Strasbourg, 18 March 2024 **CDL-PI(2024)005**

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING

CENTRAL ELECTORAL MANAGEMENT BODIES[1]

[1] *This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 138th Plenary Session (15-16 March 2024).*

Table of contents

I. Introduction

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning electoral administration. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to electoral administration, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission’s reports and studies quoted in this compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study.

The Venice Commission’s position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission’s position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission’s Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading (venice@coe.int).

II. Structure

1. Composition of central EMBs (Election Management Bodies)

Among the range of models for the formation of election-administration bodies which has been established in Venice Commission member States and OSCE [Organization for Security and Co-operation in Europe] participating States, central election administration bodies have been established based on multi-party representation. The membership of lower-level commissions generally replicates the principle followed in the establishment of the central commission. The main value of setting up the central election management body based on multi-party representation is to strengthen confidence and transparency in the process by allowing major political interests to take part in the administration of the election. In Georgia, election commissions have a mixed composition including both partisan and non-partisan appointments of members. While this model has been in place for many years, the number of commission members and the appointment processes have repeatedly been changed. The draft amendments under consideration once again modify the election and appointment procedures concerning the non-partisan members and the Chairperson of the CEC [Central Election Commission].

The Venice Commission and ODIHR underline that the fairness – and the perception of fairness – of the electoral procedures and, at the end of the day, the fairness of the elections themselves depend to a high extent on the election management bodies and their enjoyment of the public trust, i.e. the election commissions and the Central Election Commission in particular. Therefore, the highest level of impartiality and independence should be sought in both the composition and the functioning of those bodies. The best possible way to achieve this is to provide, first, that their members, including their Chairperson, are elected through procedures which seek consensus; and, second, that qualified majorities are required for the taking if not of all, at least of the most important decisions by the Commissions. In both respects, negotiations between stakeholders and, in particular, between political parties, are necessary to reach compromises and, if possible, consensual solutions. At the same time, as already stressed in previous opinions, alternative solutions should be provided in case an agreement proves impossible. Such solutions could either imply the requirement of smaller majorities (an alternative which needs to be handled with care since it may lead to single-party majorities), or the referral of the issue to another institution, such as the President of the Republic or a high-ranked judge, such as the President of the Supreme Court or of the Constitutional Court.

In the view of the Venice Commission and ODIHR [Office for Democratic Institutions and Human Rights], more should be done to facilitate consensus amongst political stakeholders on the CEC's composition and leadership. Although a 3/5 parliamentary majority would require some opposition support in the selection process and therefore work in the direction of garnering greater consensus, re-establishing a quota of 2/3 majority might serve to further strengthen the efforts to seek political consensus on the selection of the non-partisan CEC members and Chairperson, and to further reinforce public trust in the CEC's independence. As noted in the April 2021 Urgent Joint Opinion, on-the-ground consensus on the appointment of the non-partisan members and Chairperson should be sought, as the election administration does not currently enjoy a high level of public confidence.19 Moreover, the previous regulation requiring a 2/3 parliamentary majority had the benefit of broad political support and implemented the political agreement of the majority and several opposition parties of 19 April 2021.

First, the draft amendments do not introduce higher credentials for CEC members and the Chairperson, as recommended in the 2021 Urgent Joint Opinions. The Venice Commission and ODIHR made it clear in the second Urgent Opinion that the increase of required work

experience from three to five years – which is maintained in draft Article 10(4) of the Election Code – alone was not sufficient to ensure "higher credentials" for CEC members as had been recommended in the first Urgent Joint Opinion of the same year.

The Venice Commission and ODIHR recommend:
C. Transferring the nomination authority for the non-partisan members and Chairperson of the CEC back from the Speaker of Parliament to the President of Georgia; [paragraph 32].
E. Removing from the draft the abolishment of the deputy chairperson elected from among the opposition party-appointed CEC members; [paragraph 36].

CDL-AD(2023)047, Georgia - Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia

While the above-noted draft amendments are welcome developments, they do not address long-standing and reiterated ODIHR recommendations to ensure a genuinely merit-based selection process for non-partisan DEC/PEC [District Election Commission/Precinct Election Commission] members, by strengthening the selection criteria, improving and elaborating procedures for the recruitment and selection process, including by extending the timeframes for submission and review of applications, and enhancing transparency of the selection process. These recommendations are based on shortcomings identified in recent elections in the recruitment processes for lower-level commission members – conducted by the CEC for DECs and the DECs for PECs – resulting in a lack of genuinely open, transparent, and inclusive competitions. The recent ODIHR/Venice Commission Joint Opinions have reiterated these recommendations and also put forward recommendations for enhancing the process for selection of the CEC's non-partisan members.

CDL-AD(2022)047, Georgia - Joint opinion of the Venice Commission and the OSCE/ODIHR on draft amendments to the Election Code and the Law on Political Associations of Citizens

Concerning the substance of the legislation, the Venice Commission and ODIHR make the following key recommendations:
A. On the composition and functioning of electoral administration: strengthening the professional background and expertise of its members, the balance between the parties supporting the government and the opposition and considering the possible inclusion of independent members who are not directly appointed by the parties or who require a broad consensus for their nomination; reviewing the justification and function of the extended composition.

Main concerns about the composition of the election management bodies (EMBs) are related to their impartiality and independence. Reports of the recent international election observation missions support this finding, as the EMBs have not been able to prevent voter intimidation and pressure on voters in polling stations and to build the general trust of the electorate in the electoral processes.

Compliance with the obligation under Article 3 of Protocol No. 1 of the ECHR [European Convention on Human Rights] is interpreted by the ECtHR [European Court of Human Rights] as the requirement to ensure that the election administration bodies "function in a transparent manner and [..] maintain impartiality and independence from political manipulation", which constitute an essential element of the regularity of and trust in the electoral process. The Code of Good Practice in Electoral Matters contains similar independence and impartiality requirements. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process throughout the entire election cycle, and especially from the pre-election period to the end of the processing of results''. It is common to include both a subjective and

an objective element in the independence requirement for institutions and public officials. This means that the composition, appointment, and procedures of EMBs should ensure the independence and perception of independence of the EMB for voters and candidates.

For this reason, many countries have resorted to the creation of electoral commissions as independent bodies responsible for the management and control of the electoral process. The composition of these bodies may include persons appointed by the political parties equally represented, provided that this equality may be interpreted either strictly or proportionally – in other words, taking or not taking into account the parties' relative electoral strengths based on previous elections or current representation in elected bodies. The Code of Good Practice in Electoral Matters suggests, as a general rule, that the permanent central electoral commissions include at least one member of the judiciary and representatives of parties already in parliament or having scored at least a given percentage of the vote.

The composition of electoral commissions and polling boards in Serbia, both in their permanent and extended compositions during election periods, is the result of political appointment (Articles 17-40 LEMP). [Law on the Election of Members of Parliaments]

In a number of states, several shortcomings in the functioning of election commissions were detected whenever their composition was highly politicized. The Parliamentary Assembly of the Council of Europe has declared that "[m]ulti-party electoral commissions (…) do not seem to be the best solution. When they are opted for, there should be guarantees for their composition to be politically balanced and their functioning transparent throughout the electoral process''. This recommendation for guarantees of political balance and transparency remains applicable to the Republic of Serbia.

CDL-AD(2022)046, Serbia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration

The Venice Commission underlines that any electoral system and electoral administration can be improved; however, changing a system and especially an electoral administration which have performed well requires particular caution; if the current system and administration have ensured independence, enjoy the trust of most electoral stakeholders and have proved to be capable of securing several consecutive successful electoral cycles, it is imperative that the new electoral management authorities and specialized jurisdictions should provide at least the same guarantees of independence and should be capable of offering at least the same quality of the electoral process as their predecessors.

An independent electoral administration needs proper funding. INE [Instituto Nacional Electoral] is currently organized through four central bodies (the General Council as the highest decision-making body and its presidency, the General Executive Board, the Executive Secretariat and the internal control body), six executive directorates (of the Federal Register of Voters, of the National Electoral Professional Service, of Prerogatives and Political Parties, of Electoral Training and Civic Education, Electoral Organization and Administration), ten technical units (social communication, gender equality and non-discrimination, international affairs, electoral litigation, IT services, liaison with local public bodies, legal, auditing, secretariat, transparency and protection of personal data), and delegate and oversight bodies in each of the federal entities (delegates: local executive boards, local councils, district executive boards and district councils, and oversight: a national oversight commission, 32 local and 300 district commissions, and working groups). In addition, there are permanent and temporary commissions, committees and working groups of the General Council. The existing structure of INE and its subdivisions have so far allowed for planning the expenses of the electoral administration.

CDL-AD(2022)031, Mexico - Opinion on the draft constitutional amendments concerning the electoral system of Mexico

At the same time, it should be noted that the principle of the political composition of the CEC is retained, as political bodies would appoint all but two members appointed by the Superior Council of Magistracy. Furthermore, if the President hails from the same political options as the government majority, the proposed model will not ensure against possible domination, or its perception, over the CEC by such a political majority. While the President is elected in a separate election and may therefore exercise his or her powers independent of the political balance in the Parliament, that is not the case for the Government. In a parliamentary system such as in Moldova, the Government hails from or at least requires the confidence of a majority in the Parliament. One may therefore question why the Government, being dependent on and usually acting in concert with the parliamentary majority, should appoint members to the CEC. It is questionable whether such a nomination mechanism can address the underlying concern of insufficient impartiality and political neutrality of the CEC and pave the way for its professionalization, which is the stated aim of the legislator.

Furthermore, it is unclear whether “proportional representation of majority and opposition” clearly ensures that one nominee comes from among the opposition parties regardless of their strength in the Parliament. To avoid uncertainty concerning the draft proposal, it would be advisable to clearly state that one member appointed by the parliament is appointed by the governing party or parties and one from the opposition. Since there may be situations in which the opposition parties might not agree on a common candidate, the Code should specify the procedure for nomination, for example, by specifying the candidate with the most votes from among the opposition MPs shall be appointed or a similar procedure.

While different models of the composition of the central election management body may be considered, the composition of the election management body should strive to avoid a situation in which one political option is dominant in the decision-making processes of this body. If, on the other hand, the CEC is to be composed of non-political appointees, a greater role in the appointment process should be envisioned for non-political bodies, such as the judiciary, academia or the civil society organizations engaged in electoral matters. In the current proposal, considerations should be given to specifying that the two appointees from the Government should not be political figures, but rather experts nominated by specialized bodies, for example, those dealing with national minorities, media, gender issues and human rights.

The draft Code reduces the number of CEC members from 9 to 7 (Article 19(3)) and increases their term of office from 5 to 7 years, with the possibility to serve a maximum of two terms (up to 14 years). While there are no international standards related to the length of tenure for the appointed members of the highest electoral body, the extension of the term to seven years should be viewed from the perspective of the body’s impartiality and independence. It should be noted that some important details are missing from the draft Code, including transitional measures to explain when and how the currently appointed members will be replaced or whether the entire commission will be replaced with a new composition. Also, it is advisable that the process of the transformation of the CEC composition is accompanied by an explicit legal provision governing the replacement of its members, which should preferably be staggered (for example, with only one member replaced or re-appointed every year). Such a mechanism could weaken political pressure from any current ruling structure and increase the institutional memory of the commission.

According to Article 20(3), the CEC shall be constituted when at least five members are appointed, which leaves a possibility of composition without any opposition representation. Furthermore, the CEC may hold deliberative meetings if the "absolute majority" of members attend (Article 31(2)), which in the case the CEC is constituted with only five members,

means a majority of at least three members. Decision-making may thus be carried out by a small number of members, which may be detrimental to the institutional legitimacy of the CEC. In this context, it is worth recalling the Code of Good Practice's recommendation for electoral commissions to reach decisions by a qualified majority or consensus to the extent possible.

According to the draft Code, the authorities shall carry out the procedure for selecting candidates for the position of member of the commission, on the grounds of competence and professionalism, by their own procedures. While members of election administration should be “competent” and “professional”, when such terms are used as requirements for the appointment and selection, their meaning should be established in the law as clearly as possible. Further, Article 22(1)(c) introduces the requirement of an ‘irreproachable reputation’ for all CEC appointees. This requirement is questionable, as it may be used for arbitrary disqualifications and should be either removed or further defined. As an alternative, experience in electoral administration or election observation could be required.

Article 17(5) prescribes that the election authorities should seek to provide gender balance in the composition of the election management bodies, in line with international commitments and good practice, which recommends the representation of women in all decision-making bodies in political and public life be above 40 per cent. In previous elections, women were equally represented in lower-level commissions, but this was not the case with the CEC composition and currently, five out of eight appointed CEC members are men. Given the intention of the legislator to change the composition of the CEC and include appointees from multiple organizations, the draft Code could enshrine a principle for appointing agencies to seek gender balance among the CEC members, at the time of members’ appointments.

Article 28 deals with cooperation of the CEC with other entities. In its para (2), it enables the CEC to decide to come up with additional responsibilities belonging to other authorities. This formulation appears rather vague, even if there may be a need to address unexpected requests from time to time. The division of powers between the CEC and the electoral constituency councils, stipulated in Article 102(6), is also not clearly explained. ODIHR and the Venice Commission recommend making these provisions more precise. To avoid any ambiguity, it would be advisable to include detailed definitions of the first- and the second level electoral constituency councils in Article 1, along with other relevant definitions related to election administration bodies.

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections

GUIDELINES ON THE HOLDING OF REFERENDUMS

II. Conditions for implementing these principles

4. Procedural guarantees

4.1. Organisation and supervision of the referendum by an impartial body

(…)

d. The central commission should include at least one member of the judiciary or other independent legal expert; it may include a representative of the Ministry of the Interior, as well as representatives of national minorities.

(…)

CDL-AD(2022)015, Revised Code of Good Practice on Referendums

Despite this limitation, it is important to first assess the composition of the election administration in general, at least briefly. According to Article 33.1 of the Law on the Election of Members of Parliament, the "standing composition of the Republic Electoral Commission shall consist of the President and sixteen members appointed by the National Assembly of the Republic of Serbia on the proposal of parliamentary groups of the National Assembly of the Republic of Serbia". At least in the current composition of the National Assembly where nearly all political groups belong to the majority, this implies that the designation of the Republic Electoral Commission is controlled by the majority in Parliament. The Guidelines recommend that the Central Electoral Commission include "at least one member of the judiciary or other independent expert". The Constitutional Court of Serbia held that judges cannot be members of electoral commissions on any level. This does not seem to exclude "other independent experts" from the Republic Electoral Commission. Even if the members of the latter are lawyers and act impartially, the composition of the election commissions has to appear impartial. Independent experts can increase the trust in the election authorities. Moreover, in its meeting with representatives of the Republic Electoral Commission, the Venice Commission was informed that, even in the case of early elections, the practice is to renew the composition of the Republic Election Commission – provided for in electoral legislation - after each parliamentary election. This reinforces the impression that this body is systematically dependent on the political majority of the moment. The Venice Commission recommends reconsidering the composition of the electoral administration to ensure its independence.

