctions Act.

18. After the Ombudsman of Bulgaria challenged, on 17 October 2016, provisions of the Election Code on voting abroad before the Constitutional Court, arguing that a restriction which sets a cap of 35 Bulgarian polling stations per country violates the Constitution by infringing on the rights of expatriates to vote, the government parties (GERB, the Reformist Bloc and the Patriotic Front) reached a compromise to amend the Election Code after an emergency meeting, removing the cap on the number of polling stations outside Bulgaria within the European Union. Consequently, the National Assembly adopted, on 21 October, the relevant amendments to the Election Code. However, this restriction remained valid for non-EU countries (which include Turkey and the United States).

19. The National Assembly also debated the “None of the above candidates” option on the ballot paper, but this voting option remained. Under the current rules, the “None of the above” option is a valid vote and is therefore part of the voters having voted; it is used to measure the voter turnout but is not counted in the final results. Some, including President Rosen Plevneliev, voiced concerns about a method that may allow any of the candidates to get support from “protesting voters” if their share is not taken into account in the final result.

20. In May 2016, the National Assembly adopted a number of amendments to the Election Code. These included the introduction of compulsory voting, the transfer of most election-related responsibilities from the Council of Ministers to the Central Election Commission and new rules for the establishment of polling stations abroad.

21. On 14 October 2016, the Monitoring Committee of the Parliamentary Assembly requested an opinion of the Venice Commission. This opinion will be prepared jointly with the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and will mainly focus on the recent amendments to the Election Code. The opinion will be issued at the Venice Commission’s plenary session of 2017.

22. The President and the Vice-President of Bulgaria are elected jointly through a nationwide majoritarian system for a five-year term. More than half of registered voters must cast ballots for the election to be valid. Any Bulgarian citizen entitled to vote is eligible providing that he/she is at least 40 years of age and has resided in the country for the five years preceding the election.

23. The President and the Vice-President are elected simultaneously from national candidate lists registered by political parties and coalitions or by nomination committees. They are elected on the same ticket, on the same conditions and by the same procedure and are eligible for only one re-election to the same office.

24. The Election Code provides for various voting methods, including mobile voting (homebound voting), voting at special polling stations, use of absentee voting certificates and voting abroad. The Election Code also provides for both paper and machine voting. Machine voting was conducted at 500 polling stations. In addition, an experimental machine vote count was conducted in accordance with the rules defined by the Central Election Commission.

4. Electoral administration, voters lists and the registration of candidates

25. The presidential elections are administered by a three-level structure of electoral management bodies: the Central Election Commission (CEC), 31 constituency (district) election commissions and around 12 000 section (precinct) election commissions.

26. The CEC consists of 18 members, including a chairperson, deputy chairpersons and a secretary, who are nominated by the parties and coalitions represented in parliament, as well as of members nominated by each of the parties and coalitions which have elected members in the European Parliament, but which are not represented in the Parliament of Bulgaria.

27. The chairperson, the deputy chairpersons and the secretary of the CEC are elected by the National Assembly, whereas the rest of the members are appointed by the President following proposals by the political parties and coalitions in parliament.

28. A constituency election commission consists of a chairperson, deputy chairpersons, secretary and members. The representatives of any single party or coalition should not represent the majority in the constituency election commission. The chairperson, the deputy chairperson and the secretary may not be of one and the same party or coalition. In constituencies of up to nine members of parliament, the constituency election commission will be composed of 13 members. In constituencies of 10 or more members of parliament, the constituency election commission will be composed of 17 members.

29. The constituency election commissions or the municipal election commissions appoint section election commissions for each voting section within Bulgaria not later than 25 days in advance of polling day.

30. The section election commission consists of a chairperson, a deputy chairperson, a secretary and members. The representatives of any single party or coalition should not represent the majority in the section election commission. The chairperson, the deputy chairperson and the secretary may not be of one and the same party or coalition. The number of members of section election commissions, including a chairperson, a deputy chairperson and a secretary, is, for voting sections with up to 500 voters inclusive, up to seven members, but not fewer than five; and for voting sections with more than 500 voters, up to nine members, but not fewer than five.

31. All Bulgarian citizens aged 18 years or over on election day have the right to vote, except those serving a prison sentence, regardless of the severity of the crime. The recent amendments to the Election Code prescribe that a voter who has not voted during two consecutive elections of the same type without a valid reason is removed from the voters lists. Active registration is consequently prescribed for those wishing to be reinstated in the lists.

