



Office for Democratic Institutions and Human Rights

**COMMENTS ON THE LAW
ON ELECTIONS TO THE
PARLIAMENT**

CZECH REPUBLIC



Warsaw
May 2002

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	EXECUTIVE SUMMARY.....	1
III.	ANALYSIS AND COMMENTS.....	2
A.	ELECTION SYSTEM.....	2
B.	ELECTION ADMINISTRATION.....	3
C.	ELECTION DATES.....	5
D.	VOTER REGISTERS.....	5
E.	REGISTRATION OF LISTS OF CANDIDATES.....	5
F.	VOTING.....	6
G.	VOTE COUNTING, AGGREGATION, TABULATION.....	6
H.	APPEALS PROCESS.....	7
I.	MEDIA.....	8
J.	MINORITIES.....	8
K.	INTERNATIONAL AND DOMESTIC NON-PARTISAN OBSERVATION.....	8
L.	CAMPAIGN FINANCES.....	9

COMMENTS ON CZECH LAW FOR THE ELECTION TO THE PARLIAMENT

May 2002

I. INTRODUCTION

This assessment reviews and comments on the “Act No.247/1995 of September 27, 1995 on Elections to the Parliament of the Czech Republic and on the Amendment of Certain other Laws”, in the version provided by the OSCE ODIHR. The assessment is based on a reading and analysis of English translations of the mentioned law and the Czech constitution.

This analysis was prepared by Michael Meyer, legal expert. It should be noted that any legal review based on translated laws may be affected by issues of interpretation resulting from translation. This does not imply that the translations used are defective in any way, but simply that translation from one language to another occurs in the context of the different semantic rules of the two languages.

The Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) conducted an observation mission during the last parliamentary elections on 19,20 June 1998 and issued a final report.

In that report, the OSCE/ODIHR made recommendations with regard to the following issues:

- Parties, which registered have to pay a financial bond, but the law was unclear on when it had to be paid and what the consequences were if it was not paid. This led to confusion regarding questions like representation in the National Election Commission and right to free airtime.
- The National Election Commission had no authority to issue binding instructions regarding the implementation of the law, with risks for the uniformity of decision-making at all levels.
- The law provided no clear mechanism for dealing with violations of the law.
- There were no provisions for the presence of international and domestic non-partisan observers.
- There was no possibility to vote for Czech citizens living outside their country.

II. EXECUTIVE SUMMARY

Changes to the election law since 1998 have addressed a number of concerns raised in 1998, in particular:

-
- The law now stipulates that paying a financial contribution is a pre-condition for registration; without proof of payment parties cannot be registered.
 - The law now foresees the possibility of out-of-country voting

However, some of the mentioned OSCE ODIHR recommendations have not been met, in particular:

- There are no provisions for the presence of domestic or international non-partisan observers
- The National Election Commission has no authority to issue binding instructions
- There is no mechanism to dealing with violations of the law.

In addition this review raises a number of other concerns, which result partly from changes in the law made after 1998. It must be noted that some of these concerns are preliminary; they might result from the fact that the reviewer had no access to a number of relevant laws. Also some points, which seem not to be entirely clear in the law, might be clarified by the upcoming EOM with the authorities.

The main potential concerns are:

- Reforms after 1998 have removed election commissions with party representation at all levels, except polling station level. Thus, the electoral process is now almost entirely in the control of the executive branch of power and local self-government bodies. Such a system requires a highly professional and neutral civil service, it is more open to accusation of bias, reduces transparency and alienates parties somewhat from the electoral process. In the context of this system other concerns become more serious (appeals process; tabulation)
- Appeal avenues to courts are limited and apply mainly after the elections, challenging results. Before, it is mainly the election administration dealing with complaints, but only related to technical and organizational aspects. Broader standards, such as fairness and transparency are not stated in the law. Thus the right to an effective remedy might not be fully guaranteed in the electoral context, in particular against government activities.
- It seems that results from polling station level are not published at any stage in the process. Thus, the tabulation process cannot be recapitulated in detail by the media, citizens or parties, because they are not represented in the electoral administration beyond the lowest level (polling station level).

III. ANALYSIS AND COMMENTS

A. ELECTION SYSTEM

The main law establishing the legislative basis for parliamentary elections is the Parliamentary Election Law of 1995, which has been amended a number of times since. Several other laws apply.

The Czech constitution establishes a mixed electoral system: The 200 members strong chamber of deputies is elected on a proportional system based on 14 regional party lists, with a preferential element. There is a 5% threshold for entering the Czech Parliament, coalitions of two parties have to gather 10% of the vote¹. The 81-member senate is elected on the basis of a majoritarian system (single member constituencies).