CDL-AD(2021)033, Serbia - Urgent opinion on the draft law on the referendum and the people's initiative, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure, on 24 September 2021

According to the revised draft Article 10 of the Election Code, the CEC is composed of "not more than 17 members", seven of which are elected by Parliament, upon recommendation by the President of Georgia, while the parties appoint "not more than nine members". In addition, the chairperson is elected by Parliament upon recommendation by the President of Georgia. The high number of CEC members, compared to the current situation of 12 members, had been met with some criticism in the first Joint Urgent Opinion which stressed that this "may in practice pose a challenge for the election administration, particularly in reaching decisions on a consensus basis, a preferable approach under international good practice." While a lower number of CEC members would therefore be preferable, the current proposal seems acceptable as a political compromise which accommodates all the parliamentary parties.

The first key recommendation made in the first Joint Urgent Opinion was composed of the following two elements:

1) to consider introducing a qualified (e.g. two-thirds) parliamentary majority vote or a double majority requirement (requiring a majority among MPs both of the ruling parties and the opposition parties) for the election of the chairperson and non-partisan members of the Central Election Commission (CEC), with a final anti-deadlock mechanism;
2) to require higher credentials for non-partisan CEC members and ensure a diverse membership in the selection commission that undertakes a transparent, merit-based nomination process.

The first part of this recommendation has been implemented by introducing a two-thirds parliamentary majority vote for the election of the chairperson and non-partisan ("professional") members of the CEC, with a final anti-deadlock mechanism: if no two-thirds majority is reached in the first round of voting, a second (again two-thirds), third (three-fifths)

and fourth (simple majority) round are possible. While this can be a rather lengthy process (a period of at least four weeks must be kept between the different rounds of voting), the new provisions are clearly a positive step forward, in line with the aforementioned recommendation and with the political agreement. In contrast, the significant reduction of the period between different rounds of voting, from four weeks to one, in the transitional provisions should be reconsidered as it may be detrimental to reaching consensus between the ruling and opposition parties. The authorities indicated in this respect that the parliamentary parties represented in the electoral reform task force had agreed on this reduction in view of the limited time left before the forthcoming local elections. However, the rapporteurs share the significant concerns raised by several other interlocutors that such a transitional rule might put at risk the success of the reform aimed at guaranteeing a balanced composition of the election administration.

In the political agreement, the signatories furthermore committed to ensuring that one of the partisan members of the CEC representing an opposition party is deputy chairperson. This has been achieved by revising draft Article 11 of the Election Code accordingly. At the same time, it is not clear why the position of a second deputy chairperson elected by Parliament out of the CEC members has been introduced. This amendment might weaken the position of the deputy chairperson representing an opposition party and should be reconsidered.

Another amendment based on the political agreement is the creation of a "CEC consultation group" composed of a representative of the Public Defender's office and international and local experts selected by election observation organizations. It is competent to submit recommendations on the dispute resolution process to the CEC and to carry out additional functions such as engagement in the process of recounting election results. While the establishment of such a CEC expert group can be seen as a positive innovation, it is unsatisfactory that according to the draft amendments the composition and functions of the group are to be specified by CEC ordinance. These elements should be regulated in the law itself.

CDL-AD(2021)026, Georgia - Urgent Joint Opinion of the Venice Commission and the OSCE/ODIHR on the revised amendments to the Election Code of Georgia

In the absence of a specific international standard for the formation of election administrations, each country should find the most appropriate model that complies with local traditions and good practices that have been developed, and based on a few guiding principles, most notably the independence and impartiality of the election administration, confidence of election stakeholders in the election management bodies, and transparency and accountability in the overall election process. As noted in the Code of Good Practice in Electoral Matters, "[w]here there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to the polling station level" to ensure that elections are properly conducted, or at least to remove serious suspicions of irregularity. The proposed amendments can be seen as an attempt to ensure this, but further improvements seem necessary as outlined below.

A wide range of models for the formation of election-administration bodies has emerged in OSCE participating States, including central election administration bodies that are based on multi-party representation. The membership of lower-level commissions generally replicates the principle followed in the establishment of the central commission. The main value of setting up the central election management body based on multi-party representation is to strengthen confidence and transparency in the process by allowing major political interests to take part in the administration of the election. The key assumption is that major political interests contesting the election should be able to identify professional publicly respected individuals, who, regardless of their political affiliation, will be able to implement the legal

framework in a collegial and consensual manner, in accordance with both the spirit and letter of the law.

The proposed amendments to Articles 8, 10, 12-14, 19-20, 24-26, 30, 42, 196 and 203.3 of the Election Code of Georgia concern the composition of election commissions at the three levels – Central Election Commission (CEC), District Election Commissions (DECs) and Precinct Election Commissions (PECs). The draft amendments maintain the mixed composition of the CEC and DECs (non-partisan and partisan appointments of members) but introduce changes to the number of commission members and the appointment processes. The amendments fundamentally change the membership of PECs from a mixed composition to a fully non-partisan membership. In light of the significantly revised process proposed for the appointment of political party nominees as members to the election commissions, Article 2 of the draft amendments terminates the authority of the standing members appointed by parties to the commissions, which have to be replaced according to the revised Article 196. However, the mandates of non-partisan members of the CEC and DECs serving five-year terms are not terminated under the amendments.

(…) The move from multiple (proportional) to single appointments to the CEC by each eligible party addresses an ODIHR recommendation following the 2020 parliamentary elections that states: “The composition of the election administration could be reconsidered to increase its impartiality and independence. The appointment formula could be revised to ensure more balanced political representation and to prevent factual dominance of a single political party.”

The proposed amendments provide for the CEC chairperson to be nominated by the President and appointed by two-thirds of CEC members from the CEC members elected by the parliament. The draft amendments essentially establish the status of the chairperson on the same footing as a member of the CEC. Notably, the proposed changes would repeal a requirement for the President to consult with civil society organizations on three nominees for CEC chairperson, instead giving the president unfettered discretion to nominate one CEC member to be chairperson (…).

(…) To guarantee broader consensus on CEC leadership, consideration should be given to introducing a qualified (e.g. two-thirds) parliamentary majority vote or a double majority requirement (requiring a majority among MPs both of the ruling parties and the opposition parties) for the election of the CEC chairperson, with a final anti-deadlock mechanism.

As with the potential appointment of the CEC chairperson by the parliament noted above, the parliament majority rule for the election of non-partisan CEC members could effectively result in all members being ruling party appointees. Alternative mechanisms for the nomination and/or appointment of non-partisan CEC members should be explored to ensure broader-based consensus on those members, guarantee the independence and impartiality of the highest election body, and garner increased public confidence in the election administration. As noted earlier, the introduction of a qualified (e.g. two-thirds) majority parliamentary vote or a double majority requirement, with an anti-deadlock mechanism, should be considered. This point holds even more importance if the proportion of non-partisan CEC members plus ruling party appointee versus opposition-appointed members remains the same as in the current and draft law, since the ruling party effectively holds power to appoint an absolute majority of all CEC members. In any case, on-the-ground consensus on the appointment of CEC members should be sought in an environment in which the election administration does not enjoy a high level of public confidence.

The proposed provisions on the composition of the highest election body are not fully in line with international good practice for election commissions with multi-party representation. The Code of Good Practice in Electoral Matters provides that the central election commission should include representatives of parties already in parliament or having scored at least a

given percentage of the vote. Such membership should be premised on equality, which can be construed strictly or on a proportional basis, the latter taking account of the parties' relative electoral strengths. The proposed amendments do not establish equal rights (strict or proportional) to membership on the commission as they introduce a provision that parliamentary parties have the right to appoint a CEC member only if the party is entitled to state funding in accordance with the law and at least one of its members of parliament carry out parliamentary activities in accordance with paragraph 10 of Article 224 of the Regulation of the Parliament.

The above-noted exclusions appear to be aimed at addressing the parliamentary boycott and seeking the functioning of the parliament, but depriving individual parties of the established right to participate in the election administration is not the proper or proportionate way to do so. While states are not obliged to provide parties with the right to manage the elections, if the choice of election management structure is one of multi-party representation, the right should be extended to all political parties based on either their representation in parliament or electoral strength in terms of votes received. While the legislation should address how and when changes in commission membership should occur when a political party dissolves, new parties emerge, or when the relative strength and representation of parties in elected institutions change, the application of the above-mentioned factors in determining which parties will form the election administration risk increasing political tension and undermining confidence in the election administration. This is especially so in situations of parliamentary boycott by (part of) the opposition which will result in many parties losing the right to appoint members to the CEC. It must be stressed again that political dialogue remains the most appropriate mechanism to overcome political stalemate.

At the same time, it is noted that in situations of boycott of parliamentary activities by most opposition parties, any legislation that could be seen as largely punitive in nature, and that targets opposition parties, should be avoided. As stated by the Venice Commission, there is a clear need for ensuring that majorities do not abuse their otherwise legitimate rights just because they won the elections. Undue restrictions on otherwise eligible parliamentary opposition parties to participate in the election administration would go against this principle, send the wrong message and set a dangerous precedent in terms of party pluralism and equality of opportunity in the electoral process. There are other more proportionate and appropriate means to achieve the goal of this amendment, which could involve imposing direct consequences on individual members of parliament for their actions, rather than excluding a political party from participating in the electoral process on the same basis as other parties.

(…) In light of the preceding paragraphs, the Venice Commission and ODIHR recommend reconsidering the proposed changes to the eligibility of parties for the appointment of CEC members and revising draft article 13(1) to (3) of the Election Code to bring it more in line with the international principle of equality of opportunity in the electoral process. In particular, the specific restrictions of the right for a party to appoint a member to the CEC under draft Article 13(1)b) and c) – i.e. the conditions that the party is entitled to state funding and that at least one of the party members actually "carries out activities of the member of the Parliament"– should be removed.

Similar to the proposed changes in the CEC composition, under the draft amendments the number of DEC members would increase from 12 to 17 members (including the chairperson). The number of members appointed to the DECs by eligible political parties for the period of an election would increase to 9 from 6, while the remaining 8 members, an increase from 6, would be appointed by the CEC by majority vote of all members. The eligibility of political parties to appoint members to the DECs and the move from proportional to single member appointments for each eligible party are the same as for the proposed party appointment process for CEC membership. As such, the same commentary as noted above for the

proposed changes to the CEC composition and appointment process apply to the draft amendments related to the DEC composition and appointment process. In addition, it should be noted that in the past, DECs have not enjoyed full public confidence due, in part, to many non-partisan DEC members having been previously party-appointed to election commissions or as partisan observers, or affiliated to such persons. Establishing criteria that preclude such types of appointments by the CEC and that define merit based selection criteria would be a positive step toward assuring effective non-partisan appointments to the DECs. Consideration could also be given to enhancing the selection process, including holding interviews and substantiating decisions to demonstrate merit-based selection. To further bolster public confidence, consideration could be given to qualified majority (e.g. two-thirds) rather than majority vote (with an anti-deadlock mechanism) or identifying alternative selection methods.

It should be noted that the significant increase in the number of CEC and DEC members, proposed to be 17 for each of these bodies, may in practice pose a challenge for the election administration, particularly in reaching decisions on a consensus basis, a preferable approach under international good practice. While a mixed composition structure for election management bodies is acceptable from an international perspective, enlarging the commissions as an apparent solution to a political crisis is arguably not an effective approach and may actually undermine the public's trust in the election administration, particularly if it negatively impacts their professional work. In this respect, the ODIHR election observation report on the 2018 presidential election recommended that consideration be given to aligning the number of commission members at each level to the actual need. For PECs, this is addressed by the proposed amendments (see below) but for the CEC and DECs the number of members actually increased rather than decreased. Moreover, it should be noted that the proportion of non-partisan- versus party-appointed CEC/DEC members remains the same as under the current system, that is, just under 50 per cent are non-partisan appointees. In this regard, it is questionable why increasing the number of party appointees from six to nine and introducing the parity principle, which will provide a more pluralistic election administration, necessitated a proportionate increase in the number of non-partisan members, absent clear justification as to administrative need. This approach appears solely aimed at maintaining the same proportion of non-partisan/party appointees. In light of the low level of trust in the CEC/DECs due to widespread perceptions that their non-partisan members are ostensibly ruling party loyalists, maintaining the same proportion in their composition cannot serve to strengthen public confidence in the election administration.

However, fundamentally, a shift away from multi-party representation may do little to gain back stakeholder trust in the election administration, and would most likely further undermine public confidence, taking into account past challenges in the appointment of non-partisan PEC members. This is especially so if the established selection criteria and professional appointment processes for CEC, DEC and PEC members are not fundamentally strengthened to guarantee objective, transparent and genuinely merit-based selection of non-partisan members down to the lowest level. Until systemic reform of the election administration is undertaken, shifting to a fully non-partisan model may not be advisable. In the interim, a mixed model PEC composition with the non-partisan appointments made by two-thirds of DEC members or the use of alternative appointment mechanisms could be considered as a way to increase public trust. Whichever mechanism is adopted, a transparent, genuinely merit-based process for appointment of non-partisan PEC members is key to enhancing public confidence.

It should be noted that any decision to maintain a mixed model should consider that mere duplication of the proposed CEC/DEC mixed composition of 17 members would certainly not be practically appropriate at the PEC level. In this respect, administrative needs and ensuring the smooth-running of election day proceedings should be prioritized when establishing PEC composition. If there is not a clear administrative reason to have more than the currently

proposed minimum 7 PEC members, with one additional member added for every 300 voters registered, it is recommended to maintain these numbers in whichever model is used.

In addition, in case of a mixed model of PEC composition, as with the proposed CEC/DEC composition, the principle for political party appointments based on strict equality is, in the current context, a more appropriate mechanism than the existing proportional party appointments. In any case, as noted earlier with regard to the higher commissions, otherwise eligible political parties should not lose their right to appoint PEC members on grounds that they are not entitled to state funding or that their elected members of parliament do not participate in parliamentary activities.

CDL-AD(2021)022, Georgia - Urgent joint opinion on Draft Amendments to the Election Code, issued pursuant to Article 14a of the Venice Commission's Rules

The Draft Constitution submitted for review has changed the manner of appointment of the members of the Central Commission for Elections and Referenda ("CEC") of the Kyrgyz Republic. The current Constitution in force stipulates that 1/3 of CEC members are chosen by the President, 1/3 are chosen by the ruling majority in Parliament, and 1/3 are chosen by the parliamentary opposition. The Draft Constitution however, stipulates in Article 70(5)(3) that the President shall "propose to the Jogorku Kenesh for elections and dismissal half of the members of the Central Commission for Elections and Referenda". Article 80(3)(6) states that the parliament shall "elect members of the Central Elections and Referenda Commission; one half as nominated by the President and the other half of their own initiative", making the proposal suggested in Article 70(5)(3) one that cannot be refused. Such unconditional acceptance must be reconsidered as it further encroaches on the principle of separation of powers between the executive and the legislative branches. The removal of the participation of the parliamentary opposition (if one is eventually formed) should also be reconsidered.

International standards stipulate that, in principle, the administration of democratic elections requires that election administration commissions/bodies are independent and impartial and this should be guaranteed by the Constitution. As stated in previous OSCE/ODIHR opinions, election management bodies make and implement key decisions regarding organization of elections and while the selection and appointment of their members differs greatly across the OSCE and Council of Europe region, laws should be guided by the ultimate need to ensure that such bodies are able to carry out their duties in an independent and impartial manner, ensuring the proper administration of the entire electoral process.

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

The draft law changes the name of the current State Election Commission to the Central Election Commission (CEC) and introduces a new procedure for electing members. The draft law shifts the membership of the CEC from one of members appointed by political parties to a "merit-based system". It also reduces the number of members from eleven to seven. The term of office of both the CEC and the municipal election commissions ("the MECs") is extended from four to five years. This term is thus longer than the term of office of the MPs (see Article 5 of the draft law), which may improve the independence of the CEC members.

