



Strasbourg, 24 March 2014

Opinion No. 750 / 2013

CDL-AD(2014)001  
Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**AND**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**JOINT OPINION**

**ON THE DRAFT ELECTION CODE  
OF BULGARIA**

**Adopted by the Council for Democratic Elections  
at its 47<sup>th</sup> meeting  
(Venice, 20 March 2014)  
and the Venice Commission  
at its 98<sup>th</sup> Plenary Session  
(Venice, 21-22 March 2014)**

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## I. Introduction

1. On 26 November 2013, Ms Maya Manolova, Vice-President of the National Assembly of Bulgaria (hereafter “the National Assembly”) and President of the *ad hoc* parliamentary Committee in charge of drafting a new Election Code, requested the Venice Commission to prepare an opinion on a draft new Election Code of Bulgaria (hereafter “the draft Code”).<sup>1</sup> The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) decided to provide a joint legal opinion on the draft Code.

2. Following this request, the National Assembly of Bulgaria invited a delegation of the Venice Commission to visit Bulgaria on 13-14 November 2013. This visit aimed at gathering more information and clarifications regarding both the consultation process and substantial issues of the draft Code. The delegation had meetings with the parliamentary political parties (as well as a non-parliamentary party), the Central Election Commission, the *ad hoc* parliamentary Committee in charge of drafting a new Election Code, the Directorate General of Civil Registration and Administrative Services, the Bulgarian Delegation to the Parliamentary Assembly of the Council of Europe, as well as representatives of the media and civil society. The background elements obtained during the expert visit are reflected in this opinion.

3. On 14 March 2014, the Venice Commission and the OSCE/ODIHR have been informed by the National Assembly of Bulgaria that a number of recommendations of the draft Joint Opinion have been taken into consideration in the Election Code adopted by the National Assembly on 4 March. If confirmed, this would be a positive step forward.

4. This joint opinion is based on an English translation of the draft Code provided by the National Assembly of Bulgaria to the Venice Commission on 26 November 2013. The accuracy of the translation, as well as of the numbering of articles, clauses, and sub-clauses cannot be guaranteed. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

5. Considering the length of the draft Code submitted and the tight timeframe to provide an opinion, the OSCE/ODIHR and the Venice Commission have concentrated their comments on the most important elements of the text.

6. Relevant provisions of the Constitution of the Republic of Bulgaria were taken into consideration while drafting this opinion. However, this joint opinion does not provide an analysis of the laws that are cross-referenced in the draft Code but limits its scope to the draft Code.

7. The assessments and recommendations provided in this joint opinion are based on international electoral standards and commitments as well as good practices for the conduct of democratic elections. This opinion should be read in conjunction with the following documents:

- European Convention on Human Rights, Article 3 of the First Protocol;<sup>2</sup>
- Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990);<sup>3</sup>
- Other international and regional documents which are binding on Bulgaria;
- 2011 Venice Commission and OSCE/ODIHR, Joint Opinion on the election code of Bulgaria (hereafter “the 2011 joint opinion”);<sup>4</sup>

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<sup>1</sup> Draft Election Code of Bulgaria (CDL-REF(2013)059), available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2013\)059-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2013)059-e).

<sup>2</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No.: 005), available at: [www.conventions.coe.int/Treaty/en/Treaties/Html/005.htm](http://www.conventions.coe.int/Treaty/en/Treaties/Html/005.htm).

<sup>3</sup> Available at: [www.osce.org/odihr/elections/14304](http://www.osce.org/odihr/elections/14304).

<sup>4</sup> CDL-AD(2011)013, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)013-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)013-e).

- OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation;<sup>5</sup>
- Venice Commission documents:
  - i. Code of Good Practice in Electoral Matters;<sup>6</sup>
  - ii. Code of Good Practice in the field of Political Parties;<sup>7</sup>
  - iii. Guidelines on an internationally recognised status of election observers;<sup>8</sup>
- Council of Europe's Parliamentary Assembly (PACE) documents:
  - i. Post-monitoring dialogue with Bulgaria, Report;<sup>9</sup>
  - ii. Post-monitoring dialogue with Bulgaria, Resolution;<sup>10</sup>
  - iii. Observation of the early parliamentary elections in Bulgaria (12 May 2013) – Election observation report;<sup>11</sup>
- OSCE/ODIHR Limited Election Observation Mission Final Report on the 23 and 30 October 2011 presidential and municipal elections;
- OSCE/ODIHR Election Observation Mission Final Report on the 12 May 2013 early parliamentary elections.<sup>12</sup>

8. This opinion is provided with the goal of assisting the authorities, political parties, and civil society in Bulgaria in their efforts to develop a sound legal framework for democratic elections.

9. The present Joint Opinion was adopted by the Council for Democratic Elections at its 47<sup>th</sup> meeting (Venice, 20 March 2014) and by the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice, 21-22 March 2014).

## II. Executive Summary

10. The draft Code addresses a number of recommendations previously made by the Venice Commission and the OSCE/ODIHR in the 2011 joint opinion and in OSCE/ODIHR and PACE election observation mission reports. Amendments that address these recommendations are positive developments and in accordance with international electoral standards for democratic elections. The draft Code is therefore an improvement over the Code currently in place. The electoral system has been modified to some extent. A proportional representation system remains in place, with the introduction of a preference

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<sup>5</sup> OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, adopted by the Venice Commission at its 84<sup>th</sup> session (Venice, 15-16 October 2010, CDL-AD(2010)024), available at : [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

<sup>6</sup> Venice Commission of the Council of Europe, Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52<sup>nd</sup> session (Venice, 18-19 October 2002, CDL-AD(2002)023rev), available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev-e).

<sup>7</sup> Venice Commission of the Council of Europe, Code of Good Practice in the field of Political Parties, adopted by the Venice Commission at its 78<sup>th</sup> session (Venice, 13-14 March 2009, CDL-AD(2009)021), available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)021-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)021-e).

<sup>8</sup> Venice Commission of the Council of Europe, Guidelines on an internationally recognised status of election observers, adopted by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009, CDL-AD(2009)059), available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)059-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)059-e).

<sup>9</sup> Post-monitoring dialogue with Bulgaria, Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Rapporteur: Mr Luca Volontè, Italy, Group of the European People's Party (EPP/CD) (Doc. 13085, 4 January 2013), available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19244&lang=en>.

<sup>10</sup> Resolution 1915 (2013). Text adopted by the Assembly on 22 January 2013 (4<sup>th</sup> Sitting), available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19402&lang=en>.

<sup>11</sup> Council of Europe, Parliamentary Assembly, Observation of the early parliamentary elections in Bulgaria (12 May 2013), Report of the Bureau of the Assembly. Rapporteur: Mr Andreas Gross, Switzerland, Socialist Group (Doc. 13238, 24 June 2013), available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19784&lang=en>.

<sup>12</sup> All OSCE/ODIHR election observation mission reports on Bulgaria can be found at: <http://www.osce.org/odihr/elections/bulgaria>.

vote for candidates on a list (open list voting). Most of the political forces in Bulgaria seem to agree on the method of allocation of seats. The broad agreement on the electoral system chosen is welcome.

