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December 1997

## NDI COMMENTS ON THE NOVEMBER 1997 MINISTRY OF JUSTICE PROPOSAL FOR PASSING THE LAW FOR ELECTION OF MEMBERS OF PARLIAMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

At the request of the Ministry of Justice, political parties and civic organizations in the Former Yugoslav Republic of Macedonia, the National Democratic Institute for International Affairs (NDI) has prepared the following comments on the November 1997 Ministry of Justice "Proposal for Passing the Law for Election of MPs for the Parliament of the Republic of Macedonia" (the "Proposed Parliamentary Election Law" or "Proposed Law"). In January 1994, NDI provided comments on the law used to conduct the 1990 parliamentary elections and proposed amendments to that law. In July 1996, the Institute provided comments on the June 1996 Working Version of the Ministry of Justice's "Proposal for the Enactment of a Law on Election of Bodies of Local Government Units and of the City of Skopje." Those comments were sent to ministers, members of the Republic Election Commission, leaders of the National Assembly and political parties and civic leaders.

NDI was gratified that, in both previous cases, many of the Institute's comments were incorporated into the final draft laws and that dialogue was conducted among the government, political parties and citizens concerning NDI's comments and other aspects of the proposed laws. The Institute is therefore pleased to respond to the present requests for comments on the Proposed Parliamentary Election Law.

NDI formed a Macedonian Election Law Advisory Group to review the Proposed Parliamentary Election Law. This group is chaired by Patrick Merloe, NDI's Senior Associate for Election Processes. The group also includes the following election law experts, each of whom has participated in their individual capacity, not as representatives of their respective institutions: Rafael Lopez Pintor (Spain), Professor of Sociology and Political Science at the Universidad Autónoma of Madrid; Susana Lorenzo-Giguere (USA), formerly with the United States Department of Justice, Civil Rights Division, Voting Rights Section; Lawrence Nobel (USA), General Counsel at the United States Federal Election Commission; and Simon Osborn (United Kingdom), member of the British Electoral Reform Society. NDI is grateful to each member of the group for contributing their time and valuable comments concerning the present and past Macedonian draft election laws. Their efforts demonstrate the international community's continuing interest in supporting the democratic process in Macedonia.

NDI analyzed the Proposed Parliamentary Election Law, reviewed comments provided by the group and developed the comments presented below. Just as in the two previous cases, NDI's present comments are offered in the spirit of international cooperation and with the recognition that no election system is perfect. The comments hopefully will assist those in Macedonia who are continuing to advance democratic development by further improving the Macedonian electoral process.

## **I. General Issues**

### **Public Confidence and Transparency**

The Proposed Parliamentary Election Law compares favorably to similar election laws in other developing democracies. In settings such as Macedonia, efforts to promote public confidence in the political process through dialogue concerning the elements of proposed laws -- especially election laws -- is every bit as important as ensuring that the contents of the law meet international standards.

The provision in the Proposed Law's introductory section entitled "Passing the Law," which states that the public will be given a chance to be involved actively in discussions about the Proposed Law and to give their contribution in shaping the election model, is therefore very important. NDI's experience around the world shows that such measures, including roundtable discussions among the political parties, town meetings to discuss the election model and provisions of the Proposed Law and the ability of citizens and their organizations to provide oral and written comments and suggestions, are vital to developing public confidence in the political process. It is hoped that experience from roundtable discussions concerning the 1997 proposed local election law will be developed further to incorporate broad public input for the present Proposed Law.

The Proposed Law also contains several specific confidence-building provisions that incorporate the participation of political parties in election administration and make the system more open to public scrutiny. Such provisions include:

- appointment of political party nominees to the State Electoral Commission (SEC)(Article 11), Election Commissions (ECs) for the electoral districts (Article 13) and Electoral Boards (EBs) for the polling stations (Article 17);
- representatives of the political contestants may follow the work of the ECs and EBs from the beginning of the elections to the announcement of results, and their "warnings" or "remarks" must be included in the official reports from these bodies (Articles 20, 65 and 76);
- copies of the official reports of the EBs and ECs are to be given to representatives of the contestants (Articles 77 and 81);
- results of the voting at each polling station are to be announced on the spot (Article 77);
- there are explicit provisions for monitoring all activities of the campaign and election day

by both Macedonian and international organizations (Article 92).