Comment: The initial plan for amendments of the election law in 2000 foresaw the increase of electoral regions from 8 to 38. The constitutional court, after an intervention by the President, declared that change unconstitutional, as such a marked increase of electoral regions would have undermined the proportionality of the system, which is stipulated by the constitution². The number was then increased to 14, corresponding to 14 political regions. Although the increase improves the chances of bigger parties to some degrees, it does not raise concerns. The ruling of the constitutional court is an indication that domestic constitutional checks and balances are effective.

B. ELECTION ADMINISTRATION

The Czech Republic had until 1998, as many other countries, a two-tier structure of election administration. On the one hand election commissions, in which parties are represented, on the other hand agencies of the executive branch of power (Ministry of Interior, Ministry of Foreign Affairs, Statistical Office, District Offices) and self-governing bodies (Municipal Offices, Mayors) for dealing with technical and organizational tasks. This system has been largely abolished in a reform of the law after 1998. Election commissions with party representation now exist only at polling station level (Constituency Commissions). All other bodies dealing with the elections are from the executive branch of power or self-governing bodies. The State Election Commission (SEC)³ is now staffed with representatives of ministries and the presidential administration. The SEC's president is the Minister of Interior. The tasks of electoral bodies are distributed as follows:

1. Election Commissions: At national level the **State Election Commission (SEC)** *inter alia* co-ordinates the preparation, organization and course of the elections and oversees the implementation of organizational and technical aspects related to the elections (Section 8). The **constituency commission** is located at constituency level and operates essentially as a polling station board. It takes care *inter alia* of the order at the polling station, organizes and supervises voting, counts votes and prepares records on the result. Members are delegated by organizations, which fielded candidate lists. The chairman of constituency commissions is identified by drawing a lot. The district office, a part of the executive, can issue binding instructions on constituency commissions, except for vote counting issues (Section 21 II). Special constituency commissions are established in diplomatic missions for out-of-country voting. They are composed by at least three persons to be appointed by the head of the diplomatic mission.

¹ This threshold can be lowered under specific conditions (section 49 III). It is not entirely clear whether the threshold refers to valid votes or total number of votes.

² The higher the number of regions, the less proportionate the system would be. As an *argumentum ad absurdum* one could have a proportional system based on 200 electoral regions, which would *de facto* be a majoritarian system.

³ Previously National Election Commission. Re-named by the recent amendments.

2. The tasks of carrying out elections largely lies with the executive branch of power and municipal bodies and representatives. The essential tasks are distributed as follows:

The **Ministry of Interior** (MoI) provides guidelines for the preparation of organizational and technical aspects of the elections; it resolves complaints related to those aspects at district level, it issues lists of registered parties; it provides information from residence registers for the maintenance of voters registers, it ensures printing of ballots and other material (Section 9).

The **Ministry of Foreign Affairs** (MFA) organizes and provides for technical aspects for out-of country voting, which takes place in diplomatic missions, including the maintenance of a special register (Section 10).

The **Czech Statistical Office** prepares a binding system of ascertainment and processing of election results, processes the results and passes them on to other agencies and political parties (Section 11).

District Offices at the Seat of the Region provide for the organizational and technical aspects of the elections in that region, including registering lists of candidates and passing that information on, arranging printing of ballots. (Section 12).

District Offices (all of them, not only at the seat of the region) have the task to provide for organizational and technical tasks related to the elections, including checking the course of voting, the counting of votes by constituency commissions, imposes penalties and resolves complaints against municipalities regarding organizational and technical aspects (Section 13).

Municipal Offices provide polling stations, maintain special registers (e.g. for military personnel), issue voter passes for voters who want to vote in another district, resolve complaints regarding organizational and technical aspects related to the elections (Section 14b).

Mayors provide information to voters, ensure distribution of ballots to voters, convene the first meeting of the constituency commission, provide information to parties regarding the constituencies (polling station districts) – (Section 14d).

Comment: The reform of the law after 1998 has largely eliminated party control of the electoral process. The electoral system beyond polling station level now relies on agencies of the executive and self-governing bodies. Even at polling station level, the district office can issue instructions to the constituency commission.

Such a system necessitates the existence of a strictly impartial and professional civil service, in order to avoid partisan influence. Whether this exists in a transition state like the Czech Republic cannot be assessed by the reviewer. The general disadvantage of the system is that – even with the best of civil services – it is open to accusation of bias made by parties competing in the elections, because it generally reduces transparency. Inclusion of parties in the electoral process largely avoids this problem. An additional drawback is that the system somewhat alienates political parties from the electoral process. Systems with party

representation generally ensure that parties stay abreast of developments, give input into possible reforms and feel some ownership of the process.

