Science and technique of democracy, No. 25

CDL-STD(1998)025
Or. Engl.

Sarajevo (Bosnia and Herzegovina),
17-18 April 1998

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

New trends in electoral law in a pan-European context

Proceedings of the UniDem Seminar
organised in Sarajevo
from 17 to 18 April 1998
in co-operation with the University of Sarajevo
and the Central European Initiative

TABLE OF CONTENTS

Opening Speech by Mr Cazim SADIKOVIC 2

Opening Speech by Mr Gianni BUQUICCHIO 3

The constitutional principles of electoral law by Mr Pierre GARRONE 6

Electoral Corporative Bodies (Commissions, Committees, Boards) and Preparation of Voters' Registers promoting Free and Fair Democratic Elections by Dr György CSALÓTZKY 26

Electoral Systems and Outcomes in Central and Eastern Europe by Messrs Richard ROSE & Tom MACKIE 36

The Debate on Electoral Systems – Case Study: Italy by Mr Mauro VOLPI 48

Debate on Electoral Systems – Case Study: Russia by Mr William SMIRNOV 53

Debate on Electoral Systems – Case Study: South Africa by Messrs Jacques DE

VILLE and Nico STEYTLER.....62

Electoral Systems in the New Democracies and Comparison of their effects by Mr Bernard OWEN.....72

Electoral Systems for post-conflict societies: Lessons for Bosnia and Herzegovina by Mr Ben REILLY.....85

The Electoral Debate in Bosnia and Herzegovina by Mr Slobodan KOVAC,.....95

The Electoral Debate in Bosnia and Herzegovina by Mr Hilmo PASIC, MA......96

The Electoral Debate in Bosnia and Herzegovina by Mr Mirko BOSKOVIC.....105

Principles for Elections in Bosnia and Herzegovina by Mr Johan VAN LAMOEN.....108

Concluding Speech by Mr Cazim SADIKOVIC,.....112

Opening Speech by Mr Cazim SADIKOVIC
Dean of the Law Faculty, University of Sarajevo

Let me first say how happy I am to see the members of the Venice Commission and many other European lawyer colleagues meeting here in Sarajevo.

This meeting of lawyers, representatives of European legal theory and practice, is taking place at a particular moment, one might say a critical moment, in the development of our country. It is in fact high time that the progress made on the political level was given a stable constitutional and legal infrastructure.

"Just as matter strives for form, a society strives for the state". The society of Bosnia and Herzegovina, in this post-war period, is showing clear signs of wanting to have a real and legal state, a precondition for any further progress.

The beginning of modern history and democracy in Europe is marked by the words "elections are the foundation of the democratic model". The development of democracy in Europe in fact followed the general development of the right to elections and the electoral process. The present phase of electoral law in Europe is no exception in this respect: it represents the present general democratic development and carries within itself the seed of new trends in the democratic process.

The present requirements according to which elections should be identical, free, direct and secret are considered everywhere to be the undeniable heritage of constitutional and democratic development in Europe and are at the same time a reliable criterion for judging the progress of each European country, and hence Bosnia and Herzegovina. It is clearly time

that these requirements were considered essential conditions for all the countries that constitute the family of the Greater Europe.

The intention that these electoral principles should become rules in all European countries, including Bosnia and Herzegovina, in no way implies that it is impossible to express certain needs specific to each country. The general idea is in fact to make it possible to meet these specific needs, in a context of complete respect and unreserved acceptance of the principles set out above. This also, of course, applies to Bosnia and Herzegovina.

Everybody knows that the problem with elections in post-war Bosnia and Herzegovina is that not all the legal principles mentioned above are respected. Nor indeed have the most important democratic and political institutions in our country yet been defined. The general situation at present indicates that it is necessary to remedy these shortcomings as quickly as possible if we want to avoid the dangerous consequences of such a situation. Some efforts are already being made in this direction.

I would remind you that the Venice Commission, at the request of Mr Westendorp, recently decided to examine the following questions:

1) elections and the general status of the presidency of Bosnia and Herzegovina,
2) the position of the government, considering the intention to introduce a prime minister instead of two co-Chairs of the Council of Ministers,
3) the constitutional status of the three constituent peoples of the state of Bosnia and Herzegovina in the constitutions of the two entities.

These questions clearly imply the examination of the efficiency of the political system of the Bosnian State. The question of elections is in fact the question of the legitimacy of all the organs of state. In European political and legal theory it is an undeniable fact that only the citizens concerned by the decisions of an organ can make this organ legitimate. The question of elections in Europe, and in Bosnia and Herzegovina in particular, thus represents an opportunity to examine and criticise all the political and democratic institutions, and also an opportunity to rehabilitate them and strengthen their democratic nature. This applies particularly to the famous “parliamentary triangle”: parliament, the head of state and the government.

In short, the present debate concerning the electoral system could provide the opportunity to bring the entire normative and institutional part of the Constitution of Bosnia and Herzegovina into line with the aims set out in the preamble of this Constitution. I would recall that this preamble sets out in excellent fashion the aims of a modern European state, starting with sovereignty and integrity, and also mentioning the principles of a State governed by the rule of law, and going on to the question of economic development on the bases of the market economy, prosperity and the quality of life of all the citizens of Bosnia and Herzegovina.

Opening Speech by Mr Gianni BUQUICCHIO
Secretary of the European Commission for Democracy through Law

The idea of setting up the European Commission for Democracy through Law was suggested in 1989. The initiative was inspired by the notion that great changes were on the way. It was a propitious moment. As the Council of Europe's 40th Anniversary approached, the walls which had divided our continent collapsed. History presented us with a unique opportunity for creating a new instrument within the Council of Europe for seeking to achieve shared goals. Democracy, human rights and the rule of law will no longer be the exclusive preserve of the West.

The Venice Commission was therefore established to achieve three aims:

First, it was to be a specialised body responsible for debating issues of constitutional reform, not simply within the context of the Council of Europe, but also for the benefit of central and eastern European states which needed its assistance in order to join the family of democratic nations.

Second, the Commission was to be a forum for specialised and in-depth knowledge on constitutional law as practised in member states, with the emphasis on comparative assessment of the decisions of constitutional courts and other comparable organs. For democracy, a body of "living" rules as it were, is shaped not just by basic texts and the statute book but equally by the work of judges who mediate between major principles and specific problems.

Last, but by no means least, it was recognised that the Venice Commission, as an open forum, would provide the opportunity to further knowledge of constitutional law and democratic political culture.

The results achieved speak for themselves. The enlargement of the Commission's membership - nearly fifty states now participate in its work - reflects the growing importance of the Council of Europe's role of bringing European states together and allows the latter to benefit from our shared political and legal heritage.

The Commission is therefore making progress towards achieving its goal of spreading democratic constitutional values. Constitutional democracy, based on the rule of law, on a balance between power and freedom and on a responsible government, requires a sophisticated cultural climate. It is our duty to ensure that the process of constitutional reform and the creative spirit which it generates do not run out of steam during the initial phase of transition from dictatorship to pluralist politics and economic liberalism. Moreover, once a constitution has been drafted, there remains the task - and it is a formidable one - of implementing it. The ruling classes must be capable of ensuring that assistance from the Council of Europe and the Commission has a long-lasting impact on society.

This concern has led the Commission to diversify its activities. On the one hand, thanks to the Bulletin on Constitutional Case-Law, now available on CD-ROM and the Internet, the work of constitutional courts is publicised well beyond the circle of the initiated, allowing for fruitful exchanges of information between long-standing and new member States. On the other hand, the Commission has launched the Universities for Democracy Programme, also

known as UniDem. Its purpose is to promote the growth of a democratic culture, legal maturity and a political class with a good knowledge of issues relating to democracy and law, acquired through specialised seminars, university exchanges and conferences. The programme draws on eminent political figures, currently in positions of responsibility, and prestigious academics to discuss the science and technique of democracy and, above all, one of its key components, the Rechtsstaat or rule of law.

The Zeitgeist, the spirit of our times, is about freedom of movement which, as we know, also means the movement of freedom. UniDem is designed to allow the exchange of the wealth of democratic experience that we have accumulated, which is entirely consistent with the Commission's principal vocation.

It is for the Council of Europe to express and shape the great values which make of our continent what it aspires to be: not merely an enormous market, but a family of closely united nations which, whatever their differences, share ideals and cherish their shared roots. Nevertheless, integration is never easy. A pan-European system needs to be established to allow the economy-based Community to become a genuine political union. This looks likely to be a difficult process. Let us not forget that there is currently a virulent re-emergence of nationalism which threatens in many respects to take us back to the divided and troubled Europe of 1919. The "spirit of Geneva" of those distant days gave rise to a hope for a peaceful and civilised world built around the League of Nations, itself focused on Europe. That era was also characterised by the conviction that the only force used to resolve conflicts should be reason and law.

The "spirit of Geneva" was ephemeral, but our "spirit of Strasbourg" or "of Venice" has a better chance of succeeding. Europe is at the heart of a legal and political civilisation which seems to be steadily developing around it. The days are past when the Council of Europe could do nothing more than denounce countries which turned their back on democracy and which violated human rights. Our organisation has become - and will remain - the driving force behind Europe and a home for reason and law, in which we can live and prosper together. The European Commission for Democracy through Law is determined to serve this spirit of Strasbourg to the best of its ability. Its work resembles a laboratory of constitutional law, although that does not mean that it must concern itself solely with technical details. In fact, the subjects which it addresses cover all aspects of the way in which society is structured because all dynamic constitutions are conceived for the benefit of people and their government.

The European Commission for Democracy through Law is therefore relentlessly working towards building up and strengthening stable democracies. Part of its work must be to study electoral law, insofar as modern democracies are unthinkable without elections. Gone are the days when appointments were made by drawing lots in the ancient democracies criticised by Plato and Aristotle.

Nowadays, a small random programme would have no problem appointing authorities within minutes on the basis of lists of citizens, thus ending not only the headaches brought on by the complexity of electoral systems and the worry caused by the practical arrangements involved in organising an election, but also the need for election campaigns and the problems of financing them. Unfortunately, though, it is likely that the political results of such a system

would be as random as the programme on which it is based. So we have no alternative but to study a subject which seems awesome in its technicality. For generations, mathematicians have studied the arithmetic subtleties of different electoral systems, political scientists the effects of such systems, and politicians ways of arriving at elected bodies with perfect membership, not to mention the lawyers and citizens from all backgrounds and professions who with varying degrees of genius have invented new voting systems.

Now it is our turn, and in a state where elections are a burning issue. In helping to draw up a definitive electoral law for Bosnia and Herzegovina, the Venice Commission is contributing to an essential part of the process to consolidate a democracy in the country.

In the course of this seminar we shall be discussing both the universal and specific aspects of electoral law. On the one hand, respect for general principles is necessary so that an election can be declared democratic, and because the same electoral systems tend to produce the same results in different contexts. On the other hand, the situation in each country is specific to that country and so it is understandable that lawmakers tend towards original solutions. The new electoral law in Bosnia and Herzegovina, for example, will have to take account of local features and, by definition, will be unique.

I should like to end by thanking the University of Sarajevo and the Dean of the Law Faculty, Prof. Sadikovic, associate member of the European Commission for Democracy through Law, the Office of the High Representative and Mr Westendorp, the High Representative, the OSCE and the head of its delegation in Bosnia and Herzegovina, Ambassador Barry, and the Central European Initiative and Ambassador Hartig.

The constitutional principles of electoral law by Mr Pierre GARRONE
Administrative Officer in the Secretariat of the European Commission for Democracy Through Law

Introduction

At the end of the second millennium, it is almost inconceivable for any political regime not to profess foundation on democratic elections. Where this is plainly not so, the authorities continually promise elections; otherwise, such elections as may be held are only to return a single candidate or to express pluralism which is just window-dressing or at best limited, precluding any alternance in power.[1] It obviously takes much more than this for an election to bear the democratic hallmark. The election must comply with the three fundamental principles upheld by the Council of Europe: human rights, rule of law and democracy in the strict sense of the word.

---

[1] *Concerning elections in "non-competitive" and "semi-competitive" systems, see Nohlen Dieter, Wahlrecht und Parteiensystem. Über die politischen Auswirkungen von Wahlsystemen, Opladen: Leske + Budrich, 2nd edition 1990, pp. 22 ff.*

Firstly, democratic elections cannot be contemplated without securing fundamental freedoms, notably freedom of expression, assembly and association for political purposes.

Secondly, they presuppose respect for rule of law: not only must the rules of electoral law be observed, but above all the elected bodies must perform the functions vested in them by the legal system. An elected body unable to exercise the powers conferred on it by the constitution would render the election meaningless.

Lastly, and this is our present concern, an election placed in a context of freedom and legality has to meet specifically democratic criteria.

Briefly, democratic elections are founded on five cardinal principles: universal suffrage which must be equal, free, direct and secret. [2]

These five principles, repeatedly affirmed,[3] may appear to invoke realities that are self-evident, but for some of them it is not so simple. The first part of this paper sets out to define them by means of examples taken from national law, and to determine the minimum rules for a democratic election, part and parcel of Europe's constitutional heritage. The second part will consider how far these principles have been sanctioned by the European system of human rights safeguards.

I. The principles of national law

1. Universal suffrage

Universal suffrage, to take its literal meaning, implies that all and sundry are entitled to exercise political rights (termed "active franchise"; right to vote) and to enjoy them ("passive franchise"; eligibility).

It would of course be unthinkable for absolutely everyone to be able to vote in any election whatsoever. This is why universal suffrage has certain natural limits:

a. There are firstly *nationality* limits; the rule is that political rights are reserved for nationals with very few exceptions, at least for national elections; the Irish Constitution, in permitting "such other persons in the State as may be determined by law" to participate in national elections, is unique in Europe.[4] While the right to vote in local elections is recognised by a larger number of States, it is to be noted that only three - the Netherlands, Norway and Sweden - have so far ratified the European Convention on the Participation of Foreigners in

---

[2] *Cf. Nohlend D (op. cit., footnote 1), pp. 30-32.*

[3] *A statement of the five principles can be found, for instance, in Article 38 (1) of the German Constitution, Articles 68 (1) and 69 (2) of the Spanish Constitution and Article 59 (1) of the Romanian Constitution.*

[4] *Article 16 (1, 2.ii).*

Public Life at Local level[5] without making exclusions as to the applicability of the part concerning the right to vote in local elections. In the European Union, however, all citizens of the Union and thus all citizens of the Member States have the right to vote and to stand for election in local and European Parliament elections in the Member State where they reside.[6]

b. Secondly, the right to vote and to stand for election are subject to *age* requirements: although the minimum ages for voting and for candidacy are not the same in all States and for all elections, minors are universally disqualified. Much more seldom, an upper age limit equal to or above the statutory retirement age is set for candidacy.[7] This limit is to be equated with the rules requiring civil servants to retire at a specified age. On the other hand, it would infringe the principle of universal suffrage to disenfranchise elderly voters.

In a good number of States, similar qualifying ages for electing and being elected to most bodies apply,[8] while in others the right to stand for election is acquired at a slightly more advanced age (generally twenty-one instead of eighteen years).[9] The qualifying ages may also be greater for election to certain offices, e.g. the Presidency of the Republic or membership of the Upper House (the minimum age is sometimes even fixed at forty years[10]).

c. Next, *residence* requirements may be imposed in both cases; for local elections, the stipulation of a certain *term* of residence does not appear incompatible with the principle of universal suffrage if not in excess of a few months;[11] a longer term, favouring old inhabitants to the detriment of more mobile individuals, can be accepted only in special circumstances.[12]

---

[5] *ETS 144.*

[6] *Article 8 B of the Treaty Instituting the European Union.*

[7] *This is the case in Switzerland for a limited number of cantonal elections: cf. the writer's thesis: Garrone Pierre, L'élection populaire en Suisse - Etude des systèmes électoraux et de leur mise en oeuvre sur le plan fédéral et dans les cantons, Basel/Frankfurt: Helbing & Lichtenhahn, 1991, p. 28.*

[8] *Examples: Article 30 of the Danish Constitution; Article 153 of the Portuguese Constitution.*

[9] *Examples: Articles 42 (1) and 65 (1) of the Bulgarian Constitution; Articles 18 (3) and 19 (1) of the Czech Constitution; Articles 57 (21) and 60 (2) of the Estonian Constitution; Articles 48 (1) and 56 (3) of the Italian Constitution (25 is the age of eligibility).*

[10] *For the Senate: Article 58 of the Italian Constitution (the voting age for the Senate is 25); for the Presidency of the Republic: Article 93 (2) of the Bulgarian Constitution; Article 78 (1) of the Lithuanian Constitution.*

[11] *In Switzerland, cantonal law can only withhold the right to vote at cantonal and municipal level for the first three months of residence: Article 43 (5) of the Constitution.*

[12] *Consider the special case of Trentino-Alto Adige: section II.3.c below.*

d. Moreover, universal suffrage can accommodate the disenfranchisement of certain persons in clearly specified situations, firstly persons who are disqualified, in particular where this measure is applied for reasons relating to their mental health, and secondly persons who have been sentenced, at least to certain penalties or for serious offences.[13] Certain states further prescribe deprivation of civic rights for dependence on public assistance,[14] or bankruptcy.[15] Such measures are consistent with the principle of universal franchise only where they abide strictly by the principle of proportionality.

Other States keep possible interference with the principle of universal suffrage to a minimum. In Lithuania for instance, the Constitution guarantees that only persons declared legally incapable may be deprived of the right to vote.[16] The Irish Constitution even provides that all citizens without exception are eligible to vote in elections for members of the *Daíl Éireann* (Lower House).[17]

Exclusion from "*passive franchise*" may be more widely applied while respecting universal suffrage. In particular, criminal convictions or deprivation of rights may weigh more heavily than in the case of the right to vote, for public office-holding is at stake and it may be justifiable to keep out of office persons whose activity in office is incompatible with an *overriding public interest*. This naturally calls for meticulous observance of the principle of proportionality. There are few statutes which, like the Greek Constitution[18], specify numerous grounds of ineligibility connected with the discharge of a public or semi-public function.[19] The Albanian Constitutional Court has found constitutional the temporary exclusion of perpetrators, conceptualisers and implementers of a cruel and inhuman dictatorship.[20] In other States, grounds of unsuitability for election are more restricted. For example, the Danish Constitution confers the right to be elected on any person having the status of a constituent, except one found guilty of an act which, in the

---

[13] *Examples: Article 54 (2) of the Netherlands Constitution: deprivation of the right to vote on the ground of a criminal conviction concerns only those cases where a person has been sentenced to at least one year's imprisonment and simultaneously disqualified from voting; Article 34 (2) of the Romanian Constitution: here too, disenfranchisement must be the express consequence of a judgment. In these two States, mental disorder is the sole ground of disqualification.*

[14] *Example: Article 29 (1) of the Danish Constitution.*

[15] *Article L 5 of the French Electoral Code.*

[16] *Article 34 of the Constitution.*

[17] *Article 16 (1.2.i).*

[18] *Article 56.*

[19] *The application of this provision has raised a complaint to the European Court of Human Rights; see section II.3.c below.*

[20] *Bulletin on Constitutional Case-Law, ALB-1996-2-001.*

eyes of the public, renders him unworthy to be a member of the Folketing.[21] Certain constitutions even provide that deprivation of the right to be elected affects only persons deprived of the right to vote.[22]

In some States such as Switzerland, inclusion in the *electoral rolls* occurs automatically on the basis of the population registers. In others, the electors must register in order to vote or stand for election. This requirement[23] is not to be regarded as a restriction on universal suffrage but rather as a means of exercising it. On the other hand, for the universal suffrage principle to be upheld, the State must make it materially possible for citizens to place their names on the electoral rolls and, inter alia, permit registration for a reasonably long period. When the electoral rolls are brought up to date, all persons who have the right to vote must be included.[24]

2. Equal suffrage

Equality can be apprehended from various standpoints, each of which will be discussed in turn.[25]

2.1 Equality in counting

A first aspect of equal suffrage, and the most essential, is equality in counting. Each voter is entitled to one vote and one only ("one man - one vote"). In other words, a plural vote is prohibited. This is still expressly stipulated in the Constitution of Belgium, where plural votes were allowed last century.[26]

2.2 Equal weight of votes

a. Principle

The fact that constituents have one vote each does not automatically give the same influence in determining the election result. Indeed, most elections, or at least national parliamentary

---

[21] *Article 30 (1).*

[22] *Examples: Article 60 (2) of the Estonian Constitution; Article 99 (1) of the Polish Constitution; Article 97 (1) of the Russian Constitution.*

[23] *This requirement applies, for instance, in France - Article L 9 et seq. of the Electoral Code, in Bosnia and Herzegovina - Article 5.1 et seq. of the "Rules and Regulations", and in the United States.*

[24] *Bulletin on Constitutional Case-Law, TUR-1994-3-008.*

[25] *Regarding the various aspects of electoral equality, reference can be made to the thesis by Poledna Tomas, Wahlrechtsgrundsätze und kantonale Parlamentswahlen, Zurich: Schulthess 1988, pp. 21 ff.*

[26] *Article 61 (2).*

elections, are not held in a single constituency;[27] normally the national territory is divided into a number of constituencies within which seats are allocated. Such being the case, the principle of equality requires equal distribution of seats among the constituencies in a fixed ratio, whether according to the number of residents in the constituency,[28] the number of resident nationals (including minors),[29] the number of registered electors[30] or possibly the number of voters. When the apportionment of seats among constituencies diverges too far from the standard ratio, equal weight of votes is not maintained, nor consequently equal suffrage; it is then a question of "electoral geometry" or inequalities in representation.

The most blatant electoral geometry is "active", that is a distribution of constituencies causing inequalities in representation immediately it is applied.

Electoral geometry may also be "passive": in this case, the inequality arises from protracted retention of an unaltered territorial distribution of seats and of constituencies. In order to avert this situation, two methods may be used. The first is regular reallocation of seats to the constituencies; the second entails regular redistribution of the constituencies themselves. The first method is the simpler but is usable only in multi-member constituencies; the second is mandatory where a system of single-member constituencies applies. Accordingly, the Irish Constitution provides for a review of constituencies "at least once in every twelve years, with due regard to changes in distribution of the population".[31] In Japan, the correction must be made "within a reasonable period of time".[32]

Equal weight of votes tolerates certain inequalities of representation between constituencies provided that each constituent weighs equally in determining the overall result. Thus, in Slovenia there are cases where an elector's vote for a party candidate in one constituency may lawfully allow a candidate belonging to the same party to be elected in another constituency after remaining votes have been distributed at national level.[33]

b. Real or apparent inequalities? Different treatment of different situations

In electoral law as in other branches of law, different treatment of different situations must be accepted.

---

[27] *The State of Israel affords one of the few examples of a single constituency for the parliamentary election. Single constituencies are much more common at municipal level.*

[28] *See for example Article 16 (2.2) of the Irish Constitution and Article 7 of the Latvian Constitution.*

[29] *This is the case in Austria according to Article 26 (2) of the Constitution.*

[30] *See for example Article 152 (2) of the Portuguese Constitution.*

[31] *Article 16 (2.4).*

[32] *Bulletin on Constitutional Case-Law, JPN-1996-2-001.*

[33] *Bulletin on Constitutional Case-Law, SLO-1996-1-002.*

This approach is best exemplified by the composition of many second Chambers. Unlike first Chambers, they often represent not the people but the federated entities of a State or its territorial units. In that case, the equality which must be achieved is between the federated states or territorial units instead of between the constituents. Thus, the United States Senate[34] and the Swiss Council of States[35] consist of two members per state or canton. In Germany, the representation of each Land in the Bundesrat only marginally depends on the population of the Land; it may vary as much as twofold (from three to six seats).[36] The Spanish Senate comprises (with exceptions for the island provinces) four senators per province, far more than are returned by the autonomous communities in proportion to their population. Equality is thus assured between territorial communities without special autonomy;[37] the same applies in Croatia regarding the Chamber of Županije, for which each Županija elects three representatives.[38]

For the election of the first Chambers representing the people, such inequalities of representation are inadmissible. However, certain exceptions may be made for the benefit of regions in a special situation. Firstly, the physical extent of the constituency may be allowed for. Such provision is made by the Danish Constitution, which lays down as criteria for the apportionment of seats not only the number of residents and electors but also population density.[39] It is fairly common for sparsely populated regions to be over-represented in this way. Note, however, the further provision made in the Constitution that Greenland shall be represented by not more than two Folketing members, to prevent the results from being distorted by taking the territory's area into account.[40] Over-representation of (rural) areas with few residents is nevertheless quite widespread. In Spain for instance, it is established by securing one "basic deputy" to each province: the Constitution expressly stipulates that "the law … assigns minimum initial representation to each constituency and allocates the remaining seats proportionally to the population".[41] Furthermore, in some States minimum representation is secured to national minorities; in Slovenia, the Italian and Hungarian ethnic communities are entitled to elect one Deputy each to the National Assembly.[42] In Poland, the Constitutional Tribunal has even held that the lists put up by "registered" organisations of national minorities may, at their request, be

---

[34] *Amendment XVII to the Constitution, first paragraph.*

[35] *Article 80 of the Constitution.*

[36] *Article 51 of the Constitution.*

[37] *Article 69 of the Constitution.*

[38] *Article 71 (2) of the Constitution.*

[39] *Article 31 (3).*

[40] *Article 28.*

[41] *Article 68 (2).*

[42] *Article 80 (3) of the Constitution.*

taken into account in the allocation of parliamentary seats even if they do not attain the 5% quorum required of other lists;[43] German electoral law makes a similar rule.[44] In Romania, "there is a certain number representing national minorities if the latter have not captured a parliamentary seat but have obtained at least 5% of the average number of votes validly expressed throughout the country for the election of one Deputy".[45][46]

2.3 Equality of results

In contrast to rules governing, for instance, civil service entrance, electoral law is perfectly fitted for achieving equality of results between the various groups, without offending against the principle of equality in other ways.

a. Equality of party representation

1. The more closely the elected body's composition resembles that of the electorate, the more fully equality of results is achieved, that is to say the systems which guarantee the most proportional result are the most consistent with this goal. It is not intended here to discuss in detail how perfect proportionality can be achieved, but certain points should be made by way of clarification.

The proportionality of a system may be defined according to two criteria: the decisional principle and the representational principle.[47] The decisional principle is the method by which votes are converted into mandates, and relates primarily to the way the electoral system operates within the constituency. The representational principle corresponds to the anticipated effect of the electoral system on the result or, more precisely, to the desired level of proportionality between votes cast and seats gained. In practice, *the rules for allocation of seats being constant*, i.e. with the same decisional principle, the representational principle may differ widely according to the number of members returned by the constituency (also termed size). In small constituencies, small parties are eliminated by the *threshold effect* in the absence of any quorum. Thus, in a two-seat constituency a list must obtain over one-third of the votes to be sure of participating in the allocation of seats, while if nineteen seats are to be filled it needs only 5% of votes, or 3.3% in a constituency with thirty-two seats.

---

[43] *Bulletin on Constitutional Case-Law, POL 1997-1-009.*

[44] *Replies to the Questionnaire on the Participation of Members of Minorities in Public Life, CDL-MIN (97) 2, p. 9.*

[45] *European Parliament, Directorate General for Research: Working Paper, Electoral Systems - Central and Eastern Europe - Central and Eastern Europe Series, E-1, 11-1994, p. 21.*

[46] *On the question of unequal representation between constituencies, readers are referred in particular to Buffet-Tchakaloff Marie-France, Juges constitutionnels et découpage électoral (Allemagne fédérale, Autriche, Etats-Unis, France, Japon), Revue du droit public et de la science politique en France et à l'étranger 1989, pp. 981-1008.*

[47] *On this question, see for instance Nohlen D (op. cit., footnote 1) pp. 102 ff.*

The proportional representation system is applied nowadays - at least for Lower House elections - in the majority of European States, or it is combined with certain features of the majority vote system (Germany, Albania, Armenia, Hungary[48]). Many States have gone to the lengths of making proportional representation a constitutional principle, such as Belgium,[49] Denmark,[50] Spain,[51] Poland[52] and Ireland (where the single transferable vote is applicable.[53]) The Constitution of Luxembourg even provides that the principle of the highest quotient is applicable.[54] In Portugal, the Constitution not only prescribes the application of proportional representation according to the d'Hondt highest average without the possibility of imposing a quorum at national level,[55] but also and most importantly the principle of proportional representation is declared inviolable, i.e. not to be abrogated even by a constitutional revision.[56] In other States, the principle of equal representation of the lists has a purely legislative status,[57] whereas it obviously does not apply to "majority" elections. Certain constitutional statutes even prescribe this system for one Chamber and the proportional representation system for the other.[58]

Constitutional courts have occasionally had to rule on the conformity of legislative provisions with the principle of proportional representation laid down by constitutional norms. It is therefore plain that in deciding that a candidate must poll 50% of the votes in a given electoral district in order to be elected, the legislator of an Austrian province actually envisaged transition

---

[48] *See section I.2.3.b below.*

[49] *Article 62 (2) of the Constitution.*

[50] *Article 31 (2) of the Constitution.*

[51] *Article 68 (3) of the Constitution.*

[52] *Article 96 (2) of the Constitution.*

[53] *Article 16 (2.5) of the Constitution.*

[54] *Article 51 (5).*

[55] *Article 155.*

[56] *Article 288 (h).*

[57] *Cf. Nohlen D. (op. cit., footnote 1), p. 108.*

[58] *Article 18 (1) and (2) of the Czech Constitution.*

to a majority vote system conflicting with proportional representation.[59] In the Czech Republic, a 10% quorum was deemed contrary to the proportional representation system.[60]

2. Under systems inclining to a non-proportional result, particularly majority vote systems, a subtle form of manipulation known as gerrymandering is sometimes applied. It involves favouring one party by means of an artificial distribution of constituencies. Under the majority vote system, its main aim is to prevent the minority from obtaining seats or, where that is not possible, to assemble the electors of the minority in a few constituencies where it is assured of a very comfortable victory while the majority wins in the other constituencies, albeit with a far smaller margin. Certain particularly artful distributions enable the ruling party to secure the majority of seats against an opposition party commanding more votes; however, it happens that such manipulations backfire and aggravate the defeat of their perpetrators. The best way to avoid gerrymandering is to define all constituencies once and for all by making them correspond to established administrative entities. That is not always possible in uninominal elections, otherwise the electoral geometry referred to above may result. If constituencies are to be redistributed, the redistribution should be performed not by a political authority but by an independent electoral commission, as established in the United Kingdom or Ireland.

b. Equality of territorial representation

Instead of the parties or lists being proportionally represented, it is conceivable to aim at having the population of the various parts of the country represented as equally as possible. Apart from obviating "electoral geometry", this requires the size of the constituencies to be small as possible, or for practical purposes the existence of one-member constituencies.

Equal representation of lists and equality of territorial representation cannot be completely secured at the same time. They are best provided for in systems where an election in one-member constituencies is combined with a proportional election at national level, and especially in the system known as personalised proportional representation. Stage one of this system is to allocate part of the seats under the majority system; in stage two, the remaining mandates are allocated in such a way as to make the final result proportional. This is done in Germany,[61] while other composite systems for electing parliament partly by simple majority in single-member constituencies and partly by proportional representation exist, for instance, in Croatia,[62] Hungary,[63] Albania[64] and Armenia.

---

[59] Bulletin on Constitutional Case-Law, AUT-1995-1-004.

[60] Bulletin on Constitutional Case-Law, CZE-1997-1-002. Regarding case law on quorum in Switzerland, see Garrone P. (op. cit., footnote 7), pp. 243 ff (references to German case law).