The draft law provides that a Commission established by the Parliamentary Committee responsible for election and appointments shall administer the election of CEC members. This Commission is composed of five members, representing respectively: the majority, the opposition that won the highest number of seats, the Association of Lawyers, the institution of the Protector of Human Rights and Freedoms of Montenegro and qualified nongovernmental organizations. The proposed composition of the Commission provides

prima facie an overall adequate balance and representation of relevant institutions, key political forces, and of the civil society. The procedure and criteria for the selection process are outlined in the draft law in detail. At the same time the procedure appears to be burdensome and complicated. If some of the members have to be nominated in case of early termination of the mandate of a former member, the same complicated procedure has to be followed even in case the mandate of the new member is short and there will not be any elections until the new composition of the CEC is nominated (see Article 34.2). This could lead to a lack of interest of prospective candidates for CEC membership. Such a complicated procedure could also lead to errors while conducting the procedure. Furthermore, it seems more difficult than compared to the previous method of appointment to assess the neutrality of the whole exercise, which could put into question the trust in the election administration as a whole.

The Parliamentary Committee issues an open competition call for CEC membership within three months before the term of different members of the existing CEC expires. Applications for CEC membership may be submitted during a 15-day period. Immediately after announcing the competition for CEC members, the Parliamentary Committee invites qualified bodies and non-governmental organizations to nominate members to the Commission, which will be set up to administer the selection process. However, the draft law does not regulate a situation when nominating subjects fail to nominate candidates to the Commission within the stipulated 7-day period, which may hinder the process.

The Commission checks the fulfilment of requirements by CEC candidates, compiles a list of eligible candidates, carries out interviews, and proposes a list of seven candidates to the Parliamentary Committee. However, the draft does not allow for appeals in connection with the Commission's work and its proposal of CEC members, at odds with international standards and good practice. While a compilation of a report on the election of CEC members is envisaged by Article 31 of the draft law, there are no provisions regarding the report or other information about the recruitment and selection process to be made public. To enhance transparency and public confidence, it is recommended that provisions be included in the draft law for the information about the recruitment of CEC members to be made public.

The draft law states that the approval of the CEC candidates list must be by a majority of at least four votes of the Commission (Article 30.4) but contains no provisions covering the situation when Commission members do not come to an agreement or deliberately avoid voting for candidates, which may further complicate or even stall the process. It is recommended that the law regulate the decision-making process regarding the appointment of CEC candidates and provide for an anti-deadlock mechanism.

Article 31 provides that the “decision on the election of the members of the Central Election Commission” is carried out by the Parliament. However, this process cannot be considered as a proper election since the Parliament can only accept or refuse the whole list of candidates – with a simple majority (cf. Article 91 of the Constitution). Some ODIHR and Venice Commission interlocutors expressed their concern that the decision be taken by the political majority. As already said, the composition of the Commission established by the Parliamentary Committee responsible for election and appointments is aimed at representing an overall balance. This should, however, be confirmed by practice. Thus, good faith in the nomination procedure to avoid a politically biased composition of the CEC is required. Another risk would be that Parliament rejects the list. The law should address this case and in particular say whether the procedure should then be restarted, and how to avoid a deadlock.

In a positive change, Article 27 of the draft law introduces provisions banning from applying for the position of CEC members, persons who performed the duties of a member of the parliament or a local assembly, or served in the government, or as a president and vice

president of the municipality within a five-year period or still hold these positions.

Those who performed leadership duties in a political party within three years are banned from applying for CEC membership. Positively, the draft law maintains the prohibition on party affiliation for members of upper-level election commissions (CEC and MECs).

In the same provision, the draft law introduces a list of specific crimes which makes a person ineligible for membership in the CEC and MECs. The provision states that "a person who has been sentenced by a final decision for a criminal offense against official duty, corruption, fraud, theft or other criminal offense that makes him or her unworthy of public office or who has been sentenced by a final decision for a criminal offense against election rights, shall not be a member" of an election commission. However, the draft law does not specify the severity of the crime or the period when this criterion ceases to apply (e.g. expunged conviction), at odds with international standards.

The draft law eliminates provisions that currently stipulate quotas for national minority membership in the CEC. At the same time, in line with past ODIHR and Venice Commission recommendations, a requirement is being introduced in Article 44 for the CEC to take into account the proportional representation of national minorities and minority communities when establishing MECs. Consideration could be given to clarifying how this requirement is to be complied with in the context of an open merit-based recruitment. Previous recommendations of ensuring as a general principle, in line with international standards and obligations, adequate representation of national minorities in membership of election commissions are reiterated.

International good practice suggests that the composition of election commissions, regardless of the formation method used, should ensure pluralism and credibility of the election administration, which should function in an independent and professional manner. While a shift is being made through this draft law away from a model of election administration that is based on political representation towards a more professionalized independent one, care needs to be taken that the new approach to the establishment of election commissions yields also in practice a neutral, impartial and balanced composition. Presently, the draft law does not in any way regulate who may nominate candidates for CEC membership, outlines criteria for a purely merit-based selection, and does not envisage review for other possible conflicts of interest or affiliation. Additional checks and balances could be considered to help safeguard the neutrality, balance in composition, and independence of election commissions.

The draft law abandons the concept of "extended composition" in the election administration, while preserving the possibility for the submitters of registered candidate lists to appoint authorized representatives and their substitutes to election commissions at all levels and to polling boards. In addressing uncertainties related to the role of such authorized representatives and their involvement in the decision-making processes during previous elections, the draft law explicitly states that these representatives participate in the work of commissions and polling boards without the right to decide. In addition, the previous requirement for authorized representatives to be lawyers has been dropped.

CDL-AD(2020)026, Montenegro - Urgent joint opinion on the draft law on elections of members of parliament and councilors, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure

The composition of election commissions is one of the most controversial aspects of electoral legislation in many emerging or new democracies throughout the world. Even with formally independent electoral management bodies, the commissions' composition may strongly favor the government or pro-governmental forces. Thus, the commissions' composition

should be guided by the principles of maximum impartiality and independence from politically motivated manipulation.

Even if the law formally provides equitable opportunities for parliamentary parties to be represented at all levels of the election administration, political independence cannot be taken for granted. In Azerbaijan, for instance, members of all election commissions are formally nominated in three equal shares by the parliamentary majority, the parliamentary minority and independent Members of Parliament. Since actually all of them are pro-government, as shown by voting patterns, the formula for nominating commissioners does not in practice guarantee impartiality and political independence.

Moreover, if the political environment ahead of elections is polarized and antagonistic, even a real balance between pro-government and opposition parties in the composition of electoral commissions may run the risk of an over-politicization of the commissions' work. This is a longstanding problem, for example, in Albania where the commissions' membership has been used by parties for political maneuvering at the cost of the impartiality of the electoral administration. Here, if pro-government and opposition parties can agree it may be helpful if at least some of the commission members are appointed by non-political institutions that are perceived as being neutral. This may contribute to a de-politicization of the commissions' work.

Such a de-politicization may also be necessary to improve professionalism of the electoral administration. In a number of CoE member states, members of electoral commissions have repeatedly made decisions along political lines at the expense of the impartiality and clarity of electoral instructions.

Efforts should be made to promote gender-balanced representation at all levels of election administration, particularly in decision-making positions. Whilst in a number of countries women were greatly underrepresented in electoral commissions, some states (e.g. Ukraine in 2019 presidential elections, according to ODIHR) have stood out as a positive example of women being well-represented at all levels of the election administration. Furthermore, the involvement of persons with disabilities as members or advisers of electoral management bodies should be considered.

CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

While the Code of Good Practice in Electoral Matters suggests a broad and pluralistic composition of central election commissions in order to secure their independence, the SBE's [Supreme Board of Elections] composition of full members from the two highest judicial bodies in civil and administrative cases appears to place particular emphasis on its independence from the executive as well as from any political party in Parliament. This is essential for the confidence in the electoral process. However, as the full members of the SBE are exclusively judicial officials, its independence is contingent on the independence of its judges as such.

CDL-AD(2018)031, Turkey - Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonization laws"

A number of provisions and requirements for membership in election commissions are aimed at ensuring the independence of commission members. Article 9 contains a general premise that election commissions and their members perform their duties independently from any state bodies, public associations or officials. Article 11 lists a number of incompatibilities that apply to CEC members, including membership of political parties, of other commissions, candidates, proxies, and military and state security personnel. Article 23 contains a more

elaborate list of incompatibilities with membership in other election commissions. This includes mayors (hokim) of oblasts, districts and cities, officials of the prosecutor's office, courts, close relatives of candidates, and individuals, who have a direct employment relationship with candidates.

CDL-AD(2018)027, Uzbekistan - Joint opinion on the draft election code

According to the amended Article 46 (3), the 18 members of the CEC, including the chairperson, deputy chairperson and secretary shall be nominated by the parties and coalitions represented in the Parliament. Concerning the distribution of seats in the CEC, the amended Article 46 (8) prescribes that "the correlation of the parties and coalitions represented in Parliament shall be retained. The representatives of a single party or coalition may not have a majority in the Commission." In addition, Article 46 (3) also guarantees one seat in the CEC for each of the parties and coalitions that have Members of the European Parliament, but are not represented in the Parliament. The amendments thus establish a system of equal representation of the parties in the Parliament on a proportional basis as well as guaranteed representation for parties represented in the European Parliament, but not in the National Assembly. These procedural safeguards allow for a balanced composition of the CEC in line with the recommendations of the Code of Good Practice in Electoral Matters. Beyond the balanced composition, the Venice Commission and the OSCE/ODIHR emphasize the importance of constructive dialogue and non-partisan conduct among members of the entire election administration, in particular, during the decision-making process. Members of the election administration at all levels – CEC, regional and precinct (section) election commissions – should debate and vote based on objective elements and not through partisan considerations or affiliations.

Provisions relating to the CEC deputy chairpersons are somewhat ambiguous. Article 46 and the other articles of Section 1 of Chapter Five of the Electoral Code consistently refer to "Deputy Chairpersons" in plural. Neither Article 46 nor any other provision states how many deputy chairpersons are to be appointed or which person or body is competent to decide the number of deputy chairpersons. During the expert visit, the CEC explained that the number of deputy chairpersons is decided by the National Assembly, which also appoints them.

While the Electoral Code leaves open whether the requirement in Article 46 (8) of proportional representation in the CEC applies to or should apply to deputy chairpersons, the CEC clarified that the deputy chairpersons are appointed to reflect representation of the largest parties in the National Assembly. To avoid confusion, the number of deputy chairpersons in the CEC and the proportional representation should both be regulated in the Electoral Code.

CDL-AD(2017)016, Bulgaria - Joint opinion on amendments to the electoral code

In line with Article 195.2 of the Constitution, Article 42 of the draft code provides that the CEC is composed of seven members elected by the National Assembly with at least three fifths of votes of the total number of deputies, for a term of six years. This election procedure differs from the current code, by which CEC members were appointed by the President upon recommendation of specified bodies. This qualified majority does not of itself ensure representation of the opposition. It is recommended that the process to appoint members of the CEC in the parliament be inclusive, so all parties may have trust in the CEC. Article 42.6 states that, if the chairperson or a member of the CEC is not elected by the National Assembly within the prescribed time limit, the President shall appoint the acting chairperson or a member of the CEC, which shall hold the office until the proper election by the National Assembly. The President's power should be properly weighted. Indeed, if the President has the political support of the National Assembly, a simple majority may block the selection of candidates and entrust the appointment of the CEC members to the President. It is

recommended that the code provide that the President should hold consultations with all parliamentary parties before appointing the CEC members.

CDL-AD(2016)019, Armenia - Joint Opinion on the draft electoral code

The Central Electoral Commission and its independent and permanent character could be enshrined in the Constitution. Details on its composition and functioning should be left to an organic law.

CDL-AD(2014)027, Opinion on the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia

Election administration is currently regulated by a separate Law "On Election Commissions to Conduct Elections and Referenda in the Kyrgyz Republic". The draft law repeals this law and incorporates the majority of its provisions as Articles 13-34. As noted by the OSCE/ODIHR in its election observation reports, the problems observed in the election administration have resulted primarily due to implementation failures and not the law itself. Most of the recommendations of the OSCE/ODIHR and the Venice Commission have been for increased transparency, training, and good faith implementation of existing legal provisions. However, there are areas of the draft law that should be improved.

Article 13 of the draft law provides that elections are administered by the CEC, TECs, which are determined by the CEC for the territory covered by Bishkek and Osh cities and the rayons, and precinct election commissions (PECs). In the 2011 presidential election, the CEC established 58 TECs and 2,318 PECs were established by the TECs.

Article 18 of the draft law provides that the CEC is formed for a period of six years and consists of 12 members. The President of the Kyrgyz Republic, parliamentary majority and parliamentary opposition each "recommend" to the parliament one-third of the nominees for membership in the CEC. Should a nominee be rejected, then the nominating entity "shall be entitled to nominate the same or a different candidate". As a rejected candidate can be nominated again, it appears that the right to nominate is equivalent to the right to appoint the member as the nominating entity can keep submitting the candidate's name to parliament until the candidate is approved. Moreover, the parliament has to justify the rejection of a candidate, which could be difficult to implement in practice, since it is a collegial body in which the decisions are adopted by the majority of votes. The OSCE/ODIHR and the Venice Commission recommend the revision and clarification of the procedures.

The Venice Commission and the OSCE/ODIHR already recommended that at least some members of CEC have a legal background. Article 23(4)(5) determines that candidates for the post of Chairperson and Deputy Chairperson of the CEC shall have a law degree, election experience as a candidate or member of an election commission. The order of performance of the authorities of the Chairperson of the CEC is defined by drawing lots. The law is silent of possibility that not enough members of the CEC might have the above-mentioned qualifications.

As noted by the OSCE/ODIHR in its election observation mission report on the 2011 presidential election, the current law requires that no more than 70 per cent of the CEC members may be of the same gender, which resulted in four female members. This requirement is not found in the draft law. This is a negative change in the legal framework regulating the formation of the CEC. The Venice Commission and the OSCE/ODIHR recommend that the law provides a mechanism for ensuring that women are represented in the election administration, including in senior decision-making roles.

The OSCE/ODIHR and the Venice Commission previously expressed concern that the

appointment process for the election administration did not ensure a broad and equitable representation of all election stakeholders. The most recent election report of the OSCE/ODIHR on the 2011 presidential election noted that election commissions at all levels were more pluralistic than in past elections. This is positive, particularly since interests holding political power in executive and legislative branches of government control much of the appointment process. The appointment process for the election administration in future elections should be observed carefully and assessed whether this positive trend is likely to be maintained even without changes in the legal provisions regulating appointment.

CDL-AD(2014)019, Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic

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.

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.

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.

CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria

The Law on Basic Guarantees establishes some guarantees of the independent status of Central Electoral Commission members. This Law establishes a five-year term and the members of the Central Election Commission cannot be removed from their duties except by the causes and in the forms established by law. There are also detailed norms about the incompatibility and ineligibility of the members. However, except in the case of the five members appointed by the Duma, there are no sufficient guarantees of the pluralistic composition of the Central Electoral Commission. Nor are there guarantees of the impartiality of its members since the majority of them may share the same political orientation. This would go against the principles of the European electoral heritage, as enshrined in the Code of Good Practice in Electoral Matters. Moreover, legislation does not ensure that members of election commissions – including the Central Election Commission - are experts in electoral legislation and receive standard training.

CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation

The Venice Commission and the OSCE/ODIHR have previously recommended increased pluralism in election commission membership in order to enhance the impartiality and independence of the election administration. Although the draft law includes revised provisions in Articles 27.2 and 29.3 for nomination of members to the DECs and PECs, this recommendation is not addressed. Only parties already holding parliamentary mandates are guaranteed positions on the DECs and PECs while non-parliamentary parties can only participate in a lottery for the distribution of the remaining vacant positions. *Thus the Venice Commission and OSCE/ODIHR recommendation for increased pluralism in election administration remains unaddressed.*

CDL-AD(2013)016, Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine

See also *CDL-AD(2009)040, Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine*

See also *CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR*

In a welcome measure and in response to recommendations from domestic civil society, the draft Code requires that half of the membership of the competition commission, which is mandated to review the applications and suggest candidacies for CEC membership, be composed of representatives of civil society. This measure helps enhance the inclusiveness of the process.

CDL-AD(2011)043, Joint opinion on the draft election code of Georgia

The Code of Good Practice in Electoral Matters provides for the impartiality of election administration. “Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.” While there is no single recommended formula for the composition of the highest election administration body, its members’ impartiality in the exercise of their duties is of paramount importance and an indispensable condition for the conduct of democratic elections. Moreover, “impartiality in election administration must be accompanied by the appearance of fairness. Regardless of how an election administration is structured, it is important that it not only function in an impartial manner but also be perceived by the electorate as doing so.”

Even though a different system of formation by itself cannot be the automatic solution to the high polarisation that permeates all levels of the election administration in Albania, it might be helpful to revise the current composition and possibly involve other institutions that enjoy a certain degree of trust among the citizens of Albania, on the condition that broad consensus can be reached. Although the Code of Good Practice in Electoral Matters suggests that representatives of parties should be included in electoral bodies, this does not necessarily imply that the majority of electoral bodies be composed on the basis of nominations by political parties. Several options may be considered to reduce political polarisation, including increasing the number of nominating bodies, inviting different public institutions to nominate representatives, including a member of the judiciary or independent members from the civil society (e.g. nominated by universities). This could improve the efficiency of the election administration and help reaching consensus.

The Venice Commission and OSCE/ODIHR recommend reconsidering the current system of formation of election commissions in order to narrow the scope for possible partisanship and politicization of election administration that puts party interests above voter interests. The dominate role of political party representatives in election commissions at all levels could be complemented by appointing, in addition to party representatives, election officials selected from among representatives of the judiciary, civil society or professional election administrators without party affiliation. However, any changes must be based on broad consensus.

However, it should be acknowledged that in the current political atmosphere in Albania, it would be extremely difficult to identify individuals or bodies considered impartial and who could be entrusted with the task of appointing “neutral” CEC members. Past attempts to establish a non-partisan CEC, as provided for in the 1998 Constitution, were not successful since the CEC was considered to favor one political side. The Venice Commission and OSCE/ODIHR experts that visited Tirana did not hear any feasible proposals on how such non-partisan CEC members could be appointed.

CDL-AD(2011)042, Joint opinion on the electoral law and the electoral practice of Albania

The Draft Electoral Code submitted to the previous expertise of the Venice Commission and OSCE/ODIHR provided for the nomination of five candidates by each nominating body, therefore giving discretion to the President of the Republic to choose seven candidates amongst the fifteen nominations. The new version strongly limits the discretion of the President, who has to follow the nominations of the three bodies. This is a positive step towards ensuring full independence and impartiality of the CEC.

In addition, Article 40.2 requires that at least two of the seven CEC members are women and that at least two members have a legal education or a scientific degree in Law. These are positive developments. In particular, the Electoral Code’s CEC appointment process and its requirements for professional experience as a public servant, higher education, and recusal from social and political activities aim at a professional and impartial mechanism. On a positive note, the possibility to become a member of the CEC – and the CSECs – is no longer limited to civil servants.

The Venice Commission and OSCE/ODIHR remind that for this professional model formed by presidential appointment to function successfully, it is crucial that the appointees enjoy the trust of the electorate. The nominating institutions therefore bear responsibility for choosing candidates who enjoy the trust of the society. It is equally essential that the Armenian authorities abstain from any intervention and interference in the nomination process. The Venice Commission and OSCE/ODIHR encourage the Armenian authorities and society to use this change in the composition of the CEC as an opportunity for ensuring a fair and balanced conduct of elections.

In conclusion, the Venice Commission and OSCE/ODIHR welcome the improvements introduced in the new Electoral Code, which follow up on previous recommendations and discussions between the Venice Commission, OSCE/ODIHR and the Armenian parliament. Although the new code has the potential to ensure the conduct of democratic elections, the Venice Commission and OSCE/ODIHR wish to emphasize, as underlined in previous Joint Opinions, that legislation alone cannot guarantee that members of election commissions will act professionally, honestly and impartially. Full and proper implementation of the existing and possible new provisions on electoral commission formation and administration remains crucial.

CDL-AD(2011)032, Joint final opinion on the electoral code of Armenia

Article 6 of the draft election commissions law provides that the CEC is formed for a period of five years and consists of twelve members. The President of the Kyrgyz Republic, parliamentary majority and parliamentary opposition each propose “for consideration” one-third of the nominees for membership in the CEC. The phrase “for consideration” suggests that the nominees may be rejected by the parliament. However, there are no provisions in the draft election commissions law on how replacement nominees are to be named in the event the parliament rejects original nominees. Thus, it appears that the “nominations” are really automatic appointments which the parliament must accept. The Venice Commission and OSCE/ODIHR recommend that the draft law be clarified as to whether appointments of members to the CEC are automatic. If appointments are not automatic, then the draft CEC law should state how replacement nominations are to be made. The drafters could also consider introducing a requirement that there should be at least some members with a legal background.

Each entity that nominates to the CEC should propose nominees of both gender in equal numbers. However, Article 6 does not state how many nominees a nominating entity may propose. Thus, the practical effect of the fifty per cent requirement cannot be determined. If there are no limitations on the number of nominees, then the fifty percent requirement for gender balance may not facilitate the balanced gender representation at the CEC. The Venice Commission and OSCE/ODIHR recommend that the draft law clearly state whether there is any limit on the number of nominees that may be submitted by a nominating entity.

The OSCE/ODIHR has previously recommended that:
“The composition of election commissions at all levels should be revised so as to ensure broader and equitable representation of election stakeholders and to avoid the domination by one party interest. This would increase confidence in the process.”

This recommendation is not implemented by the draft law, as the CEC is appointed by a limited group of political party interests holding political power in the executive and legislative branches. Political parties participating in elections, unless they already have mandates in parliament, are excluded from the appointment process. The Venice Commission and OSCE/ODIHR recommend that the appointment process for the election administration ensure broader and equitable representation of all election stakeholders.

CDL-AD(2011)025, Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic

(…) Article 40(3) requires that at least two of the CEC members must be women, which is a positive development, and that at least one-third of the seven CEC members have a legal education.

The draft provides that only civil servants may be members of the central and constituency election commissions (Articles 40(5), 41(5)). As with the professional method of appointment, hiring only from among civil servants requires as a basis a trust in the neutrality of the state institutions. If such a model does not ensure public confidence that those selected are free from political influence, this requirement should then be reconsidered. Such a concern is highlighted in the Code of Good Practice in Electoral Matters: "However, in states with little experience of organizing pluralist elections, there is too great a risk of government's pushing the administrative authorities to do what it wants…".

Under Article 40(7), the CEC elects its chairperson, deputy chairperson and the secretary from among its members at its first meeting. Article 41(11) provides that this same election procedure applies to the selection of these election management positions in the CSECs. While Article 41(5) provides that those applying for CSEC positions should "not carry out public social and political activities" it does not mean that the individuals selected cannot be a supporter of one or another party. As elections are made by majority vote or plurality vote where there is more than one candidate (Article 40(12)), it is possible for all leadership positions on the CEC and CSECs to be filled by supporters of the majority group of parties. Therefore, a fair and balanced representation in the management positions of the election administration is not ensured. This is problematic, and the draft Electoral Code should be revised to provide for balance among political forces also in these election management leadership positions.

CDL-AD(2011)021, Joint interim opinion on the new draft electoral code of Armenia

Article 23(7) indicates that upon "appointment of the complement of the Central Election Commission, the proportion of the parties and coalitions of parties represented in Parliament shall be retained". While the first sentence of the same article stipulates that the 19 CEC members nominated by parties and coalitions represented in parliament must include the chairperson and the deputy chairpersons nominated by each party or coalition of parties represented in parliament, it is not clear whether the calculation made for determining the share of each party or coalition of parties include the chairperson and the deputy chairpersons. It is recommended that this provision be clarified so that the calculation made for determining the share of each party and coalition of parties includes the chairperson and the deputy chairperson.

The Code should ensure a balance of political parties in the appointment of chairpersons and secretaries at all levels of election commission. Furthermore, it is essential that opposition parties be included in these leadership positions at all levels of the election administration. An allocation of leadership positions among political parties with no consideration given to whether they belong to the ruling coalition may not be sufficient to dismiss perceptions of possible bias.

According to the Code of Good Practice in Electoral Matters, the CEC should include "at least one member of the judiciary" or a law officer. During the expert visit, it was confirmed to the Venice Commission and OSCE/ODIHR that three members of the recently appointed CEC are former members of the judiciary. This is a welcome step. As the legal capacity of lower election commissions would also need to be strengthened, it is recommended that Article 16(4) of the Code which recommends that members of the CEC as well as of constituency and municipal election commissions "be qualified lawyers" be implemented in practice.

CDL-AD(2011)013, Joint opinion on the election code of Bulgaria

There are a few internationally recognized good practices regarding the composition of the CEC. In a political environment where there is a deficit of public confidence in the election

process, it is considered that inclusion in the CEC of full fledged representatives nominated by key political stakeholders would augment transparency and could boost public confidence.

CDL-AD(2010)012, Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus

According to Article 27(5) the President and the members of the State Election Commission (SEC) are elected by the Parliament with a two-third majority of the total number of Members of Parliament. Although this provision requires broad consensus on the membership of the SEC, it undoubtedly makes it more difficult to appoint the membership, and the procedure might easily be drawn out. It is understood that the vote in Parliament will be on every member separately. The provision would however benefit from clarification.

CDL-AD(2009)032, Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia"

Article 154 of the Constitution of Albania, which established the CEC as a constitutional body, was repealed by the constitutional amendments of 21 April 2008. The CEC is now regulated only by the Electoral Code. This amendment is only one of several amendments adopted over the years in the electoral reform process in Albania. It should be recognized that these amendments may contribute significantly to reduce the highly politicized environment in the election administration that has been observed in past elections in Albania. Although it is not the purpose of this joint opinion to provide a complete history of the changes in the election administration in Albania, it can be stated that the cumulative effect of the amendments should encourage more efficiency and professionalism in election administration. Two issues must however be raised for reminder. First, even if not provided for in the Constitution, the existence of independent, impartial election commissions at all levels is a cornerstone of democratic elections. Second, professionalism does not mean that political parties cannot be involved in the nomination process; so-called professionals are not always independent from political forces, as soon as they are nominated or appointed by political bodies; and non-politicized members are not per se going to act in a professional manner by simple virtue of their nonpartisan nomination.

CDL-AD(2009)005, Joint Opinion on the Electoral Code of the Republic of Albania

Article 27 par. 3 states that the President of Georgia shall form a “competition commission” to process applications for the CEC Chairperson and 5 members. It is recommended that for increased transparency, this provision be amended to provide detailed procedures for appointment of the competition commission, including the number of members of the commission, their background and the criteria for selection.

As noted in the OSCE/ODIHR Final Reports on the 2008 presidential and parliamentary elections, enhanced professional skills of election commission members, regardless of their mode of appointment, are crucial for the administration to effectively serve its mandate. Election commissioners, whether party-appointed or not, must act impartially, and in accordance with the law. The Election Code should include safeguards (restrictions) against the dominance of any one political party in managerial positions of commissions at all levels, and that the CEC Chairperson be elected from among the CEC members (not by the President and Parliament) based on broad and inclusive discussions among the political forces. Consideration should be given to decreasing the number of appointments made by the President and Parliament so as to eliminate the de facto majority of the ruling party, and instead have several unaffiliated professionals appointed by consensus of all other members. The law should also stipulate that the CEC include at least one member of the judiciary. It should further stipulate that all CEC members, including those appointed by political parties, be qualified in electoral matters, such as judges, legal experts, political scientists,

mathematicians or other people with a good understanding of electoral issues. The Election Code should provide that the CEC receive standard training on electoral law and electoral issues, including on the best practices for guaranteeing due process of law in the adjudication of complaints and appeals.

CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia

The Venice Commission and the OSCE/ODIHR have commented on the lack of political balance in the composition of election commissions in prior opinions and election reports. The practical political problem with this nomination and composition formula is that it can produce an unbalanced composition of these bodies, as observed in the 2008 presidential election.

Moreover, the election of the management positions of election commissions (chairperson, deputy chairperson and secretary) is done by majority vote of commission members, which makes it possible for all leadership positions on an election commission to be taken by representatives of the majority group of parties or of the governing coalition. Therefore, a fair and balanced political representation in the management positions, as well as among the other membership, is crucial and should be better ensured at all levels of the election administration.

CDL-AD(2008)023, Joint Opinion on the Election Code of the Republic of Armenia

The 2004 opinion expressed concern that the election administration is highly politicized in Albania and some Code provisions encourage a politicized election administration. The 2004 opinion noted that, although the Code should provide for a degree of political party representation, the Code should establish impartial, independent and professional election commissions that operate in a non-partisan and efficient manner, and in full respect of the law. The 2004 opinion also expressed concern that the election administration was dominated by the two major political parties at every level, coupled with de facto veto power at every level of election administration. The 2004 opinion counselled consideration of amendment of Article 154 of the Constitution, along with amendments to the Electoral Code, as part of a reform effort to develop an independent, professional, efficient, and non-partisan election administration.

CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

The 9 members of the CEC are approved by the People's Assembly upon recommendations by the Assembly, the executive committee and the judiciary. This does not seem to have guaranteed an independent composition and alternative nomination procedures should be considered.

Article 19 (1) regulates the elections within the CEC and states that a person is elected "with a majority of votes by members of the commission". This should be clarified. The commission has nine members and one interpretation would be that at least 5 members have to vote for a candidate to be elected. The term "majority" sometimes means more than half and sometimes most votes (plurality only), so this should be stated clearly. If one need more than half of the members and not only of those present and voting, one should have a rule for what happens if no candidate obtains such a majority. One may consider requiring more than half of those present and voting, and if no candidates obtain that, a new vote is carried out between the two candidates with the highest number of votes and in this vote the one with the highest number of votes is elected. In case of a tie, one may call a new meeting with a repeat vote, and in the end a lot may decide. Even though one should try to achieve consensus or large majorities behind votes, one also needs to avoid stalemate situations.