11. This opinion does not comment on the legislative processes which resulted in the draft Code. However, the Venice Commission was informed during the visit that the draft Code was the result of an inclusive process, largely due to the *ad hoc* parliamentary Committee in charge of drafting the text. This process allowed for political parties, the electoral administration, as well as representatives of civil society, and the media to submit proposals and to take part in the regular meetings of the *ad hoc* parliamentary Committee in charge of drafting the Code. A broad public consultation process encourages public trust and confidence in electoral legislation and processes.

12. Positive changes in the draft Code include:

- Balancing appointment and composition of the constituency, municipal, and polling station election commissions;
- Balancing the leadership positions on all election commissions;
- Reducing electoral deposits and signature requirements for registering independent candidates and political parties;
- Clarifying the deadlines for appealing denials of candidate registration;
- Clarifying what Central Election Commission (CEC) decisions are appealable to the Supreme Administrative Court; and
- Reducing the residency requirement for voters in hospitals and detention centres to six months in order to vote in local elections.

13. However, a number of recommendations raised in the 2011 joint opinion of the Venice Commission and the OSCE/ODIHR, as well as in OSCE/ODIHR final reports, remain unaddressed in the draft Code. Consideration should be given to addressing these recommendations before the draft Code is adopted. Nevertheless, in line with good electoral practice the stability of the legislation should be guaranteed, especially with regard to fundamental elements of the legal framework, such as the composition of the election administration. Fundamental changes should not be made within one year before an election process and it is thus recommended that such changes should only apply after the upcoming May 2014 elections to the European Parliament.<sup>13</sup> The unaddressed recommendations include:

- Improving voter registration and compilation of voter lists;
- Reducing restrictions of suffrage rights for citizens serving prison terms, regardless of the severity of the crime committed;
- Providing for an effective system of appeal of all election-related decisions to a competent body;
- Requiring more balance in the membership of the CEC;
- Harmonising the various deadlines of the electoral process, including deadlines regulating the complaints and appeals procedures;
- Granting an effective mechanism for challenging election results to all electoral contestants, as well as individual citizens on the grounds of irregularities in the voting procedures;
- The draft Code should be reviewed to ensure the right to vote of Bulgarian citizens holding a dual citizenship;
- Strengthening the authority of the National Audit Office to check the accuracy of campaign finance reports; and

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<sup>13</sup> See in this respect the Venice Commission Interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043), available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)043-e).

- Allowing the use of minority languages in an electoral campaign.

14. Additionally, the structure of the draft Code would benefit from further improvement. The election cycle is reflected in several parts of the draft Code. This leads to similar provisions in the second part of the draft Code for various types of elections. Such repetitions could be avoided by including these provisions in the first part of the draft Code (General Provisions) rather than spreading them across different sections in the second part.<sup>14</sup> Moreover, the wording of these similar provisions is not always consistent.

15. The OSCE/ODIHR and the Venice Commission stand ready to provide assistance to the authorities in their efforts to improve the legal framework for elections and bring it more closely in line with OSCE commitments and international standards.

### **III. Electoral system**

#### **A. The system of representation for the National Assembly and the Grand National Assembly**

16. According to the draft Code, the National Assembly is composed of 240 members elected in 32 multi-member constituencies under a proportional system with a possibility of a preference vote for one candidate on a candidate list (open list voting).<sup>15</sup> A candidate may benefit from the preference vote if the number of received votes is at least seven per cent of the votes cast for the candidate list.<sup>16</sup> The seven per cent threshold is mentioned in the Annex and is not reflected in the law itself. The seven per cent should be included in relevant articles of the draft Code. The threshold for political parties and coalitions for participating in the allocation of seats at the national level remains four per cent.<sup>17</sup>

17. The number of 32 multi-member constituencies is an increase in the number of constituencies from the 2011 Code, which provides for 31 multi-member constituencies, of which three are in the Administrative Region of Sofia City and two in the Administrative Region of Plovdiv. The other constituencies correspond to administrative regions. The additional constituency appears to be for the administrative region of Varna as Article 249 of the draft Code states that there will be “three in the Administrative Region of Sofia City, two in the Administrative Region of Plovdiv and two in the Administrative Region of Varna”.

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

19. Although the electoral system is a proportional representation system, differences in population among the 32 electoral constituencies may result in election results where the number of votes required to win a mandate in one constituency may vary significantly from the number required to win a mandate in another constituency. This was noted by the OSCE/ODIHR and the PACE election observation mission reports for the 2013 parliamentary elections.<sup>18</sup> This variance will likely persist due to the requirement that each constituency be allocated a minimum of four seats regardless of the constituency population. The

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<sup>14</sup> For example, the voting through ballot paper is described in Articles 208-211, but also in Articles 227-228 and 265-267.

<sup>15</sup> Articles 238(4), 246 and 249(1) of the draft Code.

<sup>16</sup> Annex No. 1, para. 11.3 of the draft Code.

<sup>17</sup> Article 297(2) of the draft Code.

<sup>18</sup> See page 5 of the OSCE/ODIHR Final Report on the 12 May 2013 parliamentary elections in the Republic of Bulgaria. See Para. 23 of the 2013 PACE Report (Doc. 13238).

OSCE/ODIHR and the Venice Commission recommend that consideration should be given to reviewing the legal provisions regarding the criteria to be considered in the delineation of constituencies and allocation of mandates through a public and inclusive discussion to ensure compliance with the principle of equal suffrage.<sup>19</sup>

20. Article 297 of the draft Code states that the method for allocating seats to political parties, coalitions, and independent candidates shall be based on the Hare-Niemeyer method.<sup>20</sup> However, the step by step mathematical calculations are to be done by the CEC according to the methodology included in Annex No 1 to the draft Code. The Hare-Niemeyer method is an acceptable proportional representation method of allocating mandates. However, there are some problems with the text of the annexes, as noted below.

21. Annex No 1 describes the steps for the distribution of seats to constituencies: first, the 240 seats are distributed according to the method of the largest remainders. If some constituencies have less than four seats allocated, these four seats are then allocated to such constituencies in a second step. The remaining seats are then distributed in a third step to the constituencies which had obtained more than four seats in the first step.<sup>21</sup> However, the procedure does not address the situation if, following this third step, some constituencies would be allocated fewer than four seats. The solution could be that these constituencies receive four seats and the rest of the seats are distributed again. The procedure would then be repeated until all constituencies have received four or more seats. The Venice Commission and the OSCE/ODIHR recommend this clarification be written into the procedure in the Annex.<sup>22</sup>

22. The rules described in Annex No 1 also indicate a problem when adjusting the results in constituencies to fit overall national results of electoral contestants. First, the nationwide distribution to parties is established according to the Hare-Niemeyer method. Then the results are calculated based upon the constituency results and added up. This may not produce the already established national distribution. It then becomes necessary to adjust the local results to fit the overall results. This process is rather complicated, including a stepwise calculation of results in the multi-member constituencies. For each step, each party's sum from the constituencies is checked against the party's nationwide result. If a party has the correct national result, it is excluded from the process. The procedure ends in Section X of Annex No. 1 with a final subtraction and addition of seats at the constituency level in order to reach the desired nationwide result. In a constituency, a political party having a surplus of seats with the weakest mandate of the party is removed and the seat is given to a party *in the same constituency* which is supposed to have more seats. The problem is that there will not always be such a party in the constituency. The rules provide no solution should this situation occur. Annex No 1 has introduced procedures which may reduce the risk for this situation to occur, but it is still possible. Among other options to avoid such deadlock situations, the possibility to change from a largest remainders' method to a divisors' method may be explored. If the largest remainders' method with Hare's quota is kept, a modification to the definition of the quota with an accurate calculation could be considered. The Venice Commission and the OSCE/ODIHR recommend the annex be amended to include procedures which will address these possibilities.