Additional problems of this system result from two other features of the election law – limitations of complaint mechanisms in connection with a limited system of court appeals, no fully transparent tabulation process – which will be commented on below.

The 1998 EOM recommended that the SEC should be given “authority to issue binding instructions regarding the implementation of the law”. The election law stipulates that the SEC “oversees the performance of acts necessary to ensure organizational and technical aspects of the elections” (Section 8 I b). This formula is ambiguous. On the one hand it neither makes the SEC part of a complaints process, nor does it state clearly that it can instruct other agencies to implement legislation in a certain manner, on the other hand it seem to give the SEC the pivotal role in the electoral process. It depends in some way on the SEC how it interprets this provision. The fact that it is now composed of senior civil servants is likely to make it easier to ensure uniformity of the process by instructing lower-level agencies, but this is unlikely to relate to organs of local self-government.

It would be preferable if parties had a right to nominate members for special constituency commissions in diplomatic missions and that the head of mission only has the right to appoint in case that no sufficient number of people are nominated by parties.

C. ELECTION DATES

Elections are taking place during two days. This is unusual in a relatively small country, but dates back to pre-World War II traditions. It raises no principal concerns, but it should be noted that it is more burdensome for the electoral administration to conduct elections during two days and it requires additional safeguards for keeping of ballot boxes safely from one election day to the next. The provision to this effect (Section 21 I) is not specific. The upcoming EOM should monitor how it is implemented.

D. VOTER REGISTERS

There are two types of registers: The permanent register, the administration of which administration is governed by a law, which was not available to the reviewer and special registers. Special registers are maintained for voters who have no permanent residence or cannot vote there, because they perform military service, are in hospitals, in detention, abroad or have received voter passes in order to vote outside their permanent residence (Section 6). Maintenance of registers should be analyzed by the EOM.

E. REGISTRATION OF LISTS OF CANDIDATES

Lists of candidates shall be submitted 66 days before the elections. In contrast to the version of the law in 1998, paying the financial contribution⁴ is a condition for submitting lists for registration. (Section 31 IV).

Comment: The key concern of the 1998 EOM with confusion over the financial bond issue has been removed with the change of the law. The details of the registration process are not

⁴ Financial “bond” in the version of the law before the changes.

described here. They seem to be positively detailed and clear, including deadlines (see sections 31-37).

F. VOTING

Ballots are distributed to voters not later than three days before the elections. However, voters can receive other ballots in the polling station in case they miss any or have marked them wrongly. For each political party, movement, etc. a special ballot is printed. Voters insert the ballot of the party of their choice into the envelope, which is distributed at the polling station. Voters can express preference for a maximum of two candidates by circling their serial numbers. Voters have to vote in the polling booth and no other person is allowed to be present there – except in special circumstances, namely poor health conditions (Sections 19,38).

Comment: The explicit provisions on secrecy of voting are a positive feature. However, the fact that ballot papers are sent home might raise concerns. While it allows voters to accustom themselves to their choices, it could also be misused – e.g. for some form of family voting, whereby one member of the family takes away all ballots of parties he finds undesirable from members of his family, leaving them only the ballots of the party of his preference. By social pressure they might not ask for new ballots in the polling station.

The existence of many ballot papers with every voter could encourage unscrupulous persons to try ballot box stuffing, although no incidents have been reported in 1998. Stamping the official envelope when handing it over to the voter could be an additional safeguard.

G. VOTE COUNTING, AGGREGATION, TABULATION⁵

After the close of voting the constituency commission shall count the votes. Ballots are valid as long as they are not torn or in another but the official envelope. Written alterations have no impact on the validity of the ballot. If more than two preferences are given, the ballot shall be counted for the relevant party, but without taking into account any preferences (Sections 39, 41).

Comment: These provisions seem to be sufficiently clear for minimizing disputes over validity of votes.

After counting the constituency commission shall prepare in duplicate a record on the results and other aspects of the elections. One of the records is then sent to the Czech Statistical Office, which reviews it for inconsistencies. If none are found the statistical office issues a computer printout to the constituency commission attesting that results have been free of errors and taken over for further processing. If errors are found the statistical office tries to resolve them with the chairman or another authorized member of the constituency commission. If constituency commissions do not comply with time limits foreseen in the law or set by the statistical office, results of their constituency shall be disregarded (Section 43 VI). The other copy of the record is sent, together with other materials, to the municipal office.

⁵ The process is here described for “normal” constituency commissions. The same principles apply for special constituency commission (diplomatic missions). In order to avoid too much detail this is not described here.