CDL-AD(2007)033, Opinion on the Law of the Gagauz Autonomous Territorial Unit on the Election of the Governor of Gagauzia (Moldova)

The presidential role in approving the composition of the CEC remains unclear. Article 35 Paragraph 3 of the Code (as amended by Article 29 of the amendments) now sets a ten-day deadline for a decree of the President of the Republic of Armenia to approve the composition of the CEC, on the basis of nominations made by the entities responsible for forming the CEC. Former opinions expressed concern and asked for a clarification of this article of the Code (Paragraph 31 of the Joint Opinion; Paragraph 13 of the Final Opinion). It is still not specified whether the presidential decree is merely a formality, which would imply that the President has no power to veto, negate, or prevent an appointment by means of this formality.

Paragraph 10 of the Final Opinion underlined that it is not possible to predict whether the provisions on the composition of election commissions will be applied in good faith. The extent to which these provisions will result in a balanced composition of election commissions and an impartial and professional electoral administration remains to be seen during future elections. Good faith implementation of these provisions could increase confidence in the electoral administration. However, legislation alone cannot guarantee that members of electoral commissions will act professionally, honestly and impartially. The Venice Commission and the OSCE/ODIHR again stress that good faith implementation of the provisions on electoral commission formation and administration remains crucial.

CDL-AD(2007)013, Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Overall, the new formula for the formation and composition of election commissions provides the President and the parliamentary majority with a dominant role in selecting all CEC members, giving them extensive control on the entire election administration. Provided that the President and the parliamentary majority have been elected on the ballot of the same political interest, such a solution has the potential to hamper the independence of the election administration. The legislation should provide more guarantees for inclusiveness, transparency and non-interference in election administration bodies' nomination and functioning.

Through their central role in selecting CEC members, the President and parliamentary majority can exercise, in effect, an extensive influence and potential control of the election administration. It is again recommended that the Election Code be amended so that the nomination and appointment process for CEC members is inclusive and ensures their independence and impartiality. Further, it is recommended that safeguards be included in the Election Code to ensure that no party or bloc has a preponderance of managerial positions in election commissions. The Code of Good Practice in Electoral Matters touches upon the question of election commissions' composition and can provide some guidance in this regard.

CDL-AD(2006)037, Joint Opinion on the Election Code of Georgia as amended through 24 July 2006 by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights

In the Code of Good Practice in Electoral Matters (II.3.1.a.), the Venice Commission has proclaimed that an impartial body must be in charge of applying electoral law and that the Central Electoral Commission must be permanent in nature. "Where there is no longstanding tradition of administrative authorities' independence from those holding political power,

independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level".

Unfortunately, the legal guarantees of independence are not always fully respected in practice. The risk is the highest when most or all members are appointed by politicians from the majority in power. A pluralistic representation that includes a strong presence of members appointed by opposition representatives is crucial in order to avoid the likely potential for manipulations.

This procedure does not allow candidates from the opposition to be appointed to the commission nor does it provide the members of the commission to be politically independent. Consideration could be given to amending the law to provide for the members to be nominated by political parties in a balanced manner. The same suggestions are applicable to the staff members. No consent of the President or the Parliament should be needed.

CDL-AD(2006)028, Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR

The composition of the election administration, in particular the CEC, has been a contentious issue for a number of years. In previous elections, the ruling party enjoyed a dominant position in the election administration through the system of appointments. The OSCE/ODIHR and the Venice Commission have previously expressed concern that the composition of election commissions gave a clear advantage to the pro-presidential parties, were politically imbalanced, and overall did not act independently. However, the main opposition parties were entitled to nominate members to the CEC, District elections commissions and Precinct elections commissions. Until recently, the CEC was composed of a Chair and 14 members, of whom five were Presidential nominees and nine were nominees of political parties.

Amendments to the Election Code adopted in April 2005 have introduced changes in the formation of election commissions, which do not address previous OSCE/ODIHR and Venice Commission concerns about the formation of election commissions. To the contrary, these changes have the potential to further diminish transparency and inclusiveness. The amendments were presented as an attempt to 'professionalize' the election administration. The new CEC is composed of a Chair and six other members, who the Election Code requires to be "non-party" persons (Article 27.4). Significantly, the President was given a central role in deciding the composition. According to the new rule, the President proposes to the Parliament a short list of 12 nominees to fill the six member positions, and nominates the Chairperson.

A 'Competition Commission' is set up in order to process applications for CEC membership. The appointing process for the 'Competition Commission' is unclear and should be specified in Article 27.3. This article provides no guidance as it merely states that a 'Competition Commission' for the CEC chairperson and members shall be formed. While Article 27.3 provides that the 'Competition Commission' is founded upon an order of the President of Georgia, it is not clear how and according to which criteria the members are chosen and appointed. This important commission controls the gateway for CEC membership as it is this commission that decides on the short list (at least two but no more than three names) for the President of Georgia to choose from for subsequent submission to Parliament. Arguably, the 'Competition Commission' has the greatest influence in the nomination process as it can limit the pool of nominees for the entire CEC to sixteen names, all of which could be from the same political force. Thus, the appointing process for the 'Competition Commission' is of sufficient importance to require that it be stated in the Election Code. It is recommended that the Election Code be amended to state the process for appointing the 'Competition Commission' and that this process be politically inclusive and transparent.

Through their central role in selecting CEC members, the President and parliamentary majority can exercise in effect an extensive control of the election administration. It is again recommended that the Election Code be amended so that the nomination and appointment process for CEC members is inclusive and ensures their independence and impartiality. Further, it is recommended that safeguards be included in the Election Code to ensure that no party or bloc has a preponderance of DEC and PEC managerial positions. The Code of Good Practice in Electoral Matters touches upon the question of election commissions' composition and can provide some guidance in this regard.

Article 71-2 states that participants in elections (a party, election block, voter initiative group - in the case of the Presidential elections only), shall be entitled to appoint two representatives at every election commission, while a voters initiative group representing a candidate in single or multi-mandate election districts for the local self-government elections, shall have the right to appoint two representatives only in each of the appropriate districts and subordinate Precinct elections commissions, not the CEC. It is not clear why such a distinction between different kind of participants is established, since all participants in the election process should be treated equally. If the role of the representatives of the election subjects is to observe the work of the commissions and to express his/her opinion, than all participants should be equally represented.

CDL-AD(2006)023, Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005 by the Venice Commission and OSCE/ODIHR

Even with formally independent electoral commissions the method of the commissions' composition may strongly favor the government or pro-governmental forces. Not surprisingly the composition of election commissions is one of the most controversial aspects of the legal framework for the election in many emerging or new democracies in the region.

Although in many countries the influence of the executive government on the composition of the electoral commissions has, in general, greatly been reduced, in a few states still a significant number of commission members are nominated and appointed by the executive government, e.g. the President of the Republic or the Ministry of the Interior or Justice. For example, in Georgia five (out of 15) members of the Central Electoral Commission are appointed by the President, not including those members appointed by the governing parties in Parliament. To avoid the risk of governmental interference in the commission's work, as a rule the number of commission members nominated and appointed by the executive government should, if at all, be very low.

Even if institutions other than the executive government nominate and appoint commission members, these institutions may be de facto under governmental control. Three possible solutions might be adopted to avoid that risk.

a) It is important that not all commission members are appointed by the same institution. A "mixture" of institutions that are involved in the nomination process of commission members is nowadays the rule in developing or new democracies in Europe.

b) It is regarded as helpful if at least some of the commission members are appointed by non-political institutions that are perceived as being neutral. In several countries specific bodies of the judiciary are regarded as suitable for that task. Significantly the Venice Commission has encouraged the involvement of the judiciary in the appointment process for electoral commissions, e.g. in Armenia (cf. CDL-AD(2005)027, para. 9). However, we must be aware that the "trust level" for institutions is country specific. Thus, country-specific solutions ought to be found.

c) If some or all commission members are appointed by the parliament or by political parties, an adequate balance between pro-government and opposition parties has to be achieved. In some countries, however, pro-government parties are (still) favored in the commission's composition. Among the remaining shortcomings in the Election Code of Azerbaijan, for example, is the fact that, according to international observers, the method of composition of election commissions continued to strongly favor the government and thus, undermined confidence in the independence of the election administration. In many countries, the challenge remains to find an adequate balance and a politically acceptable formula as to the distribution of commission members between the parties. Finally, with partisan bodies, careful consideration needs to be given to the selection of the chair, vice-chair and secretary, and the role of other members.

The provision for regular or expanded membership of electoral commissions to include party representatives is often regarded as an effective system to guarantee checks and balances of the electoral process. The underlying idea is that one party watches the other. Progovernment and opposition parties are represented in the electoral commission and can control each other. Closely related to the nomination of party representatives to electoral commissions, however, is the risk of the over-politicization of the commission's work. In such cases, the commission's members act in the interest of their parties rather than in the interest of the electorate. The consequences can be serious: In some countries the commission's work was severely hindered by party conflicts and party interference. In such cases the integration of non-partisan members may contribute towards de-politicizing the commission and making it work more professionally.

The Albanian Electoral Code of 2003, for example, has been criticized because the electoral law encourages a politicized election administration dominated by the two major political parties which interfere negatively in the election administration process. It was therefore recommended that impartial, independent, professional and non-partial election commissions be established, with extended membership possibilities for representatives of political parties before an election (see CDL-AD(2004)017, para. 14).

Moreover, legislation ensuring women's participation in election commissions should be considered, since women are heavily underrepresented in election management bodies in many countries.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

The provisions for a recall election require more detail and clarification in particular in the area of administration of recall elections. Inter alia, the law does not address the "extended" composition of election administration and election deadlines applicable to "recall" elections. Moreover, Article 13 of the Law on Presidential Elections permits recall of the President by a majority vote of the "total number of registered voters". Article 13 should state the specific date and how the number of registered voters for the purpose of recall is determined. The OSCE/ODIHR and the Venice Commission recommend that the Law on Presidential Elections be amended to address these issues.

CDL-AD(2006)013, Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in The Republic of Serbia by the Venice Commission and OSCE/ODIHR

The draft amendments constitute improvement as they increase political pluralism in the formation of the Central Election Commission (CEC) and Territorial Election Commissions (TECs). The OSCE/ODIHR and the Venice Commission have previously recommended that these election commissions be established in a pluralistic manner, minimizing the undue

influence of the executive branch government or a single political force over these commissions. The draft amendments constitute a positive movement to achieve a greater degree of political pluralism in election administration. As no law can guarantee the impartiality in the real functioning of the electoral commissions, the OSCE/ODIHR and Venice Commission once more stress that the good faith implementation of the provisions on electoral commission formation remains crucial.

Both appointment models require judicial membership on the CEC and TECs. The OSCE/ODIHR and the Venice Commission have encouraged involvement of the judiciary in the appointment process for election commissions. However, neither institution has suggested that elections in Armenia should be administered by judges. Considering that the draft amendments regulating election complaints and appeals permit judicial review of election commission decisions, actions, and inaction, it would be advisable to add safeguards in the law to address the situation where members of the judiciary are also serving on election commissions. It should be explicitly specified that a judge must not sit in review of a decision in which he or she participated as a commission member.

These comments should not be interpreted as suggesting that there can be no involvement of judicial institutions in the appointment process for the CEC and TECs, but the questions should be considered when determining the role of the judiciary in election administration. As noted, there is a distinction between judicial involvement in appointments and the administration of election processes by judges.

Draft Article 20 (amendment to Article 38 paragraph 3) grants the President of Armenia appointment powers over vacancies on the CEC and TECs during the 20 days before an election, if the minimum number of commission members would not be otherwise present. There appears to be no reason why the original appointing body could not convene immediately and appoint a replacement. This especially applies to the TECs, whose members are appointed by the members of the CEC. Consideration should be given to providing at least a minimum amount of time for replacement by the appointing body before transferring this appointment power to the President of Armenia.

CDL-AD(2005)019, Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR

The Composition of Electoral Commissions. The draft does not change the appointment method for members of electoral commissions. For example, under the current law, the members of the Central Electoral Commission (CEC) are appointed by the parties having factions in the current or dissolved National Assembly and the President of the Republic. Thus, the members of the Electoral Commission may have (and have had) a strong partisan interest. In particular, there is still no provision enabling a “trusted institution” to appoint members to the Central Electoral Commission. Although the provisions on professional training guarantee some degree of professionalism, the influence of one candidate on the Commission may still be excessive, especially in the presidential elections. If the aim is to develop an independent, professional, efficient, and non-partisan election administration, changes to the current procedures are necessary. As more extensively noted in the Joint Recommendations, it results from the rule of having the commissions constituted only by parliamentary appointments coupled with an appointment of three members by the President of the Republic (without any non-partisan-based appointments) that the commissions cannot be regarded as being sufficiently pluralistic and providing an adequate balance in favor of overall impartiality and independence.

CDL-AD(2005)008, Preliminary Joint Opinion on the Revised Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR

It must be recognized that no formal or technical solution for the formation of election commissions can be a remedy for lack of political will on behalf of the major election stakeholders. The rules for the elections must be respected and electoral participants and stakeholders must act in good faith throughout the election processes.

A fundamental problem with the Electoral Code is that some of its provisions encourage a politicized election administration dominated by the two major political parties at every level. This politicized environment, combined with qualified majority voting requirements in all commissions on any issue of consequence, has given de facto veto power to each of the two major political parties on every significant issue at every level of the election administration. While such veto power may be perceived as a protection for the minority not to be excluded from the decision making process, it in fact has a negative impact on the process when used by members of election commissions who view their work in a political rather than technical manner and who are subject to political party interference throughout the process. The current Electoral Code provisions for election administration must be improved. While permitting political party representation on commissions before elections, the Code should establish impartial, independent, and professional election commissions that operate in a non-partisan and efficient manner.

Authorities in Albania should consider amendment of Article 154 of the Constitution, along with amendments to the Electoral Code, as part of the reform effort to develop an independent, professional, efficient, and non-partisan election administration. Additionally, the CEC and all election commissions may wish to consider extended membership possibilities for representatives of political parties before an election, specifically whether they have voting rights or not. The primary goals in this reform effort should include: (1) creating a transparent process for appointing the CEC and other election commissions so that it is not a simple matter of Institution A or Political Party B appointing a certain number of members and, as a result, a “win or lose” situation for those who have a stake in the elections; (2) developing an independent, professional, efficient, and non-partisan election administration that is not subject to political party or government manipulation; (3) ensuring political party confidence with the appointment of extended members to commissions before an election. The sole reliance on political parties to administer elections may impede the development of an independent, professional, efficient, and non-partisan election administration. It must be finally noted that any reform must provide adequate transitory provisions as such reform would constitute the third appointing scheme for election commissions in Albania since 2000. Adequate and detailed transitory provisions are critical for the appointment of members to the CEC in particular.

Another problem with the Code is its lack of provisions to ensure that qualified individuals are appointed to election administration structures. This has resulted in the appointment of individuals based singularly on their ability to obstruct and hinder the election processes. It has also resulted in the appointment of individuals who simply do not have the necessary skills to administer elections. In order to address these problems, The OSCE/ODIHR and Venice Commission recommend that the Code be amended to require that the CEC develop, no later than 180 days before an election, a training course for members of ZECs, LGECs, and VCCs. This training course should consist of a minimum of eight hours training in election administration, the Electoral Code, ethics, and other matters that the CEC deems important for the administration of elections in Albania. This training course should be offered free of charge to persons who meet the requirements to vote and should be offered throughout Albania as frequently as necessary to ensure that there exists a sufficient pool of trained election administrators. At the completion of the training course, a test should be administered and those individuals who obtain a satisfactory score shall be “certified” as election administrators. Only individuals with certification would be eligible for appointment to ZECs, LGECs, and VCCs. As an incentive to attract individuals to obtain certification, the Government of Albania should considering paying an appropriate monetary amount to those

who obtain certification. The CEC should also have the power to revoke certification where an individual violates the law.