23. In paragraph 11.1 of Annex No 1, it is stated that a party will only win as many seats as it has candidates. However, there is no rule for redistributing remaining seats if there are some due to this contingency, which may indicate that such seats remain vacant. If this is the intention, then it should be stated explicitly.

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<sup>19</sup> See in this respect the Code of Good Practice in Electoral Matters, I 2.2 iv.

<sup>20</sup> The Hare-Niemeyer quota is determined by dividing the total number of valid votes cast by the number of seats in the constituency.

<sup>21</sup> According to paras. 2.2 and 2.3 in Annex No 1 of the draft Code.

<sup>22</sup> Annex No 1 should also state a division method, which would make the calculation simpler.

24. An independent candidate, under Article 248(2) of the draft Code, is entitled to a mandate if he or she has received valid votes of not less than the constituency Hare-Niemeyer electoral quota. After distribution of seats to independent candidates, seats are distributed to political parties and coalitions using the Hare-Niemeyer quota and largest remainders.

### **B. The system of election for the President and Vice President**

25. Article 310 of the draft Code provides that the President and Vice President are elected on a common ticket in a majoritarian two-round system. Under Article 93 of the Constitution and Article 342 of the draft Code, a candidate ticket that receives more than half of the valid votes cast is elected, provided that more than half of all registered voters have voted. Otherwise, a second round is to be held one week later between the two candidates who received the highest number of votes.

26. The second round of elections is required to take place within seven days of the first round. This is a very short time within which to organise elections, in particular if there are complaints. This is also applicable for the elections of mayors. The Venice Commission and the OSCE/ODIHR recommend that the length of time between the first and second round of voting be increased.

### **C. The system of representation for the European Parliament**

27. In 2014, the Bulgarian delegation to the European Parliament will have 17 members. Members of the European Parliament are elected by a proportional system from a nationwide constituency with a possibility of a preference vote for one candidate on a candidate list (open list voting).<sup>23</sup> The distribution formula is using largest remainders with Hare-Niemeyer's quota.<sup>24</sup> A candidate can benefit from the preference system if he/she obtains at least seven per cent of the votes cast.<sup>25</sup> This is an acceptable method of proportional representation for the distribution of mandates.<sup>26</sup>

### **D. The system of representation for municipal councils**

28. The municipal councils are elected from a constituency covering the municipality under a proportional election system with a possibility of a preference vote (open list voting).<sup>27</sup> The method used for allocating seats is the largest remainders with Hare's quota and a threshold equal to this quota. A candidate may benefit from the preference system if he/she obtains at least seven per cent of the municipal electoral quota.<sup>28</sup> In paragraph 4.4 of Annex No 5, it is stated that a political party will only win as many seats as it has candidates. However, there is no rule for redistributing remaining seats if there are some; this may indicate that such seats remain vacant. If that is the intention, it should be stated explicitly.

## **IV. Right to vote and be elected**

29. The Constitution and the draft Code do not provide for voting rights for citizens serving a prison sentence. This prohibition is absolute without any reference to the nature of the crime

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<sup>23</sup> Articles 238(4) and 353, Annex No. 3, para. 5.1 of the draft Code.

<sup>24</sup> Annex No. 3, para. 4.1 of the draft Code.

<sup>25</sup> Annex No. 3, para. 5.3 of the draft Code.

<sup>26</sup> If a party wins more seats than it has candidates, then it wins only as many seats as the number of its candidates and the remaining seats are distributed to the other parties first by allocating to those who have the next highest but not already utilised remainders.<sup>26</sup> It is difficult to foresee this situation occurring as the number of candidates on a list can be double the number of mandates to be distributed.

<sup>27</sup> Articles 238(4) and 399 of the draft Code.

<sup>28</sup> Annex No. 5, para. 5.2 of the draft Code.



committed. The disenfranchisement of citizens serving a prison sentence, regardless of the severity of the crime committed, weakens the guarantee of universal suffrage, and is inconsistent with OSCE commitments and international standards.<sup>29</sup> The Venice Commission and the OSCE/ODIHR reiterate the recommendation that the restriction of suffrage rights of citizens serving prison terms, regardless of the severity of the crime committed, should be reconsidered through legislative measures to ensure case by case decisions as to the proportionality between the limitation imposed and the severity of the offense.<sup>30</sup>

30. The Venice Commission and the OSCE/ODIHR recommended in the 2011 joint opinion, a constitutional amendment concerning the restriction of the right to stand for Bulgarian citizens holding a dual citizenship.<sup>31</sup> Considering the recent evolution of the case law of the European Court of Human Rights, the deprivation of the right to be eligible for Bulgarian citizens holding dual citizenship might be deemed contrary to Article 3 Protocol 1 in conjunction with Article 14 of the European Convention on Human Rights.<sup>32</sup> The draft Code should be reviewed to ensure the right to be elected for Bulgarian citizens holding dual citizenship.<sup>33</sup>

31. The 2011 joint opinion expressed concern about a 12-month residency requirement established for the registration of voters under medical treatment and voters in detention centres. As Articles 9(7) and 29(2) of the draft Code reduce this requirement to six months and the requirement is applicable to local elections, the concern expressed by the Venice Commission and the OSCE/ODIHR is addressed.

## V. Election administration

32. The elections are administered by a three-tiered administration composed of:

- a. the CEC<sup>34</sup>;
- b. constituency<sup>35</sup> or municipal<sup>36</sup> election commissions; and
- c. polling station election commissions.<sup>37</sup>

33. The draft Code establishes a new composition of the CEC and provides for a permanent CEC, addressing a long-standing recommendation of the OSCE/ODIHR and the Venice Commission that the CEC be a permanent body. Fifteen (previously 19) members of the CEC shall be elected by the National Assembly, based on proposals from the various parliamentary groups. Furthermore, the CEC chairperson, the two deputy chairpersons and the secretary may not be nominated from the same parliamentary group. There are further requirements for the members' professional background and limitations due to holding another position or office that is incompatible with commission membership.<sup>38</sup>

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<sup>29</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document provides that "participating States will ensure that the exercise of all the human rights and fundamental freedoms will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law". See also judgements of the European Court of Human Rights, *Hirst (2) v. the United Kingdom*, judgment of 6 October 2005, Application no. 74025/01; *Frodil v. Austria*, judgment of 8 April 2010, Application no. 20201/04, para. 25; *Greens and M. T. v. the United Kingdom*, judgment of 23 November 2010, Applications nos. 60041/08 and 60054/08; *Scoppola v. Italy (No. 3)* [GC], no. 126/05, 22 May 2012. See also the Code of Good Practice in Electoral Matters, I 1.1 d. See para. 17 of the 2011 joint opinion.