32. Additionally, there is a new provision introduced by the recent amendments, according to which “the voter [abroad] shall furthermore present a declaration completed in a standard form to the effect that he or she has not voted and will not vote elsewhere in the same elections. The said declaration shall be attached to the electoral roll and shall constitute an integral part thereof”.

33. If a voter is not registered in a voters list but is entitled to vote, he or she has to justify this right by presenting to his/her section election commission a declaration in a standard form to the effect that the said voter has not voted and will not vote elsewhere.

34. The voters lists are compiled by the municipal administrations. Each voter shall be entered on a single list and registered according to his/her permanent address. A separate voters list shall be compiled for each voting section.

35. Special voters lists are established for the purpose of voting outside polling stations, i.e. in medical-treatment facilities, specialised institutions, prisons and navigation vessels. There are also specific voters lists established for voting abroad, based on applications by Bulgarians living abroad and wishing to exercise their voting right through diplomatic and consular missions.

36. The candidates for President and Vice-President may be proposed for registration by a party, a coalition or a nomination committee. Independent candidates are registered when the candidature thereof is supported by at least 2 500 voters. According to the new amendments, each voter may participate in only one list.

37. The CEC is responsible for registering candidates. Should a registration be denied by the CEC, the decision can be challenged before the Supreme Administrative Court.

38. The CEC is the main relevant (but not exclusive) authority to examine complaints about irregularities affecting the electoral process, including against decisions and actions of constituency and section election commissions, including section election commissions abroad. The CEC pronounces a decision on any such complaints within 24 hours of the complaint being submitted. On election day, the CEC pronounces a decision

within one hour after the arrival of any such complaint and in any case before the closing of the poll. The Supreme Administrative Court is the relevant body for appeals of CEC decisions, including the decisions taken following election disputes appealed before the CEC.

39. In addition, the constituency election commissions are competent to deal with complaints about irregularities affecting the election campaign and have to take a decision within 17 hours of the arrival of any such complaints and with complaints against decisions and actions of section election commissions within the same deadlines as the CEC. The CEC is the appeal authority for election dispute resolution before constituency election commissions.

40. Disputes relating to registration of candidates can be filed before the Supreme Administrative Court.

41. Disputes relating to media during electoral campaigns can be filed before the CEC for national broadcast providers or before the constituency election commission of the territory where the challenged medium is broadcasted. The CEC is the appeal authority for election dispute resolution before constituency election commissions relating to media during electoral campaigns. The decisions of the CEC are appealable before the Supreme Administrative Court.

42. Citizens who are not included on the voters lists can appeal such a decision or inaction before the Supreme Administrative Court.

43. Domestic observers, party agents and representatives of parties, coalitions and nomination committees can also file complaints about irregularities affecting the electoral process.

44. Nevertheless, voters are not authorised to file complaints about irregularities which would have affected their rights during the electoral process. As indicated in the 2014 Venice Commission-OSCE/ODIHR opinion on the draft Election Code of Bulgaria, voters registered in the constituency concerned should be entitled to contest the election results.

45. A total of 24 candidates registered for the presidential election. Three of them did not gather the required number of signatures, therefore 21 candidates ran.

46. The main candidates (according to surveys) were Ms Tsetska Tsacheva (Citizens for European Development of Bulgaria – GERB); Mr Rumen Radev (Bulgarian Socialist Party – BSP); Mr Krasimir Karakachanov (VMRO – Ataka block and Front for national survival); Mr Trajcho Trajchev (Reformist Block – RF); Mr Ivailo Kalfin (ABV); Ms Tatyana Doncheva (Movement 21) and Mr Plamen Oresharski (Turkish party Movement for Rights and Freedoms).

5. Election campaign and finance and media environment

47. The official election campaign started 30 days before election day and was low-key. According to the Election Code, it has to be conducted in the Bulgarian language only.

48. Funding of political parties, coalitions and candidates is based on public funds as well as on the financial resources of the party or of the coalition, on financial resources of the candidates and of contributions by natural persons.

49. Anonymous contributions, contributions by legal persons, contributions from abroad (by natural persons as well as States, State-owned companies and foreign non-profit organisations) and contributions from religious institutions are banned.

50. The total amount of campaign funding for a presidential election cannot exceed 2 million BGN (approximately €1 million) for a party, a coalition and a nomination committee.

51. The National Audit Office has the authority to oversee political party and campaign expenses.

52. Public service broadcasters are required to cover elections in accordance with the principles of equitability and objectivity and allocate free airtime to each contestant. The election coverage by private broadcasters is largely unregulated.