[61] Sections 4-6 of the Bundestagwahlgesetz of 1 September 1975.

[62] Electoral systems - central and eastern Europe (footnote 45), p. 6.

[63] East European Constitutional Review, vol. 3, number 2, spring 1994, p. 69.

[64] Law on election of the People's Assembly.

2.4 Equal chances

a. General[65]

Securing equal chances between lists or independent candidates requires controls regarding a whole range of questions which cannot be discussed in detail here. In brief, the chances of success for the various lists may be influenced by either State or individual action. In accordance with the accepted rules on fundamental rights, it is chiefly the first type of interference which raises an issue in constitutional law.

1. The concept of equal chances embodies the principle of *State neutrality* in electoral matters. In other words, intervention by the State or any other public authority in an election campaign is generally contrary to the principle of equality. Any propaganda drive by the authorities must be forbidden.[66] However, the neutrality of the authorities cannot amount to general inaction. They are naturally required to organise the poll and to manage the registers; furthermore, they must take decisions as to the use of public space (particularly for posters) and of the mass media. In addition, official intervention may occur in other respects, such as party funding and election campaigns, either by allocating government finance or by regulating private funding. In each case, the authorities are required to uphold the principle of equality.

They nonetheless have fairly wide discretion, as equal chances can have two interpretations here; either "strict" equality or "proportional" equality.[67] "Strict" equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for propaganda purposes. "Proportional" equality involves allocating, in proportion to the parties' election results (in terms of votes or seats) such aids as airtime on radio and television or public funds. Accordingly, in Albania public funds are allocated according to the result of the next elections.[68] Proportional equality can be modified in various ways; Romania provides that the prescribed allocations of airtime to political parties represented in parliament are double those of other parties and political formations, and correspond to numerical representation in Parliament.[69]

2. It is a central feature of the political process, not at all inconsistent with the principle of equality, that individuals should influence the various parties' prospects of success. In certain borderline cases, however, this may affect voting freedom, and specifically free determination of

---

[65] *On this point, see in particular Poledna T (op. cit., footnote 25), pp. 147 ff.*

[66] *An example of unlawful televised intervention by a Head of Government is given in the Bulletin on Constitutional Case-Law, SVK-1994-3-005.*

[67] *See for example Poledna T (op. cit., footnote 25), pp. 153 ff.*

[68] *Article 58 of the Elections Law (a pre-election advance is possible).*

[69] *Article 46 (4) of Law No. 68/1992 on election of the Chamber of Deputies and Senate.*

the elector's will.[70] It is also acceptable for the State to issue rules on political party funding and election campaigns, but only where such restriction on freedom of expression is dictated by an overriding public interest, as may be the case if it is plain that a very large financial investment would unduly affect the candidates' equal chances.

b. Should there be positive measures to ensure equal chances?

In elections, positive measures pose a less acute problem than elsewhere. As already mentioned, equality of results whether between lists or between the country's different parties can be achieved without raising any doubt over its consistency with the general principle of equality. In addition, preferential treatment of national minorities or underpopulated regions may be regarded as different treatment of different situations.

Nevertheless, the question of *affirmative action,* narrowly defined, to redress past injustices arises with regard to representation of the sexes in elected bodies. The simplest way to ensure balanced representation of the sexes would be separate polling by men and women for candidates of the same sex, with the advantage of precluding affirmative action but also the drawback of a segregationist taint which might render its constitutionality dubious in a number of States. Neither the stipulation of gender parity in the membership of the elected body,[71] nor the requirement that lists of candidates should bear a number of names representing both sexes, has yet found favour with constitutional courts or equivalent authorities.[72]

3. Free suffrage[73]

Free voting has two main aspects: *free determination of the elector's* will, and *free* expression thereof.

a. Free determination of the elector's will

1. Electors' freedom to make up their own minds is violated, in the first instance, where the *authority* breaches its obligation of neutrality, e.g. by backing a candidate or by not being even-handed in its regulation of bill-posting, use of mass media or the right to hold demonstrations on the public thoroughfare. Similarly but more emphatically, the election is not free if the authority bans a political party where no overriding public interest is served and prevents it from contesting or campaigning for the elections. In this respect, free voting blends with equal chances.[74]

---

[70] *See section I.3 below.*

[71] *Swiss Federal Court ruling of 19 March 1997, ATF 123 I 152.*

[72] *Bulletin on Constitutional Case-Law, IT-1995-3-012; decision of 18 November 1982, digest of decisions of the French Constitutional Court, 1982, pp. 66 ff.*

[73] *See Poledna T (op. cit., footnote 25), pp. 233 ff.*

[74] *See above, section I.2.4; Poledna T (op. cit., footnote 25), pp. 235.*

The authority also has certain active obligations, in particular to afford voters a means of knowing which lists and candidates are being put up for the elections.

2. Free determination of the elector's will may also be infringed by the action of *individuals.*

Primarily, this takes the form of intimidating or pressuring electors, or purchasing votes. If the State does not act to prevent or punish such activities, freedom of voting is not guaranteed; hence there is an affirmative obligation in this regard.

More insidiously, deceitful propaganda issued by private individuals or organisations can interfere with freedom of voting. However, a violation of this kind can be found only when it has not been possible to refute, sufficiently in advance of the election, the facts alleged by such propaganda. Thus it seldom occurs when freedom of expression is secured, especially through a pluralist press, and equal access to the mass media for the candidates is likewise secured.

b. Free expression of the elector's will

Like free determination of the elector's will, its free expression may be influenced by the State and by individuals.

1. Free expression of the elector's will requires the *State* not only to *refrain from pressuring* electors to vote in any particular way, but above all to take all necessary steps for *proper conduct of polling and returning*, in particular by ensuring that the secrecy of the ballot is maintained throughout these two stages. The State must furthermore *declare the poll* in a manner consistent with the electors' vote and finally *ensure that the elected body is constituted in accordance with the results.*

2. Even more so than its free determination, free expression of the elector's will may be obstructed by individuals forcing the elector to vote in a certain way or not to vote, particularly through violent interruption of electoral processes. Here again, electoral freedom places the State under an active obligation to prevent and punish such malpractice.

c. The elector's freedom to choose between candidates

Depending on the type of electoral system applied, the elector has more or less extensive freedom in the choice of candidates.

1. Firstly, it is uncommon for electors to have the possibility of voting for any eligible person whether or not nominated, although it may be the case in certain elections under the majority vote system.[75] Elsewhere, there is a set period for the delivery of nominations and a specified number of signatures are required. This is not to be regarded as an impediment to freedom of voting, but as arising from the system used.[76] Freedom is nevertheless impaired

---

[75] *In Switzerland, certain cantonal elections by simple majority do not require the submission of lists: see examples given by Garrone P (op. cit., footnote 7), p. 173.*

[76] *Poledna T (op. cit., footnote 25), pp. 252-253.*

where the number of signatures required for nomination is too large; it must be established beyond doubt that the candidates thereby eliminated would have no chance of being elected.

2. In ballots involving several seats, the voter may only be able to choose between lists - known as closed party lists - or be able to vote for candidates individually.

The closed party list system is applied in a large number of States using the proportional representation system, e.g. (for the Lower House) Bosnia and Herzegovina,[77] Bulgaria,[78] Spain, Portugal,[79] Romania[80] and Yugoslavia[81] or Germany,[82] Albania,[83] and Croatia[84] for Representatives chosen by proportional representation. The elected candidates on a given list are then appointed in their listed order.

In a fair number of other States, electors may express preferences for a given number of candidates on the list for which they vote (preference voting). This is the case, for instance, in the Czech Republic,[85] Slovakia[86] (electors can cast four votes for preferred candidates), Estonia,[87] Finland,[88] Poland[89], Slovenia[90] (each elector has one vote, valid for a candidate and

[77] *Article 92 of the Rules and Regulations.*

[78] *Electoral systems - central and eastern Europe (see footnote 45), p. 3.*

[79] *Martin Pierre, Les systèmes électoraux et les modes de scrutin, Paris: Montchrestien 1994, p. 96.*

[80] *Article 65 (7) of Law No. 68 of 15 July 1992 on election of the Chamber of Deputies and Senate.*

[81] *Electoral systems - central and eastern Europe (see footnote 45), p. 30.*

[82] *Section 4 of the Bundeswahlgesetz of 1 September 1975.*

[83] *Article 11 (c) of the Law on Election of the People's Assembly.*

[84] *Electoral systems - central and eastern Europe (see footnote 45), pp. 5-6.*

[85] *Electoral systems - central and eastern Europe, p. 8.*

[86] *Electoral systems - central and eastern Europe, pp. 24-25.*

[87] *Articles 26 (7) and 28 (5-6) of the Law of 6 April 1992 on election of the Riigikogu.*

[88] *Martin P (op. cit., footnote 79), p. 96.*

[89] *Articles 8 and 102 of the Law of 28 May 1993 on the election of the Sejm of the Republic of Poland.*

[90] *Electoral systems - central and eastern Europe, p. 27.*

for a list) and Latvia (the elector can support one or more candidates or, on the contrary, cross out their names)[91]. Where preference voting is permitted, seats are usually allocated in descending order of votes gained by the candidates on a list.

Lastly, still wider freedom is secured in States which allow vote-splitting, i.e. voting by electors for candidates on different lists. This system is universal in Switzerland at all tiers,[92] and is also applied in Luxembourg.[93]

Ireland has enshrined in its Constitution the principle of the single transferable vote, a proportional system without lists under which voters state an order of preference for the candidates.[94] The elector's right to vote for candidates belonging to different parties therefore has constitutional force in this country.

4. Secret ballot

The two final principles of electoral law, direct suffrage and secret ballot, can be much more succinctly defined. Secrecy guarantees respect for freedom of voting, and is designed to shield electors from every pressure which outsiders' knowledge of their choice could entail. It is essential at all stages of the procedure, most of all during actual polling as well as returning. It is not only a right but also an obligation of voters, who must not disclose the content of their ballot paper, otherwise anyone wishing to exert pressure on an elector could easily compel him to make his vote public. As abstention may signify a political choice, neither should the list of voters be disclosed.[95]

5. Direct suffrage

Direct election of the legislature is to be regarded as the expression of the people's sovereignty. Indeed, indirect election, for example of an assembly (of leading citizens), often without real power, having authority to elect the legislature, creates an intermediate stage in the expression of the citizens' will and may prevent them from genuinely partaking of power where the intermediate assembly itself has freedom of choice. Direct popular election of the Lower House has now become part of all Europe's shared constitutional heritage. It is often accompanied by direct election of the Upper House, or even of the President of the Republic, not to mention local and regional elections.[96]

---

[91] *Electoral systems - central and eastern Europe, p. 15.*

[92] *For elections to the National Council, see Articles 21 et seq. LFDP.*

[93] *Martin P (op. cit., footnote 79), p. 97.*

[94] *Article 16 (2.5).*

[95] *On secret ballot, see Poledna T (op. cit., footnote 25), pp. 237 ff.*

[96] *No examples are given here, they are so many and varied.*

II. Recognition of the principles in European international law

1. Treaty instruments

Article 1 of the Council of Europe Statute proclaims the existence of ideals which are the common heritage of its Members.[97] In the Preamble, it is stated that the spiritual and moral values which are the common heritage of European peoples are "the true source of individual freedom, political liberty … principles which form the basis of all genuine democracy".[98] Democracy, alongside human rights and rule of law,[99] is therefore one of Greater Europe's fundamental values, and "political freedom" is one of its foundations.

The general term of political freedom can obviously incorporate the freedom of expression,[100] assembly and association[101] guaranteed by the European Convention on Human Rights. However, our concern is political freedom in the strict sense, the right to free elections by secret ballot as secured by Article 3 or the First Protocol to the ECHR[102] which provides that "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".[103]

Accordingly, the following are expressly proclaimed:

. the right to free elections, embodying free expression of the opinion of the people; elections are to be held at reasonable intervals;

. secrecy of the ballot, which includes secrecy of returning operations.[104]

2. Case law

---

[97] *Article 1 (a) of the Statute (ETS 1).*

[98] *Third paragraph of the Preamble.*

[99] *Article 3 of the Statute.*

[100] *Article 10 of the European Convention on Human Rights (ECHR - ETS 5).*

[101] *Article 11 ECHR.*

[102] *ETS 9.*

[103] *Concerning Article 3 of the Protocol, see Marcus-Helmons Silvio, in La Convention européenne des Droits de l'Homme, - Commentaire article par article, edited by Louis-Edmond Petiti / Emmanuel Decaux / Pierre-Henri Imbert, Paris: Economica 1995, pp. 1011-1020.*

[104] *Marcus-Helmons S (op. cit. footnote 103) p. 1012.*

The case law of the European Commission and Court of Human Rights has established that the provision in question guarantees the other principles of electoral law, namely:

- *universality* of the right to vote ("active franchise") and to stand as a candidate and, once elected, to exercise one's mandate (right to be elected, or "passive franchise").[105]

- the principle of *equality* of treatment for all citizens in exercising their right to vote and their right to stand for election.[106]

The Commission has moreover specified that the words "free expression of the opinion of the people" primarily signify that the election cannot be made under any form of pressure in the choice of one or more candidates, and that in this choice the elector must not be unduly induced to vote for one party or another.[107] No pressure must be brought to bear regarding choice of candidates or parties.[108] A prohibition therefore applies not only to interference with *free expression* of the elector's will in the strict sense, occurring at polling time, but also hindrances to *free determination* of the elector's will before the poll. Furthermore, free expression of the elector's will in combination with the right to exercise his/her mandate once elected, implies that the election result must be respected.

In brief, the Protocol secures the right to free elections with universal and equal suffrage and secret ballot, and in particular the right to vote and to be elected, and free determination and free expression of the electors' will. The only one of these five fundamental principles of electoral law not yet proclaimed by the Convention or its case law is the right to election by direct suffrage. The question has never arisen as long as at least one Chamber of the legislature is directly elected in all States Parties. The guarantee of free election of such a body must at the very least be considered implicit in the Protocol, in that a system founded on indirect elections

---

[105] *European Court of Human Rights, judgment in the case of Mathieu-Mohin and Clerfayt against Belgium of 2 March 1997, Series A No. 113, p. 23; Gitonas and others v. Greece judgment of 1 July 1997, Reports of Judgments and Decisions 1997-IV, p. 1233; Eur. Com. HR, No. 6745 and 6746/76, Dec. 30.5.75, W, X, Y and Z v. Belgium, Yearbook 18, pp. 236, 244; No. 10316/83, Dec. 7.3.84, M. v. United Kingdom, D.R. 37, pp. 133, 138; No. 28858/95, Dec. 25.11.96, Gantchev v. Bulgaria, D.R. 87-A pp. 130, 137; No. 27614/95, Dec. 21.5.97, Luksch v. Italy, D.R. 89-A p. 76; No. 35385/97, Dec. 21.5.97, Luksch v. Germany, D.R. 89-A p. 175.*

[106] *See for example European Court of Human Rights, judgment in the case of Mathieu-Mohin, op. cit., p. 23; Eur. Com HR, No. 6573/74, Dec. 19.12.74, p. 87; No. 11391/85, Dec. 5.7.85, Booth-Clibborn and others v. United Kingdom, D.R. 43 pp. 236, 247; aforementioned decisions Luksch v. Italy and Luksch v. Germany.*

[107] *Eur. Com. HR No. 894/80, Dec. 8.12.81, X v. United Kingdom, D.R. 7 pp. 95, 96; No. 9267/81, Dec. 12.7.83, Moureaux and others v. Belgium, D.R. 33 pp. 97, 114.*

[108] *Eur. Com. HR Moureaux and others, op. cit. p. 114; No. 8364/78, Dec. 8.3.79, Lindsay and others v. United Kingdom, D.R. 15, pp. 247, 251; X. v. United Kingdom, mentioned in the previous footnote.*

alone, ensuring only a tenuous link between the electors' will and the composition of the elected body, would deprive electoral law of its useful effect.

3. The scope of this provision is nonetheless limited:

a. In the first place, it applies solely to "the choice of the legislature", thus excluding any executive body,[109] and of course referenda.[110]

However, the case law does not restrict the concept of "legislature" to national parliaments, but has extended it to the Parliaments of German[111] and Austrian[112] Länder or Belgian regional councils,[113] which hold legislative powers. Conversely, municipal or county councils having no power to make rules, other than in connection with the powers conferred by Parliament, are not legislative bodies.[114]

b. Next, the principle of equality, vitally important in electoral matters, is restrictively interpreted.

The European Commission of Human Rights, dealing with an issue regarding inequality of representation between constituencies, considered that such disparities "cannot be considered to be in contravention of Article 3 of the First Protocol, which does stipulate that the weight of votes behind each Member of Parliament shall be equal". At the most, this provision might be infringed if the disparities were arbitrary or abusive. However, Icelandic legislation, at issue in the case in point, created a considerable disparity to the advantage of less populated regions, as the disparity of the votes behind candidates in the various constituencies could be as great as 1:4.8.[115]

The Convention bodies moreover decline to guarantee equal representation between parties. In other words, distribution of seats need not be proportional to distribution of votes. More generally, the Protocol does not impose any specific electoral system and does not distinguish

[109] *Eur. Com. HR No. 15344/89, Dec. 14.12.89, Habsburg-Lothringen v. Austria, D.R. 64 p. 210.*

[110] *Eur. Com. HR No. 7096/75, 3.10.75, X. v. United Kingdom, D.R. 3 p. 165.*

[111] *Eur. Com. HR 27311/95, 11.9.97, Timke v. Germany, D.R. 82, p. 158.*

[112] *Eur. Com. HR No. 7008/75, 12.7.76, X. v. Austria, D.R. 6, p. 120.*

[113] *Eur. Court HR, Mathieu-Mohin and Clerfayt, op. cit. p. 23.*

[114] *Eur. Com. HR No. 5155/71, 12.7.76, X. v. United Kingdom, D.R. 6 p. 13; Booth-Clibborn and others, op. cit.; No. 10650/83, 17.5.85, Clerfayt, Legros and others v. Belgium, D.R. 42 p. 212.*

[115] *Eur. Com. HR, X. v. Iceland, D.R. 27 p. 149. The quotation is on p. 150, cf. Eur. Court HR Mathieu-Mohin and Clerfayt, op. cit. p. 24.*

between the majority vote and proportional representation systems and their variants, but leaves a broad margin of discretion to the national legislator in so far as the latter upholds the principle of universal and equal suffrage.[116]

c. What is more, the rights secured are not (all) unlimited.[117]

The right to vote and the right to be elected are "neither absolute nor unlimited, but are subject to restrictions which may be imposed by Contracting States on condition, however, that they are neither arbitrary nor contrary to the free expression of the people's opinion ".[118] Nationality, age and residence requirements in particular are admissible.[119]

Any other conditions must not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; they must pursue a legitimate aim, and the means employed must not be disproportionate.[120] Consequently, the stipulation of four years' continuous residence in order to participate in the Trentino-Alto Adige Regional Council elections was considered admissible having regard to the region's special social, economic and cultural status, the measure being intended to protect the linguistic minorities.[121] It is also permissible to deprive convicted persons of the right to vote, even after serving out their sentence.[122] The right to stand for election may be restricted on grounds which would not suffice for withholding the right to vote. The election of several Greek members of parliament was annulled on the basis of a constitutional provision disqualifying a number of civil servants and assimilated persons from standing for election in any constituency where they had performed

---

[116] *Eur. Court HR Mathieu-Mohin and Clerfayt, op. cit. p. 24; Eur. Com. HR No. 7140/75, Dec. 8.10.76, X. v. United Kingdom, D.R. 7 p. 95; No. 8364/78, 8.3.79, Lindsay and others v. United Kingdom, D.R. 15 pp. 247, 250-251; No. 8765/79, The Liberal Party and others v. United Kingdom, Dec. 18.12.90, D.R. 21 pp. 211 ff; No. 1123/84, Dec. 9.12.87, Tête v. France, D.R. 54 p. 52; No. 12897/87, Dec. 3.12.90, DR. 67 p. 166; No. 25035/94, Dec. 15.4.96, Magnago and Südtiroler Volkspartei v. Italy, D.R. 85 p. 122; No. 27120/95, Clerfayt and others v. Belgium, D.R. 90-A p. 35.*

[117] *Eur. Court HR, Mathieu-Mohin and Clerfayt judgment, op. cit. p. 23.*

[118] *Eur. Court HR, Gitonas and others judgment, op. cit. p. 1239; Eur. Com. HR No. 8987/80, Dec. 6.5.81, X v. Italy, D.R. 24 p. 192; Booth-Clibborn, op. cit. p. 247; No. 28858/95, Gantchev v. Bulgaria, D.R. 87 p. 130; Luksch v. Italy, op. cit. p. 77; Luksch v. Germany, op. cit. p. 176; No. 23450/94, Dec. 15.9.97, Polacco and Garofalo v. Italy, D.R. 90-A pp. 5, 9.*

[119] *See for example Eur. Com. HR No. 7566, Dec. 11.12.76, X. v. United Kingdom, D.R. 9 pp. 121, 124; Luksch v. Italy, op. cit. p. 78; Luksch v. Germany, op. cit. pp. 176-177.*

[120] *Eur. Court. HR, Gitonas and others judgment, op. cit. p. 1259; Mathieu-Mohin and Clerfayt, op. cit. p. 23; Eur. Com. HR, Polacco and Garofalo, op. cit. p. 9.*

[121] *Eur. Com. HR, Polacco and Garofalo.*

[122] *Eur. Com. HR No. 9914/82, Dec. 4.7.83, H. v. Netherlands, D.R. 33 p. 242.*

their duties for more than three months during the three years preceding the elections. The European Court of Human Rights found this restriction consistent with the Protocol.[123]

Hence certain incompatibilities are also admissible (in the case in point, between membership of the Northern Ireland Assembly and the office of Irish parliamentarian[124]).

d. Lastly, a violation of the Protocol does not arise from any irregularity whatsoever. With regard to free expression of the people's opinion, an irregularity infringes international law only if it has affected the outcome of the election.[125] The same should apply where the secrecy of the ballot is infringed.

The limitation of prohibited inequalities to arbitrary or improper disparities also allows inequalities without effect on the composition of the elected body to escape censure. In the writer's opinion, the only individual breaches which may be found contrary to the Protocol without assessing their influence on the result are disqualification from both voting and candidacy.

Study of the Strasbourg organs' case law demonstrates that they uphold the five fundamental principles of electoral law, but may give them more limited scope than certain national (constitutional) rights. To reproach them for this would be to forget the European Convention on Human Rights guarantees a minimum standard of protection.[126] Nor should it be forgotten that certain features of fundamental electoral rights are bound up with a political choice which cannot be assured throughout a continent by a treaty instrument: this especially applies to stipulations concerning the proportionality of the result or the voter's freedom to choose between candidates, and also to the constitution of directly elected bodies beyond the minimum represented by the people's election of one Chamber of the legislature.

Conclusion

The five major principles of electoral law - universal, equal, free, secret and direct suffrage - are deeply rooted in Europe's constitutional legacy. They are the foundation of democracy, itself one of the three pillars of the legal culture epitomised by the Council of Europe Statute. The existence of common fundamental values, however, does not rule out divergences in their realisation.

According to the country, the emphasis is on the need for the populations of its various parts to be represented as equally as possible, or on the proportionality of the result, or on the need to ensure adequate representation of minorities, or on equality between the federated States in the composition of the second Chamber. This diversity should not eclipse the essentials, as sanctioned by the organs of the European Convention on Human Rights and developed by

---

[123] *Eur. Court HR, Gitonas and others judgment.*

[124] *Eur Com. HR No. 10316/83, Dec. 7.3.84, M. v. United Kingdom, D.R. 37 p. 129.*

[125] *Eur. Com. HR, No. 18997/91, Dec. 28.2.94, I.Z. v. Greece, D.R. 76-A p. 65.*

[126] *Cf. Article 60 ECHR.*

national constitutions: the establishment and preservation of democratic institutions founded on the sovereignty of the people.

Electoral Corporative Bodies (Commissions, Committees, Boards) and Preparation of Voters' Registers promoting Free and Fair Democratic Elections by Dr György CSALÓTZKY
Former Ministerial Chief Counsellor, Hungary

The Hungarian Experience and an Outlook to the Central and Eastern European Region

1. Theoretical origins, definitions

1.1 Effective participation of citizens in the exercise of central, regional and local state power is the basis of the modern constitutional state. Without underestimating the necessity of referendums and other forms of direct democracy, elections of different power organs and office bearers are the determinant form of this participation in complex modern societies.

Two arguments in particular support the fact that elections should be free, fair and democratic. The first is that it is only at elections that citizens have the possibility to determine the composition and, by means of that, the strategy and working system of elected organs. The second is that the prevailing regime has disproportionate means to influence the electorate and such means must be balanced objectively.

There are several elements that make an election "free, fair and democratic": assuring the right to vote for every citizen of voting age, elections organised systematically at stated intervals, freedom to found political parties and to nominate candidates, secret ballots, the honest determination of election results, etc. Each of them is indispensable. Consequently, it is not possible or feasible to distinguish between their importance. Nevertheless we consider it necessary to cast light on the group of elements which are summarised in international science as "transparency of elections". This is the term for a clear and open process which is understandable and accountable to the electorate. It encourages participation in and support for the electoral system. Transparency is essential to the electoral process because it eliminates the appearance of impropriety and limits the possibility of electoral fraud. Transparent procedures promote public confidence and trust in the electoral system.

1.2 Undoubtedly, the general guarantees of a constitutional state (such as the dissociation of sectors of power control, the role of the courts, the strength of power of the head of state, constitutional links of electoral law etc.) promote the transparency of elections. Nevertheless, a number of states have become aware of the necessity to institutionalise electoral commissions as specialised organs of the electoral system to create conditions for the participation of voters and to exercise control on behalf of voters in the field of elections.

Besides the electoral commission there are other organisations and methods of social electoral participation and control, for example non-governmental organisations, associations,

foundations, press bodies etc. At the same time, electoral commissions have three advantages in this field:

a. The main function of electoral commissions is to control electoral procedure. To fulfil this role successfully they have at their disposal sufficient legal authority, know-how and political discretion possibilities.

b. The existence of electoral commissions deters irresponsible politicians or electoral officials from committing electoral abuses.

c. The possibility of turning to electoral commissions encourages voters to make use, without fear, of their right to vote.

2. Characteristic features of the Hungarian Electoral System

2.1 An electoral commission system is determined to a large degree by the characteristics, dimension, population and territorial scheme of the country in question.

Hungary is a homogeneous state, with 10.2 million habitants on a territory of 93.000 square kilometres. The territory is divided into 19 counties (*megye*) and Budapest, the capital of the country, with 23 capital districts (*fõvárosi kerület*). There are about 3 200 local authorities, 22 of them have a legal status of a town with county right (*megyei jogú város*), about 190 have a legal status of a town (*város*) and about 2 900 the legal status of a community (*község*).

2.2 At present the electoral laws in Hungary (Act No. XXXIV. of 1989 on the Election of Members of Parliament and Act No. LXIV. of 1990 on the Election of Local Authority Representatives and Mayors) were passed by the Hungarian Parliament in a period of considerable strengthening of the constitutional state. These laws, which were modified to small degree, and the procedural provisions which were integrated in Act No. C of 1997 on the electoral procedure established all the legal and organisational conditions for a system based on a general, equal and secret voting system. The most important guarantees of free, fair and democratic elections were simultaneously incorporated into the text of the Hungarian Constitution. The new Hungarian electoral system proved itself successfully in practice during the parliamentary and local authority elections in 1990 and in 1994 and we hope that the situation will be the same in the upcoming national, regional, local and minority elections this year.

The Hungarian electoral commission system is also determined by the characteristic features of the whole electoral system:

- The total number of Members of Parliament is 386. It is a parliament with a single-chamber system. 176 Members of Parliament are elected in single-member constituencies and 152 in county and metropolitan constituencies on a list. On the basis of a national aggregate of votes in single-member and county capital constituencies failing to obtain mandates, the parties may obtain 58 additional compensatory mandates from their national list. There are two election rounds.

- The system of local authority elections is also differentiated. In settlements with less than 10 000 inhabitants, local representatives are elected from a small list on the basis of a relative majority. In settlements with over 10 000 inhabitants local representatives are elected according to a mixed (one ballot) system, the votes given to single district candidates being qualified at the same time as votes given to compensatory lists of parties. Mayors are elected directly by voters everywhere. The voting of the members of County (Capital) General Assemblies is a one-ballot voting system with only one election round.

National and ethnic minorities can elect their own self-governments with a privileged election system

3. Types, General Functions and Creation of Hungarian Electoral Commissions

3.1 The Hungarian electoral system involves the following types of electoral commissions:

a. National Electoral Commission: consists of at least five members

b. District, i.e. county or capital, electoral commissions (one in each of the 19 counties, districts and one in the capital Budapest: consists of least three members)

c. Parliamentary single-member constituency electoral commissions (one in each of the 176 single member constituencies): consists of at least three members

d. Local electoral commissions (one in each of the 3 200 settlements): consists of at least three members

e. Vote counting boards (one in each of the 11 000 polling stations): consists of at least five members

3.2 The Hungarian electoral system considers electoral commissions as most the important institutions for involving voters in the election process. According to paragraph 21 of Act No. C of 1997 electoral commissions are voter authorities and subject solely to law; their primary tasks are to determine election results, assure the fairness and legality of elections, enforce impartiality and – where necessary - restore legal order of elections. Both safety and sense of responsibility are increased by the regulations that electoral committees are considered to be authorities during the term of their operation and their members as official persons.

In spite of the fact that there are considerable differences in the general characteristics of political systems of Central and Eastern European countries - henceforth abbreviated “CEEC” (e. g. parliaments with one chamber or with two chambers, unified or federal state, existence or not of regions etc) they resemble each other in many respects. Such common features emphasise the transparency of electoral process and the organisation and control role of electoral bodies. Denominations are diverse: they are called “electoral commissions” or “electoral committees in Slovenia they are called “electoral boards”, while in the former Yugoslav Republic of Macedonia “vote counting committees”. There are also differences in the arrangement of electoral commissions. Generally, there are three levels of these bodies:

- central/national level
- level of districts or constituencies, and
- level of polling stations

The system of electoral commissions which presents the most number of features can be found in the Russian Federation which had: the Central Election Committee of the Russian Federation, election committees of the subjects of the Russian Federation, district election committees, territorial - rayon, city and other - election committees, and polling station election committees.

A general function of the electoral commission which is fixed in any CEEC - over and above the general functions of Hungarian electoral commissions – is the "preparation and conduct of elections".

3.3 The Hungarian electoral rules in connection with the powers, composition, founding and procedure of electoral commissions are destined to uphold various requirements, namely: impartiality, disinterestedness, stability and professional attitude.

The Hungarian regulation does not prescribe the exact numerical strength of the members of these commissions, merely the minimum number: at least three members, and in some commissions, at least five members. This method of regulation is in accordance with the fact that the law differentiates between elected and appointed commission members.

Elected members - and the necessary number of additional members - shall be elected by central, regional or local organs of power: Parliament, county (capital, general assembly), representative board of settlement municipality, e. g. the Parliament shall elect five members and the necessary number of additional members of the National Electoral Commission, the Minister of Interior shall make proposals for the member-persons.

In addition to elected members one member of the electoral commission can be appointed by independent candidates or organisations nominating a candidate or list in the given constituency or in the case of the National Electoral Commission, all over the country. At all levels, the proposals for the elected members of other electoral commissions must be made after prior consultation with political parties.