<sup>30</sup> Article 38 of the draft Code. See the Code of Good Practice in Electoral Matters, I 1.1 d.v.

<sup>31</sup> For parliamentarian and presidential elections. See para. 18 of the 2011 joint opinion.

<sup>32</sup> See, for example, judgment *Tănase v. Moldova*, 27 April 2010.

<sup>33</sup> Articles 397 and 407 of the draft Code.

<sup>34</sup> Articles 46-58 of the draft Code

<sup>35</sup> Articles 59-73 of the draft Code

<sup>36</sup> Articles 74-88 of the draft Code

<sup>37</sup> Articles 89-100 of the draft Code.

<sup>38</sup> Article 50 of the draft Code.

34. During its expert visit to Bulgaria, the Venice Commission observed an overall consensus in favour of the changes made in regard to the election administration. Further, these changes constitute improvement and partially respond to previous recommendations expressed by the OSCE/ODIHR and the Venice Commission in the 2011 joint opinion and OSCE/ODIHR election observation mission reports. However, concerns remain and the draft Code requires additional improvements as discussed below.

35. Article 46 of the draft Code provides that the 15 members of the CEC shall be elected by the National Assembly. Although the chairperson, the two deputy chairpersons, and the secretary of the CEC may not be nominated by the same parliamentary group, there is no requirement as to how the nominations will be distributed among various parliamentary groups. Thus, there is no guarantee in the draft Code for the formation of a pluralistic and balanced CEC reflective of all parliamentary groups, which could contribute to ensuring impartiality. Under the current Article 23(7), nominations to the CEC are to be reflective of “the proportion of the parties and coalitions of the parties represented in Parliament [...] using the greatest remainder method”. This proportional formula still applies for constituency election commissions appointed under Article 61 of the draft Code, but does not apply to the CEC. Under the draft Code, with the exception of the three leadership positions for the CEC, the National Assembly is free to nominate CEC members reflective of a single parliamentary group. Although the establishment of a permanent CEC is a positive step, the lack of nominating guarantees for pluralism, inclusiveness, and balance is a significant concern. The Venice Commission and the OSCE/ODIHR recommend that measures be included in the draft Code to ensure the establishment of a balanced CEC.

36. Decisions of the CEC shall be taken by a two-thirds majority of present members.<sup>39</sup> If this majority has not been established, a rejection of the decision shall be presumed. It is understandable that the idea is to create as broad consensus as possible for decisions of the CEC. Moreover, in cases where a non-decision is a viable alternative, such non-decisions are appealable. However, in a large number of the CEC decisions listed under Article 57 of the draft Code, a decision needs to be taken and a non-decision is therefore not an option. If there are disagreements, decisions need to be voted on. With a two-thirds majority requirement there is a risk of deadlock on some decisions. It is recommended that the decision-making process be qualified in such a way that decisions are made when needed. This comment is also valid for lower-level commissions.<sup>40</sup>

37. The process for appointing the constituency election commissions is quite complex. Article 59(2) requires this process to be completed and commissions appointed not later than 45 days before election day. Article 60 of the draft Code requires the regional governor to hold public consultations involving all political parties and coalitions. The political parties and coalitions are required to present written proposals for the membership of the constituency election commission, with detailed information regarding the proposed members and alternate members. “A memorandum of the results of the consultations conducted” is prepared and signed by all participants. Participants can also refuse to sign the memorandum or sign a dissenting opinion to the memorandum. If a consensus on membership is reached, the regional governor presents a written proposal on the composition of the constituency election commission to the CEC. If a consensus is not reached or the regional governor fails to timely submit a proposal to the CEC, then the CEC makes the appointments based on the individual proposals of the political parties and coalitions.

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<sup>39</sup> Article 53(4) of the draft Code.

<sup>40</sup> See for example Article 70(4) of the draft Code.

38. Article 61 of the draft Code places requirements on the membership of the constituency election commission. The chairperson, the deputy chairperson, and the secretary may not be from the same political party or coalition. The members representing political parties and coalitions in the National Assembly are to be in proportion to the parties' representation, but one party cannot have the majority in the commission. In addition, parties and coalitions which are only in the European Parliament are entitled to get one member each in the constituency election commission.

39. Municipal election commissions are appointed in a process similar to the one used for constituency election commissions. Article 75 of the draft Code requires the mayor of the relevant municipality to hold public consultations. Political parties and coalitions submit written proposals for membership and there is an attempt to reach consensus. If consensus is not reached, then the CEC makes the appointments based on the written proposals of political parties and coalitions. Article 76 of the draft Code requires certain balance in the composition and is similar to Article 61 of the draft Code regulating the composition of the constituency election commission. A similar process for public consultations, attempted consensus, and proportionate representation of political parties and coalitions is established in Articles 91 and 92 of the draft Code for the appointment of polling station commissions.

## **VI. Voter lists and voter registration**

40. The voter lists are extracted from the population register maintained by the Civil Registration and Administration Services Department of the Ministry of Regional Development and Public Works (GRAO).<sup>41</sup> Voters in hospitals, detention centres and ships are entered into special lists compiled by the individual in charge at such institution, centre or ship and are removed from the regular voter lists.<sup>42</sup> Additionally, voters who expect to be abroad on election day can be listed on voter lists at a consular office and the person will be removed from the regular voter list.<sup>43</sup>

41. A long-standing concern that the number of registered voters seems high when compared to the 6.2 million population over the age of 18 years was mentioned to the Venice Commission during its expert visit.<sup>44</sup> As described in the OSCE/ODIHR election observation mission report on the 2013 parliamentary elections, the size of the population is calculated based on the population that is present on the territory of the country or has left the country for a period not exceeding one year. In contrast, the number of voters encompasses all Bulgarian citizens with voting rights, including citizens residing abroad. This partly explains the difference between the numbers of population and registered voters.

42. The 2011 joint opinion and OSCE/ODIHR and PACE election observation mission reports made three major recommendations regarding voter lists. The recommendations were: (1) increasing the accuracy of voter lists; (2) increasing public trust in the integrity of lists through the GRAO disaggregating voter data so voter data can be assessed by district, municipality, and category of voter; and (3) improving procedures for correcting lists, particularly on election day with improved procedures for the use of the supplementary lists.<sup>45</sup>

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<sup>41</sup> Article 26 of the draft Code.

<sup>42</sup> Articles 28, 29 and 30 of the draft Code.

<sup>43</sup> Article 31 of the draft Code.

<sup>44</sup> The data of the National Statistics Institute is available at: <http://www.nsi.bg/otrasalen.php?otr=53>. The number of voter lists during the 2013 parliamentary elections was 6.8 million, according to the GRAO.