A few measures could be taken to strengthen these provisions even further, such as: extending Article 20 to include the work of the SEC as well as the ECs and EBs; Articles 20, 65, and 76 could be expanded to provide copies of the official reports of ECs and EBs to monitors from Macedonian and international organizations; Article 92 could be expanded to allow organizations to monitor activities concerning electoral complaints and all other aspects of the election process. Also, Article 92 could be clarified so that reference to international agreements does not restrict monitoring activities or preclude appropriate individuals (such as scholars) or organizations interested in impartial monitoring of elections.

Another important clarification would be to provide explicitly in Articles 72 and 74 that representatives of the political contestants and monitors may accompany the special ballot box to and from the homes or hospitals and be present for voting and other election procedures at military units, prisons and detention centers.

### *Election Model*

The Proposed Law presents two election models for selecting the 120 Members of Parliament. One uses a mixed majoritarian-proportional system, and the other employs a proportional system with one or more electoral districts (Article 2). The relative strengths and weaknesses of majority, proportional and mixed election systems are well documented. NDI does not take positions concerning which system best fits the needs of any particular country. This is essentially a political decision to be made by national actors. That is also true of such questions as: what is the appropriate mix of majoritarian and proportional seats, what is the appropriate minimum percentage of votes to be obtained to include a party in the calculation of awarding seats, and how many electoral districts should be employed in a proportional system.

While a mixed system is administratively more complicated than either of the other two approaches, if crafted appropriately, it can have the advantage of moderating the effects of each of them. Some of the moderating effects of a mixed system can be gained in a proportional system that uses a significant number of election districts. Rather than attempting to present detailed analysis of advantages and disadvantages of the possible electoral models, NDI's experience demonstrates the importance of stressing that decisions about these matters are best taken after open discussion among the political contestants, broad civic education and public input. The Institute would be willing to offer advice concerning such a process.

## **II. Specific Topics**

### *Definitions of Terms*

The introductory section of the Proposed Parliamentary Election Law sets forth definitions of several terms. The comments presented on these terms may reflect ambiguities

created by the English translation of the Proposed Law provided to NDI

Article 4 states that every citizen with “business ability” has the right to vote. International standards generally provide that persons judged by a court to be mentally incompetent or found guilty of serious crimes (felonies) may be ruled ineligible to vote. Use of the term “business ability” should be brought into conformity with such standards. In addition, voting qualification provisions in the Proposed Law do not address voting by citizens who are not present in the country on election day. While there is no requirement for extending the vote to such persons under international standards, it is common to allow voting at embassies or by other means for citizens who are outside of the country on election day.

Article 55 provides for the possibility of annulling the election if a court finds that candidates used money acquired by “punishable acts.” The term “punishable acts” should be clearly defined, and the Article should state that the ruling must find that the election was materially affected as a consequence of using such funds.

Article 85 addresses conditions that require repeat voting and includes thresholds that must be met before a repeat is triggered by excess ballots or excess voting envelopes appearing in the ballot box. Article 85, Model 2, however, also states that voting must be repeated if the secrecy of voting is violated or there is an unjustified police presence at the polling station. These provisions should also be qualified by a threshold, such as voting will not be repeated unless these factors materially influenced results of the voting.

Article 6 provides that Members of Parliament cannot be recalled, while Article 87 sets forth specific provisions for recalling MPs. This contradiction should be removed. While the issue is essentially a political question, the provisions of Article 87 are consistent with international trends for accountability of elected officials. Article 87's terms, such as crimes that make an MP “unworthy of the position” or “unjustifiably absent”, however, are too vague to meet international standards against arbitrary government actions. Recall or removal must be based on clear procedures that provide minimum due process to protect the rights of the Member in question.

Article 38 provides that foreign organizations and individuals cannot “organize an election campaign.” While it is not uncommon to prohibit foreigners from standing as candidates or from controlling political parties, it is not usual to extend this to prohibiting advice or assistance. In fact, there is a growing trend for candidates and parties to establish contacts with parties outside the country and for candidates to employ campaign consultants from abroad. Article 38 could be clarified concerning this point.