The rights and obligations of the elected and appointed members are the same, but their term of mandate is different:

- the mandate of elected members of an electoral commission - and on the basis of this, the mandate of the whole electoral commission - lasts until the statutory meeting of the electoral commission established for the next election,

- the mandate of appointed members of electoral commission lasts until the publication of the final results of the elections.

As concerns the numerical strength of electoral commissions one can find various legal solutions in the CEEC. There are many countries where the number of members of the electoral commissions is fixed. For example, the Electoral Commission of the Republic of Croatia consists of the chairman and four members. The State Electoral Commission of Poland consist of 9 persons: three justices of the Supreme Court, three justices of the Constitutional Tribunal and justices of the Superior Administrative Court. The Central Commission on Election of deputies to the Supreme Council of the Republic of Belarus is composed of a Chairman, two deputy Chairmen, a Secretary and 15 Commission members.

In other CEEC, the number of body members is fixed more relatively. In Bulgaria: "The Central Election Commission may consist of no more than 25 members". In Lithuania: "The Seimas shall appoint the chairman of the Central Electoral Committee and at least 12 members.... New members may be additionally appointed to the Central Electoral Committee.......". In Moldova: "The Central Election Commission...shall include .... not fewer than 16 individuals ....."

Except for a few countries, electoral commissions have got both elected and appointed members, with the same rights and obligations. In some CEEC, appointed members have only the right to be present but not vote at the board sessions. As in Hungary, the mandates of appointed members are shorter than those of elected members. The elected members of electoral commissions are appointed in majority by the highest or territorial power organs (parliaments, regional and local representative bodies). But there are exceptions e.g. Bulgaria: "The Central Election Commission shall be appointed by the President of the Republic..." ; Croatia: "The Electoral Commission of the Republic of Croatia ... shall be appointed by the Constitutional Court of the Republic of Croatia ... the electoral commission of an electoral unit ... the county electoral commission appointed by the Electoral Commission of the Republic of Croatia ...".

The obligation to consult with political parties about the for electoral body members exists in electoral laws of all CEEC.

Article 15 of the Law of the former Republic of Macedonia on Election and Recall of Representatives and Assemblymen states seven responsibilities for "standing membership" of the Republican vote counting committee and five for "changeable membership". Appointed members do not have the same rights as elected members in all CEEC (e.g. in the Russian Federation any electoral associations and blocks "are entitled to appoint one member to the Central Election Committee of the Russian Federation with the right of deliberated vote".

3.4 Only persons who have right to vote may be members of Hungarian electoral commissions and their mandate shall terminate if they lose their right to vote during their duty. In addition only citizens having an address in the constituency may be members of the National Electoral Commission in Hungary. Exceptions exist - concerning vote counting boards and local electoral commissions – which are in any case fixed in the electoral law.

The existence of the right to vote as a preliminary condition of membership of electoral commissions is prescribed in all CEEC. In the overwhelming majority of countries, the existence of an address in the respective constituency is also prescribed.

3.5 There is a strict regulation without exception in the Hungarian electoral law concerning the incompatibility of membership of electoral commissions:

- No President of the Republic, state leader, head of an administrative office, Member of Parliament, President of county general assembly, Mayor, clerk, county recorder, town clerk, Member of electoral office, civil servant in an administrative authority operating in the field of electoral commission or candidate up for elections in the constituency may be a Member of the Electoral Commission.

- No member of an organisation nominating a candidate in the constituency or person having a family relationship with a candidate in the constituency may be a member of the Electoral Commission.

- Persons in a family relationship with one another may not be Members of Electoral Commissions that may be connected with a decision or judgement on a decision in a legal remedy procedure.

3.6 The regulation of procedure of Hungarian electoral commissions aims to create conditions for non-bureaucratic, efficient and lawful work.

- Members of electoral commissions take an oath in the presence of the representative mayor, the Lord Mayor of the capital, the president of the county general assembly or the president of the Parliament.

- After their members have been elected and taken the oath, electoral commissions hold a statutory meeting. President and vice-president shall be elected from among the elected members at this statutory meeting.

- Sessions of electoral commissions are open to the public.

- Electoral commissions shall be represented by their presidents. Where an electoral commission is without a president or a president is inhibited in his or her activities, the tasks of the president shall be carried out by the vice-president.

- Electoral commissions shall operate as bodies. The presence of a majority of members and identical voting of majority of members present are necessary for their decisions. Voting shall be carried by "yes" or "no".

- Decisions of electoral commissions shall be included in resolutions with justifications. Minority opinions along with reasons are to be recorded in the minutes.

- Neither elected nor appointed membership of the Hungarian election commission requires any qualifications (e.g. certificate of final examination in secondary schools, academic degree). At the same time there are two legal institutions that guarantee properly the professionalism in the work of electoral commissions:

3.7 An electoral office operates with each electoral commission (except for vote counting boards, where one member of the local electoral commission acts as keeper of minutes). Electoral offices are authorities which carry out state tasks in connection with the preparation, organisation and conduct of elections, independent information of voters, candidates and

organisations nominating candidates, management of election data, establishment of technical conditions, monitoring legal conditions and maintaining professional rules. Professional activities of electoral offices shall be controlled by the Minister of Interior by way of the head of the National Electoral Office. Heads of higher electoral offices may give direct instructions to heads of lower grade electoral offices in their area.

- Civil servants and officers may be appointed heads and members of electoral offices and they must have a qualification (certificate of final examination of certain schools, primary public administration examination). The appointment of the head and members of the National Electoral Office is currently for the 1997-1998-1999 elections and referendums. They shall take an oath and there are legal regulations that determine the elimination of inadmissible influence.

- The activity and decision making of Hungarian electoral commissions are comprehensively controlled by independent courts. Capital or county courts make decisions on objections against district electoral commissions. The Supreme Court shall make decisions on objections against decisions of the National Electoral Commission. The legal provisions order and make possible an extraordinary expeditious process for the courts in electoral affairs.

The legal regulation of CEEC concerning obligatory qualifications to become a member of an electoral commission varies. Some countries do not fix any legal qualification requirement (e.g. Czech Republic: "Each Czech citizen who has the right to participate in elections and who has no restriction on his/her will, may be a member of an electoral commission". Estonia "Only Estonian citizens who are entitled to vote may be members of an electoral commission". At the same time, other countries prescribe that all members must be lawyers. In Croatia: "Members of electoral committees and their deputies shall be graduate lawyers...". In Albania: "The deputy chairman and the secretary of the Central Election Commissions in the zones must be attorneys." In Moldova: "The Central Election Commission ... shall include five judges of the Supreme Court…but no fewer than 16 individuals." The State Electoral Commission in Poland consists of nine justices as I mentioned earlier. In Ukraine the chairman, deputy chairman and secretary and no less than one third of the members of the Central Election Commission should have "the highest legal education". In Latvia five members of the Central Election Commission are elected by the Supreme Council, one member is elected out of the current judges of the Supreme Court at its plenary meeting, one member is elected by the Supreme Council upon the proposal of the World Federation of Free Latvians and one member is elected by the Supreme Council upon the proposal of Russia's Latvian Association Board.

4. Legal Authority of Electoral Commissions

4.1 One of the general characteristics of legal authorities of the electoral commissions is that every single level of these commissions has special authorities determined by law.

Rights and obligations of electoral commissions are in close relationship with one another.

4.2 The most varied duties and authorities are determined for the National Electoral Commission (NEC). NEC is the highest electoral commission. It is the most important guardian of the legality and fairness of elections.

It issues a standpoint for the uniform interpretation of rules related to elections and forms uniform legal practice. No legal remedies can challenge this standpoint, which must be published in *Magyar Közlöny* (Official Paper).

The NEC:

- makes decisions on registration or refusal of lists, candidates therein and organisations nominating candidates;
- draws lots on serial numbers of lists;
- approves data of ballot-papers of national referenda;
- makes decisions on complaints submitted;
- annuls the results of an election if an important violation of law is detected;
- determines which organisations nominating candidates have reached the vote limit percentage determined in law;
- determines which candidates on national lists have obtained seats based on surplus votes summarised nationally;
- issues letters of appointment to representatives having obtained seats;
- determines and publishes nationally summarised election results;
- calls for parliamentary by-elections and determines deadlines according to the calendar;
- initiates decisions on the proper authority in case of violation of law;
- gives the Parliament an account on general elections of Members of Parliament, municipal representatives and mayors and national referenda;
- operates in all affairs within its scope by law.

4.3 <u>Parliamentary single-member constituency electoral commission</u> and district (county capital) electoral commissions have the same or similar duties and authorities. They shall:

- make decisions on registration or refusal of candidates (lists and organisations nominating candidates and their lists);
- approve data of constituency ballot-papers (electoral district);
- make decisions on complaints submitted;
- annul the results of an election if an important violation of law is detected;

- determine and publish results of election;
- issue the letter of appointment to representatives in its area;
- initiate a decision of the proper authority in case of a violation of law:
- District electoral commissions can draw lots on serial numbers of lists.

4.4 Local electoral commissions have important duties:

- In the preparation of elections, they shall: make decisions on registration or refusal of candidates, lists and organisations nominating candidates; draw lots on serial number of lists; approve data of ballot-papers of settlements; make decisions on complaints submitted.

- In the balloting and in the determination of results of elections, they shall: annul results of election if an important violation of law is detected; in case of equal numbers of votes, draw lots to decide which candidate shall obtain a seat; determine and publish results of elections; issue a letter of appointment to representatives and mayors with its jurisdiction.

- In other matters, they shall call for by-elections and determine deadlines according to the calendar; initiate a decision of the proper authority in case of violation of law; call for local minority municipality elections; carry out tasks of a vote counting board at settlements with only one constituency.

Local electoral commissions do not work at parliamentary elections.

4.5 Legal authority of vote counting boards

4.5.1 the conduct of voting: shall... "check polling places, conduct voting, provide for legal conduct of voting, make decisions on discussed questions emerging during voting", and

4.5.2 determine results of election : shall ... "count votes and determine results of elections in the given constituency; propose annulment of results of election in the given constituency if an important violation of the law is detected; make an official report on the results of election".

5. Importance and Principal Rules of Register of Voting

5.1 An authentic, up to date register of voters provides an important guarantee in respect of effective voting rights and transparency in the electoral procedure. It is not just a technical question of ensuring that all citizens who have the right to vote are included in the register of voters and have an authentic certificate to this effect. Citizens who do not have the right to vote, for example, who are restricted in their capacity to act or who have been barred by a final legal decision from participating in public affairs. shall not be included in this register.

5.2 According to the regulations of the Hungarian electoral law the leader of the local electoral office (clerk of community, town or capital district) is the person who shall compose a register of voters. This register is based on two official and authentic data bases:

5.2.1 register on personal data and addresses: these records are based on a law on records, personal data and addresses, kept by the Central Office of Registrations and Elections and based on modern computer technique; and

5.2.2 register on adult citizens not having the right to vote: this register - which is only available to the person concerned and members of the court, the electoral commission and electoral office - shall be maintained by the Central Office of Registration and Elections, with data provided by other authorised organs, e.g. National Law Enforcement Authority.

5.3 A register of voters shall be composed after elections are called. This does not mean that a brand-new register should be composed at this time. As a result of continuous registration of citizens the register should be completed and checked.

5.4 Register of voters shall be composed on the basis of electoral districts.

5.5 All persons who have the right to vote with a permanent address in the electoral district or without a permanent address but with residence have to be included in the register of voters.

5.6 The register of voters shall be established in a manner so that the capital, county, settlement and constituency, electoral districts and voters can be identified.

5.7 The register of voters shall be published for a period of eight days and the period thereof shall be announced according to local custom; voters must be informed that they have been included in the register of voters by way of sending an announcement thereon.

5.8 Objections regarding omission from or inclusion in the register of voters may be submitted while the register is published. Objections are to be submitted to heads of local electoral offices who shall make a decision thereon within three days. Refusal may be challenged by voters within three days after being informed thereon by submitting an objection to the proper local court or in Budapest to the Central District Court of Pest. Where the court considers an objection unreasonable, it shall refuse the objection.

5.9 Leaders of local electoral offices shall continuously record changes in the register of voters.

Voters who change their address after completion of the register of voters shall be included in the register at the time of registration on arrival and informed by an announcement by the head of the local electoral office of the new domicile. The head of the local electoral office of the previous domicile shall erase that person from the register.

Voters who were absent from their domicile on the day of election, may vote - based on the certificate given by the head of the proper electoral office of his or her address - at the place they are staying on the day of parliamentary election.

All CEEC make efforts to compose an authentic, up-to-date register system, which can be used well while composing the voters' register and results in more successful and rapid work.

6. Conclusions; Perspectives of Future Development

6.1. The legal rules concerning electoral commissions and their practical functions are generally acceptable and serve free, fair and transparent electoral procedures in Hungary and in the great majority of CEEC.

6.2. The political, legal and technical improvement of electoral systems in this sphere and the function of electoral commissions are an independent and internal affair for each CEEC.

It should be recommended that the leading political parties and organs of CEEC establish all necessary legal, organisational and technical conditions for the complete realisation of electoral commissions' function and authority for voters of CEEC to take part in an active way and without influence in the social monitoring of the election in their country.

6.3. There are great advantages in organising international co-operation, election observation and exchange of experience concerning electoral law, procedure and technical means. This kind of international co-operation can be realised both at bilateral and multilateral levels.

6.4. Regional organs e. g. Association of Central and Eastern European Electoral Officials, Central European Initiative, European organs, such as the Council of Europe, the European Union and OSCE can help effectively and in a multifaceted way the development of electoral commission systems.

6.5. Hungarian electoral experts are eager to participate in this work. The Association of Central and Eastern European Electoral Officials (ACEEEO) is a non-profit organisation which is independent from parties and governments and works in the interest of free, fair and democratic elections in CEEC. It can be considered an effective organisational framework. At its upcoming annual conference - which will be hosted by Lithuania and prepared by the Secretariat in Budapest under the direction of the Board, comprised of the representatives of five countries - one of the central topics will be the question of the openness of the electoral procedure.

Electoral Systems and Outcomes in Central and Eastern Europe by Messrs Richard ROSE & Tom MACKIE
University of Strathclyde, Glasgow, United Kingdom

Democracy requires free elections; from this three leading institutional scholars, Jon Elster, Claus Offe and Ulrich Preuss (1998: 111) conclude, "Choosing an electoral system has been one of the most intricate and important decisions to be made during the transition from Communist rule". The law on the electoral system necessarily influences election outcomes, because it determines who shall vote, the nature of the constituencies, the form of the ballot offered to voters, and how votes are translated into seats in the national Parliament. At each step in designing an electoral system there are choices, and interested parties that seek to influence choices to their particular benefit. The need for choice is urgent, because free elections are critical for a public and irreversible rejection of the old regime. There is now a vast literature of books and articles that can be drawn on to analyse the potential effects of particular choices on election outcomes. While electoral systems are important, however, they are not all-important, and to study systems in isolation can be misleading.

The thesis of this paper is that the outcome of free and fair elections reflects the interaction between three sets of decisions concerning:

1. Party formation, party splits and mergers, and election alliances

The number of parties on the ballot is ultimately determined by what politicians do in terms of forming parties, creating mergers, splits and electoral alliances. Their behaviour reflects ideology, interest, personality and many other factors that cannot be controlled by legislation.

2. Voting behaviour

By definition, a free election gives each individual elector the right to determine for himself or herself which party to vote for on the basis of political principles, economic interests, social affiliations or ephemeral influences, none of which can be controlled by legislation – and in the first free elections the novelty of free choice increases unpredictability.

3. Electoral system legislation

In a free and fair election, laws and regulations about registering parties and nominating candidates should facilitate not exclude competition. Choices of proportional representation or first-past-the-post may affect political strategies but cannot prevent politicians from putting forward candidates – if they choose to do so.

The significance of these three points assumes that the administration of elections is free and fair. Unfortunately, this assumption cannot always be taken for granted in new democracies (cf. Diamond, 1996; Elklit and Svensson, 1997).

If the electoral system is all important in determining the nature of party competition, then we would expect elections held under similar rules in different countries to produce similar results in terms of the number of parties winning seats, and tendencies toward a two-party or a heterogeneous multi-party system. Even more, we would expect different elections in the same country to produce the same result, since the law, the electorate and the cadres of party politicians remain the same. However, if the behaviour of voters and party politicians has a significant impact, then we would expect election outcomes to differ substantively, even when held under similar systems – and differences to occur also from one election to the next within a country. We test which of these conditions holds by examining evidence from the national elections held since 1990 in ten Central and East European (CEE) countries: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (detailed results in Rose, Munro and Mackie, 1998).

I. Clarity of choice vs diversity of representation

The debate about the merits of proportional representation (PR) and the first-past-the-post (FPTP) plurality system continues because proponents of each cause use different arguments (Rose, 1991). The proponents of PR emphasise the need for fairness in representation in the national Parliament: the distribution of seats should match, to a very high degree, the diversity of views found in the electorate. By contrast, advocates of the FPTP system

emphasise the need for clarity in the choice of government. Choosing a government is described by Schumpeter (1952) as duopolistic competition. A measure of disproportionality in order to reduce electoral choice to two parties - a government and an opposition - is deemed a small price to pay in order to give voters a clear choice between voting the government of the day back into office, or voting it out.

The argument for proportional representation is that it encourages the representation of a diversity of opinion in national Parliaments. All CEE countries examined here use PR, and every election produces a Parliament with a lot more than two parties. On average, nine parties sit in a CEE parliament elected by proportional representation (Table 1). But equally striking is the fact that the number of parties varies greatly. There were as few as three in the Bulgaria Narodno Sobranie in 1991 and 17 parties in the Polish Sejm elected in 1991.

Table 1: Number of parties winning seats in CEE parliaments

	Election				
	1st	2nd	3rd	4th	Mean*
Bulgaria	10	3	5	5	6
Czechoslovakia	8	11	–	–	9
Czech Republic	4	8	6	–	6
Slovakia	7	5	7	–	6
Estonia	9	7	–	–	8
Hungary	7	8	–	–	7
Latvia	8	9	–	–	8
Lithuania	9	13	–	–	11
Poland	17	7	6	–	10
Romania	11	7	7	–	8
Slovenia	9	8	7	–	8
United Kingdom	9	9	–	–	9

* To nearest whole number

(Czech figures are for Narodni Rada, 1990-1992, then Snemovna Poslancu; Slovak figures are for the Narodna Rada)

Source: R. Rose, N. Munro and T. Mackie, Elections in Central and Eastern Europe since 1990. Glasgow: U. of Strathclyde Studies in Public Policy No. 300.

The use of PR does not by itself determine the substantial number of parties in Parliament. This is shown by the number of parties winning seats varying within a country from one election to the next. In Bulgaria, the number of parties was low in 1991 because many groups were prepared to submerge their differences in order to form a Union of Democratic Forces to challenge their bitter opponents, the Bulgarian Socialist Party. The fragility of that coalition has led to instability in the party system since. In Poland, the reduction of parties to six in the 1997 election was due to anti-socialist and union forces that had previously fought each other forming an alliance under the Solidarity banner; this boosted the vote of that party (sic) from 5 percent at the previous election to 34 percent. Moreover, even though Britain uses a first-past-the-post

electoral system, it has nine different parties in Parliament, including four parties sharing the 17 single-member districts in Northern Ireland.

Clarity of choice in government depends not only on the total number of parties in Parliament but also on their relevance for government. Everything else being equal, a party with only one seat has much less chance of being part of a governing majority than a party with 50 or 100 or 200 seats. But everything else is not equal, for the opportunity of a party to influence government depends on the aggregate outcome of an election. If the two biggest parties divide seats almost equally, then a party with less than a dozen seats can determine which of the two largest parties is in the majority. In five of the fourteen British elections since 1950, the largest party has had an overall majority of ten or less.

Table 2: Concentration of vote for two largest parties

	Election				Mean*
	1st	2nd	3rd	4th	
	(% vote for two largest parties)				
Bulgaria	83	67	68	74	73
Czechoslovakia	67	47	–	–	57
Czech Republic	63	44	56	–	54
Slovakia	48	51	44	–	48
Estonia	36	48	–	–	42
Hungary	46	53	–	–	49
Latvia	46	30	–	–	38
Lithuania	65	41	–	–	53
Poland	24	36	61	–	40
Romania	73	48	52	–	58
Slovenia	32	38	46	–	39
United Kingdom	74	73	–	–	73

* To nearest whole number

(Czech figures are for Narodni Rada, 1990-1992, then Snemovna Poslancu; Slovak figures are for the Narodna Rada)

Source: R. Rose, N. Munro and T. Mackie, Elections in Central and Eastern Europe since 1990. Glasgow: U. of Strathclyde Studies in Public Policy No. 300.

Proportional representation does tend to make the biggest parties less big than in FPTP systems. In the median CEE election the two largest parties win only around half the vote (Table 2). However, there are great variations between countries. In Latvia the two "largest" parties have taken as little as 30 percent of the vote in the second election there, whereas in Bulgaria electoral competition has been between a large Socialist Party and the UDF. The result is that the extent of concentration of the vote there is the same as in the United Kingdom, where 73 percent of the vote is cast for the Labour and Conservative parties (in fact a surprisingly low figure for the FPTP system). The Federal Republic of Germany shows that, even after the complexities of re-unification, a PR system can produce a high degree of concentration, for the combined vote for

the Christian Democrats and the Social Democrats has averaged 78 percent since the fall of the Berlin Wall.

If the vote for the largest party is the criterion of concentration, then it is entirely possible for one party to become the "pivot" of party competition by winning upwards of half the vote. In Scandinavia, social democratic parties have typically held this role, contesting control of government with a loose coalition of anti-socialist parties. Immediately after the fall of Communist regimes, "movement" parties such as Civic Forum were capable of winning more than half the popular vote – but subsequently splintered. In five party systems – Bulgaria, Czechoslovakia, the Czech Republic, Lithuania and Romania – one party has managed to win at least as large a share of the popular vote under PR as does the winning party in a British general election held under first-past-the-post rules. In short, if voters see one party or two as uniquely important, votes can be concentrated, whatever the electoral system.

II. Proportionality, exclusion and "wasted" votes

The debate between advocates of PR and first-past-the-post systems is exaggerated, for even though the systems are different in kind the outcomes are not. Proportionality is a matter of degree, for no electoral system could be totally disproportional, awarding 0 seats to parties winning 100 percent of the vote and all the seats to parties winning no votes. Reciprocally, no electoral system is exactly proportional, for restrictions on the number of seats in a Parliament mean that in a 100-seat Parliament a party with half a percent of the vote is unlikely to win a seat. Moreover, the introduction of regional constituencies to preserve a geographical link between representatives and the represented and the choice of the threshold of votes that a party must win to qualify in the PR distribution of seats, however justified, also produce departures from 100 percent proportionality.

The impact of party choices and voter choices on election outcomes is demonstrated by proportionality in CEE elections held under proportional representation being substantially less than in PR elections in Western Europe (Figure 1). In the latter, the Index of Proportionality is 96 percent, whereas in CEE countries the average is 84 percent, a figure only three percentage points higher than the Index in the 1997 United Kingdom general election and only one percent above the 1992 British figure.

Source: Richard Rose, Neil Munro and Tom Mackie 1998, *Elections in Central and Eastern Europe since 1990* (Glasgow: University of Strathcylde Studies in Public Policy Number 300), page 117.

Even though electoral systems tend to change little from one election to the next, substantial differences in proportionality occur within as well as between countries. In seven of the eleven sets of outcomes examined, the Index of Proportionality has fluctuated by at least 10 percentage points, and in Poland by as much as 25 percentage points. In Russian Duma elections, the range is greater still. Whereas in the 1993 Duma election, there was 85 percent proportionality in the outcome in the PR seats, by 1995 the proliferation of parties by fissiparous Russian politicians dropped the Index to 51 percent (cf. White, Rose and McAllister, 1997: chapters 10, 11).

In Hungary and Lithuania, elections are held in which some seats are assigned by PR and some by a form of FPTP. This makes it possible to examine the electoral system effect while holding national characteristics constant. In Hungary there is a great difference in outcome between the two systems: the Index of Proportionality was 47 percent for single-member seats in 1994, 36 percent less than for PR seats, and 59 percent in 1990, 23 percent less than for PR seats. However, in Lithuania, there is little difference and in 1996 proportionality was actually two percent higher in single member districts than in PR outcomes, where it was only 68 percent. In 1992 single-member Lithuanian districts were 84 percent proportional, only three points less than PR seats. When both systems were used in Bulgaria in 1990, both had above-average proportionality, 90 percent in single-member seats and 97 percent in PR seats.

Recognising the problems of governing if there are "too many" parties in a Parliament, most PR laws prescribe a threshold of votes that a party must clear in order to be awarded any seats by proportional representation. Thresholds vary greatly between established democracies, from Germany, where it is five percent, to the Netherlands, where it is effectively less than one percent. Most CEE countries immediately settled on a five percent threshold in order to avoid the proliferation of a large number of small parties – and this has been augmented by introducing a higher still threshold for PR lists presented by coalitions or alliances. It has been as high as 11 percent of the vote for five-party coalitions in the Czech Republic.

A threshold is both incentive and punishment. It is an incentive to politicians to cooperate with others of similar though not identical outlook rather than form separate parties that divide support for a broad political tendency into three, four or five very small parties. In so far as that happens, then few parties should fall just below the threshold. In eight of the 29 elections reviewed here, no party winning at least 2.5 percent of the vote failed to win seats because its vote fell short of the threshold. The 1993 Polish election was atypical in that eight parties ended up with no seats because, while gaining at least 2.5 percent of the vote, they failed to clear the 5.0 percent barrier. Politicians learned from that mistake. In 1997 a large number of parties formed a Solidarity alliance that altogether claimed 44 percent of seats in the Sejm; only one party fell just short of the 5.0 percent barrier. Across CEE countries, in the normal election the five percent barrier excludes only one party.

Exclusion differs from disproportionality, for the latter refers to parties winning relatively more or less than their share of the popular vote, while exclusion means that a party wins no seats, thus wasting votes, as, electors are without any representation. In FPTP systems, at the single-member district level a majority of votes can be wasted, when the winner in a three or four candidate race has a plurality rather than an absolute majority of votes. This often occurs in Britain. In a PR system, votes are distorted as the Index of Proportionality falls, but they are not completely wasted, as long as a party list secures some representation in Parliament.

Table 3: Wasted votes in CEE Parliaments

	Election				Mean*
	1st	2nd	3rd	4th	
	(% vote cast for parties winning no seats)				
Bulgaria	19	24	–	–	21
Czechoslovakia	7	34	13	–	18

Czech Republic	19	13	11	–	14
Slovakia	8	24	12	–	15
Estonia	15	12	–	–	13
Hungary	13	14	–	–	13
Latvia	1	25	16	8	12
Lithuania	11	11	–	–	11
Poland	6	5	6	6	5
Romania	3	16	13	–	11
Slovenia	6	16	13	–	12
United Kingdom	1	2	–	–	1

* To nearest whole number

(Czech figures are for the Narodni Rada, 1990-1992, then Snemovna Poslancu; Slovak figures are for the Narodna Rada)

Source: R. Rose, N. Munro and T. Mackie, Elections in Central and Eastern Europe since 1990. Glasgow: U. of Strathclyde Studies in Public Policy No. 300.

The proportion of votes completely wasted by being cast for a party that wins no seats normally runs between ten and twenty percent, averaging 13 percent across all countries (Table 3). The total of wasted votes rose as high as 34 percent in Poland in 1993 and was as low as one percent in Bulgaria in 1990, where the alternative of single-member districts enabled parties to win individual seats with less than the threshold vote nation-wide. A striking feature is that the percentage of wasted votes tends to vary within a country – and to go up as well as down. In only three of the eleven countries surveyed was the highest number of wasted votes cast when it might be expected, in the first election when politicians had most grounds to be ignorant of the distribution of public opinion. The scale of wasted votes is far higher than in a first-past-the-post system such as the United Kingdom, where parties do not compete if they cannot be assured of winning at least a few seats, whether they concentrate their appeal on a single region or campaign nation-wide but win only in a few districts where their support is disproportionality high.

III. Stability, volatility and learning

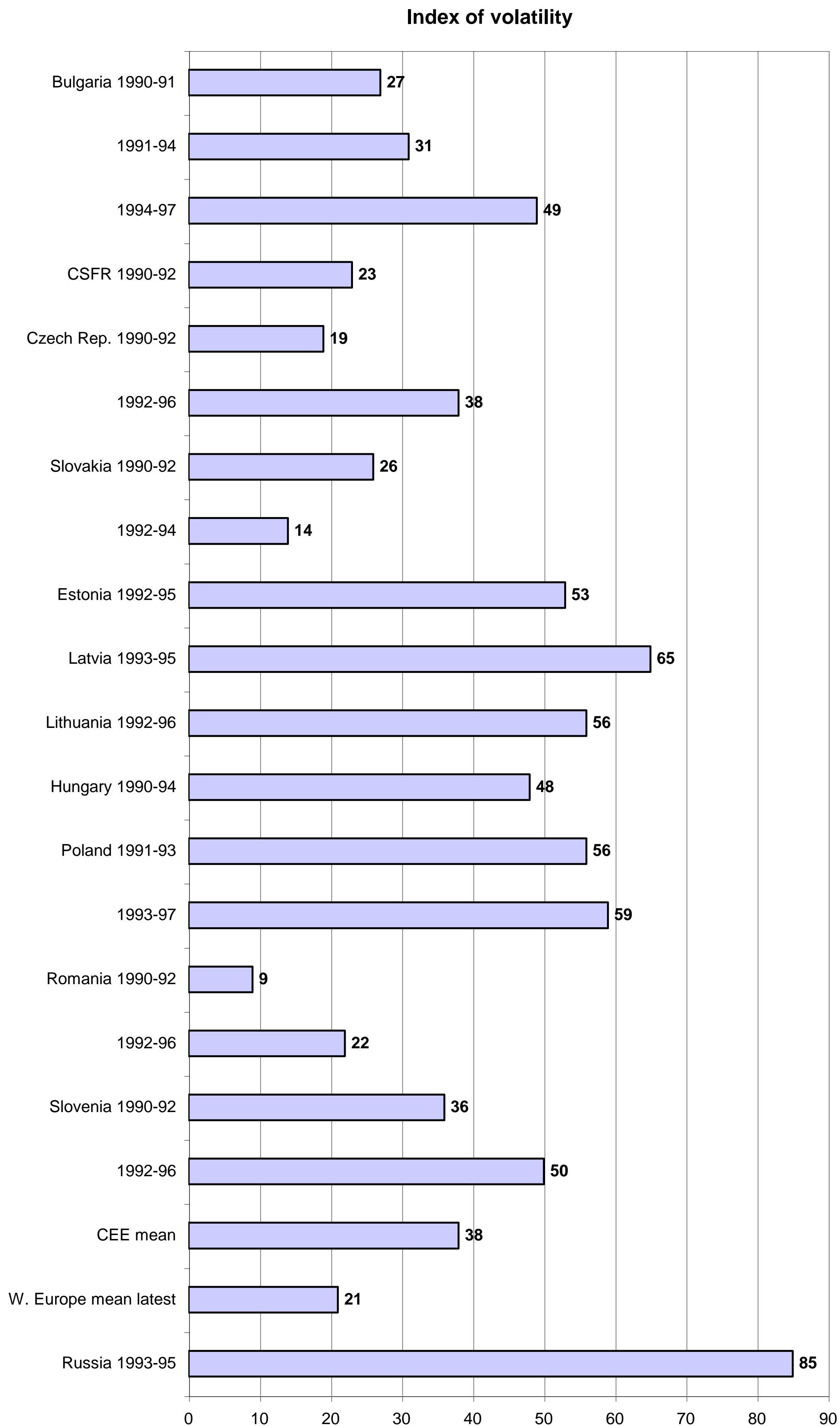
Democracy presupposes competition between parties, with some voters switching their vote from one election to the next. But political stability assumes that "not too many" voters switch; otherwise, each general election would see new parties burst on the scene and governing parties disappear. The Index of Volatility measures the extent to which party strengths change from one election to the next. It is calculated as the sum of the differences between a party's percentage share of the valid vote in two successive elections. Thus, the disappearance of a small party will have little effect, but the break up of a big party will have a big impact. The Index can vary from 0 to 200, since the drop in one party's share of the vote necessarily increases the share of other parties.