<sup>45</sup> OSCE/ODIHR Election Observation Mission Final Report, page 8, part VI on "Voter Registration", available at: [www.osce.org/odihr/elections/103878](http://www.osce.org/odihr/elections/103878).

PACE Report (Doc. 13238), paras. 30, 58, available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19784&lang=en>.

The draft Code remains relatively unchanged in these areas. Thus, the recommendations remain unaddressed.

43. The draft Code retains use of the “removed persons list”, which is a list of persons who have been removed from the regular voter list because they were no longer meeting the requirements to be registered to vote. The use of this list was noted as problematic in the 2011 OSCE/ODIHR election observation report on the presidential and municipal elections. Article 39 of the draft Code provides a procedure for a voter to seek removal from the “removed persons” list and inclusion on the voter list. Although ‘removal’ from the “removed” list may result in addition to the voter list, the maintenance of two separate lists does not appear to provide any additional protections for voters or to increase the accuracy of the voter lists. However, Articles 39 and 40 of the draft Code do include a procedure, as recommended in the 2011 OSCE/ODIHR election observation mission report, for a voter to challenge his or her inclusion on the list of “removed persons”. Article 39 requires the “removed person” to file a written application, on a standard form, with the mayor or lieutenant mayor of the municipality. The application is to be examined “without delay” and the decision reasoned and pronounced. A refusal of exclusion from the “removed person” list can be appealed to the respective administrative court within 24 hours of its day of receipt. The appeal shall be decided “without delay” and is not subject to further appeal. Based on the decision to remove a voter from the “removed person” list, Article 39(6) provides that the voter is added to the voter list delivered to the polling station election commission. The OSCE/ODIHR and the Venice Commission recommend that consideration could be given to abolish the “removed persons list”.

44. Article 40 of the draft Code grants another opportunity for a voter to be removed from the “removed persons” list on election day. On election day, Article 40 allows a voter who is “entered on the list of the removed persons” to vote “if he/she presents a certificate from the municipality that the reason has become irrelevant or that there is no reason for entry thereof on the roll or if he shows up at the polling station, which has jurisdiction according to the permanent address [...]”. The certificate is issued by the municipality on “a standard form as approved by the CEC, subject to a verification check of whether there is or there is not a reason for entry of the person on the roll.” Article 40(3) provides that, upon presentation of the certificate and the voter’s identity document, “the voter shall be excluded from the list of the removed persons and all his details shall be entered in the additional page of the electoral roll”.

45. The process stipulated by Article 40 for obtaining a certificate to vote on election day without judicial involvement is of concern. The OSCE/ODIHR 2013 election observation report specifically recommended the introduction of a reasonable deadline for all categories of voters to request changes prior to election day and for judicial oversight for election day registration of voters. A decision on election day registration should not be taken by the polling station election commission.<sup>46</sup> Further, no deadline is stated in Article 39 and it would appear that procedures under Article 39 are available until the voter list is delivered to the polling station election commission. Thus, the recommendations to introduce reasonable deadlines for changes and judicial involvement for election day registration remain unaddressed.

46. It also appears that Articles 39 and 40 may be circumvented completely as long as a voter “is entitled to vote”. Article 264(4) provides that a voter, who is not entered on the voter list but is entitled to vote, shall be entered on the supplementary list and allowed to vote. Arguably, the entitlement to vote is established by presenting a decision, according to Article 39, or a certificate, according to Article 40. However, Articles 264(4) and 252(3) allow a citizen, who has been abroad, to vote on election day according to the polling station of the voter’s permanent address, upon presentation of an identity document and signing of a

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<sup>46</sup> See in this respect the Code of Good Practice in Electoral Matters, I, 1.2, iv.

declaration that the person “shall not vote elsewhere”. These articles do not explicitly require a decision or a certificate. Thus, it can be argued that the entitlement to vote is guaranteed to any citizen who meets the requirements of Article 42 of the Constitution. Regardless of this possibility, the election commissions should not be forced to make this interpretation and the draft Code should state clearly what proves the entitlement to vote, so that polling station commissions can properly administer voting. It is recommended that Articles 264 and 252 clearly state what documentation is necessary to establish the entitlement to vote.

47. As noted in paragraph 40 above, the draft Code remains relatively unchanged in the three areas where recommendations were made for the improvement of legislation regulating voter registration. The procedures for creating and revising the voter lists and the lists of “removed persons” do not increase the accuracy of the lists or public confidence in the integrity of the lists. The procedures simply create greater opportunities for a person to be included as a voter at late stages in the electoral process, on election day, and in some instances without any judicial oversight or involvement.

48. A candidate, observer and member of an election commission may be issued a non-residence voter certificate to allow the person to vote in a polling station other than the polling station where the person is listed. Such persons are removed from the regular voter lists after issuance of the non-resident certificate.<sup>47</sup> Persons who reside at a place other than their permanent residence may be removed from their regular voter list and listed in their present location upon written request.<sup>48</sup> Students may vote where they study upon presentation of identity documentation confirming their student status.<sup>49</sup>

49. It is clear that citizens in Bulgaria have ample opportunities to register to vote in elections and to change registration options as late as on election day and through alternative means. These enhanced opportunities for registration can be considered positive, but previous recommendations to introduce additional mechanisms for increased accuracy in voter lists and greater transparency in voters’ data through disaggregation of data on voter registration by districts, municipalities and categories of voters by the GRAO have not been addressed.

## **VII. Candidate registration**

50. The 2011 joint opinion and OSCE/ODIHR and PACE election observation mission reports made three primary recommendations regarding registration of political parties, coalitions, and independent candidates for elections. The recommendations are: (1) lowering the number of signatures required to register as an independent candidate; (2) simplifying procedures for registration of political parties, coalitions, and independent candidates; and (3) clarifying the deadline for appealing decisions on candidate registration.<sup>50</sup> The draft Code partially addresses these recommendations.

51. Candidate lists can be submitted by political parties and coalitions registered with the CEC. Independent candidates can be put forward by nomination committees. Several changes introduced in the draft Code make it easier for smaller political parties and independent candidates to participate as electoral contestants. Article 129 lowers the amount of the electoral deposit for national and European Parliament elections to 2,500 BGN for

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<sup>47</sup> Article 34 of the draft Code.

<sup>48</sup> Article 36 of the draft Code.

<sup>49</sup> Article 241 of the draft Code.

<sup>50</sup> See paras. 34-36 of the 2011 joint opinion; OSCE/ODIHR Election Observation Mission Final Report on the 2013 parliamentary elections, pages 9-10, part VII on “Candidate Registration”, available at: [www.osce.org/odihr/elections/103878](http://www.osce.org/odihr/elections/103878). PACE Report (Doc. 13238), paras. 33, 58, available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19784&lang=en>.

political parties; 5,000 BGN for coalitions; and 100 BGN for a nomination committee of independent candidates. Signature requirements are lowered to 2,500 for political parties; 5,000 for coalitions; and 1,000 for independent candidates in parliamentary elections and 2,500 for candidates in presidential and European Parliament elections. These are positive changes addressing previous Venice Commission and OSCE/ODIHR recommendations.