An additional problem with the Code is that Articles 33, 35, and 41 have created a virtually uncontrollable forum for "non-voting representatives of parties" to attempt to inject chaos and confusion into election administration. Although Article 154 of the Constitution provides that "electoral subjects" appoint representatives to the CEC, there is no constitutional requirement that "representatives of parties" be given a political forum at every level of election administration to engage in obstruction of the political processes. The OSCE/ODIHR and Venice Commission recommend that Article 33 of the Code be amended to meet the narrow requirements of Article 154 of the Constitution. Further, Articles 35 and 41 should be amended to ensure that they are also narrowly drawn for consistency with Article 33. Finally, regardless of whether an intervention occurs at the CEC, ZEC, or LGEC, the relevant election commission should limit the time for interventions, taking into consideration other items on the agenda and the number of requests for intervention. The OSCE/ODIHR further recommends that Articles 30, 38, 44, and 47 be amended to specifically state that an election commission shall at all times conduct meetings in a manner that ensures professional, efficient, and dignified consideration of the public's interest in and right to genuine democratic elections.

The new provisions for the appointment of members to the CEC are of concern. These provisions expressly limit the number of candidates that can be considered by the three constitutional institutions when electing a member to fill a CEC vacancy. These provisions limit the appointing institution's constitutional prerogative to a list of no more than two candidates nominated by non-Article 154 bodies ("political parties/groups"). The phrase "no more than two" compounds constitutional concerns as it permits the list to be limited to a single name, thereby completely abrogating the constitutional prerogative of the three appointing institutions. This transforms these three constitutional institutions into mere "rubber stamps" for the Article 154 CEC appointment process. The OSCE/ODIHR has previously expressed concern about attempts to limit the Article 154 constitutional prerogatives granted the Assembly, President, and High Council of Justice for electing CEC members.

The involvement of non-Article 154 bodies in the election process of the CEC might be acceptable, provided the overall process respects the constitutional structure and prerogative that rests with the three Article 154 institutions (Assembly, President, and High Council of Justice) to elect members of the CEC. However, the procedures established by these new provisions in the Electoral Code significantly limit constitutional prerogative and, thus, appear to be contrary to the constitutional structure established by Article 154 of the Constitution. The OSCE/ODIHR and Venice Commission recommend that Article 22 of the Electoral Code be reformulated in order to ensure that the involvement of the constitutional Article 154 institutions in the CEC membership election process includes a meaningful level of participation that respects the constitutional prerogatives of these institutions.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

The composition of the Central Election Commission (CEC), Constituency Election Commissions (ConECs) and Precinct Election Commissions (PECs), set out in the Election Code and the transitional provisions, should be revised. The commissions should enjoy the confidence of all major election stakeholders. To achieve this goal they should not be dominated by pro-government forces. The existing provisions are not sufficient to ensure that. The recent presidential election demonstrated that the election commissions do not operate independently enough.

Attention should be paid to other important aspects of election commissions' composition:

i) *Leadership of electoral commissions.* The Election Code gives large powers to the Chairperson of an election commission. Hence, it would be preferable to appoint chairpersons representing different political parties. This measure will increase the confidence in the work of the commissions. The ruling party should not monopolize the chair positions across the election administration. This contributes to the lack of independence of the election commissions from the authorities.
ii) *Nomination and appointment of commissioners.* The Election Code should provide for a clear and transparent procedure of nomination and appointment of all commissioners.
iii) *Term of office of commissioners.* The 5 years term of office for regular members of ConECs acting only during election periods and for all PEC members, acting during election periods and annual drafting of the voters' lists, looks excessively long and should be revised. This will decrease the cost of elections.
iv) The residence restrictions for PEC membership (Art. 36.2) appear artificial and irrelevant for constituencies organized for IDPs and refugees from the occupied territories and should be revised.
v) Further, decisions of the commissions should require a quorum of two-thirds and a majority of two- thirds. This would require a high level of consensus to make the commissions operative.

CDL-AD(2004)016rev, Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan by the Venice Commission and the OSCE/ODIHR

Although not uncommon in the region, the Election Code contains a prohibition for judges and assistants to judges to become members of the CEC or the DECs (Art. 18.6 h). It might be sensible to reconsider such a provision. In some new democracies, the incorporation of judges into the electoral commissions contributes towards strengthening professionalism and impartiality. It should be remembered that the "Code of Good Practice in Electoral Matters" of the Venice Commission also recommends that the central electoral commission should include at least one member of the judiciary (CDL-AD (2002) 23rev.).

CDL-AD(2004)005, Opinion on the Unified Election Code of Georgia

Considering possible amendments to the Electoral Code, the recommendations are made:
• to review the provisions regarding the composition of the electoral commissions to reduce the presidential administration influence on the commissions' work and to strengthen the impartial performance of the electoral administration (Chapter Eight of the Electoral Code).

CDL-AD(2003)021, Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR

Article 16(2) vests the choice of the composition of the Central Elections Commission in the President of the Republic, the Parliament and the High Council of Magistracy. If the election is decided by majority or plurality vote in the last two bodies, all posts could be in the hands of a single political party. To avoid this, it would be suitable to elect the Commission by a system of proportional representation. The election of the president of the Central Elections Commission seems to depend on the majority in Parliament. Article 17(1) vests the choice of the Vice President and Secretary in a majority of the Commission members. In order to ensure political pluralism, the three above-mentioned officers of the Commission, or at least the Vice President and Secretary should be elected by PR, for instance with the single transferable vote system.

Article 29(12). The election commissions' members should also be elected by proportional representation to prevent one party or clique from dominating it.

CDL-AD(2003)001, Opinion on the Election Law of the Republic of Moldova

7. Election Commissions should not fall under the influence of a single political interest in order to be perceived as impartial and trustworthy by a broad political spectrum.

CDL-AD(2002)035, Joint Assessment of the Revised Draft Election Code of the Republic of Azerbaijan

The composition of a central electoral commission can give rise to debate and become the key political issue in the drafting of an electoral law. Compliance with the following guidelines should facilitate maximum impartiality and competence on the part of the commission.

As a general rule, the commission should consist of:

- a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office;
- representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; “equally” may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties’ relative electoral strengths.37 Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.

In addition, the electoral commission may include:
- representatives of national minorities; their presence is desirable if the national minority is of a certain importance in the territory concerned;
- a representative of the Ministry of the Interior. However, for reasons connected with the history of the country concerned, it may not always be appropriate to have a representative of the Ministry of the Interior in the commission. During its election observation missions the Parliamentary Assembly has expressed concern on several occasions about transfers of responsibilities from a fully-fledged multi-party electoral commission to an institution subordinate to the executive. Nevertheless, co-operation between the central electoral commission and the Ministry of the Interior is possible if only for practical reasons, e.g. transporting and storing ballot papers and other equipment. For the rest, the executive power should not be able to influence the membership of the electoral commissions.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

The requirement of approval by at least 2/3 of the members of Parliament is understood as a required majority and not a quorum. This requirement is desirable in order to ensure a multi-party influence on the composition of the CEC, while it poses the technical problem of achieving this majority. If that problem is difficult to solve, the method of choosing the members by a proportional parliamentary vote may perhaps be considered.

The Commission has been informed that the composition of the CEC was once again modified by Parliament on 10 April 2002. This reform would not be applied to the next local elections to be held in June, and cannot therefore be considered as a last-minute modification of the electoral legislation. However, it must be underlined that frequent changes of electoral law, and in particular of its most sensitive features like the composition of the election commissions, will often seem to be dictated by immediate political interest and may cast doubt on the legitimacy of the democratic process itself. It is therefore advisable to adopt rules on this matter for the long run.

In itself, the newly adopted composition of the CEC – according to our information, 2 members nominated by parties/coalitions/factions which passed the 4 % threshold in the 1999 parliamentary elections, 2 members nominated by the autonomous republics and 1 nominee of the President of Georgia – is not contrary to the standards of the European electoral heritage. It seems that it would actually imply a re-politicization of this body, by eliminating the role of the NGOs. More detailed comments could be made as soon as the new text is available to the Venice Commission.

CDL-AD(2002)009, Opinion on the Unified Election Code of Georgia

2. Term of office and dismissal of members

A further area of concern is related to the extension of the term of office of the CEC members and Chairperson currently in office. Based on the political agreement of 19 April 2021, draft amendments to the Election Code provided that when no qualified majority is reached, the CEC members and Chairperson would be elected with simple majority for a limited period of six months. However, following the approval of the draft amendments by the Venice Commission and ODIHR in their second 2021 Urgent Joint Opinion, these provisions were supplemented with the following provision: in case no new member or Chairperson are elected during the six-month period, the term of office of the member(s) in question or of the Chairperson is extended until a new member(s)/Chairperson is elected.

This led in practice to the following situation: the current CEC Chairperson, as well as some members, were elected under this anti-deadlock rule by simple majority, initially for a period of six months, but are still in office at the moment for lack of a political agreement. This regulation was highly unsatisfactory as it could lead to practically unlimited terms of office of persons elected by simple majority. The June 2023 amendments went even further, repealing the limited six-month term and granting the CEC members and Chairperson – all of whom are to be elected by simple majority – five-year terms which are extended until a new member/Chairperson is elected (Articles 10(3), 12(1) and 12(11.1) of the Election Code). The current draft amendments maintain the five-year term for all CEC members and the Chairperson regardless if elected by qualified or simple majority, with extensions until a new member/Chairperson is elected/appointed (draft Article 10(7) and (9) of the Election Code). The Venice Commission and ODIHR recommend modifying the draft amendments in this respect, in order to ensure that appointments made on the basis of the anti-deadlock mechanism are significantly limited in time and cannot be prolonged. The political agreement of 19 April 2021 included a reasonable formula in this regard, making it clear that such appointments would be temporary, with a term limited to six months, during which the standard appointment procedure should be re-launched.

Second, the draft amendments (draft Article 211.1(2)-(4) of the Rules of Procedure of the Parliament) do not substantively address outstanding recommendations to adopt legal provisions designed to ensure the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson.

Third, draft Article 13(4) of the Election Code maintains the full discretion of parties to dismiss CEC members (and lower-level commission members) appointed by them, contrary to international standards, as set out in the 2021 Urgent Joint Opinions which recommended to clearly and restrictively set out on what grounds party-nominated members may be removed, in order to ensure their independence.

The Venice Commission and ODIHR recommend:
F. Modifying the draft amendments with respect to the term of office of the non-partisan

members and Chairperson of the CEC, in order to ensure that appointments made on the basis of the anti-deadlock mechanism are significantly limited in time and cannot be prolonged. [paragraph 38].

The Venice Commission and ODIHR furthermore reiterate their previous recommendations relating to the composition of election commissions, namely:
H. Ensuring the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson; [paragraph 41].

CDL-AD(2023)047, *Georgia - Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia*

The authorities appointing CEC members are entitled, according to Article 23(2) of the draft Code, to dismiss its appointee or appointees, among other things, if "serious and obvious professional incompetence was found", as stated in paragraph 2(h) and "acts incompatible with his/her office were committed" (paragraph 2(i)). Such grounds for dismissal appear vague and could be used for dismissal based on subjective and inappropriate reasons. This provision, therefore, challenges the international good practice that recommends having grounds for dismissal clearly and restrictively specified in law. Also, while such a CEC member would be relieved by the appointing authority, it remains unclear which authority would establish and ascertain professional incompetence. Due process guarantees must also be considered, providing those members subject to dismissal with a clear legal path to address aggrievances, detailed in the law. Access to a judicial remedy may be provided for in other legislation. In addition, if not explained in the law in more detail, the possibility for dismissals on such grounds is not conducive to ensuring the security of tenure and, thus the independence of CEC members. It is recommended to uphold the independence of CEC members by setting out exhaustive and specific grounds for their dismissal as well as the procedure for ascertaining them. Those dismissed should have a clear legally defined possibility to appeal the decisions of their dismissal.

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections

The fourth key recommendation of the first Joint Urgent Opinion, to clearly set out in the law on what grounds the removal of party-nominated election commission members may be based, has not been fully followed: positively, the revised draft amendments stipulate that parties may not withdraw their DEC members during the last three weeks prior to election day, rather than until the eve of election day and PEC members may be replaced until 20 days prior to election day, instead of 15 days; at the level of the CEC, the revised draft amendments maintain the provision of the initial draft, i.e. parties may not withdraw their members at the CEC from the day of call of the election until the final election results. However, outside of those time periods, parties would still enjoy complete discretion to dismiss their commission members. This is contrary to international standards according to which the bodies appointing members of electoral commissions must not be free to dismiss them at will, as this practice can cast doubt on their independence. The Venice Commission and ODIHR reiterate their long-standing recommendation calling for the legislation to set out on what grounds a removal of party-nominated election commission members is justified in order to protect the tenure of commission members.

CDL-AD(2021)026, Georgia - Urgent Joint Opinion of the Venice Commission and the OSCE/ODIHR on the revised amendments to the Election Code of Georgia

The Code of Good Practice in Electoral Matters provides that the bodies appointing members

of electoral commissions must not be free to dismiss them at will, with the Explanatory Report elaborating that this practice can cast doubt on their independence. Recall for disciplinary reasons to protect the impartial and professional performance of the election administration is permissible provided the grounds for this are clearly and restrictively specified in the law. However, the proposed amendments leave in place provisions that give parties complete discretion to dismiss their commission members. The Venice Commission and ODIHR reiterate their long-standing recommendation calling for the legislation to set out on what grounds a removal is justified in order to protect the tenure of commission members.

CDL-AD(2021)022, Georgia - Urgent joint opinion on Draft Amendments to the Election Code, issued pursuant to Article 14a of the Venice Commission's Rules

The Draft Constitution offers a model that does not reflect these recommendations. The proposed model assumes broader involvement of the President in formation of the CEC detracting from the current balanced approach. Half of the members of the CEC is appointed by the President and the other half is chosen by the Jogorku Kenesh whose powers are severely diminished by the proposed provisions of the Draft Constitution. In addition, when the parliamentary majority is from the same political force as the President, the proposed model may compound the President's influence over the composition of the CEC. This may potentially negatively affect the public perception of the CEC, undermine its independence and impartiality and put at risk public confidence in the outcome of the elections administered by such institution. The possibility for the President to dismiss half of the CEC members may also make the members of the CEC vulnerable to political pressure putting the independence of individual members at higher risk.

While the presidential form of government proposed by this Draft Constitution may re-distribute certain powers from the parliament to the president, this should not be the case with the formation of independent institutions, such as the CEC, Ombudsperson and others. The selection and dismissal process for the members of the CEC must be reconsidered in the corresponding provision of the Draft Constitution establishing that an "independent impartial body" is "in charge of applying electoral law". The principle of independence and impartiality of the CEC should be expressly stipulated in the Constitution.