Comment: Section 43 VI raises concerns as it would disenfranchise a constituency, because of incompetence of its commission. It appears that there are alternative ways, such as taking over of operations by the statistical office, in order to identify results in a constituency.

The Statistical Office processes all results for a given electoral region and prepares a record which contains *inter alia* the total number of votes given in the region to each party and preference votes given to candidates. This record is forwarded to the district office at the seat of the region. At central level the statistical office gathers results from the municipal offices, in order to calculate the number of mandates given to each individual region based on its share of the overall turnout (Section 48 III), to calculate which parties passed the threshold, etc. (Section 49) The SEC proclaims and publishes the overall results of the election promptly after the completion of the process (Section 52). Political parties, movements, etc. registered for the elections can receive written summaries of the results at regional level from the statistical office.

Comment: It seems that constituency commissions do not publish results at polling station levels. Nor do constituency commission members seem to receive a copy of the records. Also no agency seems to publish results from constituency level. It appears that the most detailed results published are those from the regions. This raises issues of transparency, because no party, no observer group and no voter can recapitulate the tabulation of results from constituency level to regional level. This would be particularly important as the complete tabulation process from constituency level onwards is in the hand of civil servants without additional political control. If in practice detailed results are made available⁶, this should be enshrined in the law.

H. APPEALS PROCESS

Complaints can be raised with the following bodies: The Ministry of Interior against the district offices, the district offices against the municipal offices, the municipal offices and the constituency commissions, although for the latter this is only implicit (see section 42 II g). Complaints can be made regarding “the organization and technical aspects of the elections”. There are no deadlines mentioned until when bodies have to deal with complaints. As mentioned above the SEC might also address complaints, based on its mandate to “oversee the performance of acts necessary to ensure the organizational and technical aspects of the elections into the Czech Parliament”. Complaint provisions are narrowly focused on organizational and technical issues. The law provides no broad standards, such as fairness and transparency - against which other than technical complaints could be measured⁷. The only exception is section 16 II, which stipulates standards for how parties and candidates must conduct their campaigns (“honesty and integrity”).

Generally decisions of the electoral administration cannot be appealed to courts, with the exception of two cases⁸:

a. Registration issues (Section 86)

Against a decision to reject a list of candidates, delete a candidate from the list, etc.

⁶ As was the impression of the NAM.

⁷ Also the constitution is not very detailed on electoral rights.

⁸ Extra-ordinary appeals also seem to be possible to the Constitutional Court (see Art. 87 I Constitution). However, the conditions for this appeals avenue cannot be assessed, in lack of relevant legislation.

b. Results (Section 87)

Somebody who believes that that provisions of the election act have been breached in a manner that affected the results can file a petition for invalidity.

Comment: The key problems of the appeals system are that

- It lies mainly with bodies of the executive, which do not enjoy institutional independence as courts and have no parties represented.
- It is narrowly focused on technical issues and provides no mechanism for corrective decisions on broader electoral aspects, such as fairness and transparency before election day. There are no mechanisms in particular for addressing possible interference by government bodies.
- Court review is only open after election day (except for registration issues), when complaints can only be based on voting results having possibly been affected. This is a high threshold and courts can be expected to very reluctant to invalidate elections. Thus the possibilities to correct the process before elections is very limited.

I. MEDIA

Media issues seem to be generally covered by the Media Law, which was not available to the reviewer. The election law only deals with access to free airtime on state TV (section 16 IV). Section 16 also prohibits the publication of opinion polls three days before the elections until the close of votes. The prohibition is linked to a possible penalty.

Comment: Such provisions can be found in many systems. In the last years the publication of opinion polls on the internet has become a general problem. Either the information was posted outside the jurisdiction of the relevant state, or polls were posted before the stipulated periods, but still accessible.

J. MINORITIES

Section 15 IV refers to a special law on the establishment of national minority committees. This law was not available to the reviewer. No provision in the election law raise concerns with regard to electoral rights of minorities.

K. INTERNATIONAL AND DOMESTIC NON-PARTISAN OBSERVATION

The law has no stipulations regarding the presence of international or domestic non-partisan observers. In 1998 the SEC voted on the presence of the OSCE ODIHR observation mission. While the OSCE ODIHR was accredited, another observer group was denied accreditation. The law must be brought in line with commitments for allowing non-partisan observation undertaken by the Czech republic (Copenhagen Document). This is particularly important in a situation where domestic parties are not represented in the higher- level election administration.

L. CAMPAIGN FINANCES

The law has no stipulations regarding financing of campaigns. It only provides for a state contribution to parties' campaign costs if they gained more than 1.5 % of the valid votes (section 85).