52. Article 416(1) of the draft Code requires different scales of signature requirements for nominating and registering independent candidates at the municipal level, based on the number of inhabitants in the respective municipalities. For municipalities with up to 10,000 residents, the right to nominate and register an independent candidate for municipal councillor or mayor requires no less than 100 voters from the considered municipalities. The OSCE/ODIHR and the Venice Commission recommend that this requirement could be lowered for smaller villages and municipalities.

53. Other than lowering the amount of the electoral deposit and the required number of signatures, the draft Code introduces no significant changes in the registration process or concerning the collection or verification of signatures that would simplify registration procedures. The OSCE/ODIHR observed in the 2013 parliamentary elections that 22 per cent of the signatures presented by political parties were invalidated.<sup>51</sup> The previous recommendation for improved registration procedures remains unaddressed.

54. The draft Code addresses the concerns over clarity and deadlines for appeal of decisions on denying political party or coalition registration. Article 134(3) addresses a refusal of registration for political parties and states that denial of registration is appealable to the Supreme Administrative Court pursuant to the procedures of Article 58. The deadline for appeal stated in Article 58 is three days. Similar provisions are stated in Article 141 concerning a decision denying the registration of a coalition for the elections. Similar provisions are stated in Article 256 concerning a decision denying the registration of an independent candidate.

## **VIII. Campaign finance**

55. The draft Code makes only minor changes in campaign finance provisions. The prior articles on campaign finance (Articles 150-161) are now numbered as Articles 162-174 in the draft Code. The intended limit on the total amount of financing in parliamentary elections is unclear. Article 165 provides two “options” for limits in parliamentary elections. Either the options are internal notes of the drafters of the Code, indicating no decision as to the Code’s final text, or political parties participating in a coalition are able to use the highest limit of the two options. The current limit under Article 155 is 4,000,000 BGN for political parties and coalitions and is reflected in Option I. Under Option II of Article 165 of the draft Code, it would appear a coalition has a limit of 2,000,000 BGN and each party within the coalition has a limit of 1,000,000 BGN. Thus, Article 165 of the draft Code requires clarification.

56. Contestants do not have an obligation to report on the expenditures of an election campaign during the campaign period as only reports on donations and income of the campaign finances have to be submitted before the elections.<sup>52</sup> The draft Code does not regulate mechanisms for the National Audit Office (NAO) to check the accuracy of the reports. The OSCE/ODIHR election observation mission report on the 2013 parliamentary elections states: “It should be ensured that all political parties and nomination committees submit information to the public register maintained by the NAO as required by the law on an ongoing basis. The NAO could have the authority to request this information if failure to

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<sup>51</sup> See OSCE/ODIHR Election Observation Mission Final Report, page 10, part VII on “Candidate Registration”.

<sup>52</sup> Article 171 of the draft Code.

submit it is suspected and to sanction the respective party for failure to comply with the law. The authority of the NAO could be strengthened and additional resources granted thereby enabling it to crosscheck and verify the authenticity of reported expenditures of electoral contestants against actual expenditures.” The recommendation remains unaddressed.

57. The 2011 joint opinion noted that sanctions provided in the law for campaign finance violations “may not be proportionate to breaches of the requirements regarding the financing of the election campaign and therefore not dissuasive enough.”<sup>53</sup> This concern has also been expressed in the election observation mission reports of the OSCE/ODIHR. Further, the Group of States against Corruption (GRECO) has stated that the current Article 289 of the Code, which provides for a range of monetary sanctions for campaign finance violations between 5,000 and 10,000 BGN, did not produce the desired dissuasive effect.<sup>54</sup> Articles 476-479 of the draft Code provide for a range of monetary sanctions for campaign finance violations between 2,000 and 10,000 BGN. As the maximum monetary sanction remains at 10,000 BGN, the concern with the absence of dissuasive sanctions for violations of campaign finance rules remains valid and should be addressed.

## **IX. Campaigning and media**

58. The OSCE/ODIHR and the PACE made several recommendations in their election observation reports on the 2013 parliamentary and the 2011 presidential elections for improvement of media provisions.<sup>55</sup> Some of those recommendations address issues of media ownership and the Radio and Television Act, which has not been reviewed for this joint opinion except to the extent amendments are included in the Transitional and Final Provisions of the draft Code. The draft Code partially addresses the OSCE/ODIHR recommendations.

59. The OSCE/ODIHR recommended introducing legal provisions regulating the publishing of contracts between the media and electoral contestants which could include a requirement that information be provided in a systematic and standardised format within required deadlines. Article 180 of the draft Code appears to address this recommendation by specifying five categories of information that must be disclosed. However, the phrase “if the contract has been concluded with an intermediary”, which is at the end of Article 180(1), implies that this requirement does not apply if the contract was not concluded with an intermediary. The Venice Commission and the OSCE/ODIHR recommend that this be clarified in Article 180 in order to assess whether the recommendation has been adequately addressed.

60. The OSCE/ODIHR recommended adopting regulations to require that paid content in political advertising be clearly labelled and legislation to prohibit hidden advertising be introduced. Although the draft Code contains no prohibition on hidden advertising, Article 179 states: “When broadcasting, publishing and distributing paid forms of coverage of an election campaign, the providers of media services shall separate them through visual, sound or spatial means and shall indicate in an appropriate manner that the material is paid for”. Thus, the recommendation is partially addressed.

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<sup>53</sup> See para. 37 of the 2011 joint opinion. See also PACE Report (Doc. 13238), para. 22.

<sup>54</sup> See “GRECO Compliance Report on Bulgaria: Transparency of Party Funding”, 19 October 2012, paras. 84-85, 89.

<sup>55</sup> See 2011 OSCE/ODIHR Election Observation Mission Final Report, pages 24-25, part XVI on “Recommendations”. See 2013 OSCE/ODIHR Election Observation Mission Final Report, pages 13-16. See 2013 PACE report (Doc. 13238), Paras. 34-45, 58 (recommendations).

61. The OSCE/ODIHR recommended that the Council on Electronic Media could be tasked with supervising overall compliance with regulations concerning paid and editorial content based on media monitoring, and with power to provide a remedy during the campaign in a timely manner. An amendment in Article 22 of the Radio and Television Act suggests greater cooperation with the CEC in monitoring media coverage of election activities. However, it cannot be determined from this one amendment whether the recommendation concerning the powers of the Council on Electronic Media has been addressed.

62. Although the draft Code in Article 176 states the general principle that “candidates and parties, coalitions and nomination committees that have registered candidates shall be entitled to equal access to the sources of the information they need for the purposes of the election campaign”, the draft Code provides few guarantees for equal access. In fact, the draft Code shifts some responsibility for creating a level playing field from the state to the political contestants themselves.<sup>56</sup> These provisions require the electoral contestants to reach a consensus on the content of the coverage in certain formats. However, consensus will be difficult to achieve before or during the electoral campaign period. Indeed, it will be difficult to reach an agreement among broadcast media and all electoral contestants on the content of debates due to the fact that various competing political parties will promote discussion of certain issues beneficial to the party’s campaign. The Venice Commission and the OSCE/ODIHR recommend that the draft Code include provisions to ensure equality in media opportunities.