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

Article 33 stipulates grounds for the dismissal of individual CEC members and authorizes the CEC to submit a proposal for dismissal to the Parliament specifically in connection with cases categorized as "negligent and unprofessional performance of duties". The latter is clarified to include acts contrary to the CEC's statutory powers and failures to fulfil the obligations prescribed by law. However, a clarification is needed on the procedure to be followed in connection with other envisaged grounds for dismissal. The ground for dismissal "public expression of political beliefs" is especially vague and may lead to misuse, as the line between politics and administration may in some instances be faint, e.g. in case the member of the CEC proposes publicly some amendments to the voting process, otherwise decided by the parliament. The same applies to the ground for dismissal of MEC members (see Article 46.3). The principle of proportionality should be respected and, more generally, cases and procedures for dismissal or replacement of (members of) election commissions – including polling boards - should be made more precise. As the membership of the CEC is designed as a full-time job (see Article 37.1 of the draft law), the dismissal of members is disciplinary in nature and therefore should be subject to a judicial review.

Article 35 of the draft law gives the Parliament the right to dissolve the CEC if the CEC fails to meet for more than six months without justification or if it fails to perform the activities within its responsibility as outlined in items 1-24 of Article 38 of the draft law. These new

limits on the authority of the Parliament to dissolve the CEC are positive as they reference the specific activities of the CEC as grounds for dismissal, in line with international good practice. However, one could wonder whether the margin of appreciation still given to Parliament is not too broad and could not be abused.

The draft law lacks provisions detailing the procedure for the Parliament when deciding to dismiss the CEC and the subsequent procedure. Consideration should be given to defining a dispute settlement mechanism in order to prevent and/or to counteract any abuse of the Parliament's right to dissolve the CEC. It could be envisaged to give each member of the dissolved CEC the right to appeal against this decision or to provide for a specific procedure dealing with the institutional conflict between the (dissolved) CEC and the Parliament.

CDL-AD(2020)026, Montenegro - Urgent joint opinion on the draft law on elections of members of parliament and councilors, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure

Article 45 provides for the procedure for removal of the deputy chairperson and secretary of the CEC and chairperson, deputy chairperson and secretary of the DEC. In both cases, the decision must be adopted by at least two thirds of the total number of votes of the members of the Commission. Nevertheless, there are no provisions that outline the grounds that could justify such a decision. Dismissal should be based only on a reasoned decision, and be limited to very serious grounds.

Article 45 also establishes the procedure for early termination of powers of members of DECs. Paragraph 6 lists some grounds, and the possibility to terminate the powers of a member of the DEC upon a decision adopted by two thirds of the votes of the members of the CEC. In addition, the DEC may terminate earlier the power of a member of the PEC upon a decision adopted by at least two thirds of the total number of votes of the members of the Commission if the latter has violated a provision of the code. The Article also establishes that "the procedure prescribed by this part may be enforced for unreasonable absence from regular sittings" of the members of DEC and CEC. However, it is not clear if absence is the only possible cause for removal. The ambiguity and lack of clarity of the Article should be revised, since it could endanger the security of tenure and independence of commission members.

CDL-AD(2016)019, Armenia - Joint Opinion on the draft electoral code

Article 28(3)(4)(7) provides that the rejection of the annual progress report of the Chairperson of the CEC shall imply termination of his/her powers. This provision is peculiar since the annual progress report must reflect the activity of the CEC and not of its chairperson as the commission is a collegial body sharing responsibility with the chairperson. The Chairperson should not be revoked on this ground.

CDL-AD(2014)019, Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic

Article 43 allows the election commissions to dismiss their chairperson, deputy chairperson and secretary without any motivation. Impeachment should be limited to very serious grounds and the decision should be reasoned. Dismissal of other members (Article 43(3)) should be limited to the same grounds and not take the form of a recall by the appointing body.

CDL-AD(2011)021, Joint interim opinion on the new draft electoral code of Armenia

The Code provides that the credentials of members of all electoral bodies may be terminated at the request of the nominating party or coalition of parties. The Code of Good Practice in Electoral Matters underlines that the bodies appointing members of election commissions should not be free to dismiss them at will, as this casts doubt on their independence. The discretion given to political parties to request that members nominated by them be recalled is compounded by the fact that they may be recalled at any time, since the Code does not provide any time-limit for the termination of the mandate. A system where members of election commissions can be dismissed upon request and at any time by the political parties who appoint them is likely to be perceived as not fulfilling the requirement of independence and neutrality. The Constitutional Court held these provisions unconstitutional on the ground that they would seriously undermine the independence of the election administration. Thus these provisions are repealed, which is welcome.

CDL-AD(2011)013, Joint opinion on the election code of Bulgaria

Article 65.3(6) provides for the removal of a CEC member if "a guilty verdict has been issued against him/her". The Venice Commission recommends that such a provision only applies to people guilty of a crime.

Article 65 on the impartiality and independence of the Central Election Commission is vital for democratic elections and necessary for the credibility of this body. This goal can not be achieved without clear rules of appointment and removal from office of members, which would exclude any possibility of pressure. This task will be difficult to achieve, if potential candidates have the authority to initiate the removal from office of the members of the Central Election Commission. In this context, paragraph one of this article, which gives the President of Ukraine, a potential candidate, the competence to initiate the removal from office of the members of the Central Election Commission can undermine the independence of this body.

CDL-AD(2010)047, Opinion on the draft election code of the Verkhovna Rada of Ukraine

The terms of offices of election commission members should not be terminated on a discretionary basis, as it casts doubt as to the independence of the members. Termination for disciplinary reasons is permissible provided that the grounds for this are clear and restrictively specified in the law. Article 21 provides that parliament can terminate early the terms of office of non-party appointed CEC members. In addition, Article 37 sets out the potential forms of disciplinary action that DECs can employ against PECs, including termination of authority. While these provisions list relevant sanctions, they should do more to ensure that the sanction of termination is not abused and is only applied with careful consideration to proportionality. ***It is*** recommended by the Venice Commission and OSCE/ODIHR that the Code protects election commission members from arbitrary removal by setting out under what grounds a removal is justified as compared to what grounds require a lesser sanction.

Article 21(1g) provides that the authority of a commission member terminates if the party, which appointed the member, "recalls" the member.21 In light of Article 19(3), which states that members of election commissions are independent and are not representatives of his/her appointing subject, the rationale for recall is questionable. In fact, there is no justification for allowing discretionary recall of an election commission member because the possibility of such recall will undermine the impartiality, independence and stability of election administration. The amendment introduced in June 2006 to the Article 21(5), which currently states that "recalling precinct election commission member during the last 15 days before the vote is prohibited" attests to the legislator's intent to ensure the stability of precinct elections commissions. Nevertheless, this amendment does not address the fundamental problem that gave rise to the recommendation. It is recommended that the Code be amended to provide legal protection to members of election commissions in order to prevent their

removal by the bodies, which appointed them and to enhance their ability to perform their duties independently, impartially, and professionally.

CDL-AD(2010)013, Joint Opinion on the Election Code of Georgia

Existing international standards require the CEC to perform its duties in a professional and politically impartial manner, independent from other branches of State power. In this context, the unconditional authority of the executive - and in particular the President – with regard to the appointment of senior election officials without any consultations with political stakeholders seems excessive.

At the CEC level, political parties may appoint representatives but they have no voting rights. In previous elections the President issued decrees envisaging the appointment of such advisory members of the CEC. This has now been formalized within the Code (in a new Article 331). However, this falls short of addressing the concerns expressed by the 2008 Report, which noted that although opposition representatives actively took part in the debate in all CEC sessions, they had no discernible impact on the decision making process. Moreover, although the Code continues to stipulate that election commissions are independent from state bodies (Article 11, part 3), the prospects that the commissions will be able to exercise meaningful independence are limited by the degree of control exercised by the President over the membership of the CEC.

Given that CEC decisions are taken by a majority of the total membership (Article 32, part 5) and that the President appoints half the members, all it takes is one pro-presidential nominee from the Council of the Republic to give the President effective control over decision-making at the CEC. It is also notable that whilst there is a clear expectation that representatives of political parties will play a significant role in all subordinate election commissions with full voting rights (Article 34, parts 1 and 2), there is no such mechanism in respect of the CEC. Thus, serious concerns remain about the lack of genuine political pluralism in the appointment and operation of the CEC.

CDL-AD(2010)012, Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus

Article 36.3.2 appears to grant a nominator of an election commission member the unlimited right to remove the member at any time, even if the member has been performing his or her duties in a professional and legal manner. Such a provision can subject election commission members to political pressure and threats of removal should the commission member vote on issues contrary to possible instructions given by the nominator. The Venice Commission has expressed in its Code of Good Practice in Electoral Matters (Point 77) and in some opinions that recall of electoral commissions is not an acceptable practice. Commission members must act impartially without regard to the political motivations of the nominator. This has previously been noted by the OSCE/ODIHR and the Venice Commission. Persons who hold positions on the election administration must be completely free from political influence or pressure. The Venice Commission Code of Good Practice notes: “The bodies appointing members of electoral commissions must not be free to dismiss them at will.” The Venice Commission and the OSCE/ODIHR recommend, consistent with the international and European principles and the Code of Good Practice, that the draft law be revised to provide the grounds and reasons when a member of an election commission can be dismissed.

CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR

The Assembly’s control over the CEC extends from election of CEC members to removal. Although the prior Code did permit the removal of a CEC member by the Assembly, a

dismissed member had the right to appeal the dismissal decision to the Constitutional Court. The suppression of such a right could make easier a removal for political reasons. The Venice Commission and the OSCE/ODIHR recommend that consideration be given to providing the right of appeal to a dismissed member.

Article 19 regulates the filling of CEC vacancies. Article 19(2) provides that vacancies are filled using the initial appointment procedures of Article 14. Article 19(2) has the following sentence: "Otherwise, the candidacies are proposed from the political party which meets the criteria of ranking and affiliation." It is assumed that "otherwise" refers to possible changes in the ranking between political groups in Parliament and in MPs' affiliations, however, this provision would benefit from more clarity.

Article 18(1) sets the criteria for expiry of the mandate of a member of CEC. Point (a) of that clause provides expiry of the mandate, if the member performs a political activity. Point (dh) provides the end of the mandate, if by acting or failing to act, he threatens the activity of the CEC concerning the preparation, supervision, direction and verification of all aspects that pertain to elections and referenda, as well as to the declaration of their results. Although the provisions are appropriate in themselves, they can give ground for arbitrary practice. The Venice Commission and the OSCE/ODIHR recommend *that reasons for dismissal be stipulated more clearly.*

CDL-AD(2009)005, Joint Opinion on the Electoral Code of the Republic of Albania

As a rule, the terms of offices of election commission members should not be terminated on a discretionary basis, as it casts doubt as to the independence of the members. Termination for disciplinary reasons is permissible provided that the grounds for this are clear and restrictively specified in the law. Article 21, par. 1 and Article 21, par. 2, prima 1 (as amended in July 2008) provide that Parliament can terminate early the terms of office of non-party appointed CEC members, the upper-level election commission can terminate early the terms of office of non-party appointed DEC and PEC members, and the courts can terminate early the offices of party-appointed commission members. These provisions, however, do not set out the grounds for such early termination. It is thus recommended that the Election Code expressly protect election commission members from arbitrary removal – setting out under what grounds a removal is justified.

CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia

The ability of political parties to control the actions of the persons they have appointed to election commissions, by virtue of the unlimited powers to appoint and remove members at will, significantly hampers the development of an independent and professional election administration that operates in a non-partisan and efficient manner. The Venice Commission's Code of Good Practice in Electoral Matters is quite clear on this point: "The bodies appointing members of electoral commissions must not be free to dismiss them at will." The OSCE/ODIHR and Venice Commission recommend that the Code be amended to provide that a member of an election commission can only be dismissed for failure to fulfil the member's legal duties imposed by the Code.

The 2004 opinion expressed concern that Article 24 permits the parliament to dismiss a member of the Central Election Commission. Article 24 is of questionable constitutional validity as neither Article 154 nor those provisions of the Constitution devoted to the Parliament expressly grant this authority to the parliament**.** The OSCE/ODIHR and Venice Commission recommend that Article 24 be carefully reviewed and amended to ensure compliance with the Constitution.

CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

Article 22 (2) on removing members of the CEC should probably refer to the bodies nominating – not appointing – the members. If it is meant that the appointing authority is the one which removes them, one should simply state the People's Assembly.

The possibility to revoke a member of the CEC is very open and the decision is made by bodies appointing the members of CEC. As mentioned, a wide possibility for revocation is incompatible with the principle of impartiality of electoral bodies. It would be preferable to provide a limited and precise list in Article 22, possibly including a list of penal and administrative offences. The criterion "if they take actions that unfit their functions" is too wide and gives rise to concern about possible abuses.

Article 22 does not specify the procedure for revocation. It remains unclear whether the right to revocation rests on the People's Assembly as the body confirming the members or on the different organs including the Assembly of Gagauz-Yeri and law courts as bodies which proposed the members to the Assembly. In both cases, it would appear that these organs have the power to dismiss a CEC member, even without any court decision. If it were the assembly
itself that had the power to investigate the "serious violations", a procedure for granting the defense of the charged CEC member should be stipulated, and some possibility to appeal should be foreseen. It is not specified according to which procedure the law courts may revoke
the membership of CEC.

CDL-AD(2007)033, Opinion on the Law of the Gagauz Autonomous Territorial Unit on the Election of the Governor of Gagauzia (Moldova)

According to Article 18.5.a of the code, only those who have received from the CEC a 'certificate of election administration official' can work on the CEC (members and staff), a DEC or a PEC. The CEC establishes the rule for certification and ensures the conduct of the certification process for all election commission members and staff. While the certification process can enhance professionalism, it also raises several issues and requires guarantees of transparency and impartiality; in particular:

- Such a certification process based on 'tests' or 'professional experience' can be easily manipulated and requires to be impartially implemented. The CEC will have to establish in advance clear and objective criteria for certification. Ideally, the CEC should seek to establish these criteria through an inclusive consultation process.

- The modalities of the certification process must be transparent, and should enable political parties and observers to verify the objectivity of the criteria and the impartiality of their implementation.

- It must be noted that this process has the potential to reduce the significance of the already limited participation of political parties to PEC members' nomination.

- It should be clear whether or not the CEC is entitled to withdraw certificates. If it were, the withdrawal would amount to a dismissal and should be properly regulated as such, in order to avoid abusive withdrawals.

- It should be clearly established whether the duration of the validity of certificates would be limited. If it were, rules for renewing or not renewing a certificate should be specified.

- The certification process should not be viewed as relieving the election administration from the necessity to train polling station commission members.

CDL-AD(2006)023, Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005 by the Venice Commission and OSCE/ODIHR

In order to guarantee the independence of the election commission it is usually preferable to respect common incompatibilities in the commission members. Persons who could be involved in an inherent conflict of interests with the requirement for impartiality should not be allowed to be appointed to electoral commissions. For example, it would be problematic if registered candidates were not explicitly prohibited from being commission members. International observers highlighted this issue, for example, with regard to the 2002 parliamentary election in Montenegro, or the 2005 Municipal Elections in "the Former Yugoslav Republic of Macedonia".

Furthermore, the commission's independence can be strengthened by appointing commission members for a fixed (and sufficiently long) time period and by prohibiting their dismissal without reasonable grounds. According to the Code of Good Practice in Electoral Matters, in general bodies that appoint members to electoral commissions should not be free to recall them, as it could cast doubt on their independence. "Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible – provided that the grounds for this are clearly and restrictively specified in law…" (CDL-AD(2002)023rev, para. 77).