Volatility has characterised the great majority of post-Communist elections to date. The mean level of volatility between elections is 38 points (Figure 2). The biggest shift between

elections, 65 points, occurred in Latvia from 1993 to 1995; it has also been 50 points or higher in at least one election in Estonia, Lithuania, Poland and Slovenia. Volatility in post-Communist countries is far higher than in Western Europe, where the mean is 21 points, and it is as low as 3 points in Malta. Even where volatility has been highest, Portugal, it is below the CEE mean. In the United States, the Index was 21 points between 1992 and 1996, and 36 points when Ross Perot intervened in 1992. In Britain, the index was only 10 points in 1992 when the Conservatives won re-election, and 25 points when the electorate swung in 1997 to New Labour.

Figure 2

VOLATILITY IN CEE ELECTIONS IN THE 1990s



Index: Sum of the changes in each party's share of vote from one election to the next.
Minimum, 0; maximum, 200.

Source: Richard Rose, Neil Munro and Tom Mackie 1998, *Elections in Central and Eastern Europe since 1990* (Glasgow: University of Strathclyde Studies in Public Policy Number 300), page 119.

In theory, volatility could be expected to be high initially as politicians make appeals in ignorance of what voters want, and then adapt their behaviour before the second election as they learn what to say and what to avoid saying when campaigning for votes. However, no pattern of learning is found. In countries that have had three or four elections, volatility has actually risen in Bulgaria, the Czech Republic, Poland and Slovenia, while falling in Romania and Slovakia. In Poland volatility has been consistently high, 56 points in the swing from anti-Communist to post-Communist parties between 1991 and 1993, and 59 points when the electorate swung to a Solidarity-led coalition in 1997. In Russia, volatility between its two Duma elections was an extraordinary 85 points. The mean Index of Volatility in CEE countries is also substantially higher than for the first two free elections in Spain and in Portugal in the late 1970s, 25 points, and in Austria between 1945 and 1949, when it was 24 points. Only Germany between 1949 and 1953 has shown a similarly high level of volatility, 52 points.

IV. The presidency as a problem in representativeness

Communist regimes concentrated power, and the cult of the leader was often a reality. In reaction, almost half the countries of Central and Eastern Europe have avoided an elected president, for fear of ending up with a plebiscitary leader ruling by personal whim. The issue was most starkly raised in Hungary, where Communists promoted the idea of a popularly elected president and anti-Communists narrowly defeated the proposal in a November 1989 referendum.

By definition a presidential election must be disproportional, for it is a winner-take-all ballot in which only one person can become president, however narrow his or her margin of victory. In the United States a candidate can become president with a minority of the popular vote, as in both Bill Clinton's "victories", and a total of five of the thirteen post-1945 American races. To guard against this, post-Communist countries have turned to the French (and the one-party American gubernatorial) practice of having a second-round run-off election between the top two candidates, if no one wins an outright majority in the first round.

In nine of the 13 presidential contests covered here, no candidate won half the first-round vote (Table 4). The exceptions are in Slovenia, where Milan Kucan has won two of his three races with an absolute first-round majority; and once in Lithuania and in Romania. In three of the nine cases where the first-round ballot failed to produce an absolute majority, the candidate who initially finished second emerged as the winner. In Lithuania this occurred because of a grand coalition against the front-runner, in Romania because the front-runner had less than a third of the vote, and in Estonia the runner-up in the popular ballot, Lennart Meri, won when the vote was put to the Parliament in lieu of a second popular ballot.

Table 4: Voting in run-off presidential elections

	Winner's share of vote	
	1st round	2nd round

		% vote
Bulgaria		
1992 Zhelev	44.7	52.8
1996 Stoyanov	44.1	59.7
Estonia		
1992 Ruutel	42.2	Meri elected by Parliament (29.8% first round)
Lithuania		
1993 Brazauskas	61.1	n.a.
1997 Paulauskas	45.3	50.4 Adamkus (27.9% first round)
Poland		
1990 Walesa	40.0	74.3
1995 Kwasniewski	35.1	51.7
Romania		
1990 Iliescu	85.1	n.a.
1992 Iliescu	47.3	61.4
1996 Iliescu	32.3	54.4
Constantinescu (28.2% first round)		
Slovenia		
1990 Kucan	44.6	58.3
1992 Kucan	63.9	n.a.
1997 Kucan	54.4	n.a.

Source:R. Rose, N. Munro and T. Mackie, Elections in Central and Eastern Europe since 1990. Glasgow: U. of Strathclyde Studies in Public Policy No. 300.

If a president's claim to be leader of all the people requires endorsement by three-quarters of voters, then no one meets this standard. The only second-round winner to secure more than two-thirds of the vote was Lech Walesa in Poland in 1990. In the median presidential election, the President is the first-round choice of just under 45 percent of the voters and the second choice of another ten to fifteen percent. The pattern is not exclusive to Central and Eastern Europe. In France, where run-off elections are also normal, the French President is the choice of a slim majority of the voters and the current President, Jacques Chirac, came second in the first round of the 1995 ballot with only 20.8 percent of the vote.

V. Variability in outcomes within and between countries

If the legal rules of electoral systems were all that mattered in determining how many parties contested elections, how big (or small) were the largest parties, election outcomes, the

proportionality or disproportionality of the distribution of votes and seats, and the degree of stability or volatility between elections, then we would expect a high degree of uniformity in elections in post-Communist countries of Central and Eastern Europe. In fact, this does not exist.

On the face of it, the legacy of a Soviet one-party system could explain differences between CEE election outcomes and those in established party systems of Western Europe, particularly the higher level of volatility between elections. But the significance of this distinction can easily be exaggerated, particularly as CEE countries have not yet shown evidence of party politicians learning how to adapt their appeals to maintain their support and voters are still ready to waste votes for parties that do not win any seats. In due course the variability between elections may well be reduced, but the amount of time required to learn the complexities of free choice is much greater than the time required to unlearn the forced choices of the Communist era.

The variations between countries, and even more variations within countries from one election to the next, emphasise the importance of examining country-specific and election-specific influences on the pattern of election results. While mechanistic advocates of a particular electoral system or a particular approach to political science may be disheartened by the weak predictive power of generalisations about electoral systems, advocates of freedom of choice may be heartened. Differences between mechanical rules and actual outcomes are not evidence of unfairness or manipulation; instead, they indicate that the outcome of aggregating the preferences of millions of people cannot be predicted with complete exactitude. Even more, it is an indication that the outcome of free elections cannot be controlled.

References

- Diamond, Larry 1996. "Is The Third Wave Over?", Journal of Democracy 7, 3, 20-37.
- Elklit, Jorgen and Svensson, Palle, 1997. "What Makes Elections Free and Fair?", Journal of Democracy, 8, 3, 32-46.
- Elster, Jon, Offe, Claus and Preuss, Ulrich K., 1998. Institutional Design in Post-Communist Societies. New York: Cambridge University Press.
- Rose, Richard, 1991. "Electoral Reform: What Are the Consequences?". In Frank Vibert, ed., Britain's Constitutional Future. London: IEA Readings No. 36, 115-136.
- Rose, Richard, Munro, Neil and Mackie, Tom, 1998. Elections in Central and Eastern Europe since 1990. Glasgow: U. Strathclyde Studies in Public Policy No. 300.
- White, Stephen, Rose, Richard and McAllister, Ian, 1997. How Russia Votes. Chatham, NJ: Chatham House.

The Debate on Electoral Systems – Case Study: Italy by Mr Mauro VOLPI
Professor at the University of Perugia, Italy

Foreword

The constitutional history of Italy, since national unification in 1861, may be divided into three periods, coinciding with three different political regimes: liberal (until 1922), fascist (until 1943) and democratic (since the 1948 Constitution). During the first stage, when the statute granted in 1848 by King Charles Albert of Sardinia was in force, suffrage was mostly restricted and the electoral system based on majority government (proportional representation was not introduced until 1919, after suffrage had been extended to all male citizens in 1912).

During the fascist regime the Albertine Statute was emptied of its essential components and repealed, and suffrage ceased to be free and was eventually abolished. A corporative Chamber was set up instead.

The period of democracy can be subdivided in turn into three stages: that following recognition of universal suffrage and leading to the election of the Constituent Assembly and, later, the adoption of the 1948 Constitution (I); the stage up to 1993, dominated by highly proportional electoral systems (II); and the period of reform, since 1993, during which mixed, predominantly majority-based electoral systems have been adopted (III). There is currently debate on ways of changing these systems, including prospects for reforming Part II of the Constitution and, in particular, the form of government (IV).

I. The election of the constituent Assembly (1946)

Passed immediately after the liberation, the law setting up the Constituent Assembly took the 1919 model as its reference even though Legislative Decree No. 74 of 10 March 1946 was meant to include the broad lines of the constitutional reforms. The proportional system was confirmed by a large majority. The need for the Assembly to be set up so as to represent as faithfully as possible the various political leanings within the electorate was also taken into account.

In addition, women were granted the right to vote and, as a result, the principle of universal suffrage was applied for the first time.

After twenty years of totalitarian rule, the problem lay in gauging what actual consensus was possible between the reorganised or newly-formed parties that had taken part in the Committee of National Liberation (CLN) governments. To meet that very requirement, the law was devised in such a way as to guarantee the broadest representation possible. Constituencies were redrawn on the basis of the provinces so that they would be larger and, as far as possible, more homogeneous; to apportion seats among the competing lists within each constituency, the "*corrected quotient*" method was adopted, any seats left unallocated then being attribuded at the national level, according to the system of largest remainders – in the "single national college" – to national block lists. This choice of proportionality brought

about electoral competition between 51 lists (11 of which were linked to the CLN), and which then formed 15 parliamentary groups.

II. The 1948 Italian Constitution and the proportional system (1948-1993)

Under the democratic and republican Constitution of 1948, a totally bicameral system was adopted, comprising the *Chamber of Deputies* (made up of 630 deputies elected by direct universal suffrage) and the *Senate of the Republic* (315 senators elected by universal suffrage on a regional basis, plus senators for life, ie former Presidents of the Republic and five figures appointed by them), enjoying the same powers.

Since the Constitution did not establish an electoral system for electing the Chambers, the rules for electing the Chamber of Deputies were set by Act No. 6 of 20 January 1948, which, apart from some slight changes, was based on Legislative Decree No. 74 of 1946 on elections to the Constituent Assembly. The list-based proportional system was retained, together with competition for remaining seats at the national level.

The first attempt at reform dates back to 1953: Act No. 148 of 31 March 1953, passed by the centrist majority and dubbed the "Legislative Fraud" by the opposition parties, introduced a proportional system granting a majority bonus to the list (or allied lists) having obtained, nationally, more than half of the valid votes cast. Accordingly the Act allocated 380 seats to the majority group of lists and the remaining 209 seats to all other lists. If no list or group of lists obtained that number of votes, the electoral system provided for in 1948 would apply.

Even so, in the elections to the Chamber of Deputies held in 1953, the majority sought by the centre parties was not achieved and Act No. 148's attempt to introduce a ground-breaking majority system came to nothing.

This led to fresh proposals for a clearly proportional system, and such a system was set out in Unified Code No. 361 of 30 March 1957. The country was divided up into 32 constituencies, each with an average of 20 seats. It should be emphasised, however, that the two biggest constituencies (those including Milan and Rome) still had more than 50 seats, considerably increasing the proportionality of the system.

On the basis of these rules, the Chamber of Deputies was elected by direct, free and secret ballot with competing lists of candidates. The allocation of seats between the competing lists was done according to the proportional representation system in each constituency, with left-over seats being distributed according to the largest remainders systems amongst lists obtaining a quotient in at least one constituency or 300,000 votes nationwide.

The rules for elections to the Senate of the Republic were established by Act No. 29 of 6 February 1948. A mixed electoral system was adopted with a ballot in singel-seat constituencies within each region. To be elected, candidates had to obtain the valid votes of not less than 65% of voters in the constituency. The number of seats allocated by this system was, at most, three quarters the number of senators and the remainder were consequently according to the proportional system. If any seats were left unallocated, they were shared out on a regional basis among the groups formed by allied candidates. This was done according

to the number of valid votes won by the groups, applying the d'Hondt method. Since the 65% majority was virtually impossible to achieve, this system ended up being highly proportional.

III. The electoral reforms of 1993

Although it had the merit of stabilising democracy and enabling parties with widely differing ideological and political viewpoints to co-exist, the proportional system was bad for stable government since it tended to produce a plethora of political parties and encouraged agreements between parties after elections, often to the surprise of their electors. Consequently, especially in the 1980s, very lively debate developed about reforming the electoral system. Nonetheless it bore no fruit mainly because the parties had a vested interest in maintaining the *status quo*.

Reform was eventually triggered by the serious crisis affecting the party system in the 1990s and by the referenda of 1991 and, above all, 1993. In 1991, a large majority voted in favour of ending the system of voting for several individual candidates, which, in many constituencies, had distorted the electorate's intentions and been harmful for voting secrecy. Consequently, single-candidate voting was introduced. This change, albeit small, proved to be politically significant and opened the way to the 1993 referendum.

The referendum of 18 April 1993 led to the partial repeal (with 82.7% of votes in favour) of the law on election to the Senate and, in particular, to ending the 65% requirement for winning the seat in a single-seat constituency, with the result that three-quarters of the seats contested went to the candidates winning most votes in the constituencies.

On the basis of the referendum result, Parliament very quickly introduced two new systems for elections to the Senate and the Chamber of Deputies, adopting a mixed electoral formula, albeit predominantly majority-based, 75% of seats being allocated to single-seat constituencies, in which a relative majority sufficed, whereas 25% were allocated according to a proportional system.

Act No. 277 of 4 August 1993, on elections to the Chamber of Deputies, provided that electors were to have two votes: one for a candidate in their own single-seat constituency and the other for one of the lists standing in the constituency (but with no possibility of expressing any preference for particular candidates on the list). In each single-seat constituency, the candidate obtaining the largest number of votes is elected. The remaining proportionally contested 25% of the seats are allocated nationally among the lists obtaining at least 4% of the valid votes under the natural quotient method. Nonetheless, a proportion of the votes obtained by its winning candidates in the constituencies is subtracted from each list's total vote (by what is known as "partial disincorporation")

Under Act No. 276 of 4 August 1993 on elections to the Senate each elector casts a single vote for his or her preferred candidate in the constituency. The candidate obtaining the largest number of votes is elected. 75% of seats are allocated by this system. The remaining 25% are shared out proportionally in each region among the groups of candidates standing in the constituencies under the same banner. For that purpose, the electoral score of each group is calculated, ie the total votes cast for the group's candidates in the region; from that total sum

are subtracted all votes cast for candidates already elected at constituency level ("full disincorporation"); finally, seats are apportioned among the groups according to the d'Hondt method.

IV. Current debate on electoral reforms

The new electoral systems may have had important effects but they have not been entirely satisfactory. In the 1994 elections, they encouraged agreements between parties which grouped together in three political coalitions (right, centre and left) but the right-wing majority was weak and divided and was therefore unable to provide stable government. A governmental crisis occurred only seven months later.

Two coalitions (centre right and centre left) fought the April 1996 elections and, before polling day, both coalitions informed the electorate of their candidates for Prime Minister. The victory by the centre left led to the rapid formation of a government which is still there after two years.

Nonetheless, the bipolarity of the political system is still imperfect, for two main reasons. First, there are medium-size parties which belong to neither coalition, such as *Rifondazione comunista* (which, however, supports the current government although it does not belong to it), and *Lega Nord*, a regional party with deep roots in the north and a separatist stance. Secondly while the new electoral system has succeeded in producing a governing majority, it has failed to bring about any great reduction in the number of parties represented and, consequently, any steadfast discipline within the coalitions. That has been revealed, in particular, by the agreements for sharing out seats in the constituencies, where the need to win a relative majority of votes enabled smaller parties to impose on the stronger parties a larger number of joint candidates than their actual size merited.

It therefore comes as no surprise that the debate on electoral reforms should have surfaced once again.

This was evident in the Parliamentary Committee on Constitutional Reforms, set up by Constitutional Act No. 1 of 1997. It completed its proceedings in November 1997, adopting a draft reform of Part II of the Italian Constitution which is currently before the two Chambers of Parliament. Even though the electoral system is a matter for the legislature and there was therefore no vote on electoral questions in the Committee, the electoral systems obvious connection with the choice of form of government has led to the tabling of two proposals for electoral reform. The first, backed by the majority of political forces, retains the current systems but provides for a second round of voting with only the two strongest coalitions present and the winning coalition receiving a "majority bonus" of the number of seats needed to achieve an absolute majority. The second proposal, backed by some parliamentarians, calls for the adoption of a two-round majority-based system.

Various leading figures from different parties have in their turn put forward a new initiative for a popular referendum aimed at ending the proportional part of the current systems and generalising the single-round majority system. However, it is uncertain whether the referendum will be allowed by the Constitutional Court as it recently ruled inadmissible

"manipulative" referendums, ie those seeking to revoke not a homogeneous section of a law but just a few sentences or words in order to give that law a different meaning.

Equally, certain political forces have expressed a preference for a return to the proportional system, even if corrected by a requirement to obtain a minimum share of the vote (5% or 6%) in order to qualify for seats.

In the last analysis, positions on electoral reform are today very far apart and any attempt to impose reforms by majority could trigger crises both in the political system and within the coalitions, jeopardising government stability. It may also be doubted whether electoral reform alone can simultaneously and with certainty guarantee the existence of a majority - and therefore of a stable government - and a drastic reduction in the number of parties represented in parliament.

It is more reasonable to predict that, in the immediate future, Italy will have coalitions made up of several parties. That poses the problem of ensuring tighter discipline within those coalitions. That might be achieved by reforms of the Constitution such as those seeking to strengthen both the role of the Prime Minister, who needs acknowledgement as the pre-eminent figure in the government, and the government's position within parliament, by adopting some of the rationalisation arrangements to be found in several other countries with experience of parliamentary majority government. A major step forward might be a reform of parliamentary rules together with changes to the Constitution - to secure greater discipline in parliamentary majorities. Amendments would also have to be made to ordinary laws which, although not electoral legislation as such, nevertheless encourage large numbers of parliamentary groupings and undermine discipline within coalitions: under the recent Act No. 2 of 1997 on financing of political parties, for example, even a party with only one elected parliamentarian qualifies for funding. When implemented, the Act resulted in the "miracle" birth of over 30 political groupings.

In this context, thought might also be given to amending electoral law so as to strengthen political bipolarisation and discourage the presence of parties outside coalitions while favouring cohesion within them. A two-round voting system might be of value for that purpose, since in single-seat constituencies it gives a boost to best placed non-elected candidates belonging to the winning coalition. But, in any case, there should be no illusions about the magical virtues of electoral formulae. These may condition the behaviour of politicians but, in practice, their effects are partly determined by the political and institutional system in place. It is therefore still vital for political forces to foster alliances and joint programmes rather than divisiveness and emphasis on divergences so as to speed up evolution towards a bipolar system.

To conclude, the Italian case confirms that the debate on electoral systems should not take as its starting pointing ideological presuppositions, based on the theoretical superiority of a system and regardless of the context in which it must operate. The proportional system, for instance, was valid for a long time but any attempt at reintroducing it now would be a serious error since it might kill off the current bipolar, majority trends, the only means of ensuring a system of government that is stable and effective. On the other hand, the adoption of fully majority formulae might lead to a kind of rejection by the political system and a weakening of the political prerequisites for bipolarity and discipline in the majority. The choice of

electoral system must therefore be made bearing in mind the political and institutional context and the aims to be achieved along with the questions of the form of government, the functioning of parliament and the role of political parties.

Debate on Electoral Systems – Case Study: Russia by Mr William SMIRNOV
Head of the Deptartment for Political Science Studies, Russian Academy of Sciences

The Hungarian scholar Janos Simon in his research on elections and the consequences for party development, democratisation and governing stability in seven post-communist countries has observed: "One criterion of democracy is the institution of free elections among parties. There are important rational expectations about the democratic character of elections: namely, the principle of proportionality and stable government. The first expectation is that persons or parties should govern who have received the greatest proportion of votes from citizens. The second expectation, however, is that there will be "manageableness" in the country."[127]

These two factors, as the history of elections in post-communist Russia has proved, are not easy to reconcile. One reason for these difficulties is that the electoral system newly established after a long period of authoritarian rule in a society without a tradition of free electoral choice cannot be quickly and fully institutionalised. Meanwhile the electoral system determines what effect votes have in allocating seats in a national Parliament. Choices in electoral systems have substantial political consequences and the selection of a particular system is much influenced by what it is expected to produce. But the outcomes of different electoral systems in a transitional society are not entirely predictable, particularly from the point of view of the type of party system that one electoral system or another may produce.

The focus of our analysis will be debates on electoral systems and elections to the State Duma - the lower chamber of the Federal Assembly (Parliament) of the Russian Federation. According to the Russian Constitution now in force, which was approved by national referendum in December 1993, federal laws shall be enacted by the State Duma and approved by the Federation Council - the upper chamber of the Federal Assembly. This means that the State Duma is the only constitutional law-making body. The Federation Council consists of "two representatives of each subject of the Federation, one each from the representative and executive organs of State power." There are 89 "subjects of the Federation"- republics and regions of different kinds.

The Constitution provides that "the modes of forming the Federation Council and electing the State Duma deputies will be established by law." But the electoral system used in the December 1993 election was established by presidential decree. It was an outcome of the protracted confrontation between reformists led by President Yeltsin and the conservative Supreme Soviet - inherited from the USSR Russian federal legislature. The federal centre was virtually paralysed by this battle. On 21 September 1993 Yeltsin dissolved the federal legislature. In the short space of time between the dissolution of the Supreme Soviet and the

---

[127] *Janos Simon, "Electoral Systems and Democracy in Central Europe, 1990-1994", International Political Science Review, Volume 18, Number 1, October 1997, p. 361.*

election on 12 December Yeltsin issued more than 360 decrees that in effect were laws. By these decrees the governmental and economic systems were substantially transformed. For example the system of Soviets was abolished and private property rights were strengthened. Yeltsin called an election for the Russian Parliament and a referendum on the new Russian Constitution that was finally drafted by his supporters. This Constitution specifies in the transitional clauses a direct election by popular suffrage of the members of both chambers of the first Russian Parliament and two years instead of four years for their term of office.

The presidential electoral decree provided for a mixed system of the majoritarian and proportional electoral systems, which was borrowed with some changes from the German electoral system. Half of the 450 State Duma deputies should be elected in single-round multi-party elections in single-member districts. The other half, 225 seats, should be elected in the federal-wide electoral district in proportion to the number of votes cast for federal lists of candidates (parties' lists) nominated by electoral associations. The term "electoral association" means registered political parties and other public associations. It was an expression not only of the political parties' weakness but also of the intentions of the presidential side to provide the right to participate in the election to reformist-liberal political associations, first and foremost to "Russia's Choice". Russia's Choice at that time was the strongest liberal democratic political association, very closely affiliated with the President and government, and nurtured the idea, with Yeltsin's consent, that it was actually a presidential party. But due to its members' and followers' hatred of the Communist Party and therefore a desire to dissociate themselves from the word "party", the leaders of Russia's Choice preferred to use the word "movement" to identify themselves.

Contrary to the constitutional draft that, as the acting Constitution, required that the two members of the Federation Council from each region be selected from the legislative and executive branches of regional governments, this presidential decree provided for the election of these members in a single-round multi-party election, in which the two persons obtaining the most votes were elected in each of the 89 regions.

The main goals of these electoral systems were:

First, to secure the electoral victory of democratic reformists and prevent the election of the radical opposition. Second, to reduce the number of political parties represented in the Federal Parliament and create (probably after the next, 1995, election) a two-party system. Third, to diminish the influence of regional elites.

At first the prospect of achieving these aims looked bright. Furthermore, by other presidential decrees the radical left and nationalist parties were banned (initially the less radical opposition political parties were also banned, but the ban on these political parties was later lifted) and publication of their newspapers was suspended. Another obstacle for the political parties, mostly for the opposition ones, was the procedure of registration of the list of candidates of political parties (or electoral associations). Parties and electoral associations were required to collect in a short period of time 100 000 signatures from throughout Russia, of which no more than 15% could be from one region. To prevent the election of tiny political parties, most of which were opposition parties, a 5% threshold was introduced. Thus, in Germany, the political party or electoral bloc had to receive 5% of the vote to qualify for seats in the Parliament. To increase the probability of electoral victory for the democrats the executive reduced the length

of the electoral campaign to 35 days for the State Duma and to 27 days for the Federation Council. In accordance with these procedures and with its own review the Central Election Commission of the Russian Federation registered 13 political parties and electoral blocs.

But the outcome of the election to the State Duma was very far from these expectations. Reform-oriented parties gained about 30% of the party list vote in comparison with about 43% of this vote for the opposition parties. The centrist parties polled about 14% of the vote. Half of the opposition vote went to the right-wing nationalist Liberal-Democratic Party of Russia under the leadership of Zhirinovsky. Pro-reform parties did better in the single-member district race which helped them to improve slightly the general outcome of the election to the State Duma. Yeltsin's favoured party, Russia's Choice, outnumbered the other parties in terms of the total number of seats, but not substantially.

The partisan implication of the election to the Federation Council is difficult to assess because only 68 of 171 winners of seats in the 1993 election were endorsed by a party and some of them were endorsed by more than one party. But the majority of elected members were chiefs of administration appointed by Yeltsin, held other regional-level offices, or were directors of large businesses. That is why the Federation Council was overall rather loyal to the President's policies.

The second goal of the State Duma's electoral system was also not achieved. Members of eight political parties and electoral associations that gained seats in State Duma formed factions. Some other deputies, mostly elected from districts, formed three independent groups.

The second State Duma election was held on 17 December 1995, this time under the Federal Law "On Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" that came into force in June 1995. This law is currently under consideration by the State Duma for redrafting so that it corresponds much more closely to international electoral standards and norms and provides the same mixed electoral system of proportional representation and single-member districts. Reformist political parties and movements with substantial support from the executive and business made enormous efforts to win this election. As Russia's Central Electoral Commission calculated, the cost of the electoral campaign of the main pro-governmental "party" (by law it is a political movement), Our Home is Russia, headed by Prime-Minister Victor Chernomyrdin, reached 10 920 million rubles - the highest in this campaign in comparison with the 1 377 million rubles spent by its main rival, the Communist Party of the Russian Federation. Together with the electoral bloc of Our Home is Russia ally Ivan Rybkin they dominated television screens. In spite of their financial and mass media superiority and the heavy involvement of public administration officials in support of pro-governmental parties the opposition parties consolidated their position in the State Duma.

Table 1: Distribution by party of the State Duma deputies: elections in 1993 and 1995.[128]

[128] *Election of the State Duma Deputies. Electoral Statistics. Moscow, The Central Electoral Commission of Russian Federation, Publishing House "Ves Mir", 1996, p. 202 (in Russian).*

Electoral associations and electoral blocs [129]	Results of 1993 election			Results of 1995 election		
	Federal-List Seats	SMD Seats	Total Seats	Federal-List Seats	SMD Seats	Total Seats
Communist Party of Russian Federation	32	16	48	99	58	157
Liberal-Democratic Party of Russia	59	5	64	50	1	51
Our Home is Russia	-	-	-	45	10	55
Yabloko	20	7	27	31	14	45
Agrarian Party of Russia	21	12	33	-	20	20
Women of Russia	21	2	23	-	3	3
Russia's Democratic Choice (in 1993: Russia's Choice)	40	26	66	-	9	9
PRESS	18	1	19	-	1	1
Democratic Party of Russia	14	-	14	-	-	-
Other Parties	-	23	23	-	32	32
Independent candidates	-	127	127	-	77	77
Total Seats	225	219	444	225	225	450

- Reform-Oriented Electoral Associations: Our Home is Russia; Yabloko; Russia's Democratic Choice.
- Centrist Electoral Associations: Women of Russia; PRESS; Democratic Party of Russia.
- Opposition Electoral Associations: Communist Party of the Russian Federation; Liberal Democratic Party of Russia; Agrarian Party of Russia.

---

[129] *Article 32 of the Federal Law On Election of Deputies of the State Duma states: "An electoral association is an all-Russian public association established in the manner stipulated by federal laws, whose chart provides for participation in elections to bodies of State power through nomination of candidates and is registered by the Ministry of Justice of the Russian Federation no later than six months prior to the announcement of the day of election". "Electoral blocs created for the period of the conduct of elections of deputies of the State Duma also posses the rights of electoral association". Article 33 adds: "Electoral blocs may be established by no less than two public associations which are electoral associations in compliance with, Article 32, paragraph 1 of this Federal Law".*

How can the results of this election be explained? The survey research based on the Russia-wide survey conducted in 1996 under an order and with the participation of the Central Electoral Commission of the Russian Federation provides some grounds for answering this question.[130] Despite some evidence of economic stabilisation almost half of the population believe that development in Russia is heading in the wrong direction. Only 34.8% of those surveyed have a generally positive view on the course of events in their country (15.5% don't know). This prevailing disappointment with reforms in Russia was confirmed by the respondents' answers to the questions on their standards of living and on the most urgent problems for them and for the nation. For example, 41.2% of the adult population regard themselves as poor and another 38.7% live on a severely restricted budget. For the majority of Russian citizens the most urgent problems are high prices, social security, unemployment, unpaid wages and crime. To these unpleasant views we should add that a substantial proportion of citizens have a negative attitude to all three branches of federal power: from 21.6% as regards the Federation Council up to 42.5% against the President.

But the factors of electoral behaviour in post-communist countries that are even more important are the attitudes of the population towards elections and political parties. From this perspective can be observed some positive and negative tendencies. What is encouraging is that for almost 60% of the population elections are seen as the most important way to form representative and governing institutions; 68% believe that by participation in elections they can to varying degrees change their life; for 18.2% elections are most significant for freedom. As a whole for the majority of Russians elections have become one of their main values. At the same time only 39.9% of the adult population considered the elections to the State Duma in 1995 were fair, and only 32.1% considered that the elections had secured the selection of appropriate deputies.

The discrepancy between the evaluation of elections as a democratic institution and the results of these elections is partly the outcome of citizens' attitudes towards political parties. A high distrust of political parties and low levels of identification with parties as a part of the legacy of the former Soviet single-party State are evident from this survey:

- only 20.1% of citizens identify themselves with any political parties;

- support for the candidate of a particular party is only the seventh priority in the list of factors that Russians take into account when they cast their votes;

- only 25.7% of participants in the 1995 State Duma elections considered the main reason for their electoral participation to be the desire to support a specific party or party's candidate, but for 10% it was an opposite motive - to prevent the election of a particular party or candidate;

---

[130] *The authors of this survey: Vladimir Andreenkov - Institute of Comparative Social Studies; Eugene Anrryushenko - Central Electoral Commission; Vladimir Komarovskii - Russian Academy of Civil Service under the President of the Russian Federation; Valentina Lapaeva - Institute of Legislation and Comparative Legal Studies under the Government of Russian Federation; William Smirnov - Institute of State and Law, Russian Academy of Sciences.*

Co-ordinator: Yurii Vedeneev - Member, Central Electoral Commission.