63. Article 178 of the draft Code requires the state to provide “media packages” to parties, coalitions, and independent candidates, for the purchase of paid advertising, in the amount of 40,000 BGN. This should be of assistance to small political parties and independent candidates. This change is positive and partially addresses a previous OSCE/ODIHR recommendation for greater financial support from the state for independent candidates.

64. Article 185(1) of the draft Code stipulates limitations on canvassing outside the official election campaign period. Although supplementary provisions of the draft Code define “campaigning”, the supplementary provisions do not provide a definition on “canvassing”. Canvassing would appear to be the correct terminology. If “campaigning” is not the same as “canvassing” in the original language version of the text, then the Venice Commission and the OSCE/ODIHR recommend Article 185 be amended to include a definition of “canvassing”. Providing a definition of “canvassing” has been a long-standing recommendation of the OSCE/ODIHR.

## **X. Voting process**

### **A. Electronic voting**

65. Articles 212-214 of the draft Code allow for “machine voting” by “using electronic communication means and data processing” should a voter so choose. Although this procedure of voting is, in principle, compatible with the Code of Good Practice in Electoral Matters, this compatibility depends primarily on adequate provisions, through national legislation and practice, of the prescribed conditions, taking particular account of technical and social conditions.<sup>57</sup> Although Article 213 provides a list of some general principles for this alternative form of voting there is no guarantee that these general principles will be implemented with specific rules that are fundamental to genuinely democratic elections held by secret ballot. In this respect, the Committee of Ministers of the Council of Europe has highlighted in its Recommendation (2004)11 on legal, operational and technical standards for

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<sup>56</sup> See Articles 189(4), 195(2) and 196(3) of the draft Code.

<sup>57</sup> Venice Commission, Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe (CDL-AD(2004)012), para. 56.

Available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)012-e).



e-voting that “e-voting shall be as reliable and secure as democratic elections and referenda which do not involve the use of electronic means”.<sup>58</sup>

66. Additionally, an entire range of privacy and data protection concerns are raised as Article 213(3) of the draft Code requires the system to identify voters and ensure that only voters with the right to vote are able to vote. In order to do this, the system will have to process and store personal data, which invokes the application of numerous standards for the processing of personal data through electronic means. The limited text of these articles is insufficient for establishing legal and technical guarantees required before electronic voting is introduced and before personal data is processed by the system. Further, the introduction of electronic voting should be done gradually and through piloting it in a limited number of polling stations, with contingency plans for backup voting arrangements should the electronic voting system fail. The Venice Commission and the OSCE/ODIHR recommend electronic voting not be introduced without addressing these issues and drafting legal text that is specific and detailed. The introduction of electronic voting based on the text of Articles 212-214 should be carefully reconsidered.

### **B. Other aspects of the voting process**

67. Article 209(2) of the draft Code states that “When a ballot paper is torn off, the same number shall remain on the ballot paper and in the book, and they shall be compared by the election commission after the ballot paper has been completed and before it is deposited in the ballot box.” The ballot paper has to be given to a member of the polling station election commission for such a check.<sup>59</sup> This procedure as well as double stamping of the ballot papers can effectively deter fraud but might also compromise the secrecy of the vote.

68. According to draft Code voters are denied the right to vote in case the ballot paper is declared invalid before it is placed in the ballot box.<sup>60</sup> It has to be noted that the voter may be given a false ballot paper before voting by a member of the polling station election commission. A more appropriate sanction should be considered in this situation.

69. Article 57 of the draft Code has a detailed list of duties for the CEC. It is particularly welcome that there is an obligation to ensure transparency by publishing the election results at the polling station level.

## **XI. Complaints and appeals procedures**

70. The draft Code partly addresses the Venice Commission and the OSCE/ODIHR recommendations aimed at clarifying the complaints and appeals procedures. The competent authorities and procedures to appeal are more clearly stated in the draft Code.<sup>61</sup> The draft Code requires the Constitutional Court to adopt a decision on an appeal within a month of its receipt.<sup>62</sup>

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<sup>58</sup> Committee of Ministers of the Council of Europe, Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting, 30 September 2004, item i. The recommendation enumerates the legal standards for electronic voting which encompass the fundamental principles of universal, equal, free and secret suffrage and specific procedural safeguards (Appendix I), available at: [www.coe.int/t/dgap/democracy/activities/ggis/E-voting/](http://www.coe.int/t/dgap/democracy/activities/ggis/E-voting/).

<sup>59</sup> Articles 265(3)4, 265(4) and 328(3)3 of the draft Code.

<sup>60</sup> See for instance Article 265(5) of the draft Code.

<sup>61</sup> Section XII of the draft Code.

<sup>62</sup> Articles 305-306 of the draft Code.

71. The 2011 joint opinion expressed concerns regarding the possibility to appeal a denial of registration of a political party or a coalition for the elections.<sup>63</sup> The opinion noted a lack of clarity as to whether a denial could be appealed and the applicable deadline if the denial was appealable. Both these concerns are addressed in the draft Code. Article 58 of the draft Code expressly states that the decisions of the CEC are appealable to the Supreme Administrative Court within a deadline of three days from the date of the announcement of the decision. Article 58 also requires the Supreme Administrative Court to examine the case and pronounce a decision within three days. Article 134(3) addresses a refusal of registration for political parties and states that denial of registration is appealable to the Supreme Administrative Court pursuant to the procedures of Article 58. Similar provisions are stated in Article 141 concerning a decision denying the registration of a coalition for the elections; Article 154 concerning a decision denying the registration of a nomination committee; and Article 256 concerning a decision denying the registration of candidates. The draft Code addresses the 2011 joint opinion concerns over clarity and deadlines for appeal of decisions denying political party or coalition registration.

72. The 2011 joint opinion also expressed concern as to the limited number of stakeholders who are able to challenge the election results. Candidates and voters registered in the constituency concerned should be entitled to contest the election results.<sup>64</sup> As underlined in paragraph 57 of the 2011 joint opinion, “[i]n June 2009, the European Court of Human Rights concluded that similar provisions laid down in the then applicable Parliamentary Election Law did not provide for effective remedy due to the limited category of persons and bodies which may refer a case to the Constitutional Court. The above-mentioned articles should be amended accordingly so that the Code provides effective remedies for challenging election results.”<sup>65</sup> Although the draft Code grants candidates the right to challenge election results, voters do not have the right to challenge election results. The previous recommendation to extend the right to challenge election results to voters is not addressed.

73. Article 8(4) of the draft Code provides a deadline of seven days to submit a complaint on the decision to establish polling stations. Based on the Code of Good Practice in Electoral Matters,<sup>66</sup> it is suggested to shorten this deadline. A shorter deadline for submitting complaints on the establishment of polling stations might facilitate a more expeditious process of nomination of members of polling station election commissions. The deadline for challenging decisions on establishing polling stations abroad is reduced to three days and welcomed.<sup>67</sup>

74. Article 43(1) of the draft Code stipulates that any voter may request elimination of any omissions and errors in the electoral roll. It is not entirely clear whether this refers to each voter’s own records or to other voters’ data. The Bulgarian authorities have stated that this refers only to voters’ own records, but the Venice Commission and the OSCE/ODIHR recommend that the language in this provision be clarified.