53. Public funding for media advertising is provided to the parties, coalitions and nomination committees that have registered a candidate.

54. A new provision among the recent amendments stipulates that “it shall be prohibited to use the coat of arms or the flag of the Republic of Bulgaria or of any foreign State, as well as any religious signs or designs, in any campaign materials”. Another new provision states that “it shall be prohibited to make political insinuations in commercial advertising to the benefit or to the detriment of any party, coalition or nomination committee or candidate”.

6. Polling day

55. On election day, the Parliamentary Assembly delegation split into six teams and observed the vote in Sofia and its surroundings, as well as in the districts of Blagoevgrad, Plovdiv, Veliko Tarnovo, Montana, Vratza and Pernik. In the polling stations observed, the election day was assessed as generally calm.

56. On 8 November 2016, the final results were announced: Mr Rumen Radev – 25.45%; Ms Tsetska Tsacheva – 21.97%; Mr Krasimir Karakachanov – 14.57%; Mr Veselin Mareshki – 11.18%; Mr Plamen Oresharski – 6.63%; Mr Traycho Traykov – 5.87%. The turnout was 56.28%.

57. On 13 November, a run-off was held between Mr Radev and Ms Tsacheva. The results were as follows: Mr Radev: 59.37% (2 063 032 valid votes); Ms Tsacheva 36.16% (1 256 485 valid votes); option “neither of them” 4.47% (155 411 valid votes). The turnout was 50.44%.

58. On 13 November, Prime Minister Boyko Borisov, leader of the GERB party, who supported Ms Tsacheva, resigned.

7. Conclusions

59. The delegation concluded that the elections were well administered technically and fundamental freedoms were respected. The election administration worked in a professional, scrupulous and transparent manner. The relatively high turnout can be considered as the expression of the hope for long-lasting political stability in the country.

60. The campaign was competitive and increased public confidence in the electoral procedures was observed. However, the electoral campaign was low-key and the media did not show much interest in reporting on the elections. There was no public debate on substantial issues among the main candidates.

61. The accuracy of the voters lists remains a concern. Accurate voters lists are central to a credible democratic electoral process.

62. In those polling stations where machine voting was used as an alternative to paper voting (the decision to use one or the other system being left to the voters), it was observed that only a relatively small number of voters used machine voting. The delegation felt that in the future it would be useful to use one or the other system in a polling station, as opposed to using both systems simultaneously.

63. The Venice Commission’s Code of good practice in electoral matters and the Council of Europe’s standards do not recommend amendments to the fundamental elements of the electoral law within one year before the elections. Prior to the presidential election, the Bulgarian National Assembly adopted on several occasions amendments to the Election Code. The Assembly has requested the Venice Commission to provide an opinion on these amendments and the Venice Commission announced it would be preparing it jointly with the OSCE/ODIHR and would issue it in March 2017.

64. The Parliamentary Assembly and the Venice Commission will continue to work alongside the authorities of Bulgaria in the field of elections with a view to continue progress.

Appendix 1 – Composition of the ad hoc committee

Based on the proposals by the political groups of the Assembly, the ad hoc committee was composed as follows:

Joseph O'REILLY, Ireland (EPP/CD), Chairperson

Group of the European People's Party (EPP/CD)

- Joseph O'REILLY, Ireland

Socialist Group (SOC)

- Geneviève GOSSELIN-FLEURY, France
- Predrag SEKULIĆ, Montenegro

European Conservatives Group (EC)

- Suat ÖNAL, Turkey

Alliance of Liberals and Democrats for Europe (ALDE)

- Anne MULDER, Netherlands
- Luis Alberto ORELLANA, Italy

Group of the Unified European Left (UEL)

- Ertuğrul KÜRKÇÜ, Turkey

Co-rapporteurs of the Monitoring Committee (ex officio)

- Franck SCHWABE, Germany

Venice Commission

- Eirik HOLMØYVIK, Norway

Secretariat

- Bogdan TORCATORIU, Administrator, Election Observation and Interparliamentary Co-operation Division
- Danièle GASTL, Assistant, Election Observation and Interparliamentary Co-operation Division
- Gaël MARTIN-MICALLEF, Administrator, Secretariat of the Venice Commission

Appendix 2 – Programme of the ad hoc committee (4-7 November 2016)