#### Complaint Procedures

Article 90 provides that political contestants have the right to submit complaints to the electoral commission within 24 hours after they notice irregularities in the nominating or election

procedure. Article 91 allows voters to submit complaints concerning irregularities in the election procedure. Both articles provide expedited complaint and appeal procedures.

The articles should be clarified to indicate that the complaints go to the SEC or other specific body. The Proposed Law should provide a specific mechanism and resources to process complaints. The mechanism should address, among other matters, who must hear the complaints, provisions for staff to process complaints and follow enforcement of remedies provided, procedures for accepting evidence, the burden of proof in the proceedings, provisions for the SEC to initiate proceedings on its own motion, and whether the SEC should have an ability to investigate possible irregularities. Also, the Proposed Law should provide for preserving original records of electoral administration, ballots cast or other materials that could be crucial to electoral disputes.

Several provisions of the Proposed Law seem to inter-relate with the complaint procedures set forth in Articles 90-91, but a lack of cross-references and/or ambiguities in these provisions should be addressed to make it clear that Articles 90-91 control the others. These provisions can be found, for example, in Articles 22, 35 and 40.

Article 75 addresses ruling ballots valid or invalid but does not provide a complaint or challenge procedure. This is often one of the most contentious aspects of determining the outcome of elections, and providing a method to resolve disputes on such rulings could avoid confusion and create confidence among the political contestants. The procedures for summarizing and announcing election results set forth in Articles 81-83 do not provide for the effects of electoral complaints contesting the vote counts or other material issues. The announcement of results should be subject to resolution of material electoral complaints.

Article 41 sets forth basic provisions about the media. A special complaint mechanism concerning the media should be considered. When media access time is denied or news coverage violates the rights of a political contestant or contestants, it is important that they be able to seek immediate redress from a body (whether it be the SEC, a court or special media oversight body) that can provide an expedited process and an effective remedy, such as immediate retraction, correction or reply by the injured party.

#### *Election Resources and Campaign Financing*

Article 89 states that funds for organizing the elections are to be provided from the Budget of the Republic, and they are to be placed at the disposal of the SEC. This is an important provision that helps ensure independence of the election administration. Another important provision is found in Article 49's prohibition against government resources being used for the electoral advantage of any particular political contestant.

Article 50 requires election campaign organizers to open a special bank account for the election campaign, to put all funds received from organizations and individuals into the account

and to pay all campaign expenses from the account. Article 51 requires that a report of the total in the account and expenses paid be filed at the Parliament no later than three months after the elections. International experience with election campaign finance disclosure demonstrates that it is important to require reports during the campaign as well as after the election. This helps prevent election campaign abuses.

Article 53 provides two methods for calculating campaign spending limits (“per candidate” and “per registered voter”). International experience in this area shows that limitations on a “per registered voter” basis are generally more fair, if election districts have a significance difference in the number of voters, because it may be more difficult and expensive to reach larger numbers of voters. This may be off-set by other variables, such as large distances in sparsely populated districts making it more costly to reach voters than doing so in more densely populated ones with approximately the same number of voters.

Article 54 provides for compensation from national budget for part of the election expenses for those candidates who win election. While there is no international standard concerning this matter, there are examples where a wider basis for financial support has been provided. One example is to provide funds to all qualified candidates, and another is to provide funds to all candidates that receive a minimum percentage of the vote (for example, 10 percent). This has an advantage of encouraging serious political contestants, while not encouraging frivolous candidates.

### **III. Conclusion**

The Proposed Parliamentary Election Law provides a generally sound legal framework for elections. The Proposed Law contains significant provisions that incorporate international standards for fair and transparent elections, and it includes important considerations for building public confidence in the political process. The comments offered above by NDI seek to address possibilities for improvements in the Proposed Law and to overcome problems where they are presented. A number of technical points are not addressed in these comments, which NDI would be pleased to cover at a later time.

NDI hopes that these comments help elected and appointed officials as well as political and civic leaders to develop appropriate provisions for the election of Members of Parliament. The Institute also hopes that the comments assist in further developing public confidence in Macedonia’s electoral system. NDI remains available to provide further information and more detailed consultations.