- less than 9% support a solely party-list electoral system and slightly more than 13% support a mixed party-list and single-member districts electoral system;
- for less than 3% the most meaningful element of freedom is the opportunity to join or not to join any political party.
- the values of a democratic party system have not yet been absorbed by a substantial proportion of people, as shown by the responses to the question "Which party system should exist in Russia?".

Table 2: Preferred party system in Russia

Party system	%
1. Multi-party	42.2
2. Two-party	12.1
3. One-party	23.5
4. Parties shouldn't exist in Russia	8.1
5. Don't know	14.1

This means that only slightly more than 50% of the population are in support of a democratic party system, almost a quarter are actually in favour of the restoration of one-party power, and 8% reject the institution of the party itself.

The dissatisfaction of reformists with the results of the December 1995 elections to the State Duma reached the stage of indignation after one year of intransigent resistance by the opposition majority in State Duma to most presidential and government policy decisions. President Yeltsin in his Opinion (of 30 December 1997) on the draft of the new Federal Law "On Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" demanded a transition from the current mixed electoral system to the absolute majority two-round electoral system. His main arguments were:

1. In circumstances when in the Russian Federation the multi-party system is underdeveloped and no Federal Law on political parties exists the election of half of the State Duma deputies under the proportional representation electoral system is not in the interests of electors and does not guarantee the implementation of the principle of the power of the people specified in Article 3 of the Constitution of the Russian Federation.

2. Existing electoral legislation violates the Constitutional representative nature of the State Duma since half of the seats in the Parliament belong to one party that gained at the election less than a quarter of votes. At the same time the interests of almost 50% of Russian people that cast their votes for parties that did not achieve the 5% entrance threshold are not represented.

3. The equal rights of Russia's citizens to elect and to be elected as well as the equal right to participate in politics and in public administration are grossly violated by the current system.
4. Under the existing mixed electoral system the correlation of the number of deputies elected in single-member districts and in federation-wide districts from the federal lists of candidates are in contradiction with the amount of support for political parties and movements by the electors.

5. The implementation of an absolute majority single-member constituency in a two-round electoral system would eliminate all these deficiencies due to the following main reasons:

- a majority electoral system secures stable and close relations in each district between individual deputies and voters;

- this electoral system ensures that competition between candidates on a personal basis and the results of elections reflect the voters' preferences to the highest degree;
- the responsibility of the deputies to their constituencies for their activities is increased;
- the political weight of each political party will be obvious and tiny parties that exist mostly for the benefit of their leaders will lose seats;
- this will encourage the consolidation of political parties and political structuring of society;
- the majority electoral system reconciles the interests of parties and voters.[131]

Yeltsin's suggestions reflect the opinions expressed in the survey mentioned above, as shown in Table 3 below.
:

Table 3: Voters' preferred electoral systems

1.	Party-list proportional representation	8.8%
2.	Single-member seats (vote for definite candidates)	60.5%
3.	Mixed electoral system	13.4%

This statement by Yeltsin sparked a hot discussion in Russian society. His opponents insisted that the main real, albeit not declared, goal of Yeltsin's proposed electoral reform was to reduce the number of opposition seats in the State Duma. Two main opposition parties, the Communist Party and Yabloko, as a democratic opposition, gained 130 seats under the proportional representation electoral system (by party-list vote) and only 72 seats in single-member districts. Furthermore, in most single-member districts the winners were leaders of small, often regional, political parties and movements that did not attain the 5% threshold or that were proteges of regional elites. This means that if all deputies were elected under a majority electoral system the State Duma could be highly fragmented and weak. The Parliament, contrary to the President's statement, would first of all express specific interests and interests of regional bureaucracies and financial and industrial elites. It would leave the Russian President as the only representative of nation-wide interests. The State Duma deputy Victor Sheinis (Yabloko) expressed this view in the following way:

"If the Presidential team managed to introduce a solely majority electoral system the role of the [State Duma] deputies would be reduced to the role of local affairs agents and political representation of people would be concentrated in the executive branch of power.

The initiators of this venture are pursuing one goal – the elimination of parliamentary pressure upon the executive authorities. Least of all are they thinking of the consequences, i.e. of the weakening of the emerging Russian parliamentarianism".[132]

[131] *'Rossiiskya Gazeta', 30 December 1997 (in Russian).*
[132] *'Novya Gazeta', February 16-27, 1998 (in Russian).*

The President's arguments are also vulnerable for another reason. The easiest way to increase the representation of parties is to reduce the entrance threshold. If the threshold in 1995 State Duma election were reduced from 5 to 4% three more parties would be in Parliament and 63 not 50% of voters would be represented in the State Duma. The reduction of the threshold to 3% would add an additional three parties and representation of voters would reach 75%.

The existing mixed electoral system favours the parties that reached the 5% threshold in the 1995 State Duma. This is why even Victor Chernomyrdin, of the "Our Home is Russia" movement, and Deputy Chairman of the State Duma Vladimir Ryzhkov in a recent interview underlined:

"I believe that Russia is simply not ready as yet to switch over to a majority system. Now that the Duma majority is made up of parties, it is really a federal body, defending federal interests. I am afraid that if we hold an election on the basis of a majority system, the new Duma would be composed of three factions: the bandits, the communists, and the regional lobbyists. Who became the speaker would be defined by the distribution of forces. We would have a parliament similar to that of 1990: loud and unstructured, hard to work with.

When three or four really powerful parties are formed here, and when they are well oriented politically in each constituency - then will be the time for a majority system."[133]

Finally, the analysis of the 1995 State Duma election results provides evidence that it is highly probable that if the Duma elections were changed to an entirely majority electoral system without a threshold the marginal and radical parties would have a chance of winning a substantial number of seats. The unavoidable fragmentation of party politics in this scenario could not lead to government stability as proponents of the suggested electoral reform expect but to the opposite outcome. Richard Rose after careful study of the Western European experience quite a long time ago came to the conclusion that is so appropriate to the current reality in Russia:

"Immediate party or policy concerns can influence the [electoral] rules chosen. But however transitory the reason, once chosen, electoral rules tend to persist by their own inertia. These rules apply to future circumstances that cannot be known at the moment of choice. Hence, the golden rule for politicians confronted with choices about electoral systems is to ask: how would I like it if the rules were applied in circumstances unfavourable to me and my party as well as in favourable circumstances? This principle of equity is of fundamental importance, for in any system of free elections politicians who immediately benefit will still be asked to endorse the system, when the rules that once made them winners turn them into losers."[134]

---

[133]. *'Russia' monthly magazine, English edition, No 3, March, 1998, p.11.*

[134] *Richard Rose, "Election and electoral systems: choices and alternatives", – in Democracy and Elections, Ed. Bogdanor and Butler, C.U.L., 1983, pp. 42-3.*

Debate on Electoral Systems – Case Study: South Africa by Messrs Jacques DE VILLE[*] and Nico STEYTLER[**]

1. Introduction

The second democratic election in South Africa is due to take place between 1 May 1999 and 29 July 1999. The National Assembly is to be elected in terms of the list system of proportional representation, i.e. the same system as that used for the 1994 election.[135] National legislation has to be enacted for the purposes of future elections (after 1999) in order to provide for the electoral system. Such a system has to "result, in general, in proportional representation". It could thus be the same system as used currently or a different system, as long as it is a system that produces proportional representation.

Whereas in the 1994 elections no voters roll was used (due primarily to time constraints), the Constitution prescribes that the 1999 election for members of the National Assembly has to take place on the basis of a common voters roll compiled and maintained by the Electoral Commission.[136]

For the purposes of managing the 1999 elections and for future elections, an Electoral Commission[137] has been established in terms of the Constitution.[138] The Electoral Commission is described in the Constitution as a State Institution for the support of constitutional democracy.[139] Its status, according to the Constitution, is that of an independent institution which is subject only to the Constitution and the law. It furthermore has to be impartial and exercise its powers and perform its functions without fear, favour or

---

[*] *Bcomm, LLB (Potchefstroom), LLD (Stellebbosch). Professor of Law in the Department of Public and Adjective Law, University of the Wertsern Cape, South Africa.*

[**] *BA LLB (Stellenbosch), LLM (London), PhD (Natal). Professor of Law and Director of the Community Law Centre, University of the Western Cape, South Africa.*

[135] *See item 6 of schedule 6 to the 1996 Constitution.*

[136] *s 5(1)(e) of the Electoral Commission Act.*

[137] *Its predecessor for the 1994 elections was called the Independent Electoral Commission: see the Independent Electoral Commission Act 150 of 1993. The Electoral Commission must, in terms of s 190.2 of the Constitution, be composed of at least three members (currently, there are five). See also s 6 of the Electoral Commission Act 51 of 1996 as regards its composition and the nomination of members.*

[138] *Act 108 of 1996. See ss 181, 190 and 191. See further the Electoral Commission Act.*

[139] *The other such institutions are the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality and the Auditor-General; see s 181(1).*

prejudice.[140] Other organs of state are instructed to assist and protect the Commission by means of legislative and other measures in order to ensure its independence, impartiality, dignity and effectiveness.[141] No person or organ of state may interfere with the functioning of the Commission.[142] The Commission is accountable to the National Assembly. The functions of the Commission in terms of the Constitution, are:[143]

(a) to manage the elections of national, provincial and municipal legislative bodies;

(b) to ensure that those elections are free and fair;

(c) to declare the results of those elections; and

(d) to exercise other powers granted by national legislation, such as the managing of referenda.[144]

Below, the present electoral system will be described and evaluated, whereafter the debate regarding a new electoral system will be assessed.

2. The present electoral system

South Africa's first fully democratic elections (for the direct election of members of the National Assembly and of the Provincial legislatures) were held on 27, 28 and 29 April 1994, based on the list system of proportional representation. The detail of the system was regulated in schedule 2 to the Constitution.[145] For the purposes of the election, the country was divided into nine multi-member constituencies (the nine provinces established in terms of the Interim Constitution)[146] of variable sizes. The primary basis upon which the distribution of seats in the National Assembly was determined was, however, the votes cast for each party in the country as a whole.

---

[140] *s 181(2).*

[141] *s 181(3).*

[142] *s 181(4).*

[143] *s 190(1).*

[144] *See with regard to referenda and other functions, s (1) read with s 1(2) of the Electoral Commission Act.*

[145] *Item 6(3) of schedule 6 to the 1996 Constitution provides that despite the repeal of the 1993 Constitution, schedule 2 to that Constitution shall remain in force for the next election of the National Assembly subject to the amendments in Annexure A to schedule 6 to the 1996 Constitution. The provisions of schedule 2 as discussed below have not been substantially amended except in so far as will be indicated in the footnotes to this paper.*

[146] *See s 124 and schedule 1 to the 1993 Constitution, Act 200 of 1993.*

The 400 seats in the National Assembly[147] were filled from the national and/or regional lists of political parties.[148] Parties could decide in particular whether to submit only regional lists or to submit only national lists or to submit both regional lists and a national list,[149] provided that lists of candidates did not in total contain the names of more than 400 candidates.[150] The lists furthermore had to denote the names of candidates in a fixed order of preference determined by each party.[151]

The number of seats a party was entitled to in the National Assembly based on the national and/or regional lists was determined as described below.

2.1 Seats from regional party lists

With regard to the filling of seats based on the regional party lists, a quota (the Droop quota) had first of all to be determined. This was done in the following way: [152]

$$\text{quota} = \frac{\text{votes cast in region}}{\text{seats in region} + 1} + 1$$

The number of seats for each region in the above formula was determined by the Independent Electoral Commission.[153] The number of seats allocated to a specific party, based on the regional party lists, was in turn determined in the following way: [154]

---

[147] Section 40(1) of the 1993 Constitution. Section 46(1) of the 1996 Constitution provides that the National Assembly shall consist of between 350 and 400 members.

[148] Schedule 2 item 2 to the 1993 Constitution.

[149] Schedule 2 item 4. The National party, for example, chose not to submit a national list of candidates but only nine regional lists.

[150] Schedule 2 item 3.

[151] Schedule 2 item 3.

[152] Schedule 2 item 5. The Droop quota chosen was not the same one as that used for list systems of proportional representation. The above quota formula is in fact the one used with the Single Transferable Vote.

[153] Schedule 2 item 2(a). The Commission had to take into account available scientifically based data in respect of voters and representations by interested parties and also had to have due regard to a proposed determination laid down in item 2(a). The determination of seats for the 1999 election is to be done by the Electoral Commission, taking into account available scientifically based data in respect of voters and representations by interested parties. No provisional allocation is made in the Constitution.

$$\frac{\text{votes for party in region}}{\text{quota of votes per seat}}$$

Surpluses were at first ignored in the allocation of seats. They would only be taken into account if all the seats were not allocated using the above formula. The surpluses would then be allowed to compete and any seat or seats in that region not awarded according to the above formula were awarded to the party or parties concerned in order of the highest surplus.[155]

2.2 Seats from national party lists

The method used in determining the number of seats from national lists of the various parties was first to determine the quota of votes per seat. The following formula was used:[156]

$$\frac{\text{total number of votes}}{401} + 1$$

With 19 533 498 persons who cast a valid vote in the general election, the quota was 48 712 (disregarding fractions).[157] The number of seats allocated to each party was determined by dividing the total number of votes cast in favour of a registered party by the quota of votes per seat.[158] Where more than one seat needed to be allocated after first disregarding surpluses, surpluses competed and the seats were awarded to the parties in order of the highest surplus. A maximum of five seats were so allocated. Where subsequent allocations needed to be made, they had to be made in order of those parties having the highest average number of votes per seat already gained.[159] This was determined by dividing the total number of votes of each party by the number of seats already awarded to that party :

$$\text{average number of votes for a party per seat} = \frac{\text{Votes (party)}}{\text{Seats (party)}}$$

---

[154] *Schedule 2 item 5.*

[155] *Item 5(d).*

[156] *The quota for the next election is to be determined "by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result, plus one, disregarding fractions, shall be the quota of votes per seat"; see Annexure A to schedule 6 of the 1996 Constitution.*

[157] *Had the normal Droop quota formula been used (and fractions ignored), the quota would have been 48 711.*

[158] *Item 6(b).*

[159] *Item 6(c).*

To determine finally the number of seats a party was entitled to on the basis of the national party list, the number of seats allocated to a party based on the regional lists was subtracted from the number of seats a party gained in accordance with the above calculation.[160] The end result of the 1994 elections was as follows :

Party Name	Total seats	Regional list	National list
ACDP	2	0	2
ANC	252	128	124
DP	7	3	4
FF	9	4	5
IFP	43	22	21
NP	82	42	40
PAC	5	1	4

2.3 Allocation of seats

Where a party submitted both national and regional lists, its representatives in the National Assembly were allocated from regional lists as explained in 2.1, and from the national list as explained in 2.2.[161] Where a party submitted only regional lists of candidates, its representatives in the National Assembly were allocated as explained in 2.1. The remainder of its seats in terms of the calculation as set out in 2.2 were allocated from regional lists in the same proportions as the proportions in which the seats were allocated as set out in 2.1. The number of seats allocated to a party in the National Assembly would of course be the same, irrespective of whether it submitted both a national and regional lists or only regional lists.

2.4 Threshold

The Constitution does not make provision for an explicit threshold to be attained by a party in order to gain at least one seat in the National Assembly. The quota of votes per seat (as determined above) does however provide for an implicit threshold. The size of the implicit threshold is also dependent upon the number of votes cast and the number of spoilt votes.

2.5 Evaluation

The electoral system will be evaluated according to the five central criteria identified by Nohlen for the evaluation of electoral systems.[162] These are representation, concentration, participation, simplicity and legitimacy.

2.5.1 Representation

[160] *Item 6(d). Provision is made in item 7 for a recalculation in the event that a party submits a national or regional list containing fewer names than the number of seats that party is entitled to. This was not necessary.*

[161] *Item 8.*

[162] *See in this regard Nohlen D., Elections and Electoral Systems (1996) 95-97.*

This criterion has two requirements. First, the adequate representation of groups, especially of minorities (including women), [163] and second, the representation of parties in parliament in a way resembling the number of votes cast in the election. The degree of proportionality of the system gives an indication of whether the latter requirement has been complied with.

2.5.2 Concentration

This criterion relates to the measure of convergence of interests and opinions achieved by the electoral system. If not too many parties obtain representation in parliament, it usually leads to stable and effective government and this ideal can be said to have been achieved.

2.5.3 Participation

The third criterion measures the level of participation of the electorate in the election of specific representatives. The so-called personalised vote ensures the accountability of representatives to the electorate.

2.5.4 Simplicity

This criterion speaks for itself and naturally aims at enabling the electorate to understand the electoral process and system.

2.5.5 Legitimacy

In terms of the last criterion, the electorate should consider as being fair and reasonable both the electoral system and the results of the election – it should be accepted as reflecting the opinion of the voters. The legitimacy of the electoral system is, however, difficult to measure. Abstention, public criticism and the use of opinion polls, though each has its shortcomings, might give an indication of the standard of acceptance of the system.

2.6 Evaluating the South African electoral system

2.6.1 Representation

---

[163] *According to the president's Council Report of the Committee for Constitutional Affairs on a Proportional Polling System for South Africa in a New Constitutional Dispensation (1992) 4, a minority group is "any discernible racial, religious, social or ethnic group in a society which is disadvantaged as a result of prejudice or discrimination. This may even refer to a majority in numbers. Women, for instance, are regarded as a minority group, when they are discriminated against in a male-orientated society. This does not necessarily mean that there are fewer women than men in the society. A privileged group constituting a numerical minority within a society is also not referred to as a minority group". This is, however, not the way in which this term is used in South African politics. Here "whites" or Afrikaaners are often referred to as a minority group.*

The fact that in terms of the current system in most parties, party committees (on a regional and/or national level) decide on the composition of lists as well as the sequence of candidates on the lists, has the advantage that a party can plan the composition of its caucus in parliament. It can ensure that a number of experts are included on the list and also that women and minority groups are adequately represented. This will, of course depend on whether the party wishes to draw votes from across the spectrum or whether it wants to appeal to a certain section of the voting population only.

Women at present comprise 25 per cent of the members of the National Assembly. This compares favourably with the position in other countries using the list system of proportional representation. This is in accordance with international experience showing that women are as a rule better represented in countries using party lists than those with single-member constituencies or those using the Single Transferable Vote system.[164]
Concerning the degree of proportionality that was attained by determining the allocation of seats on a national scale, it is clear that the system that was chosen led to a very high degree of proportionality. This can be seen by comparing the percentage of seats obtained by each party with the percentage of votes cast for that party.[165]

Party Name	% seats	% votes
ANC	63	62.65
NP	20.5	20.39
IFP	10.75	10.54

---

[164] Plan Report, A Working Party on Electoral Reform (1991) Guardian Studies, vol. 3, 56-7. See also Bogdanor V., What is Proportional Representation? A Guide to the Issues (1984) 114. This phenomenon is explained by Bogdanor as follows:

"It seems plausible to suppose that whereas a selection committee may hesitate to choose a woman as a candidate in a single-member constituency, a committee choosing a party list will be concerned to secure a 'balanced ticket'. Since the list contains a large number of names, it is unlikely that any voter will be deterred from supporting a party by the presence of women. But the absence of women in high places on the list will cause offence and will narrow the appeal of the party. A party will not wish to advertise its prejudice by placing women low down on the list. For whereas under a single-member constituency system it is the presence of a candidate who deviates from the identikit norm ... that is noticed, in a party list system it is the absence of a woman or minority candidate, the failure to present a balanced ticket, that will be commented upon and resented."

[165] A well-known way of measuring proportionality is by means of the Rose Index, named after its inventor Professor Richard Rose of the University of Strathclyde. In terms of this formula the degree of proportionality is determined by calculating the sum of the differences between each party's share of the seats and its share of the vote, divided by two and subtracted from 100; see The Plant Report (1991) 24. For criticism of this approach, see Fry V. & McLean I., "A Note on Rose's Proportionality Index" 1991 Electoral Studies 52. Other methods for measuring disproportionality are discussed by Lijphart "The field of electoral systems research: a critical survey" 1985 Electoral Studies 3, 9-12; and Lijphart A., Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies 1945-1990 (1994) 58-62.

FF	2.25	2.1
DP	1.75	1.73
PAC	1.25	1.25
ACDP	0.5	0.45

This is probably one of the most important features of the system and contributes greatly to its legitimacy.[166] By granting representation also to right-wing and left-wing parties in accordance with their share of the votes, these parties and their followers were encouraged to remain part of the system and not to resort to unconstitutional means in attaining their objectives.

2.6.2 Concentration

As appears from the figures above, a high degree of concentration was attained – the three major parties polling 93.58 per cent of the votes. If the constitution did not make provision for power-sharing in the government, the ANC with its 63% of the seats in the National Assembly could have formed an effective majority government without any help from smaller parties. This clearly shows that the effects of an electoral system are determined to a great extent by the socio-political conditions in a specific country. It is in particular often averred that a pure proportional system leads to party fragmentation (the Weimar Republic providing the most well-known example) whereas majority/plurality systems have concentrating effects (for example, Great Britain). There are, however, many examples which show the opposite.[167] The concentrating effect of the 1994 election (according to the list system) in South Africa can be partly ascribed to the fact that this was the first fully democratic election, with one of the liberation movements having a huge popularity because of their role in the preceding struggle.

2.6.3 Participation

The level of participation of the electorate in the election of specific members of parliament was minuscule. As explained above, the voter had one vote only and voted for a list (of a specific party) as a whole. This sequence of candidates (as determined by the party structures) could not be altered by voters. The electorate thus had no choice between candidates, only a choice between parties. Hallett[168] criticises this type of electoral system as follows:

The voter has to pretend, in voting, that all of the candidates of the party he chooses are better than all other candidates. In voting, he gives support to all of the party's nominees and the

---

[166] *See below..*
[167] *See Nohlen D., Elections and Electoral Systems (1983) 50.*

[168] *Hallett G.H., "Proportional representation with the single transferable vote: a basic requirement for legislative elections" in Lijphart A. & Grofman B., Choosing an Electoral System: Issues and Alternatives (1984) 113, 116-117. See also Horowitz D.L., A Democratic South Africa?: Constitutional Engineering in a Divided Society (1991) 199.*

ones that he helps elect may sometimes be candidates he does not like. There is also no individual accountability of members of parliament to the electorate such as is the case with single-member constituencies[169] or an open list.
The constituencies – that is, the provinces (in the case of provincial lists) and the country as a whole (in the case of the national lists) – for the election of members of the National Assembly are furthermore so large as to make "constituency representation" virtually non-existent.

The importance of constituency representation in South Africa, although perhaps not as important as in a highly centralised state,[170] cannot be underestimated. With no-one who can be held accountable within a particular constituency, the electorate might lose faith in the electoral process and the constitutional system.

2.6.4 Simplicity

That this criterion was wholly complied with can be seen in the small number of spoiled ballot papers – 0.98% of the votes cast in the election.[171] The system used was necessitated by the high rate of illiteracy in the country.[172]

2.6.5 Legitimacy

Because of the absence of a voters roll, the exact turnout of voters could not be established. It is nevertheless considered to have been very high, indicating that the electoral system that was made use of was considered fair. The result of the election was in the end accepted as being free and fair by the Independent Electoral Commission[173] and all parties concerned. The system has, however, been the subject of criticism in the press, mostly because of the non-accountability of individual members of parliament. This has also been the criticism of some members of parliament. By and large it can, however, be accepted that the electoral system that was used in the April 1994 elections is considered legitimate in the eyes of the public as a whole.

---

[169] *Nohlen (1983) is, however, of the view that "[t]he personality of individual candidates is of secondary importance when the choice between the candidates is equivalent with a choice between parties". In New Zealand, from a 1990 post-election survey, it appears that choosing the best constituency representative is for voters of equal importance to electing a government; see Catt H., "What do voters decide?" 1991 Political Science 30.*

[170] *See Royal Commission New Zealand Report of the Royal Commission on the Electoral System: Towards a Better Democracy (1986) 20.*

[171] *193 081 of the 19 726 579 votes cast. Voters had simply to make an "X" next to the name of the party they preferred.*

[172] *See Mokgoro J., "Interprovincial Fiscal Equalization: The Role of the Financial and Fiscal Commission" in De Villiers B (ed), Birth of a Constitution 281 at 293.*

[173] *See Report of the Independent Electoral Commission "The South African Elections of April 1994" (October 1994) 73.*

3. Electoral reform

In evaluating the different types of electoral systems it is customary to note that there is no one "ideal" electoral system for all countries in the world.174 For a specific country, a specific electoral system might, however, be considered as best suited in the light of prevailing social, economic and political circumstances. The criteria mentioned above to a certain extent conflict with each other and no electoral system can satisfy all these demands. Should the electoral system thus for example be changed to give the voter a better opportunity to express his or her wishes with regard to a candidate (participation), this might have an effect on one of the other criteria such as simplicity, representation or legitimacy or it may even have some other unforeseen effect. The possible unintended effects of changing an electoral system should thus be taken into account. The best voting system for South Africa will in our view be one which provides the most satisfactory overall balance between the different criteria, taking account of the country's history and present circumstances.[175]

To change the present system so as to make individual members of parliament more accountable to the electorate will inevitably lead to a more complex system. In the light of the critique expressed above regarding the criterion of participation, the current debate centres around the introduction of constituencies,[176] while retaining the proportionality of the present system.[177] The German electoral system of personalised proportional representation has served as a model for a number of proposals. The options, as proposed by electoral system experts, are –

a. allocating a third[178] or half[179] of the seats in the National Assembly to the representatives of single-member constituencies, with every voter having two votes (one for a closed party list of candidates and another for a constituency candidate);

b. a formal designation of members of parliament, by means of publication in the Government Gazette, to magisterial districts after an election in terms of the current system;[180]

---

[174] *Nohlen (1996) 94.*

[175] *See, similarly, Royal Commission on the Electoral System (1961) 11.*

[176] *Rather than using open or free lists as compared with the present use of closed lists. For the options in this regard for South Africa, see Krennerich M., "Electoral options for South Africa" in De Ville J. & Steytler N. (eds), Voting in 1999: Choosing an Electoral System (1996) 45-47.*

[177] *In accordance with the requirements of s 461(1)(d) of the 1996 Constitution.*

[178] *See Faure M., "Proposal 1: Proportional representation and single-member constituencies" in De Ville & Steytler (1996) 71.*

[179] *See the alternative proposal of Venter A., "Proposal 2: Proportional representation and ex post facto accreditation of members of Parliament" in De Ville & Steytler (1996) 77 at 80.*

c. allocating three-quarters of the seats in the National Assembly to the representatives of multi-member constituencies, with the other seats either to be allocated from national lists of party candidates[181] or the best losers in the constituencies.[182]

4. Conclusion

In drafting its Constitutions and in particular in deciding on an appropriate electoral system, South Africa has relied heavily on European models of electoral systems and will continue to do so when changes are considered. The peculiar socio-economic circumstances of different countries, however, means that no model, irrespective of the positive results it produces in a specific country, can automatically be considered appropriate for South Africa. We can only express the hope that Europe, and in particular Bosnia and Herzegovina, will be able to learn from the South African experience with its electoral system as well, but then with due regard to the caveat expressed above.

Electoral Systems in the New Democracies and Comparison of their effects by Mr Bernard OWEN

Centre for Comparative Studies on Elections, Paris

For the sake of simplification, the events that we are dealing with may be divided into three stages. Although they may have occurred, in the different states under consideration, at different times and in different conditions, they nonetheless constitute apparently necessary steps along the busy road towards democracy in this part of the world.

The three stages are as follows:

I. Initial elections, giving people a chance to vote for or against communism.

II. The next set of elections which, in the eyes of the legislature, should add a breath of fresh democratic air to the considerable sense of relief felt post-communism and enable all political tendencies to be represented.

III. The third stage sees a growing awareness that democracy calls for efficiency rather than anarchy.

---

[180] *See Venter as above 77.*

[181] *De Ville J., "Proposal 3: Proportional representation in multi-member constituencies (model 1)" in De Ville & Steytler (1996) 83.*

[182] *Kotzé J., "Proposal 4: Proportional representation in multi-member constituencies (model 2)" in De Ville & Steytler (1996) 101.*

I. Election-cum-referendum

The initial elections, regardless of the electoral system used, were seen by the electorate as a referendum for or against communism: the communists, transformed into a socialist party, stood against a unified democratic party.

Hungary was the exception to this rule, for two reasons stemming from the length of time which the Hungarian Communist Party took to become reform-minded:

a. A year elapsed between the creation of the Constitutional Council (guaranteeing the switch to democracy) and parliamentary elections (March 1989-March 1990).

b. A referendum first took place to determine whether the presidential election should be postponed until after the general election. It was during that referendum that the splits in the Democratic Front broke it into separate political parties.

By the time the election took place, communism no longer frightened people, and the electorate could choose from competing parties in a situation similar to that prevailing in western Europe.

Round Tables

Eastern Europe had its "round tables" just as Africa had its "national conferences". In eastern Europe, one of their purposes was to establish the voting method for parliamentary elections.

The choice of voting method depended on the given circumstances of each country, its place in the general developments in eastern Europe and the extent to which democratic forces were prepared and organised.

On these lines, three groups of countries might be considered:

a. Hungary and Poland

b. Czechoslovakia and Romania

c. Bulgaria and Albania

a. Hungary and Poland

They were the pioneers.

<u>Hungary</u>

In Hungary, a compromise was reached. The Socialist Party expected to benefit from the double-ballot majority election system used under the former regime (a French-style voting system, except that the nomination of candidates had been reserved for bodies controlled by the Communist Party). The democrats wanted proportional representation, to make it easier for them to win seats in parliament, and also because it was in keeping with what they saw as a spirit of democratic openness.

A mixed voting system was adopted, with 176 members of parliament being elected by double-ballot majority voting, 152 members being elected under the list system of proportional representation in 20 constituencies, and 58 members being elected from a national list, on the basis of transfers of the remaining votes from the 20 "proportional" constituencies.

The votes of any party on the regional list that has a nation-wide total of 4% or less do not count for seats in the proportional section.

Poland

The ruling party was less liberal than in Hungary. The voting system remained essentially a majority one, and only one-third of seats were open to unofficial candidates (Solidarnosc). A national list of 35 seats (won by an absolute majority in a single ballot) contained only official candidates whose election ought not to have posed any problem. That turned out not to be the case, since the electoral law, modelled on that of the USSR, was inherently flawed – Solidarnosc exploited that flaw concerning invalid ballot papers, and the Government was forced to change the law by decree once the election was over.

b. Czechoslovakia and Romania

Both countries, but for different reasons, opted for proportional representation.

Czechoslovakia

Although Czechoslovakia had had a compromise Government since the end of 1989, its electoral law dated back only to February 1990 – ie following lengthy consideration of the outcome of the Polish elections in June 1989 and the defeat of the communists. The Czechoslovak communists therefore expected a mediocre election result, so thought it advantageous to back proportional representation, in the hope that it would help them to win a few seats:

- Proportional representation was based on lists in 12 constituencies.
- The remaining votes were transferred on a national basis.
- A 5% threshold had to be reached in one of the two Republics.

The 1990 Czechoslovak elections were won by the Civic Forum and Public against Violence, which had agreed not to stand against each other's lists in the two Republics, effectively acting as a single party.