75. Article 58(1) of the draft Code states “the decisions of the CEC, with the exception of the explicitly referred to in the Code (sic), shall be appealable before the Supreme Administrative Court.” However, review of the draft Code does not reveal any such exceptions. It would appear that all decisions of the CEC are subject to appeal. Article 87(1)(22) of the draft Code provides that some decisions of the municipal election commission “shall not be subject to appeal”. A similar provision is found in Article 72(1)(20), making some decisions of the

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<sup>63</sup> See para. 36 of the 2011 joint opinion.

<sup>64</sup> Code of Good Practice in Electoral Matters, II 3.3 f, Explanatory Report, para. 99, 3rd sentence: “A reasonable quorum may, however, be imposed for appeals by voters on the results of elections”, that is to say that appeals will be admissible only if made by a minimum number of voters. See also OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections, available at: <http://www.osce.org/odihr/elections/104573>.

<sup>65</sup> Citing *Petkov and others v. Bulgaria*, 11 June 2009.

<sup>66</sup> Code of Good Practice in Electoral Matters, II.3.3.g.

<sup>67</sup> Article 13(6) of the draft Code.

constituency election commission “not subject to appeal.” Thus, the previous recommendation that all decisions of the election administration should be subject to appeal remains unaddressed. The Venice Commission and the OSCE/ODIHR recommend that the draft Code provides for the right to appeal all election-related decisions to a competent body.<sup>68</sup>

76. Article 58 of the draft Code does not provide a remedy where the CEC fails to make a decision where a complaint or appeal has been properly submitted to the CEC. The Venice Commission and the OSCE/ODIHR recommend that Article 58 be amended to include the right to appeal where the CEC fails to make a decision on a properly submitted complaint or appeal.

77. Deadlines for submitting petitions and for examination of those petitions by the Constitutional Court are longer than recommended in the Code of Good Practice in Electoral Matters.<sup>69</sup> In case elections are declared invalid, the decision of the CEC may not be challenged.<sup>70</sup> Such restriction should be eliminated.

## **XII. Other issues**

### **A. Minority languages**

78. The draft Code states that “[t]he election campaign shall be conducted in Bulgarian language”,<sup>71</sup> depriving minorities of the opportunity to promote their effective participation in public affairs through election processes. The OSCE/ODIHR and the Venice Commission still recommend that this provision be reviewed.<sup>72</sup>

### **B. Election observers**

79. Article 111 of the draft Code states that observers can conduct their activities up until the announcement of the election results. This text implies that, after the announcement of election results, observers will no longer be allowed to carry out their activities. However, in order to obtain an overall view of the election process, it is necessary for observers to be present during post-announcement stages, such as complaints and appeal procedures. It is recommended that the timeframe during which observers can implement their activities be extended.<sup>73</sup>

### **C. Timelines**

80. The draft Code states a number of deadlines for completing various stages of the electoral process. It appears that some deadlines may be difficult for stakeholders to meet. For example, candidates have to be registered at the latest 32 days before election day.<sup>74</sup> However, the provisions on the media prescribe that the Bulgarian National Television and the Bulgarian National Radio have to reach an agreement with the parties and the candidates on the format of the debates at the latest 31 days before election day.<sup>75</sup> This means that it will be almost impossible for candidates registered close to the deadline to be included in the discussion on the form of debates in the media.

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<sup>68</sup> See also para. 35 of the present opinion.

<sup>69</sup> See for instance Articles 305(2) and 306(2) of the draft Code.

<sup>70</sup> Article 306(5) of the draft Code.

<sup>71</sup> Article 181(2) of the draft Code.

<sup>72</sup> See in this respect the 2011 joint opinion (CDL-AD(2011)013), para. 65. See also OSCE/ODIHR election observation reports.

<sup>73</sup> Guidelines on an internationally recognised status of election observers, III. 1.5.

<sup>74</sup> Article 255(2) of the draft Code.

<sup>75</sup> Article 189(4) of the draft Code.

81. The same overlap between timeframes exists between the end of the period for registering political parties and the period for registering candidates. According to Article 134(3) of the draft Code, it is possible for the CEC to register a political party not later than 32 days before election day. However, a political party must register its candidates with the constituencies not later than 32 days before election day. The registration process for political parties should be moved to an earlier period so that this process is completed sufficiently in advance of the registration of candidates. The OSCE/ODIHR and the Venice Commission recommend reviewing the timeline in the draft Code in order to ensure that deadlines for the different phases of the electoral process facilitate instead of complicate the electoral process.

### **XIII. Concluding remarks**

82. The draft Code provides a sound legal basis for the conduct of democratic elections. The Venice Commission and the OSCE/ODIHR welcome the organisation by the *ad hoc* parliamentary Committee of public and inclusive discussions of the amendments and the electoral reform process with different stakeholders, including civil society.

83. A number of OSCE/ODIHR and Venice Commission recommendations were addressed. There is, however, still room for further improvements. The OSCE/ODIHR and the Venice Commission assess positively new provisions in different key areas, such as the reduction in electoral deposits and signature requirements for independent candidates, requiring balance in the composition of constituency, municipal and polling station election commissions, and clarifying deadlines concerning the appeal of denial of candidate registration. The structure of the draft Code would benefit from further improvement in order to avoid repetitive provisions.

84. Concerns remain regarding the restrictions of suffrage rights for citizens serving prison terms, regardless of the severity of the crime committed, providing for an effective system of appeal of all election-related decisions to a competent body, requiring more balance in the membership of the CEC, harmonising the various deadlines of the electoral process, and creating an effective mechanism for electoral contestants and voters to challenge election results.

85. As the Venice Commission and the OSCE/ODIHR stated in the 2011 joint opinion, it is essential that the new Election Code of Bulgaria be implemented in good faith and with a high level of political maturity.<sup>76</sup> Moreover, the Venice Commission and the OSCE/ODIHR underline the importance of the principle of stability of the legislation. This principle should be guaranteed especially with regard to the fundamental elements of the legal framework, such as the composition of the election administration. Fundamental changes should not be made within one year before an election process and it is thus recommended that such changes should apply only after the upcoming May 2014 elections to the European Parliament. This does not preclude improving technical provisions of the legislation or bringing the legislation in compliance with the case-law of the European Court of Human Rights regarding the issue of prisoners' voting rights.<sup>77</sup>

86. The Venice Commission and the OSCE/ODIHR remain committed to provide assistance to further improve the legal framework for elections in Bulgaria and to address remaining recommendations provided by the OSCE/ODIHR in its election observation reports and by the Venice Commission and the OSCE/ODIHR in joint opinions.

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<sup>76</sup> Para. 71 of the 2011 joint opinion.

<sup>77</sup> See in this respect the Venice Commission Interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043), available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)043-e).