Friday 4 November 2016

- 09:30-11:00 Ad hoc committee meeting:
- welcome of members by the Head of the delegation
 - presentation of the legal framework and of recent developments by Mr Eirik Holmøyvik, Professor of Law, substitute member of the Venice Commission
 - presentation of the local political situation – Assoc. Prof. Dr Teodora Kaleynska, local expert
 - presentation of the deployment plan and of logistical issues, by the Secretariat
- 11:45-12:45 Meeting with the delegation of Bulgaria to the PACE: Ms Dzhema Grozdanova, Mr Yanaki Stoilov, Mr Danail Kirilov and Mr Hamid Hamid
- 14:30-17:30 Meetings with presidential candidates and/or their representatives:
- BSP: Mr Rumen Radev; Mr Iliana Iotova; Assoc. Prof. Dr Tatyana Burudjieva; Ms Teodora Rumenova Ovcharova
- Coalition Movement 21 – NMS2: Ms Tatyana Doncheva; Mr Mincho Spasov
- ABV – representing Mr Ivaylo Kalfin: M. Georgi Dimitrov, Member of the Executive Bureau of ABV political party and International Secretary; Ms Pavlina Popova, Head of the political cabinet of the President of ABV; Mr Marin Kirov, Member of the Executive Bureau of ABV
- Reformist Block: Mr Traycho Traykov; Mr Subi Subev; Mr Ivan Ivanov

Saturday 5 November 2016

- 10:00-11:00 Meeting with media representatives:
- Ms Maria Cheresheva, Association of European Journalists
- 11:15-12:15 Meeting with representatives of NGOs:
- Association “Transparency International: Mr Kalin Savov, Ms Vanya Nusheva
 - Institute for Development of Public Sphere: Ms Iva Dimitrova
 - Civil Initiative for Free and Democratic Elections (ГИСДИ): Ms Katya Mihaylova, Mr Kiril Mirchev
- 12:15-12:30 Meeting with interpreters and drivers
- 15:00-16:30 Meeting with Ms Ivilina Verginova Alexieva-Robinsson, CEC Chairperson

Sunday 6 November 2016

- All day: Observation of the vote (opening of the polling stations, vote, closing of the polling stations, counting, tabulation)

Monday 7 November 2016

- 09:00- 10:00 Ad hoc committee meeting (debriefing and adoption of a statement)
- 11:00 Press conference

Appendix 3 – Press release

Bulgaria Presidential election well administered, although accuracy of voters' lists remains a concern

Strasbourg, 07.11.2016 – An 8-member delegation of the Parliamentary Assembly of the Council of Europe (PACE)*, led by Mr Joseph O'Reilly (Ireland, EPP/CD) and accompanied by representatives of the Venice Commission, visited Bulgaria from 3 to 7 November 2016 in order to observe the presidential election.

The delegation met with presidential candidates or their representatives, with the Central Election Commission, with members of the Bulgarian delegation to the PACE as well as with representatives of the media and of civil society.

The delegation concluded that the election was technically well administered and fundamental freedoms were respected. The election administration worked in a professional, scrupulous and transparent manner. The relatively high turnout can be considered as the expression of the hope for a long-lasting political stability in the country.

The campaign was competitive and an increase of public confidence in the electoral procedures was observed. However, the electoral campaign was low-key and the media did not show much interest in reporting on the election. There was no public debate on substantial issues among the main candidates.

The accuracy of the voters' lists remains a concern. Accurate voters' lists are central to a credible democratic electoral process.

The Venice Commission's Code of good practice in electoral matters and the Council of Europe's standards do not recommend any amendments to fundamental elements of the electoral law within one year before the elections. Prior to this election, the Bulgarian National Assembly adopted on several occasions amendments to the Electoral Code. PACE has requested the Venice Commission to provide an opinion on these amendments.

On election day, the PACE delegation split in 6 teams and observed the vote in Sofia and its surroundings, as well as in the districts of Blagoevgrad, Plovdiv, Veliko Tarnovo, Montana, Vratza and Pernik. In the polling stations observed, the election day was assessed as generally calm.

The Parliamentary Assembly of the Council of Europe and the Venice Commission will continue to work alongside the authorities of Bulgaria in the field of elections with a view to continue progress. The delegation will present its final report during the first PACE part-session of 2017.

* Members of the delegation: Joseph O'reilly, Ireland (EPP/CD), Head of the Delegation; Geneviève Gosselin-Fleury, France (SOC); Predrag Sekulić, Montenegro (SOC); Anne Mulder, Netherlands (ALDE); Luis Alberto Orellana, Italy (ALDE); Suat Önal, Turkey (EC); Ertuğrul Kürkçü, Turkey (UEL); Frank Schwabe, Germany, Co-rapporteur of the Monitoring Committee (*ex officio*).