Romania

Romania's electoral law is only slightly more recent (March 1990), but there had been no trend towards political liberation there. Furthermore the execution of the Head of

State by certain people involved in the former regime made the new leadership more sensitive than anyone to the need to appear to be generous. Proportional representation therefore seemed unavoidable. Any majority voting method might cast doubt on the democratic nature of the National Salvation Front:

A list system of proportional representation was used. Each department being a constituency. Remaining votes were transferred on a national basis.

c. Bulgaria and Albania

The first elections held in both countries - neither with much grounding in democracy - were won by the socialist parties.

Bulgaria

Bulgaria's electoral law of March 1990 is the result of a perfect compromise: 200 members of parliament were elected in double-ballot majority voting and 200 by proportional representation in 28 constituencies. The Socialist Party thought it was strong enough to back majority voting despite its relatively late entry into the democratic process in eastern Europe. It was not mistaken and defeated the democrats in the general election.

Albania

One only has to read Albanian writings against Soviet revisionism in the 1960s to realise how rigorous its scientific socialism was.

A double-ballot majority system was used for the first elections. They followed meetings held to select candidates, an occasion for lively discussions in Albanian towns and cities.

The victory by the socialist parties in Bulgaria and Albania took people by surprise, and western commentators highlighted the fact that people in the countryside had voted for the former communists, seeing this as proof that they were quite happy with the former regime. Yet this interpretation is highly debatable, since one only had to visit those countries to be aware of the terror which had been instilled in the people, to an extent that westerners would find difficult to conceive. As soon as liberalisation took place, city-dwellers could see freedom all around them and were fully aware of it. In small provincial towns and in the countryside the situation was quite different. People there knew that democracy was on the way; they had seen it on television and they talked about it among themselves, but not too much, since the old officials were still in place. Representatives of the democrats who held seats on municipal councils did not dare to speak out, even in front of foreign delegations. Of course, people knew that ballots were secret, but there were also "sputniks" which meant that there were no secrets; people had also been so used to having to be seen to do their civic duty! Voting for the democrats was fine for people in the cities, but in the countryside people preferred to wait and see.

In both countries, the second elections were still really referendums for or against communism but, although it had lost the first elections, cracks had already appeared in the Bulgarian Union of Democratic Forces, to the extent that three new parties and the Agrarian People's Union (tolerated by the former regime) obtained between 3 and 4% of the vote in the 1991 ballot.

Although it had won the first general election, the former Communist Party had become so morally discredited that it was forced to agree to electoral provisions bills tabled by the democrats.

The democrats found it difficult to come to terms with their defeat, as it bucked the general trend. In Bulgaria, in particular, majority voting was recognised as one factor that may have favoured the Socialist Party.

Bulgaria therefore adopted a list system of proportional representation - one intended to be very proportional, in a way. The country was divided into constituencies but the transfer of votes took place at national level. This measure to some extent counteracted the 4% threshold below which no seats were won, and therefore restricted both the number of parties in parliament and the proportional nature of the elections.

Leaders of Albania's Democratic Party realised that it was not because of the voting method that the Socialist Party had won, and they proposed a mixed method: election of 100 members of parliament by double-ballot majority voting and of 40 by a list system of proportional representation with, inter alia, a 4% threshold for the second set. The ruling Socialist Party agreed to this proposal, while giving the impression that it would have preferred a list system of proportional representation.

II. Multi-party elections

In the first two countries to hold elections, Hungary and Poland, the processes differed.

A. Hungary

Unlike those held in other countries, the first elections to be held in Hungary already involved a variety of parties, and led to the formation of a government that was held up as an example and remained in power for a full parliamentary term. The 1994 elections were held under the same electoral legislation, except that the threshold was raised from 4 to 5%.

The government formed after the March 1990 elections was mostly made up of Ministers from the Democratic Forum (42.5% of seats), Independent Smallholders' Party (11.4%) and Christian Democratic People's Party (5.4%). The Government was a stable one, despite a minor reshuffle, so it had a considerable opportunity to legislate.

In the 1994 elections, the Socialist Party won power, with an absolute majority of seats in parliament (54.1%), but the government also included Free Democrats, who held 17.9%. In other words, both of Hungary's governments were made up of one party with an absolute majority, or almost, along with one or two smaller parties.

None the less it is extremely interesting to take a more detailed look at the effect of the voting method on the March 1990 elections.

The mixed voting system was described above, but it is worth considering its effect on the party system, both in the main (proportional) part and in the double-ballot majority part.

1. List system of proportional representation ballot

In terms of the result of the "proportional" ballot, no other European country has such a mosaic of political parties. The first two obtained between 20 and 25% of the vote and the next three between 8 and 12.6%. Other parties obtained between 1 and 7% of votes. In all, 19 parties stood, the first 12 in the majority of regions (proportional representation constituencies).

Percentage of votes under the list system of the proportional representation:

MDF-Hungarian Democratic Forum	24.7
MSZP-Hungarian Socialist Party	10.9
SZDSZ-Alliance of Free Democrats	21.4
FIDESZ-Federation of Young Democrats	8.9
FKgP-Independent Smallholders Party	11.7
KDNP-Christian Democratic People's Party	6.5

2. Party grouping and elimination in double-ballot majority voting

a. *Tactical voting (voting for a party other than according to personal conviction)*

Tactical voting is practised by voters in majority-election constituencies, aware that only a limited number of candidates (usually two) have any chance of being elected. In Hungary the fact that the majority election involves two ballots reduces the importance of tactical voting, as people know that their vote in the first round is not necessarily decisive.

The splintering of political groupings in Hungary meant that only in five cases did parties obtain an absolute majority of votes in their constituencies. Second ballots therefore took place in the other 171 constituencies. In the first round, the number of votes cast for the two main parties was nevertheless greater in the majority election than in the "proportional" ballot (both elections took place at the same time).

BUDAPEST	FORUM	ALLIANCE
Majority system, 1st ballot	297,300 votes	324,353 votes
Proportional system	297,048 votes	284,001 votes

b. *Statutory elimination of parties from the second ballot in majority elections*

In practice, in accordance with the electoral legislation, only the three top parties in the first round may go on to the second. That leads to an automatic elimination of two-thirds of the

parties standing in the first round. (The average number of parties standing in the first round per constituency was 9.2.)

c. *Reduction in numbers of candidates following an arrangement between parties: withdrawal*

Legally, the three leading parties in the first ballot may stand in the second, but they are not obliged to do so. The advantage is that a choice may be made (in particular enabling a party in third position in a constituency to decide whether or not to stand, depending on whether it wishes to help another party close to it in terms of electorate and ideology). This can lead to a bipolarisation within "majority" constituencies and the formation of groups of two or three parties. Let us take as an example the case of two parties: the Alliance of Free Democrats and FIDESZ. In Budapest, the weaker candidate standing for either of the two parties withdrew whenever both of them came among the first three in the first ballot. FIDESZ withdrew whenever it came third (in the 5th, 11th, 15th, 16th, 24th, 27th and 30th constituencies). The Alliance did the same and withdrew when FIDESZ beat it (13th constituency) or when it came slightly ahead of FIDESZ, but the total of votes obtained by both candidates made victory possible in the second ballot (the 32nd constituency). This voluntary withdrawal of a candidate produced a positive outcome in the 11th constituency, where the Alliance just won. But in all cases the percentage of votes received was higher than that for the two separate candidates in the first ballot.

	Leading party in first ballot	Member elected in second ballot	% Alliance + FIDESZ first ballot	% for candidate in second ballot
Constituency 5	Alliance	Forum	43	49.8
Constituency 8	Forum	Forum	40.6	44.7
Constituency 11	Alliance	Alliance	44.1	50
Constituency 13	Forum	Forum	38.6	39.6
Constituency 15	Forum	Forum	37.8	41.8
Constituency 17	Forum	Forum	36.6	41.6
Constituency 24	Forum	Forum	37.8	45.3
Constituency 27	Forum	Forum	36.5	46.9
Constituency 30	Alliance	Forum	46.3	49
Constituency 32	Forum	Forum	41	47.4

The Forum obtained the best result in the first ballot voting in a majority of these ten constituencies, but that was not the case for the other 22 Budapest constituencies, in 16 of which the Alliance was ahead. This situation was not to be reflected in the final outcome since the votes cast for other parties in the first ballot tended to switch more readily to the Forum than to the Alliance in the second ballot. This could be the effect of the legitimacy

bestowed by a longer existence: the Forum was the first political party to take the stage after the restoration of democracy.

Democratic experience being only recent in Hungary, the attitude of the two parties (Alliance of Free Democrats and FIDESZ) is not constant throughout the country. Their strategy may seem contradictory from one region to another and even within the same region.

Let us take the case of the Veszprem Megye region (with seven constituencies). In the 3rd constituency one candidate representing both the Alliance and FIDESZ was elected, whereas in the 5th and 7th constituencies maintenance of the FIDESZ candidate, in one case, enabled the Forum to beat the Alliance and, in the other case, maintenance of the Alliance candidate facilitated the Forum's victory over the FIDESZ candidate.

Another type of agreement emerged between the Democratic Forum, the Christian Democratic People's Party and the Independent Smallholders Party in the region of Vas Megye (five constituencies), where the Christian Democrats and Smallholders withdrew to enable the Forum to creep up on the Alliance in three constituencies – in the 3rd constituency Forum also played the game by withdrawing in its turn (although it had come second) to give the Christian Party, of which it was ahead by only 1.8% of the votes, more of a chance. The situation was as follows:

In the first ballot, eight to ten candidates stood in each constituency. In four of those constituencies there was a two-party race between the Alliance and the Forum - each obtaining twice as many votes as the third party.

In every case, the Alliance was ahead (by between 1 and 6% of votes - in the 1st, 2nd, 4th and 5th constituencies). In three of these constituencies only two candidates stood in the second ballot. The third party withdrawing from the second ballot was:

- 1st constituency: Christian Democrats

- 2nd constituency: Christian Democrats

- 5th constituency: Smallholders

In these three constituencies, the Alliance was elected, whereas in the 4th constituency, where the Smallholders' Party also stood again, the Forum overcame a slight 3.7% lag in the first ballot and was elected.

The situation was different in the 3rd constituency, since the Alliance came a long way in front of the second and third parties, while the Forum had only a small lead over the Christian Democrats. The Forum withdrew, leaving the Alliance and the Christian Democrats in a head-to-head second ballot won by the Alliance of Free Democrats.

As for the statistics, in 24.6% of constituencies where a second ballot was held only two candidates stood (42 of the 171).

d. Relationship between the number of votes and number of seats

Establishing a relationship between the number of votes and the number of seats obtained by a given party calls for special caution when double-ballot majority voting is the rule. Consideration of the number of votes obtained in the first ballot gives highly varied results, depending on whether a majority of seats was obtained in the first or second ballot.

In Hungary, only five of the 176 seats allocated by majority voting were filled in the first ballot, because of the weakness of the parties, which prevented them from obtaining the absolute majority required for election in the first ballot. Therefore, a comparison of the number of votes obtained in the first ballot with the number of seats obtained, mainly in the second, would produce meaningless figures.

That is why, when a link is established between the percentage of votes and the percentage of seats in France, where a double-ballot majority voting system is applied, the concept of the "decisive" or "crucial ballot" is used. The principle is to compare like with like, ie the number of votes obtained when the seat is allocated.

The results achieved by Hungarian parties in terms of number of votes or percentage of votes appear quite different, depending on the context in which they are viewed. For example, the counting of votes obtained by the main party (MDF) under the list system of proportional representation and the "decisive" ballot in the majority election gives quite different results:

- Proportional system p votes cast	**1,214,359 votes**	**24.73%**
- Majority system, "decisive" ballot of votes cast	**1,967,198 votes**	**54.49%**

(The "decisive ballot" encompasses the second ballot in the 171 constituencies where one was held and the first ballot in the five constituencies where a second was unnecessary – Bacs Kiskum Megye No. 2, Békés Megye No. 5, Borsod Abauj Zemplen Megye No. 11, Csongrad Megy No. 1 and No. 2. Total of votes cast: 3,609,870.) (Total number of votes cast under the proportional system: 4,911,241.)

Figures for the second party, the SZDSZ (Alliance of Free Democrats):

- Proportional system of votes cast	,050,799 votes	1.39%
- Majority system, "decisive ballot" of votes cast	,227,502 votes	34%

Figures for the third party, the FKgP (Independent Smallholders' Party):

- Proportional system of votes cast	76,315 votes	11.73%
- Majority system, "decisive ballot" of votes cast	367,071 votes	10.17%

In terms of the number of votes, majority voting therefore favours the larger parties at the expense of the smaller ones. The latter struggle to come among the top three parties in each constituency.

This advantage in the number of votes is increased by what is known as "winning trend enhancement" when seats are allocated:

Number of seats allocated under the majority system:

- MDF, Democratic Forum obtained	114 seats or	64.8%
- SZDSZ, Alliance of Free Democrats obtained	35 "	19.9%
- FKgD, Smallholders' Party obtained	11 "	6.3%

In the "decisive ballot" in the majority election, Democratic Forum obtained 54.49% of votes, a figure rarely obtained in west European countries. In normal democratic situations parties seldom obtain 50% or more of the votes (that would require a closed two-party system, a rarity).

Winning trend enhancement (in terms of seats) is even greater when a party obtains a large number of votes and is therefore especially favourable to the Democratic Forum.

The transfer of seats under the proportional system gives markedly different results for the six parties obtaining more than the 4% of votes needed to obtain a seat. In this section all parties benefited, with the exception of the Democratic Forum, which even obtained fewer seats than the Alliance of Free Democrats:

- MDF, Democratic Forum	24.73% of votes	50 seats (23.81%)
- SZDSZ, Alliance of Free Democrats	21.39% of votes	57 seats (27.14%)
- FKgP, Smallholders	11.73% of votes	33 seats (15.71%)
- MSZP, Socialist Party	10.89% of vote	32 seats (15.20%)
- FIDESZ, Young Democrats	8.95% of votes	20 seats (9.52%)
- KDNP, Christian Democratic People's Party	6.46% of votes	18 seats (8.57%)

B. Poland

A very special agreement applied to the first elections to be held in Poland, so a new electoral law had to be drafted. Discussions were lively and enthusiastic, and there was a desire to give any grouping with a political vocation a chance. This was a democracy where everyone had a part to play – a fully participatory democracy.

The first election-cum-referendum in Poland demonstrated not only that Solidarnosc was extremely well organised, but also that the electorate was quite remarkably disciplined. It followed complicated and unusual instructions to exploit the flawed electoral legislation on invalid ballots.

This flaw would have been inconsequential, had the elections not been partly free. In the new circumstances, Solidarnosc made sure that no communist candidate in constituencies where Solidarnosc had not been allowed to stand was elected in the first ballot. Half of the electorate deliberately crossed out all the names on the national lists, so that only three of 35 candidates obtained an absolute majority - since, under the law, ballot papers on which all names were crossed out were not considered invalid. This raised the absolute majority threshold.

What a contrast with the next elections, when the electorate splintered, in the context of a list system of proportional representation without a threshold rule: 29 parties were represented in Parliament.

Between the wars Poland had practised a comparable voting method, leading to similar governmental instability and opening the way to the coup d'état.

Some felt that the Senate election results (using a majority voting method) showed that the proportional system used for the Assembly elections was not the only reason why so many parties had been elected.

In the eyes of Polish politicians, the Sejm (or Diet) was far more important, and the strategy of the parties was to concentrate on election to the Assembly, but the fact that elections to the Senate were based on single-ballot majority voting (first-past-the-post) nevertheless influenced groupings between political formations. The 1993 election to the Senate resulted in 73% of the seats going to two formations and 9% to a third, whereas in the Assembly only 65% of seats went to the same two parties, 16% to a third, 9% to a fourth, etc.

It should be noted that in first-past-the-post or single-ballot majority elections quasi-bipartism does not immediately emerge nation-wide, but can be detected initially in each constituency and often in the regions. It is only at a later stage that this situation may extend to national level. But that still needs the party leaders to form the necessary groupings in order to survive under majority voting – this was not the case in Poland where this voting method was only used to elect the second Chamber.

III. Growing awareness

Political instability in Poland made for a less effective government, of which the general public disapproved. That led the legislature to set up barriers to the splitting of parties in the Assembly.

The 1990 Act had set a 5% threshold applying to only 69 seats nation-wide, whereas 391 seats in 37 constituencies were not subject to a threshold.

These measures did nothing to limit the entry to parliament of small groupings, and only brought about a slight increase in the number of seats held by the main parties - although useful, this was insufficient, since the top party of the 29 elected obtained only 12.3% of the votes and 13.4% of the seats.

In the 1993 elections, a 5% threshold had to be attained for a party to obtain seats in the constituencies (8% in the case of alliances), and the threshold for national seats was raised to 7%.

That barrier was effective up to a point, since only six parties were elected to the Assembly, but the top party won only 20.4% of the votes. The improvement in terms of seats for the parties represented was considerable, since many parties obtained no seats (20.4% of the vote won 37.1% of the seats and 10.6% of the vote 16%).

In 1991 the two main political groups in Czechoslovakia had disintegrated to such an extent that parliamentary activity had lost all credibility in the eyes of the press and the public. President Havel proposed a move to a majority voting system but, in January, parliament passed only a few minor amendments to the existing law which would have very little effect. The 5% limit was maintained and three others added: 7% for two-party coalitions, 9% for three-party coalitions and 11% for coalitions of four or more parties.

Since these thresholds applied to the two Republics, and the count was carried out nation-wide, 8 Czech parties and 5 Slovak parties won seats. The maximum obtained was 29.7% and 37.3% of the vote. In terms of seats, those percentages were greater, as in Poland, because of the votes cast for smaller parties which failed to reach the threshold.

The position of the parties gave rise to an interesting situation, in which the Slovak party, in opposition, but which became the largest party in the June 1992 elections (having originated in a split of the party which won in 1990), adopted a programme calling for sovereignty for Slovakia, in September 1991. At the same time, a series of meetings was taking place to decide on a status for Czechoslovakia. These were held in February, June, September, October and November. In March 1991, tiring of the interminable discussions, President Havel proposed that a referendum be held. A petition calling for a referendum was signed by about a thousand people. Parliament rejected the proposal. The attitude of parliament reflects a tendency which affected many elected representatives in the early years of rediscovered democracy: having been elected, they felt that they could do anything and make every decision. It seemed to Slovakians that the partition of the Czechoslovak state clearly depended on a referendum, and not on parties with potentially ambiguous programmes, which were in any case given consideration by only a small proportion of voters. Let us not forget that opinion polls conducted prior to independence in January 1993 showed a majority of Slovaks to be opposed to partition.

Romania underwent a similar disintegration of the main political group (the National Salvation Front), and a 3% threshold, and other measures affecting coalitions, were introduced by the Act of July 1992 (a 1% increase in the threshold per party in any coalition), along with rules on funding. Only seven parties obtained seats in the Assembly in September 1992, but the top party mustered only 27.7% of the vote, although the percentage was greater in terms of seats (34.3%).

The DNSF split from the NSF and formed a minority government. Until November 1996 it could count on the support of smaller parties, which voted for it in five confidence votes. In other words, it was a single-party minority government relying on the conditional support of certain other parties.

To quote Florin Bucur Vasilescu – Democracy in Action, CEREB, 28 November 1996: "The rhythm of reform was dictated by the absence of a government majority, and the executive sometimes had to face genuine parliamentary obstruction."

Draft legislation on profits put before Parliament on 24 August 1994 did not become law until 12 July 1996. A bank privatisation bill, as well as draft legislation to amend the Criminal Code and set up the office of Ombudsman, were not passed.

In the 1996 elections, the party of the candidate who won the presidential elections, the DCR (Democratic Convention of Romania) won with 30.2% of the votes and 35.2% of the seats, well short of an absolute majority. The elections took place on 3 November and 9 December 1996, and a referendum was held on changes to the electoral system. Three voting methods were proposed:

Proportional representation
2. Double-ballot majority voting
3. A mixed system

Only 35% of the electorate took part, whereas a 50% turnout was required.

Bulgaria has not changed its voting method, although there is no party system or political continuity. While it still trails Poland in terms of government instability, Bulgaria has had six prime ministers and seven governments in seven years. Prior to the December 1994 elections, in which the Socialist Party was victorious, President Zhelev commented on 26 June: "Bulgaria is in agony". Thanks to the number of parties and the 4% threshold for obtaining seats, the Socialist Party benefited from the winning trend enhancement factor, winning 43.5% of the votes and 52% of the seats. In the 1997 elections, the United Democratic Forces obtained an absolute majority of votes (52.3%), probably thanks to its alliance with the MDL, a party mostly supported by Muslim voters, giving it 57.1% of the seats.

An attempt to describe the situation

After a remarkable burst of national solidarity expressing support for, or opposition to, the former regime, the barely existing party system in certain cases or at certain times more or less disintegrated.

Why did this happen?

The list system of proportional representation certainly was partly to blame, because these countries lack the social structures usually found in western Europe, where the chances of excessive splintering due to "proportional" voting are reduced (trade unionism, a Catholic

Church with extensive and active social involvement). The people in the countries emerging from communism had previously been obliged to join different groupings (such as Marxist-Leninist youth associations). Liberalisation brought with it a breath of fresh air. These constraints were no more. Because they were previously obliged to vote, many people now abstained. A refusal to join parties led to a splintering of the party system, where a list system of proportional representation was practised without thresholds. Parties associated with an ethnic minority had to some extent a faithful electorate. At the first elections in Romania, the Magyar Democratic Union came second with 7.2% of the votes (behind the National Salvation Front with 66.3%).

We should not forget that the voting method not only has an effect on the conversion of votes into seats (which is immediately visible) but also, in the longer term, affects the way in which voters perceive the implications of voting (e.g. tactical voting) and the attitude of politicians. Adding thresholds to list systems of proportional representation has little effect on party leaders, since they are optimistic about their prospects. On the other hand, converting votes into seats at national level, when the country is divided into a certain number of "proportional" constituencies, will encourage smaller parties to stand in all constituencies, since votes cast for them will be added to those cast in other constituencies.

Any consideration of the development of party systems in eastern Europe must take account of the fact that these are nations in economic and social, as well as political, crisis. So a certain stability must be sought, but even if it has been achieved (as in Hungary), any government, however good or successful, may trigger discontent leading to an electoral backlash and the removal of the ruling party from power.

Should not those who draw up electoral legislation aim not only to achieve government stability, but also to create a credible opposition able to take its turn at governing as a way of dissuading the electorate from turning to more outlandish candidates?

Electoral Systems for post-conflict societies: Lessons for Bosnia and Herzegovina by Mr Ben REILLY
International IDEA

The question of whether, and how, democracy can survive in divided societies has long been a source of considerable controversy in political science. Historically, some of the greatest political thinkers have argued that stable democracy is only possible in relatively homogenous societies. The philosopher John Stuart Mill, for example, argued last century that democracy was incompatible with the structure of a multi-ethnic society, as “free institutions are next to impossible in a country made up of different nationalities”. Since the early 1970s, however, a revised focus on the possibilities and prospects of democracy in divided societies has been evident. At the base of this new wave of interest in democracy was

a recognition that democratic government, rather than oligarchy or authoritarianism, presented by far the best prospects for managing deep societal divisions. Democracy increasingly came to be seen as not just possible, but necessary, for the peaceful management of divided societies. This more optimistic assessment of the potential of democracy has been greatly boosted by what has been characterised as the 'third wave' of democratisation which, beginning in the 1970s and gaining pace in the early 1990s, has seen a threefold increase in the number of democratic governments around the world.

This unprecedented expansion of democratic government, concentrated particularly in the developing world, has led to a renewed focus on the question of which institutional arrangements are most likely to secure stable and legitimate democratic government in divided or post-conflict societies. There is an increasing recognition that the design of political institutions is a key factor affecting the likelihood or otherwise of democratic stability and longevity. A better understanding of the effects of political institutions holds out the possibility that we may be able to design institutions so that desired outcomes - for example, co-operation and compromise - are rewarded. Three broad areas of constitutional design have received particular attention in this regard: the territorial structure of the state; the form of the state's legislative and executive functions; and the nature and structure of a state's rules of political representation.

Robust democratic governance is itself a fundamental pillar of building any sustainable settlement of a violent conflict. Democracy is a system by which conflicts in a society are allowed to formulate, find expression and be acted upon in a sustainable way, via institutional outlets such as political parties and representative parliaments, rather than being suppressed or ignored. Within certain circumscribed boundaries, conflict is considered legitimate, is expected to occur and is handled through established institutional means when it does. It is, in the words of one scholarly authority, a system for managing and processing rather than resolving conflicts. Disputes under democracy are never definitively 'solved'; rather they are temporarily accommodated and thus reformulated for next time. The best example of this is the electoral process itself, where parties and individuals may 'win' or 'lose', but where the losers may win next time and the winners know that their victory is only temporary.

Furthermore, the comparative experience of deeply-divided societies to date strongly indicates that only democratic procedures have the necessary inclusiveness and flexibility for deep-rooted identity-based conflicts to be managed peacefully. In societies divided along identity lines, for example, the type of political institutions which protect group and individual rights, deliver meaningful devolution and encourage political bargains are probably only possible within the frameworks of a democracy. Democracy is based, at least in part, on a common conception and adherence to the 'rule of law', which protects both political actors and the wider civil society. Ultimately, as democratic practices and values become internalised in the workings of society, democratic governance creates the conditions for its own persistence. That is why the best indicator by far of whether a country is likely to continue to be democratic is to look at its history: the longer the democratic history to date, the better the prospects that such behaviour will continue in the future.

There is a significant caveat concerning this rosy view of democracy, however, and it concerns the nature of democratic institutions. Different types of society require different types of institutions. Different types of electoral system, for example, can ensure the

proportionate representation of minority groups or single-handedly ensure their exclusion. Parliaments and executives can be structured in such a way as to give all groups a share of power, or to enable one group to dominate over all others. Appropriately crafted democratic institutions are thus crucial to the sustainability of any negotiated settlement. Unfortunately, the significance of institutional design has often been overlooked or ignored by both disputants and negotiators in many recent attempts to resolve conflicts. Indeed, constitution-makers in new democracies have often been content to restore the very institutions that were conducive to the previous breakdown, or else to look for inspiration to the institutions of the apparently successful democracies of the West, even though these have seldom been fashioned for the demands of post-conflict societies. This is particularly the case with the choice of electoral systems, which will be the focus of this paper.

Electoral system choices

Electoral systems have long been recognised as one of the most important institutional mechanisms for shaping the nature of political competition, because they are, to quote one electoral authority, "the most specific manipulable instrument of politics" -- that is, they can be purposively designed to achieve particular outcomes. The great potential of electoral system design for influencing political behaviour is thus that it can reward particular types of behaviour and place constraints on others. This is why electoral system design has been seized upon by many scholars as one of the chief levers of constitutional engineering to be used in mitigating conflict within divided societies.

In translating the votes in a general election into seats in the legislature, the choice of electoral system can effectively determine who is elected and which party gains power. Even with exactly the same number of votes for parties one system might lead to a coalition government while another might lead to a single party assuming majority control. Electoral systems also have a major influence on the type of party system which develops, in particular the number and relative sizes of political parties in parliament. They can also influence the internal cohesion and discipline of parties. For example, some systems may encourage factionalism where different wings of one party are constantly at odds with each other, while another system might force parties to speak with one voice and suppress dissent. They may encourage, or retard, the forging of alliances between parties; and they can provide incentives for groups to be accommodatory or they can provide incentives for parties to base themselves on hostile appeals to ethnicity or kinship ties. The choice of electoral system is therefore one of the most crucial institutional decisions for any post-conflict society.

An electoral system is designed to do three main jobs. First, it will translate the votes cast into seats won in a legislative chamber. The system may give more weight to proportionality between votes cast and seats won, or it may funnel the votes (however fragmented among parties) into a parliament which contains two large parties representing polarised views. Second, electoral systems act as the conduit through which the people can hold their elected representatives accountable. Third, different electoral systems serve to structure the boundaries of 'acceptable' political discourse in different ways, and give incentives for those competing for power to couch their appeals to the electorate in distinct ways. In terms of deeply ethnically-divided societies, for example, particular electoral systems can reward candidates and parties who act in a co-operative, accommodatory manner to rival groups; or they can punish these candidates and instead reward those who appeal only to their own

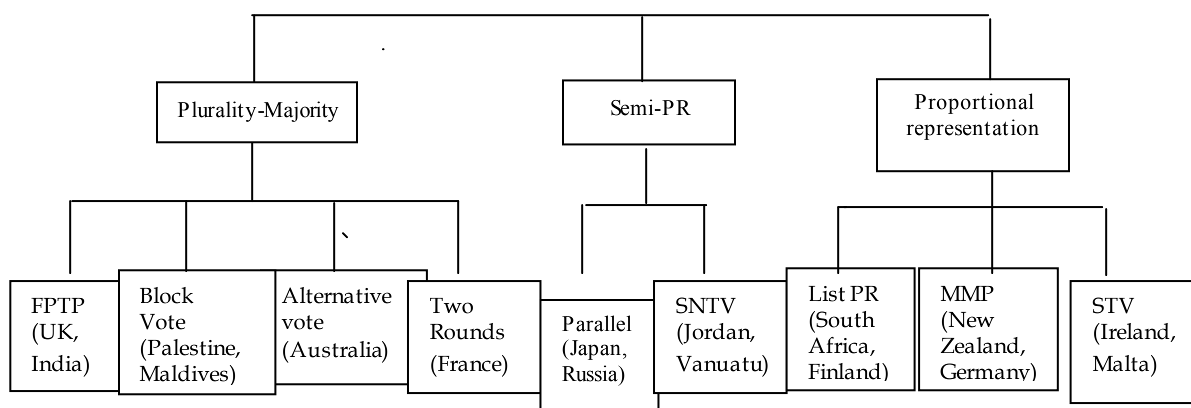
ethnic group. However, the 'spin' which an electoral system places on a wider political system is ultimately contextual and will depend on the specific cleavages and divisions within any given society.

The collective evidence from elections held in divided societies to date suggests that an appropriately crafted electoral system can do some good in nurturing accommodative tendencies, but that the implementation of an inappropriate system can do severe harm to the trajectory of conflict resolution and democratisation in a plural state. It is thus possible to identify a number of instances where the electoral system itself appears to have encouraged accommodation, and those where it has played a part in exaggerating the incentives for ethnic polarisation. These major areas are covered below.

The world of electoral systems

There are countless electoral system variations, but essentially they can be split into nine main systems which fall into three broad families. The most common way to look at electoral systems is to group them by how closely they translate national votes won into parliamentary seats won; that is, how proportional they are. Most electoral system choices involve a trade off between maximising proportionality and inclusiveness of all opinions; or maximising government efficiency via single-party governments and accountability. If we take the proportionality principle into account, along with some other considerations such as how many members are elected from each district and how many votes the voter has, we are left with the family structure illustrated in Figure One, encapsulating the three main electoral system families of Plurality-Majority systems, Semi-proportional systems and Proportional Representation systems.

Figure 1



Electoral systems and conflict management

Of the nine types of system outlined above, four have been proposed as being particularly suitable for divided societies. These systems are usually recommended as part of a wider constitutional engineering package, in which the electoral system is one element of an overall

integrated structure. Some constitutional engineering packages emphasise inclusiveness and proportionality; others emphasise the need to prioritise moderation and accommodation. The four major electoral system choices in this regard are (i) list proportional representation or list PR, (ii) the alternative vote, (iii) the single transferable vote, and (iv) the party block vote. Each of these will now be analysed in turn.

A. List PR

List PR is an essential component of the wider constitutional engineering package known as consociationalism. Consociationalism entails a power-sharing agreement within government, brokered between clearly defined segments of society which may be joined by citizenship but divided by ethnicity, religion, and language. Examples of consociational societies included Belgium, the Netherlands, Austria and Switzerland. The mechanics of consociationalism can be distilled into four basic elements which must be present to make the constitution worthy of the consociational name. They are: (i) executive power sharing among the representatives of all significant groups (grand coalition); (ii) a high degree of internal autonomy for groups that wish to have it (segmental autonomy); (iii) proportional representation and proportional allocation of civil service positions and public funds (proportionality); and (iv) a minority veto on the most vital issues (mutual veto). These four basic elements ensure that government becomes an inclusive multiethnic coalition, unlike the adversarial nature of a Westminster winner-take-all democracy. Consociationalism is particularly reliant on a list PR electoral system to provide a broadly representative legislature upon which the other tenets of minority security can be based. Proponents of consociationalism favour list PR because it 1) delivers highly proportional election results, 2) is relatively invulnerable to gerrymandering, and 3) is simpler than many alternative systems for both voters and electoral officials and thus will be less open to suspicion.

List PR also, however, has a number of disadvantages. Because it relies on large, multi-member electoral districts, it breaks the geographical link between voters and their elected member. For this reason, geographically large multi-ethnic societies which have used list PR successfully, such as South Africa and Indonesia, are looking hard at alternatives which build in some form of geographic accountability via single-member electorates. Moreover, the wider arguments for consociationalism rest on several key assumptions that may not always be viable in divided societies, such as the assumption that ethnic leaders will be more moderate on key sectarian issues than their supporters. If consociational structures are entrenched in divided societies which do show potential for the withering away of ethnic voting, then the very institutions designed to alleviate tensions may merely entrench the perception that all politics must be ethnic politics. It is thus likely that consociationalism may be a very good strategy for deeply-divided societies in transition, but less appropriate for such societies attempting to promote democratic consolidation.

The experience of list PR in Bosnia is a good example of how proportionality itself will not encourage accommodation if other required characteristics are not present. In Bosnia, groups are represented in parliament in proportion to their numbers in the community as a whole, but because parties rely exclusively on the votes of members of their own community for their electoral success, there is little incentive for them to behave accommodatively on ethnic issues. In fact, the incentives are in the other direction: as it is easy to mobilise support by playing the ‘ethnic card’, it may well be the case that the major parties in Bosnia have every

incentive to emphasise ethnic issues and sectarian appeals. The result, at the last Bosnian elections, was effectively an ethnic census, with electors voting along ethnic lines and each of the major nationalist parties gaining support almost exclusively from their own ethnic group.

B. The Alternative Vote

An alternative electoral path to accommodation in deeply divided societies is the use of particular electoral rules which encourage ‘vote-pooling’ and ‘preference swapping’, thus inducing inter-ethnic bargaining and promoting accommodative behaviour. At the core of this approach is the need in divided societies to make politicians reciprocally dependent on the votes of members of groups other than their own. The most reliable way of achieving this aim is to offer sufficient electoral incentives for campaigning politicians to court voter support from other groups. Some electoral systems such as the alternative vote enable voters to declare not only their first choice of candidate on a ballot, but also their second, third and subsequent choices amongst all candidates standing. This feature presents candidates who wish to maximise their electoral prospects with a strong incentive to try and attract the second preferences of voters from other groups (the assumption being that the first choice of voters will usually be a candidate from their own group). Those candidates who successfully ‘pool’ both their own first preferences and the second preferences of others will be more successful than those who fail to attract any second-order support. To attract such second-order support, candidates need to attract the support of groups other than their own, and this is usually achieved by their moving to the centre on policy issues to attract floating voters, or by successfully accommodating ‘fringe’ issues into their broader policy. There is a long history of both these types of behaviour in Australian elections, the only established democracy to use AV, and in the ethnically-fragmented state of Papua New Guinea, which has also used AV.

In cases of deeply divided societies, where a candidate needs the support of other ethnic groups to gain election, there is a powerful incentive for him or her to reach out to these groups in search of their second preferences. The more fragmented a constituency, therefore, the more likely it is that meaningful vote pooling will take place. In many ethnically-divided countries, however, members of the same ethnic group tend to cluster together, which means that the relatively small, single-member districts which are a feature of AV would, in these cases, result in constituencies which are ethnically homogeneous rather than heterogeneous. Where one candidate is confident of achieving an absolute majority of first preferences due to the domination of his or her own ethnic group in an area, they need only focus on maximising their own vote share from their own supporters in order to win the seat. This means that the ‘vote pooling’ between different ethnic groups which is a precondition for the accommodative influences of AV would not, in fact, occur. For this reason, it is likely that AV will work best either in cases of extreme ethnic fragmentation or, alternatively, the more common scenario of a few large ethnic groups which are widely dispersed and intermixed.

C. The Single Transferable Vote

A third approach, the use of the single transferable vote, has been recommended by some scholars who argue that under STV, the twin benefits of proportionality and accommodation can both be emphasised. In essence, this approach stands as something of a mid-point between the use of list PR, which maximises proportionality, and the alternative vote, which

maximises incentives for accommodation. As a PR system, STV produces largely proportional results, while its preferential ballot provides some incentives towards the vote-pooling approach outline in the previous section, thus encouraging party appeals beyond defined ethnic boundaries. STV enthusiasts argue that under this system, segments of opinion would be represented proportionately in the legislature, but there would also be an incentive for political elites to appeal to the members of other segments, given that second preferences on the ballot paper are of prime importance.

STV has attracted many admirers amongst electoral systems scholars, but its use for national parliamentary elections has been limited to a few cases -- Ireland (since 1921), Malta (since 1947), the Australian Senate (since 1949), and at ‘one-off’ elections in Estonia and Northern Ireland. As a mechanism for choosing representatives, STV is perhaps the most sophisticated of all electoral systems, allowing for choice between parties and between candidates within parties. The final results also retain a fair degree of proportionality, and the fact that in most actual examples of STV the multi-member districts are relatively small means that an important geographical link between voter and representative is retained. However, the system is often criticised on the grounds that preference voting is unfamiliar in many societies, and demands, at the very least, a degree of literacy and numeracy. The intricacies of an STV count are themselves quite complex, which is also seen as being a drawback. STV also carries the disadvantages of all parliaments elected by PR methods, such as under certain circumstances increasing the power of small minority parties.

However, the use of STV in divided societies to date has been limited, inconclusive and generally not supportive of this argument. Two ethnically-divided states have utilised STV in ‘one-off’ national elections: Northern Ireland in 1973 (and again in 1982) and Estonia in 1990. In both cases, little vote-pooling or accommodation on ethnic issues took place, and the elected parliaments exhibited little in the way of inter-ethnic accommodation. In contrast, however, STV has been widely adjudged to have worked successfully in Ireland and Malta, and has been seen as maximising both proportionality and, via the relatively small multi-member electoral districts used, an element of geographic accountability as well.

D. Explicit recognition of communal groups

A different approach to elections and conflict management is to recognise explicitly the overwhelming importance of group identity in the political process, and to incorporate this in the electoral law so that ethnic representation and the ratio of different ethnic groups in the legislature is fixed. There have been four distinct approaches which reflect this thinking: the use of communal electoral rolls; the presence of reserved seats for ethnic, linguistic or other minorities; the use of ethnically-mandated lists under a Block Vote system; and the use of ‘best loser’ seats to balance ethnic representation in the legislature.

The most straightforward way of explicitly recognising the importance of ethnicity is to use a system of communal representation. Seats are not only divided on a communal basis, but the entire system of parliamentary representation is similarly based on communal considerations. This usually means that each defined ‘community’ has its own electoral roll, and elects only members of its ‘own group’ to Parliament. Today, the only democracies which continue to use communal representation are Fiji and New Zealand. In New Zealand, Maori electors can choose to be on either the national electoral roll or a specific Maori roll, which elects five

Maori MPs to Parliament. In other countries, communal systems were abandoned after it became increasingly clear that communal electorates, while guaranteeing group representation, often had the perverse effect of undermining the path of accommodation between different groups as there were no incentives for political intermixing between communities. The issue of how to define a member of a particular group, and how to distribute electorates fairly between them, was also strewn with pitfalls.

An alternative approach is to reserve parliamentary seats for identifiable ethnic or religious minorities. Many countries reserve a few seats in the legislature for such groups: e.g., Jordan (Christians and Circassians), India (scheduled tribes and castes), Pakistan (non-Muslim minorities), New Zealand (Maori), Columbia ('black communities'), Croatia (Hungarian, Italian, Czech, Slovak, Ruthenian, Ukrainian, German and Austrian minorities), Slovenia (Hungarians and Italians), Taiwan (Aboriginal community), Western Samoa (non-indigenous minorities), Niger (Taurag), and the Palestinian Authority (Christians and Samaritans) reserve parliamentary seats for identifiable ethnic or religious minorities. While it is often deemed to be an unqualified good to represent small communities of interest, it has often been argued that it is a better strategy to design structures which give rise to a representative parliament naturally, rather than to mandate the representation of members who may be viewed as 'token' parliamentarians who have representation but not genuine influence. Quota seats may also breed resentment on the behalf of majority populations and shore up mistrust between various minority groups.

A third approach is to use pre-determined ethnic lists with the Party Block Vote. Party Block works like the standard Block Vote, except that electors vote for a party list of candidates rather than individuals. The party which wins most votes takes all the seats in the district, and its entire list of candidates is duly elected. Some countries use this system to ensure balanced ethnic representation, as it enables parties to present ethnically-diverse lists of candidates for election. In Lebanon, for example, each party list must be comprised of a mix of candidates from different ethnic groups. Electors choosing between party lists must thus make their choice on the basis of criteria other than ethnicity. Singapore uses a similar system to advantage the representation of its minority Malay and Indian community. However, a critical flaw of the Party Block is the production of "super-majoritarian" results, where one party can win almost all of the seats with a simple majority of the votes. In the Singaporean elections of 1991, for example, a 61% vote for the ruling People's Action Party gave it 95% of all seats in parliament, while in 1982 and 1995 the Mauritian elections saw a parliament with no opposition at all.

A final mechanism sometimes used in conjunction with the Party Block Vote is to assign seats to the 'best loser' from a specified community. In Mauritius, for example, four 'best loser' seats are allocated to the highest polling candidates of under-represented ethnic groups in order to balance ethnic representation. Recently, however, there has been a strong movement in favour of the abolition of such seats, which are seen as representing the last vestiges of communalism in Mauritian politics.

Conclusion

There is no perfect electoral system, and no 'right' way to approach the subject of electoral system design. The major criteria for designing electoral systems for all societies, not just

divided ones, are sometimes in conflict with each other or even mutually exclusive. Devices which increase proportionality, such as increasing the number of seats to be elected in each district, will almost inevitably lessen other desirable characteristics, such as promoting geographic accountability between the electorate and the parliament. The electoral system designer must therefore go through a careful process of prioritising which criteria are most important to their particular political context before moving on to assess which system will do the best job. For example an ethnically divided state in Central Africa might want above all to avoid excluding minority ethnic groups from representation in order to promote the legitimacy of the electoral process and avoid the perception that the electoral system was unfair. In contrast, while these issues would remain important, a fledgling democracy in a multiethnic state in Eastern Europe might have different priorities -- e.g., to ensure that a government could efficiently enact legislation without fear of gridlock and that voters were able to remove discredited leaders if they so wished. How to prioritise among such competing criteria can only be the domain of the domestic actors involved in the constitutional design process.

A tension exists in the range of electoral system options for divided societies between systems which put a premium on representation of minority groups (list PR and ethnically-defined lists) and those which try to emphasise minority influence (AV and STV). The best option, of course, is to have both: representation of all significant groups, but in such a way as to maximise their influence and involvement in the policy-making process. This goal is best achieved by building both devices to achieve proportionality and incentives for inter-ethnic accommodation into the electoral system itself. However, these goals are not always mutually compatible. A second level of tension exists between those systems which rely on elite accommodation (especially list PR) and those which rely on the electorate at large for moderation (AV and, to a lesser extent, STV). Where elites are likely to be more moderate than the electorate, then list PR enables the major parties to include candidates from various groups on their ticket. Where the electorate itself is the major engine of moderation, then AV and other systems which encourage vote pooling are likely to result in the election of more moderate leaders and more accomodative policies When neither group are likely to display moderation, then ethnically-mandated lists may need to be considered, as this provides the best way of ‘defusing’ the salience of ethnicity as an electoral issue.

In general the comparative evidence to date suggests that approaches which serve to explicitly represent pre-ordained ethnic communities - ethnically-mandated lists, communal rolls and the like - may serve to artificially sustain ethnic divisions in the political process rather than mitigating them. Electoral systems that are overtly majoritarian in their operation, such as the block vote and the two round system, also tend to reduce minority representation, and are thus unsurprisingly associated with authoritarian or other ‘unfree’ regimes.

The comparative experience of electoral reform to date suggests that moderate reforms that build on those things in an existing system which work well is often a better option than jumping to a completely new and unfamiliar system. There is much to be learned from the experience of others. For example, a country with a FPTP system who wished to move to something more proportional while retaining the geographic link to constituents may wish to consider the experience of New Zealand, which adopted an MMP system in 1994. A similar country which wanted to keep single-member districts but encourage inter-group accommodation and compromise should look at the experience of AV in Australia and Papua

New Guinea. Any deeply-divided country wishing to make the transition to democracy would be well advised to consider the case of South Africa's list PR elections, and the multi-ethnic power-sharing government elected as a result. Lastly, a country which simply wished to reduce the cost and instability created by a two-round system should examine the Sri Lankan or Irish preferential vote option. In all of these cases, the change from one electoral system to another has had a clear impact upon the politics of that country.

Further Reading

Reynolds, Andrew and Ben Reilly. 1997. The International IDEA Handbook of Electoral System Design. Stockholm: International Institute for Democracy and Electoral Assistance.

Taagepera, Rein and Matthew S. Shugart. 1989. Seats and Votes: The Effects and Determinants of Electoral Systems. New Haven: Yale University Press.

Huntington, Samuel P. 1991. The Third Wave: Democratisation in the Late Twentieth Century. Norman: University of Oklahoma Press.

Prezworski, A. 1991. Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America, Cambridge: Cambridge University Press.

The Electoral Debate in Bosnia and Herzegovina by Mr Slobodan KOVAC, Former member of the Provisional Election Commission, Bosnia and Herzegovina

Combining the elements of political will and legal regulations, the Provisional Election Commission (PEC) adopted rules in accordance with which the first post-war elections in Bosnia and Herzegovina were carried out. They have not necessarily been the optimal electoral solution but rather the ones that best fitted the situation in the field.

The reality was cruel and difficult. The war had just finished, and the question of taking care of people who had worked in this field (elections) took the highest priority. Three leading political parties had a strong influence on the voters, and this should have been taken seriously into account. In order to avoid obstructions of the electoral process, one had to be in touch often with representatives of both the authorities and the opposition. Members of the PEC were deeply involved, individually and collectively, in the process. They were a sort of first point of contact between the international community and the parties-signatories to the Dayton Agreement. Furthermore, the leading people from the structure of the authorities were not apart from the electoral process: they often, and significantly, interfered with the electoral process, trying to impose their own opinions and solutions. Therefore, in certain periods PEC members had to work under pressure.

Nevertheless, the PEC worked continuously and consistently and it succeeded in adopting a great number of significant decisions. Some of the important decisions were made by the Head of the OSCE Mission and the PEC. We all were aware of the necessity of making such decisions; however we did not dare to take the risk of responsibility alone.

The most difficult were the decisions concerning voters' registration, as their adoption had been awaited longest. Numerous problems arose and had to be solved as they came up, as there was little time. Voters' records were disorganised and hundreds of thousands eligible voters had to be located.

It was not simple to organise voting in absentia, where most manipulations and abuses occurred. A range of other problems that occurred during the electoral process made it impossible to provide final voters' lists. These lists were closed only in 1997 for the local elections, which provided an opportunity to make a step forward in the process.

However, the implementation of elections was accompanied at every level by specific difficulties that appeared particularly in certain electoral units such as Mostar, Brcko, Srebrenica, Zepce, etc.

The difficulties were not eliminated even in the period of implementation of the elections, and it is to be expected that they will reappear in the 1998 elections. Divided municipalities and the problem of new municipalities forming permanently attracted the attention of the PEC members for these presented numerous problems.

Thus the situation in the field had to be permanently monitored and, in some manner, one had to strive not to make any step that would lessen the effect of the efforts already made in the area of adopting electoral rules.

As a general conclusion, it might be stated that the following key characteristics were present in the work of the PEC: 1) to respect the provisions of the Dayton Agreement, notably Annex 3, when adopting rules for elections; 2) to take into account to a great extent those real relations that prevailed in Bosnia, respecting the traditions of the peoples living in these areas.

In trying to evaluate what are the prospects of adopting the new rules for the 1998 elections, I also could state my personal opinion that the two characteristics mentioned above should be respected, along with other conditions established by international documents.

The proponents of the new electoral programme should be, in my opinion, only highly qualified experts that do not belong to either of the political parties, who are ready to take on the burden of responsibility and who are capable of counteracting any politicisation of this very complicated job.

If I were in a position, as a voter, to cast my ballot for members of the PEC, than I would certainly know what kind of person they should be. They should not have strong ethnic or multi-ethnic attributes, but should have considerable expertise and other virtues that are respected by all peoples who live here. They should undergo a test in order to have their merit assessed.

This report could have been presented without the preceding conclusion; however, since we shall in future face selection of the members of Permanent Election Commission, it has not been too much to hear such opinions.

The Electoral Debate in Bosnia and Herzegovina by Mr Hilmo PASIC, MA.
Secretary of the House of Peoples of the Parliament of the Federation of BH and member of the Provisional Election Commission

In the hope of promoting a better understanding of the election process in Bosnia and Herzegovina and the best solutions for the general elections in 1998 and for those in the future, I shall present in brief the experience of the first multi-party elections in Bosnia and Herzegovina, the referendum for a sovereign and independent Bosnia and Herzegovina and the elections in 1996 and 1997, which, along with election experiences in the rest of the world, may help in the elaboration of new election regulations in Bosnia and Herzegovina.

I. The first multi-party elections

The first multi-party elections in the Socialist Republic of Bosnia and Herzegovina were held on 18 November 1990, in application of the provisions of the Law on the Election of Councillors and Deputies to the Assemblies of the Socio-Political Communities[183] and the Law on the

---

[183] *Published in the "Official Gazette of the Socialist Republic of BiH", No: 21/90, 28/90, 12/92, 22/93, 13/94, 9/95 and 37/95.*

Election and Recall of the Members of the Presidency of the Socialist Republic of Bosnia and Herzegovina.[184]

On the basis of the proposed and established lists of candidates for deputies and councillors of the assemblies of the socio-political communities (Assembly of the Socialist Republic of Bosnia and Herzegovina, municipal assemblies and Sarajevo City Assembly) and lists of candidates for the seven members of the Presidency of the Socialist Republic of Bosnia and Herzegovina (two Bosniacs, two Serbs and two Croats and one member from the ranks of other nations and nationalities, i.e. citizens who have remained undecided nation-wise or who have determined themselves on the basis of their region i.e. some other affiliation), the citizens of the Socialist Republic of Bosnia and Herzegovina, having general and equal voting rights, in open and secret ballots including the candidates of all political organisations (parties) registered in the Socialist Republic of Bosnia and Herzegovina, in 5 821 polling stations, elected the members of the Council of Citizens (130) and Councils of Municipalities (110) of the Assembly of the Socialist Republic of Bosnia and Herzegovina as well as councillors within 109 municipalities and the Assembly of the City of Sarajevo. Out of the total of 3 093 921 voters registered in the voters' list in the Socialist Republic of Bosnia and Herzegovina, 2 339 958 or 77.12% of voters attended the elections and voted.

The calculation of the results of the elections and distribution of seats was carried out using the proportional system, by combining the electoral quota and D'Otto's formula (for the electoral quotient) for the election of deputies to the Council of Citizens of the Assembly of the Socialist Republic of Bosnia and Herzegovina and councillors to the assemblies of the municipalities and to the Assembly of the City of Sarajevo. However, for the election of the deputies to the Council of Municipalities of the Assembly of the Socialist Republic of Bosnia and Herzegovina, the establishment of the results was carried out using the majority system, i.e. the absolute majority. Where a second ballot was held for candidates that received the same number of votes in the first ballot, the candidate that received the biggest number of votes i.e. a relative majority was elected. This manner of electing deputies to the Council of Municipalities was the only possible manner that could be used taking into account the fact that every municipality represented one electoral unit from which one deputy was being elected, which excluded the proportional system.

In application of these principles, candidates from 11 political organisations were elected into the Council of Citizens of the Assembly of the Socialist Republic of Bosnia and Herzegovina for a total of 130 seats. The organisations on their own or on the basis of joint lists won the following number of seats: Democratic Action Party (SDA) 43 seats or 33%, Serb Democratic Party of BH (SDS BH) 34 or 26.25%, Croatian Democratic Union of BiH (HDZ) 21 or 16.25%, Association of Reformist Forces of Yugoslavia for BiH 11 or 8.50%, League of Communists of BiH - SDP 11 or 8.50%, League of Communists of BiH - SDP and Democratic Socialist Alliance of BiH 4 or 3%, Muslim Bosniac Organisation 2 or 1.50%, Democratic Socialist Alliance 1 or 0.75%, Democratic Alliance EKO of the "Greens"' Movement of BiH 1 or 0.75%, Association of Reformist Forces of Yugoslavia for BiH and Democratic Party of Mostar 1 or 0.75% and Alliance of Socialist Youth - Democratic Alliance of BiH and EKO Movement of "Greens" one seat or 0.75%.

---

[184] Published in the "Official Gazette of the Socialist Republic of BiH" No: 21/90, 28/90 and 29/90.

As concerns the Council of Municipalities of the Assembly of the Socialist Republic of Bosnia and Herzegovina, for 110 seats, the candidates of 7 political organisations were elected; they won the following number of seats on the basis of six independent lists and one joint list: SDA 43 or 39%, SDS BiH 38 or 34.50%, HDZ BiH 23 or 21%, League of Communists of BiH - SDP 3 or 2.70%, League of Communists of BiH - SDP and Democratic Socialist Alliance of BiH 1 or 1%, Association of Reformist Forces of Yugoslavia for BiH 1 or 1% and Serb Reformist Movement (SPO) one or 1%.

In addition, the elections of the councillors of the Municipal Assemblies and the Assembly of the City of Sarajevo were carried out mainly with the participation of the same political organisations.

The election of the members of the Presidency of the Socialist Republic of Bosnia and Herzegovina (seven) was carried out on the basis of the list of candidates for the members of the Presidency of the Socialist Republic of Bosnia and Herzegovina, which was made by the Republic's electoral commission, on the basis of all properly submitted lists of candidates from eight political organisations (HDZ BiH, Muslim Bosniac organisation, League of Communists of BiH - SDP and Democratic Socialist Alliance of BiH, Association of Reformist Forces of Yugoslavia for BiH, Alliance of the Socialist Youth - Democratic Alliance of BiH, SDS BH and SDA), comprising a total of 28 candidates, and the registration of one independent candidate. The list was then divided into parts so that all the candidates of one nationality, regardless of who had proposed them, were put down on one part of the list, in alphabetical or Cyrillic alphabetical order of names, along with the political parties they represented. Proceeding from the established national structure of the Presidency of the Socialist Republic of Bosnia and Herzegovina, the list of candidates for the members of the Presidency was in effect composed of four parts within which all the candidates were listed according to their national affiliation.

The voting was carried out on the basis of the parts of the list, such that all the voters of Bosnia and Herzegovina voted separately for the candidates from each part of the list. The results of voting were established using the majority system, with a relative majority for each part of the list. The candidates who obtained the biggest number of votes depending on the number of candidates that was being elected from the ranks of the same nation were elected as follows: from the ranks of Muslims, from the SDA list - 2 members; from the ranks of the Serbs from the SDS BiH list of candidates - two members; from the ranks of the Croats, from the list of HDZ BiH candidates - two members and from the ranks of Yugoslavians and other nations and nationalities, one member from the SDA list. This satisfied the foreseen national structure of the Presidency of the Socialist Republic of Bosnia and Herzegovina.

II. Referendum for sovereign and independent Bosnia and Herzegovina

At the first multi-party elections all officials were elected for a period of four years. However, the split of the Socialist Federal Republic of Yugoslavia occurred soon after the elections. A referendum was held in Bosnia and Herzegovina on 29 February and 1 March 1992 in which the citizens of Bosnia and Herzegovina declared themselves in favour of a sovereign and independent Bosnia and Herzegovina, a state of equal citizens and nations of Bosnia and Herzegovina - Muslims, Serbs, Croats and members of the nations living in it.

Out of a total of 3 253 847 voters in Bosnia and Herzegovina, 2 073 568 of citizens with the right to vote or 64.31% voted at the Republic's referendum. Out of a total of 2 067 969 valid voter's ballots, 2 061 932 voters or 99.44% were in favour of passing the mentioned decision, while 6 037 or 0.29% of voters voted against it and there were 5 227 or 0.25% of invalid voters' ballots. In this way the citizens of Bosnia and Herzegovina directly, by the secret ballot, declared in what kind of a homeland they wanted to live and they expressed their will on the crucial issue of the future of Bosnia and Herzegovina.

On the basis of that referendum decision, one of the conditions set by the European Community, the Republic of Bosnia and Herzegovina was recognised by the international community within its existing boundaries, as a sovereign and independent state of equal citizens and nations living in it. That recognition could not be accepted by the chief promoters of the idea of a greater Serbia and greater Croatia, who had a common goal: the destruction of Bosnia and Herzegovina and its division between Serbia and Croatia. That was why immediately upon its recognition as an independent state, Bosnia and Herzegovina was subjected to a horrible and incomprehensible genocide, ethnic cleansing and other serious violations of humanitarian law. In order to prevent that, several international conferences were held - the London and Geneva Conferences, amongst others - and peace agreements were prepared: notably the Vance-Owen Plan and Owen-Stoltenberg Plan, which had no success until the Washington Agreement and finally the Dayton Peace Agreement, initialled in Dayton on 21 November 1995 and signed in Paris on 14 December of the same year. This accord finally stopped the war in Bosnia and Herzegovina, and resolved, from the legal standpoint, the issue of the future of Bosnia and Herzegovina.

III. Free and democratic elections according to the Dayton Peace Agreement

The Dayton Peace Agreement proclaimed that Bosnia and Herzegovina would continue its legal existence according to international law as a state composed of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, with existing internationally recognised boundaries. It further proclaimed that Bosniacs, Croats and Serbs (together with others) were constituent peoples and citizens of Bosnia and Herzegovina, and that Bosnia and Herzegovina would be a democratic state which would function in accordance with the law and with free and democratic elections (Preamble and Article I, items 1, 2 and 3 of Annex 4 of the Dayton Peace Agreement: the Constitution of BiH).

In accordance with those proclamations, the structure and composition of the bodies of authority in Bosnia and Herzegovina were established and the issue of elections to these was also resolved (Annex 3 - Agreement on Elections and Articles IV and V of Annex 4). In line with the provisions of those papers the Organisation for Security and Co-operation in Europe (OSCE) established the programme of elections for Bosnia and Herzegovina and set up the Provisional Election Commission composed of local (national) and international members, which adopted the Rules and Regulations for organising the first elections in Bosnia and Herzegovina. It was on the basis of these Rules and Regulations and with the surveillance of the OSCE and international observers that the elections for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, for the Presidency of Bosnia and Herzegovina, for the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, for the National Assembly of the Republika Srpska, for the president and vice-president of the Republika Srpska and for the cantonal assemblies within the Federation

of Bosnia and Herzegovina were held on 14 September 1996, while the planned municipal elections were postponed due to the poor registration of voters.

For all those bodies the elections were multi-party ones. They were carried out on the basis of the lists of candidates of the verified political parties and registrations of independent candidates. The results of the elections were established on the basis of the principle of proportional representation and with a high degree of surveillance by international and local observers of all the phases of the election process, especially of the course of voting and counting of votes in polling stations and in the OSCE centres.

In the course of the election process (elaboration of election rules and regulations and the elections themselves) there were a number of objections raised by the political parties and state bodies as well as some announcements of boycotts of the September 1996 elections. Special attention should be paid to the objections raised suggesting that the OSCE had not fulfilled its obligations under Article I of Annex 3. It was required that the conditions for holding free, fair and democratic elections be fulfilled, especially a politically neutral environment, and the OSCE was required to verify the existence of those conditions and to exert on its own and in co-operation with other international groups involved in the implementation of the Dayton Peace Agreement a constant and efficient pressure on the Parties signatories to Annex 3 - Agreement on Elections (Republic of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Republika Srpska) in this regard.

The other significant objection concerned the registration of voters, especially the massive registration of displaced persons and refugees for voting in the municipality where they would in future be living (by way of the P-2 form), which was done with the aim of ensuring ethnic dominance on certain territories.

Due to those objections, a boycott of the September 1996 elections was announced on several occasions. In spite of this, the international community insisted upon and exerted pressure regarding the holding of these elections within the deadline foreseen, claiming that the elections and creation of the new bodies would accelerate the process of democratisation in Bosnia and Herzegovina i.e. implementation of the Dayton Peace Agreement, especially in those parts referring to the freedom of movement and return of expelled persons and refugees to their homes of origin and the exercise of other rights of citizens.

Accepting those reasons and the guarantee of the international community, especially that of the United States of America, that Bosnia and Herzegovina would remain a single country within its existing internationally recognised boundaries with the internal structure established by the Dayton Peace Agreement, the Assembly of the Republic of Bosnia and Herzegovina, at its session held just before the elections on 27 August 1996, examined the question whether to hold the planned elections. The Assembly concluded that all the conditions for holding the elections were not fulfilled and that the OSCE and other international factors would continue their mission on the elections and confirmation of peace and that it was a justifiable thing to expect that the bodies and institutions of Bosnia and Herzegovina which would be constituted after those elections would contribute to the confirmation of peace and be a factor of the acceleration of the implementation of the Dayton Peace Agreement, supported the holding of the elections on 14 September 1996 and invited the citizens and political parties to involve themselves directly in the election process in a dignified manner.

Due to problems in the registration of voters i.e. falsifying of voters' lists, especially with respect to the refugee voters and the massive registration of displaced persons in a certain number of municipalities in the struggle for ethnic dominance,[185] local elections for the municipal councils in the Federation of Bosnia and Herzegovina and municipal assemblies in the Republika Srpska were postponed with the promise of the OSCE that they would be held applying considerably higher standards.

The municipal elections were held on 13 and 14 September 1997 with the organisation and surveillance of the OSCE, which established the Election Program for the Municipal Elections in Bosnia and Herzegovina. This Program took into account noticeable problems and weaknesses of the elections held on 14 September 1996 and made proposals for the elimination of those as well as establishing the tasks of the OSCE and Provisional Election Commission in the organisation of the elections.

The Provisional Election Commission completed and adjusted the Rules and Regulations from 1996 to the municipal elections and adopted the integral text as the Rules and Regulations for the organisation and carrying out of the municipal elections in Bosnia and Herzegovina in September 1997. The municipal elections were carried out on the basis of the same principles as those used for the elections in 1996.

In the course of the entire election process, the Provisional Election Commission supported the consistent application of those Rules and Regulations and requested the same thing from all the subjects participating in the election process - local authority bodies, political parties, coalitions of independent candidates, the media and its surveillance bodies (Election Appellate Sub-Commission, Commission of Media Experts, Sub-Commission for the future municipality and control of citizenship), as well as from the international observers of the elections. Every violation of the Rules and Regulations for the municipal elections in Bosnia and Herzegovina in 1997 was thoroughly investigated, the facts of the case were established and decisions on the violation were made on that basis. As a result of such decisions, sanctions were pronounced against those that committed the violation.

Special attention was paid to the registration of voters for the municipal elections of 1997 in order not to repeat the mistakes from the elections of 1996, especially those pertaining to the falsifying of lists of voters, and in particular those related to refugee voters as well as to the massive registration of displaced persons in a certain number of municipalities in the struggle for ethnic dominance. To that end the OSCE initiated the full process of voter registration under international control, in accordance with Article IV of Annex 3 of the Dayton Peace Agreement and the Rules and Regulations for the municipal elections of 1997. The 1991 census in Bosnia and Herzegovina, adjusted to the elections in 1996, served as a basis for the registration as well as certain evidence about the citizenship of Bosnia and Herzegovina in 1991 for the persons that had been accidentally left out of the census. It was defined as a fundamental rule within the Rules and Regulations for the municipal elections of 1997 that in order for voters to exercise their right to vote, they had to register themselves within the period established for that purpose. If they failed to register within that period, they would

---

[185] *Estimations from the Report of the Congress of the local and regional authorities of Europe, held around 18 November 1996.*

not be able to vote. Accordingly, and respecting the citizens' will to register or not to register themselves for the municipal elections in 1997, the registration of 2 486 418 voters within the country and abroad was carried out, out of which 1 345 912 voters were within the Federation of Bosnia and Herzegovina and 1 140 506 in the Republika Srpska.

Despite the extensive measures taken by the OSCE and Provisional Election Commission for the registration to be carried out in accordance with the aforementioned provisions, manipulations in the procedure of registration in certain territories occurred again, especially in the Republika Srpska (Brcko etc.) and parts of the Federation of Bosnia and Herzegovina (Capljina, Jajce, Stolac, Zepce etc.), aimed this time again at ensuring ethnic dominance in those territories. Those manipulations were countered in time and their effects minimised. There were also certain failures and mistakes in the registration of refugee voters abroad.

The general assessment was that the municipal elections had surpassed all expectations and had higher standards in comparison with the elections of 1996, primarily owing to the careful preparations, inviting and educating of the voters to register themselves in time to vote, along with the explanation, particularly through electronic media, of the significance of those elections for citizens' future life and work.

It is of special importance that the plan for the implementation of the municipal elections of 1997 was defined on time and that on the basis of that plan, the final verification of the election results was carried out through mediation in the majority of municipalities upon the elected candidates' taking office at the inaugural sessions of the municipal councils or municipal assemblies. The conditions for the initial work of the municipal bodies were thus fulfilled, in contrast with the elections in 1996, the implementation of which happened very slowly.

In 1997, in accordance with the Rules and Regulations of the Provisional Election Commission, the extraordinary elections for the National Assembly of the Republika Srpska were carried out. They occurred without any major incident and with an exceptionally good response of voters (70.07%), and were followed by a rather quick implementation of the results of the elections and beginning of the work of the elected bodies.

It may be stated that the election process led by the OSCE in Bosnia and Herzegovina from the 1996 elections into the 1997 elections (general elections in 1996, municipal elections and those for the National Assembly of the Republika Srpska in 1997) was steadily improved. Clear weaknesses were eliminated specifically in the areas of voter registration, the act of voting and the implementation of elections, and efforts were made towards creating ever more favourable conditions for holding free, fair and democratic elections, which represented a guarantee that the general elections in 1998 would be administered under even higher standards.

IV. Carrying out of future (regular) elections

It was expected that the above-mentioned elections, carried out in accordance with Annex 3 of the Dayton Peace Agreement, would finish the process of the first elections in Bosnia and Herzegovina and that the Parliamentary Assembly of Bosnia and Herzegovina would adopt the election law (Article IV, item 2a of Annex 4) and appoint the Permanent Election Commission

which would be carrying out the future elections in Bosnia and Herzegovina (Article V of Annex 3).

The Peace Implementation Council, at the Conference held in Bonn on 9 and 10 December 1997, adopted the Declaration in which, in the part referring to the elections (Chapter VI, point 4, Items 2 and 3), it requires the authorities of Bosnia and Herzegovina to consider and adopt the election law as soon as possible and also requires the creation of the Permanent Election Commission, which will be responsible for the carrying out of future elections in Bosnia and Herzegovina and which will be responsible for the administration of future elections in Bosnia and Herzegovina and which will closely co-operate with the OSCE during the entire mandate of the OSCE. However, until this law is adopted and starts to be applied and until the Permanent Election Commission is set up, it is provided that elections will be conducted under the supervision of the Provisional Election Commission and in line with its Rules and Regulations. Taking into account that the election law has not yet been drafted and that it is uncertain when it will be considered and adopted in the Parliamentary Assembly of Bosnia and Herzegovina and also considering the very short period of time remaining until the elections in September 1998, it is a justifiable decision to hold these elections in accordance with the provisions of Annex 3 of the Dayton Peace Agreement and under the Rules and Regulations of the Provisional Election Commission. These will incorporate the position of the Peace Implementation Council from the Bonn Declaration on multi-ethnicity as a basic goal for the consolidation of a stable and democratic Bosnia and Herzegovina and other principles to the extent allowed by the Constitution of Bosnia and Herzegovina as well as certain basic principles of the election system:

- the principle of the equality of citizens before the election law,
- the principle of the equality of political parties before the election law,
- the principle of the application of the same system for all political parties when distributing seats.

During the discussions about the Rules and Regulations for the 1998 September elections radical changes were requested in comparison with the Rules and Regulations on the basis of which the elections in 1996 and 1997 were carried out. This was because these Rules and Regulations do not allow the citizens of Bosnia and Herzegovina to elect and to be elected on the whole territory of Bosnia and Herzegovina and also due to the fact that the national component was preferred in the election system so that a deputy could be elected only on the basis of the votes from the ranks of his own people. These requests ignore the explicit constitutional provisions on the election of the members of the Presidency of Bosnia and Herzegovina and on the election of deputies of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, which were the basis for the appropriate provisions of the Rules and Regulations of the Provisional Election Commission regulating the election of those bodies.

The question has been asked whether it is possible to carry out more radical changes in the Rules and Regulations of the Provisional Election Commission in the above-mentioned sense without first changing the Constitution of Bosnia and Herzegovina in so far as it explicitly regulates these matters.

Those who argue that it is possible can see the basis for this in the Preamble of the Constitution of Bosnia and Herzegovina according to which Bosniacs, Croats and Serbs are constituent peoples (together with Others) and citizens of Bosnia and Herzegovina, as well as in paragraph 7 of the Copenhagen Document of 1990, which guarantees universal and equal voting rights for all persons of legal age as well as the respect of the rights of citizens to run for a political or public function, individually or as representatives of the political parties or organisations, without discrimination, and also in the constitutional provision that in Bosnia and Herzegovina the rights and freedoms defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly applicable and that these documents have priority over all other laws (Article II point 2 of the Constitution of Bosnia and Herzegovina). It is hard to accept that on the basis of the above-mentioned provisions, elections for the authorities of Bosnia and Herzegovina may be carried out according to rules and regulations different from those explicitly established in the Constitution of Bosnia and Herzegovina for the elections of these bodies unless these provisions of the Constitution are changed.

It is indisputable that the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols have priority over all other laws, but not over the Constitution of Bosnia and Herzegovina, because these documents are a constituent part of it.

This does not mean that some considerable improvements to the Rules and Regulations of the Provisional Election Commission for the September 1998 elections cannot be made with respect to the multi-ethnic composition of the elected bodies. Such changes might include the creation of conditions for the citizens to vote according to criteria which are not exclusively ethnic, simultaneous voting for the list of a political party and a certain candidate from that list, a system of cross-voting and the holding of two rounds of presidential elections where in the first round the candidates would see whether they have support in their nation, and, provided that they win a sufficient number of votes in this first round, in the second round it would be ascertained, among other issues, whether or not the other nations have confidence in them. Furthermore, the election procedure could also be improved as regards the role of the local election bodies and media and the registration of voters, in line with the principle that prevailed at the municipal elections of 1997, with the elimination of all failures and weaknesses in the registration of voters for those elections. Particular care will be required regarding the registration of displaced persons and refugees, taking into account that this is the year of their return en masse to their homes. If what has been planned is achieved, their return will alleviate this problem, but will not resolve it completely, because a number of refugees will change their status into the status of displaced persons given that they will not return to their places of residence.

In order to improve the election procedure, it is very important to educate political parties and voters, especially through electronic media, explaining the significance of the elections for the future of the state of Bosnia and Herzegovina. The timely elaboration and adoption of the Plan for the implementation of these elections with precisely defined conditions, implementation deadlines and strict sanctions for those who do not respect them is equally important.

As to the preparation and adoption of the election law itself, with the aim of achieving more radical changes of the existing election systems, the positive experiences of the election

systems of other countries that have multi-national or some other complex structure of the population should be used, as should the experiences of our first multi-party elections, especially as concerns the election of the members of the Presidency of Bosnia and Herzegovina for whom all the voters of Bosnia and Herzegovina voted in the parts of the list as described above. If it is concluded that the Constitution of Bosnia and Herzegovina should be changed with the aim of establishing an election system which will facilitate the reintegration of Bosnia and Herzegovina as well as the further democratisation of the relations within Bosnia and Herzegovina, then the appropriate changes will also need to be made.

The Electoral Debate in Bosnia and Herzegovina by Mr Mirko BOSKOVIC Member of the Provisional Electoral Commission, Bosnia and Herzegovina

In the process of carrying out parliamentary and presidential elections in Bosnia and Herzegovina at all levels (municipality, canton, entity and State) in 1996 and 1997 as well as in the electoral process that will be carried out in 1998, according to Annex 3 of the Peace Accord on Bosnia and Herzegovina and the Rules and regulations of the Provisional Electoral Council (PEC), several specific characteristics have been provided for that were not known in the pre-war practice (until 1992) of Bosnia and Herzegovina.

First of all, it should be pointed out that the elections are not carried out by the commissions appointed by the legislative bodies of the appropriate level. Rather, it is provided by Annex 3 of the Peace Accord on Bosnia and Herzegovina that the OSCE is to supervise the preparation and running of the elections for the House of Representatives of BiH, BiH Presidency, House of Representatives of the Federation, People's Assembly of RS, Presidency of RS, and, if feasible, elections for legislative bodies of cantons and municipalities, and for these purposes to establish the PEC.

It was provided that elections should take place within six months of the Peace Accord coming into force and if the OSCE deemed it necessary to postpone the elections, not later than nine months after the Peace Accord came into force. Thus the deadlines for elections were not set by the competent legislative body of the appropriate level, but by Annex 3.

Annex 3 on elections states that the PEC will adopt electoral rules concerning: the registration of political parties and independent candidates, the eligibility of candidates and voters, the role of domestic and foreign monitors, ensuring a free and fair electoral campaign and establishing and approving final electoral results. It is provided that elections will be based exclusively on the Rules and Regulations of the PEC, regardless of internal laws and regulations. Thus it should be emphasised that parliamentary and presidential elections are not carried out according to the procedure adopted by the legislative bodies of BiH, but according to the Rules and Regulations of the PEC.

According to Annex 3 of the Peace Accord, the PEC consists of the Head of the OSCE Mission, the High Representative or his designee, representatives of the parties, i.e.

representatives of Bosnia and Herzegovina, the Federation of BiH and the Republika Srpska, and other members as the Head of the OSCE Mission decides. It has been determined that the Head of the OSCE Mission will be chairman of the Commission, and, in case of dispute, his decision will be final.

Annex 3 of the Peace Accord and the Rules and Regulations of the PEC established that any citizen of BiH, older than 18 years, and whose name is in the Census of citizens of BiH of 1991, has the right to vote and stand for election in accordance with the Rules and Regulations. The possibility of voting by citizens of other countries who came to Bosnia during the war (for example, Serbs from Knin who came to BiH during the conflict) is not provided for.

In the BiH regulations, the basic rule was that voters could vote in the city where they last resided. Such a rule is dominant in a majority of other countries. However, as a consequence of the war a great number of citizens of BiH were displaced from their city of residence (DPs). This was the reason why this issue was regulated in such a specific way by Annex 3. Annex 3 of the Peace Accord provided that the basic principle applicable to all citizens of Bosnia and Herzegovina who are eligible to vote is to exercise this right in their 1991 cities of origin, but those who no longer live in the place where they lived in 1991 may, under certain conditions, if they do not exercise that right in their 1991 city of residence, vote in the municipality where they want to live. In such a case they must vote in person, not in absentia as they are entitled to do if they want to vote in their 1991 city of residence.

A number of political parties, bodies and individuals were critical of such regulations. The reactions against such an opportunity for voting by expelled persons and refugees can be justified on several grounds. Namely, it is possible to manipulate the voters that can vote in a place different from their 1991 place of residence, e.g., to "direct" them where they can vote according to the interests of a political party, etc. Also, as a consequence of such voting it may happen that the national composition of the newly-elected legislative bodies differs significantly from the national composition according to the 1991 Census. However, it first ought to be pointed out that this solution was laid down by Annex 3 of the Peace Accord; and second, it is reasonable to ask whether it is fair to allow a citizen to vote not in the city where he has lived for some time, but only in the municipality where he lived in 1991, even though he may have decided not to return to his former municipality.

The Constitution of Bosnia and Herzegovina (Annex 4) states that the Presidency of BiH consists of three members: one Bosniac and one Croat being elected in the territory of the Federation and one Serb from the RS. Therefore, the collective Head of State of BiH is not elected by all voters in the entire State as one electoral unit, but BiH is divided into two units, which is not usual in such a situation.

Moreover, it is a peculiarity of the Constitution of Bosnia and Herzegovina that it provides that the members of the Presidency must be a Bosniac and a Croat from the Federation, and from the RS a Serb. From this it follows that a citizen of the Federation who is neither Bosniac nor Croat cannot be put up or elected for the Presidency, nor can a citizen who is not a Serb be elected in the RS.

A symposium on electoral systems, organised by the OHR and OSCE, was held on 12 and 13 March 1998 in Sarajevo. A number of experts from the country and abroad attended the symposium. The main subjects were the 1998 September-October elections and the improvement of the Rules and Regulations of the PEC.

A number of participants proposed changes to the Rules and Regulations which have no basis in the Constitution of Bosnia and Herzegovina and are directly contrary to the provisions of the Constitution that regulate the election of the Presidency of Bosnia and Herzegovina.

Thus, a number of participants were of the opinion that all three members of the BiH Presidency should be elected from the entire territory of Bosnia and Herzegovina and that every voter should vote not only for one, but for all three members of the BiH Presidency. They based such a stance on, as they pointed out, the Preamble of the BiH Constitution, which defines Bosniacs, Serbs and Croats as constituent peoples of Bosnia and Herzegovina.

In my opinion, such proposals are unacceptable. In particular, the provisions of Article V of the Constitution of Bosnia and Herzegovina establish precisely that the Presidency of BiH consists of three members: one Bosniac and one Croat, from the Federation, and a Serb from the territory of the Republika Srpska. It is also established that the members of the Presidency will be directly elected in each entity. Thus, there is no doubt that according to these provisions of the Constitution of Bosnia and Herzegovina two members (Croat and Bosniac) are to be elected from the territory of the Federation and one (Serb) from the Republika Srpska, and one voter can vote for only one member of the Presidency.

As regards elections for the House of Representatives, it is also provided by the Constitution of Bosnia and Herzegovina that these shall be conducted in two electoral units (the Federation of BiH and the Republika Srpska). Specifically, the Constitution of Bosnia and Herzegovina (Article IV/2) states that the House of Representatives has 42 members, two thirds of them from the Federation and one third from the Republika Srpska. It is true that in this case the composition of the House in terms of the nationalities of its members is not laid down, so in both entities citizens can be nominated and elected regardless of their ethnicity. However, as far as the election of representatives to the House of Peoples of the Parliamentary Assembly of BiH is concerned, they are not elected by voters directly, but by the House of Peoples of the Federation (Bosniacs and Croats) and by the National Assembly of the Republika Srpska (Serbs); it has been established that from the Federation only Bosniacs and Croats can be elected and from the entity of Republika Srpska only Serbs can be elected, in accordance with Article IV/1 of the Constitution of Bosnia and Herzegovina.

The Rules and Regulations of the PEC specifically regulate the question of the registration and participation of political parties and independent candidates in the elections and the conditions that they must fulfil. It should be noted that a political party that wants to take part in the elections need not be registered with the competent state body in Bosnia and Herzegovina, according to the positive regulations of Bosnia and Herzegovina, as provided by the Electoral Law; the party has only to meet the conditions set down by the Rules and Regulations of the PEC, i.e. to collect the signatures of a sufficient number of voters. The Rules and Regulations of the PEC provide that one voter can give his support to more than one political party or independent candidate, which is an innovation compared with the

present Electoral Law, where one voter can give his support to only one political party or independent candidate.

In accordance with the Rules and Regulations of the PEC, the candidates of a political party registered for a higher level of elections can also stand for election to legislative bodies of lower levels, which is, also, new compared with the provisions of the Electoral Law, according to which a party had to gain signatures of support for all levels at which it wanted to take part in the elections.

A further innovation in the Rules and Regulations of the PEC means that a citizen cannot be a candidate in more than one list or in more than one electoral unit. For example, a citizen who is a candidate for a municipal council cannot be a candidate for a legislative body of a canton or other legislative body of higher level and vice versa. Under the provisions of the Electoral Law of Bosnia and Herzegovina one citizen could have been nominated for more than one list and at different levels.

According to the positive regulations of Bosnia and Herzegovina (Electoral Law) the number of nominated candidates had to be equal to the number of deputies being elected in the relevant assembly. Under the Rules and Regulations of the PEC at least one candidate may be on the list of registered political parties, and the maximum number of candidates permitted is the number that is being elected for the legislative body plus 10% of this number.

For the first time, for the elections held in 1996 and 1997, voting was organised for citizens of BiH who are refugees or temporary workers abroad, while DPs could vote at special polling stations in the country. These voters could cast their ballots abroad, at special polls for voting in absentia, if they had decided to vote for places where they had lived before 1991; if they decided to vote for bodies of a city where they wished to live from now on, they were not able to vote in the way described above, but instead had to attend the polling stations. According to the regulations of Bosnia and Herzegovina (Electoral Law), voting for citizens of BiH who had been abroad before was not organised in foreign countries, and these citizens had simply to come back to the country and vote in their place of permanent residence.

Principles for Elections in Bosnia and Herzegovina by Mr Johan VAN LAMOEN

Three months prior to the conclusion of the Peace Agreement in Dayton on 21 November 1995 and its signing in Paris on 14 December 1995, the elaboration of the Agreed Basic Principles for conducting elections in Bosnia and Herzegovina began in Geneva on 8 September 1995. The Contact Group, composed of representatives of France, Germany, Russia, the United Kingdom and the United States, agreed, inter alia, that the two Entities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska, would enter into reciprocal commitments (a) to hold complete elections under international auspices; and (b) to adopt and adhere to normal international human rights standards and obligations, including the obligation

to allow freedom of movement and enable displaced persons to repossess their homes or receive just compensation.

In a Joint Statement, signed in New York on 26 September 1995 by representatives of the then still Republic of Bosnia and Herzegovina, the Republic of Croatia and the Republic of Yugoslavia and witnessed by representatives of the Contact Group countries and by the European Union Special Negotiator for the Former Yugoslavia, both sides agreed that Bosnia and Herzegovina would have a parliament or national assembly, a Presidency and a Constitutional Court and make provisions for free and democratic elections under international supervision. Direct, free and democratic elections would be held as soon as possible when the necessary conditions would exist.

In the Further Agreed Basic Principles agreed upon in New York on the same day, all Parties reiterated that the goal was to hold free democratic elections in both Entities as soon as social conditions would permit. In order to maximise the democratic effectiveness of such elections, both Entity governments pledged their full support for (a) freedom of movement, (b) the right of displaced persons to repossess their home or receive just compensation, (c) freedom of speech and of the press and (d) protection of all other internationally recognised human rights in order to enhance the democratic electoral process.

It was further agreed that the OSCE (or another international organisation) would station representatives in all principal towns throughout the Federation and Republika Srpska and publish monthly reports as to the degree to which (a) the obligations listed in all of the Agreed Basic Principles had been fulfilled, and (b) social conditions were being restored at the level at which the election process might be effective. Within 30 days after the OSCE delegations had concluded that free and democratic elections could properly be held in both Entities, the governments of the Entities would conduct free and democratic elections and fully cooperate with an international monitoring programme.

These basic agreed principles were further elaborated in Annex 3, the Agreement on Elections, to the General Framework Agreement for Peace in Bosnia and Herzegovina, also called the "Dayton" Agreement. Article 1 established the conditions for the organisation of free and fair elections, in particular in a politically neutral environment; the protection and enforcement of the right to vote in secret without fear or intimidation; the respect of the freedom of expression and of the press; the allowance and encouragement of freedom of association (including of political parties); and the guarantee of freedom of movement.

The Parties to Annex 3 (Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska) requested the OSCE to certify whether elections could be effective under current social conditions in both Entities and, if necessary, to provide assistance to the Parties in creating the appropriate conditions. They agreed to comply fully with paragraphs 7 and 8 of the Document of the Second Meeting of the Conference on Human Dimensions of the Conference on Security and Co-operation in Europe, Copenhagen, 1990 which is an attachment to Annex 3 on Elections. This Document lays out the principles that the will of the people serves as the basis of the authority of the government and that elections are held at reasonable intervals; guarantees universal and equal suffrage to adult citizens; ensures that votes are cast by secret ballots and counted and reported honestly and that results are publicly disclosed; respects the rights of citizens to seek political or public office without discrimination, the right of association and

equal treatment before the law and by the authorities; states that political parties shall be permitted to campaign and freely present their views without fear of intimidation or retribution; guarantees access to the media on a non-discriminatory basis; ensures that elected candidates take office and are permitted to remain in office until their term of office expires or they are removed in a manner regulated by law in conformity with democratic and parliamentary constitutional procedures; ensures that foreign observers are invited to monitor the electoral process and that domestic observers are permitted to monitor the process.

Despite the fact that the conditions set down in Annex 3 of the Peace Agreement were not met, in the light of the statement made by the OSCE Head of Mission recommending that elections should take place in accordance with the timetable of the Peace Agreement, which the Peace Implementation Council welcomed, the OSCE Chairman-in-Office, by mid-June 1996, declared that the elections could take place. He reached this decision after much deliberation and consultation with the Parties involved. After this decision was taken, and despite threats of boycotts, the OSCE with the help of the national members of the Provisional Election Commission (a body created under Article III of Annex 3) succeeded in completing the preparations for the general elections of 14 September 1996.

Article IV of Annex 3 defines a person entitled to vote in the first post-conflict elections in Bosnia and Herzegovina as any citizen aged 18 or older whose name appears on the 1991 census. Article IV establishes as a general rule that a citizen may vote either in person or by absentee ballot in the municipality where he or she resided in 1991. Such a citizen may apply to the Commission to cast his or her ballot elsewhere. This entitlement was later defined in the Rules and Regulations of the Provisional Election Commission, which provided that a citizen may apply to the Commission to cast his or her vote where he or she was residing at the time or where he or she intended to live in the future. The last option resulted in widespread manipulation and fraud. Therefore, the Chairman of the Provisional Election Commission and Head of the OSCE Mission in Bosnia and Herzegovina postponed the municipal elections in late August. The Coordinator for International Monitoring of the Elections in Bosnia and Herzegovina referred in his preliminary statement presented on election day, 14 September 1996, to the five basic principles for the elections laid down in the Peace Agreement: a politically neutral environment, the right to vote in secret without fear or intimidation, freedom of speech, freedom of the press, freedom of association, and freedom of movement. In his assessment these principles were only fulfilled to varying degrees.

One of the critical factors was the provision permitting an internally displaced citizen or a refugee living abroad to cast an absentee ballot. This provision was agreed upon in November 1995 with the understanding that the majority of refugees and displaced persons would have returned to their 1991 place of residence by the date of the elections in 1996. This in fact was not the case and approximately 50 percent of the electorate was either internally displaced or living abroad at the time of the 1996 elections. The Agreement on Refugees and Displaced Persons, Annex 7 of the Peace Agreement, must be understood as being complementary to Annex 3, the Agreement on Elections. The return of refugees and displaced persons is one of the objectives of the Peace Agreement that is still to be fully implemented.

The task of the Provisional Election Commission was to establish the regulatory framework for the elections and, therefore, it included in its Rules and Regulations the principles for free and fair elections established in Annex 3 and the Copenhagen Document. The Parties agreed to

comply fully with the Rules and Regulations of the Provisional Election Commission, any internal laws and regulations notwithstanding. In addition the Provisional Election Commission established an Election Appeals Sub-Commission and Media Experts Commission to rule on violations of its Rules and Regulations. These Sub-Commissions were necessary due to the lack of a fully functional Entity judicial system and in the absence of a judicial system at the State level.

Another principle to be considered, which is reflected in Annex 4 of the Peace Agreement, the Constitution of Bosnia and Herzegovina, is the guarantee of the rights of all constituent people and citizens of Bosnia and Herzegovina.

In fact, the basic principles governing elections in Bosnia and Herzegovina are the same as for elections in any other country. The issues that complicate the process are the result of the conflict, the lack of identification documents that make it difficult to verify voter eligibility, the exceptionally high number of displaced persons and refugees and the absence of the preconditions enunciated in the Peace Agreement.

My presentation would not be complete without referring to the elections that took place under the European Union Administration for Mostar. The principles for elections in Mostar were agreed to in April 1994 and later annexed to the Dayton Agreement. The Interim Statute for the City of Mostar and the Decree issued by the European Union Administration for Mostar was an attempt to re-establish the composition of the population according to the 1991 census. This was accomplished by requiring candidates to identify themselves by nationality and distributing seats according to a predetermined quota reflecting 1991 demographics. Elections took place on 30 June 1996, but the results were never implemented due to well known reasons.

The postponed municipal elections in Bosnia and Herzegovina took place on 13-14 September 1997. The amendments to the Rules and Regulations of the Provisional Election Commission included a requirement for voters to register, strict criteria for voting in a municipality of future residence and full international supervision to ensure adherence to the principles established in Dayton. The Political Declaration from the Ministerial Meeting of the Steering Board of the Peace Implementation Council at Sintra on 30 May 1997 affirmed that the electoral process would not be complete until elected officials had taken office, and to this effect the Steering Board endorsed the principle, agreed upon by the OSCE Mission and the Office of the High Representative, of the implementation of the election results.

On 22 and 23 November 1997, extraordinary elections for the National Assembly of the Republika Srpska, which had been dissolved in June by the President of Republika Srpska, took place in accordance with the Rules and Regulations of the Provisional Election Commission.

In the Bonn conclusions of the Peace Implementation Council of December 1997, the Council considered multi-ethnicity a fundamental goal for the consolidation of a stable and democratic Bosnia and Herzegovina. It therefore recognised the need to support the establishment of new multi-ethnic parties and to strengthen existing ones. It invited the High Representative, the OSCE and the Council of Europe to take due account of this need when reviewing the draft Election Law for Bosnia and Herzegovina and its Entities and urged the authorities in Bosnia and Herzegovina to conclude their deliberations on the Law rapidly and adopt it as soon as possible. As an integral part of the Law, the Permanent Election Commission, which will

include international members, must be established. The Permanent Election Commission will have the responsibility of conducting future elections in Bosnia and Herzegovina and will closely cooperate with the OSCE as long as the mandate of the OSCE exists. Until the Law is adopted and in force and the Permanent Election Commission is established and fully functional, elections will be conducted under the supervision and authority of the Provisional Election Commission and its Rules and Regulations, as will happen at the next general elections in September 1998.

Concluding Speech by Mr Cazim SADIKOVIC,
Dean of the Law Faculty, University of Sarajevo

I am happy to observe – and I think you will agree with me – that this seminar has been a real success.

Let me first of all stress the fact that the timing of this seminar could not have been better, since with the elections scheduled for September we need to make all the necessary preparations, including those concerning the positive development of the electoral legislation.

I have no need to remind you that as a consequence of the 1992-95 war, all transition processes ceased, including those concerned with the organisation of free and democratic elections. There is now an urgent need to catch up the lost ground as soon as possible and join not only the groups of countries in transition but also the other European countries.

It is common knowledge that in the process of transition, the regular holding of democratic elections plays an extremely important role in the birth of a modern state, as indeed in all aspects of reform, such as the introduction of a modern market economy. It is thus in considering all these aspects that I think that this seminar has made it possible to define conditions which would permit these coming elections to represent a real step forward, both with respect to previous elections and more generally with respect to the process of consolidating a pluralistic democracy and a modern social state, taking the model of the best European practice.

We have good reason to expect these elections in September to create a favourable climate for the better selection of leaders, stabilisation of the democratic party system, and lastly the true legitimisation of the principles organs of state in Bosnia and Herzegovina, such as the presidency, the government and the parliament. This implies above all that in addition to the affirmation of nationality, ethnic groups and the constituent peoples, we shall arrive at the affirmation of the individual person, the citizen of Bosnia and Herzegovina.

In the course of the presentations of the main themes concerning the electoral system and the discussions on this problem, we had the opportunity to hear:

- the best experiences of the developed countries of Europe in the fields of electoral legislation, the organisation of elections, the work of electoral commissions and indeed everything which is important for the success of such a task;

- the experience of the former socialist countries that have experienced the continuing development of democracy, nationality and the economy on new bases, and are already reaping the first fruits of their efforts in these fields;

- our own experience in the organisation and operation of the electoral system in Bosnia and Herzegovina in this post-war period in which the organisation of Bosnian society itself is not yet precisely defined, with a legislative environment that is incomplete and inconsistent, with all the problems that characterise Bosnian society today.

This seminar has made it possible to define clearly the present situation of electoral legislation and practice in Bosnia and Herzegovina, as well as giving, on the basis of this situation, not only valuable suggestions and indications on the subject of the preparation of the elections to be held in September, but also more generally and for the longer term, the creation of electoral legislation in Bosnia and Herzegovina in compliance with the Dayton agreements and all the other documents of the international community. The pointers and recommendations formulated in these past two days clearly indicate the necessity to introduce immediately two principles in the electoral rules:

1) the scrupulous respect of all the fundamental principles governing elections in Europe, i.e. the elections must be universal, identical, free, direct and secret

2) they must at the same time permit as far as possible the expression of the specific characteristics of the Bosnian society and state. However, I am sure I share your view in saying that no specific characteristic can or should be so important as to compromise the fundamental electoral principles or modern democracy in general.

It is also important to mention what we are expecting at this precise moment and what we are all agreed upon, in fact what Mr Westendorp recently stressed in Venice, i.e. that through the elections the presidency of Bosnia and Herzegovina should be truly legitimised as a modern head of state, as provided for in the Dayton Agreements, and indeed as is the practice in modern parliamentary democracy. In this way the elections would be the occasion to question the functioning of the Bosnian State and implementing the necessary changes and improvements which are possible at this point in time. The election in Bosnia and Herzegovina will, as always, reinforce the democratisation of the state, in order that the state itself can ensure fair and democratic elections as is the case in all the developed countries of Europe and the Americas.

Finally, I am sure that our hopes and aspirations expressed on this solemn occasion will come to fruition. I would like to take advantage of this opportunity to warmly thank the Council of Europe and the European Commission for Democracy through Law for efficiently preparing this important seminar, and all the representatives of the international community, above all Mr Westendorp and Mr Barry, all the speakers and participants in this discussion, for their contribution to the preparation of the elections in September 1998 and more generally for

their contribution to the progress of the democratisation process in Bosnia and Herzegovina. Thank you.