Whilst in some countries respective provisions have been amended in the electoral law in line with the Code of Good Practice, in a number of states the grounds for dismissing commission members are still vague and can lead to abuse. In several cases the problem has been pointed out by the Venice Commission and OSCE/ODIHR (see for example CDL-AD(2004)027, para. 41). The issue has to be considered seriously since there have been repeated attempts by state authorities or political parties to remove "their" designated or appointed members from the electoral commission if they do not follow the official or party line.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

The Joint Recommendations (paragraph 41) also commented upon the question of the cases of dismissal of CEC members and commenting on Article 20.2, asserted that: The ability to dismiss members of the Central Electoral Commission for deeds incompatible with their position could lead to abuses. It would be preferable to provide a limited and precise list in Article 19 (2), possibly including a list of penal and administrative offences.

The problem has been partly addressed by Article 16.3, that reads as follows:
(3) The members of the Central Electoral Commission are irremovable. The vacancy of the function can appear in the case of the mandate expiry, resignation, dismissal or decease. Dismissal can be executed by the Parliament in the following cases:

a) adoption of final judicial decision in a criminal case in his/her regard;
b) the loss of Republic of Moldova citizenship;
c) the person is declared functionally limited or functionally incapacitated by a final court decision;
d) serious violation of the Republic of Moldova Constitution and of the present Code.

In case of serious violations of the Constitution and the Electoral Code, it would appear that the Parliament has the power to dismiss a CEC member, even without any court decision. If

it were the Parliament itself that had the power to investigate the "serious violations", a procedure for granting the defense of the charged CEC member should be stipulated, and some possibility to appeal should be foreseen.

CDL-AD(2006)001, Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR

Article 24 provides eight separate grounds that would permit the Parliament to dismiss a member of the CEC. Article 24 is of questionable constitutional validity as it establishes the right of the Parliament to dismiss members of the CEC where Article 154 of the Constitution does not expressly grant this authority to the Parliament and this power is not expressly granted in the constitutional articles regulating the Parliament. The OSCE/ODIHR and Venice Commission recommend that Article 24 be carefully reviewed and amended to ensure compliance with the Constitution.

Article 25 provides in the first sentence of clause (2) that the CEC Chairman advises of a vacancy in membership. The second sentence of the same clause suggests that it can be either the CEC Chairman or Deputy Chairman who advises of a vacancy in membership. Furthermore, it is not clear what is meant in clause (2) with “the respective competent body” or how this body should publicly announce the vacancy. The OSCE/ODIHR and Venice Commission recommend that Article 25 be clarified.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

Art. 18.3 stipulates that member of the election administration (that is, members of the election commission and staff), are not allowed to be party members for the term of their office in the election administration. Apparently, the provision aims to reduce the parties’ influence on the election administration. In Art. 19 on rights and responsibilities, a new para. 3 also appropriately declares that an EC member is not a representative of the election-subject which may have appointed him/her, and that in his/her activities, the member shall be independent and subject only to the Constitution and the law. Furthermore, Art. 21 sets out the conditions under which the term of office of commission members can be terminated prior to its expiration. From reading this article, it appears that only PEC members can be recalled by the appointing party (Art. 21.2 h). However, it must be admitted that, in practice, the members of the election commission have not acted politically independently up to now. Observers of the 2003 parliamentary elections expressed serious concerns over the political interference in the election commissions’ work, in particular at the district and precinct level.

CDL-AD(2004)005, Opinion on the Unified Election Code of Georgia

Article 20(2). The possibility to dismiss members of the Central Elections Commission for deeds incompatible with their quality could lead to abuses. It would be preferable to provide with an exhaustive list in Article 19(2), including possibly a list of penal and administrative offences.

Article 33(2). The possibility to dismiss members of electoral commissions at will cast doubts on their independence. It should be deleted.

CDL-AD(2003)001, Opinion on the Election Law of the Republic of Moldova

Broadly speaking, bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law (vague references to “acts discrediting the commission”, for

example, are not sufficient).

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

The possibility for political parties or blocs to withdraw (Article 21.2.i) their members is, however, completely contrary to the principle of de-politicization and should be removed. The possibility of dismissal for violation of election legislation (Article 21.2.h) should be more precise, in order to avoid any abuse and to respect the principle of proportionality; the law should also make only one body (higher level commission or Court) responsible for such a sanction.

CDL-AD(2002)009, Opinion on the Unified Election Code of Georgia

3. Permanent character

In its 2021 final report, ODIHR recommended reconsidering the procedure of appointment and nomination of the CEC to enhance its impartiality. The chosen model significantly reduces the role of Parliament in forming the election management body and considers good practices by including the judiciary in the appointment process. Positively, the draft Code also envisages that all CEC members are employed on a permanent basis (currently, this is the case only with the CEC chairperson, deputy chairperson and secretary).

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections

The Code of Good Practice in Electoral Matters highlights that one of the most important procedural guarantees is to ensure that the Central Elections Committee must be permanent in nature and elections should be “organized by and impartial body”. The Code of Good Practice in Electoral Matters further states that “the bodies appointing members of electoral commissions must not be free to dismiss them at will”.

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

The CEC is a permanent body appointed by the parliament for an indefinite term. ODIHR has previously expressed concern that the appointment procedure for CEC members does not guarantee the body’s independence and recommended reviewing such a process. In addition, ODIHR has noted in past reports that most CEC members maintain other employment in addition to their CEC responsibilities. Article 11 of the draft Election Code now stipulates that not less than 7 of 15 CEC members should work on a permanent basis. Other types of paid activities, except related to scientific and pedagogical aspects, are not permitted.

CDL-AD(2018)027, Uzbekistan - Joint opinion on the draft election code

It should be noted that Article 25 of the draft law is an improvement compared with the previous text concerning the permanent status of members of the CEC and the members’ right to payment of salary during their term of office. These addresses previous recommendations of the OSCE/ODIHR and the Venice Commission that the law ensures that members are paid for their service on the CEC, do not suffer any negative consequences as a result of their membership, and that it is clear that the duties of the CEC members are permanent duties that must be fulfilled by the members during the term of appointment. The administration and oversight of elections requires that the CEC members devote full efforts to their positions and that membership not be viewed as a part-time or voluntary position.

The text of Article 25 is an improvement addressing previous recommendations.

CDL-AD(2014)019, Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic

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.

CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria

Independent and impartial electoral commissions are necessary to ensure that elections are properly carried out. The creation of a permanent central body, the Central Electoral Commission (CEC), complies with European standards. However, there is a lack of procedural safeguards to ensure the independence and impartiality of the electoral authorities, particularly of the Territorial Electoral Commissions (TEC) and the Precinct Electoral Commissions (PEC).

CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation

The 19 members of the CEC are appointed by decree of the President for a term of five years after consultations and "on a proposal by the parties and coalitions of parties represented in Parliament and by the parties and coalitions of parties which have Members of the European Parliament but are not represented in Parliament". It is important that the establishment of the CEC as a permanent body, a long-standing OSCE/ODIHR and Venice Commission recommendation, be confirmed in the Code.

CDL-AD(2011)013, Joint opinion on the election code of Bulgaria

Article 33.2: "Members of the Central Electoral Commission (during the entire period of the Commission's operation) and members of Territorial and Precinct Electoral Commissions (during national elections) may be detained or subjected to administrative or criminal prosecution by courts with the consent of the Central Electoral Commission only."

The electoral commissions must be "impartial bodies", applying electoral law and the Central Electoral Commission must have "a permanent nature" that is not merely organized for a particular election. This part of the Code of Good Practice in Electoral Matters ostensibly applies to all democracies. The previous quotation from the Code of Good Practice in Electoral Matters however makes reference to the existence or otherwise of a "longstanding tradition of administrative authorities' independence from those holding political power." The truth is that the safeguards needed to ensure the electoral commissions' impartiality, and indeed authority, will be contingent on the kind of tradition a particular country might have. The electoral administration model of the older established democracies, in which elections are administered by government departments or Ministries of Interior offices composed of a traditionally independent bureaucracy, over which political parties exercise some surveillance through specially appointed representatives, proxies observing the whole electoral process, with electoral disputes being decided upon by the ordinary courts, might not be the most appropriate for many of the new democracies. With the hope that having

especially selected and authoritative electoral commissions as independent institutions managing elections might result in free and fair elections, generally accepted as such, many of the newer post-colonial or post-communist democracies charged these commissions with some combination of legislative, administrative, and adjudicative powers which would seem strange in traditional democratic settings.

Regarding the electoral administration and more particularly the central organ of this administration, i.e. the Central Election Commission, it would be advisable to distinguish the members vis-à-vis the staff members. The members, all appointed by elected stakeholders (political parties sitting at the National Assembly and the President of the Republic), themselves stakeholders highly involved by their decisions – occurring in the Central Election Commission sessions – in the organization of the elections, should enjoy immunity during their entire mandate, due to the high level of risk of pressure they could undergo from political factions, Government, etc. In spite of the GRECO recommendations regarding the members of the Central Election Commission, the Venice Commission recommends for the time being maintaining immunity to the Central Election Commission's members. On the contrary, it seems excessive to provide the staff of the electoral administration with immunity; such personnel should be considered comparable to other civil servants, in spite of the fact that they are staff members of a body independent from any Ministry or national Agency.

CDL-AD(2008)024, Opinion on the issue of the immunity of persons involved in the electoral process in Armenia

The first article dealing with the voting procedure is Article 11 according to which preparation and conduct of elections, assurance and protection of electoral rights and freedoms of citizens and control over their observance shall be entrusted to election bodies with their status, competence and powers being established by the constitution and other legislative acts
(Article 11, paragraph 1). The central electoral body or commission should have a permanent status and a special composition, facilitating maximum impartiality. Article 11 does not, however, refer to this particular aspect.

CDL-AD(2007)007, Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States

According to Article 26.3 of the Electoral Code of Belarus, "the Central Commission is a permanent body, it is a legal person, has its seal with the image of the State emblem of the Republic of Belarus, with its name, and an account in the bank". The formation and organization of the work of the Central Commission is determined by the Law of the Republic of Belarus "on the Central Commission of the Republic of Belarus for Elections and Holding of Republican Referendums."

CDL-AD(2006)028, Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR

Another positive development is that, as a rule, the respective national electoral commissions have been established as permanent acting bodies in Central and Eastern Europe. Nonpermanent acting national election commissions which do not come together until a few months before the elections are nowadays considered inappropriate to manage the complex process of electoral administration, both in developing and established democracies. Therefore the Code of Good Practice in Electoral Matters demands that any central electoral commission must be permanent by nature (CDL-AD(2002)023rev, II.3.1c).

In some countries where the electoral law originally established a temporary Central Election

Commission, the law has been changed and a permanent body has been established. In Croatia, for example, the absence of a permanent election administration has been criticized by electoral observers to the 2003 parliamentary elections and the 2005 presidential elections. A permanent electoral commission has been provided for in the Draft Law on the State Electoral Commission of the Republic of Croatia (2005). The planned reform has been welcomed by international experts, since the frequency of elections implies the need for continuous action by the supreme body which participates in the procedure of conducting the election itself (CDL-EL(2005)053).

It is, however, open to question whether permanent election commissions are needed on the sub-national level. It could be argued that it is less important for the election commissions on the sub-national level to be permanent, but this will depend on the nature of the responsibilities they are given. On the lowest level (local level), however, permanent structures are usually not necessary.

In any case, it makes a lot of sense for the Central Election Commission to be supported by its own Secretariat that deals with the bulk of administrative preparations for conducting elections. The importance of such a technical secretariat was positively mentioned by international observers, for example, to the 2004 local elections in Bosnia and Herzegovina (CG/CP (11) 13). In contrast, electoral observers to the 2004 referendum in “the Former Yugoslav Republic of Macedonia” criticized the fact that the permanent Secretariat, provided for by law, was not yet established.

Finally it should be stated that a permanent election administration does not itself guarantee that the elections are professionally administered. As far as professionalism is concerned, there appears to still be room for improvement in a number of countries.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

Any central electoral commission must be permanent, as an administrative institution responsible for liaising with local authorities and the other lower-level commissions, e.g. as regards compiling and updating the electoral lists.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

III. Functioning

The 2022 election observation mission reports stated that some REC members noted that not all background material necessary for meaningful discussions was shared in time before sessions. Some REC members nominated by the opposition parties asserted that there was a lack of internal communication within the commission. Some LECs claimed to have received information from the REC on certain issues late, including on the training of polling board members.

The Venice Commission and ODIHR have already pointed out in their previous recommendations about the Serbian electoral legislation that “all members of electoral commissions should be guaranteed the opportunity to participate in full in the administration of the election. Such guarantees are particularly important for members appointed in the extended composition of the REC and PBs. In order to provide such guarantees, all members should be notified in a timely manner of sessions, provided with full access to election documentation, and invited to attend and participate on an equal basis in all sessions.’’ While these guarantees are provided by the REC Rules of Procedures, it could be considered that the principles of timely access to sessions and materials for all REC members are also

provided in the law. In this respect, the Venice Commission and ODIHR recommend including in the law precise guarantees of the rights of the members of electoral commissions.

The Law prescribes a responsibility of the REC to develop training programs and conduct training for members and deputy members of lower-level EMBs. It also recommends that when proposing a candidate for PB president and deputy president, a preference should be given to a person who has attended training and has experience in conducting elections.

The Final Report of ODIHR's Election Observation Mission for the 2022 elections reported on some election stakeholders' concerns about the excessive use of authority by the REC chairperson, namely in decision-making and their normative work. An analysis of the reasons necessitating (or leading to) unilateral decision-making by the REC chairperson could be conducted to assess whether any modifications need to be made in the REC decision-making process.

The law should be supplemented with dissuasive sanctions for misconduct, failure to act and the misuse of authority by the EMB members, along with the principles of attribution of responsibility for misconduct or deficient performance by the EMB as an entity. The responsible oversight body should be determined without undermining the independence of the EMBs. Timely and effective implementation of the norms should be ensured.

Reports of international election observation missions raised concerns about the technical capacity of the LECs with regard to their new responsibilities, such as the post-electoral audit of election materials and training of the PBs. Observers noted a lack of a uniform approach by LECs in dealing with discrepancies and correction of protocols. It is notable that participation in training sessions is not mandatory for PB members. The quality of training sessions varied, with some trainers not providing sufficient opportunity for questions and comprehensive clarifications. Insufficient understanding of the procedures by polling boards appears to have resulted in inconsistent implementation of important safeguards related to the integrity of the process and secrecy of the vote. In some cases, in their effort to speed up the vote count, polling boards omitted important procedural steps put in place to safeguard the integrity of the vote count process.

The Venice Commission and ODIHR recommend that training of the LEC and PB members be reinforced, particularly during electoral periods, in order to allow the PB members, and particularly those of extended composition, to adequately fulfil their duties. All members of polling boards, including the extended ones, should receive timely, efficient, and uniform training on election-day procedures, and it could be considered that training or refresher courses are mandatory for all appointed PB members. Practical exercises, particularly related to the secrecy of the vote, order of the counting procedures and completion of the results protocols, could be considered.

CDL-AD(2022)046, Serbia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration

If the proposed constitutional reform of the electoral system in Mexico is adopted and the proportional system for elections is introduced, the new electoral management bodies will have to operate under conditions where the main political parties will play the same if not a more active role in the selection of candidates and the partisan influence during the pre-electoral period might increase. An additional challenge will consist in ensuring the equal treatment of smaller parties and independent candidates who will not have the same capacity to mobilize both material and human resources in the absence of public funding for political parties – which has been abolished by the Initiative outside the electoral campaign period.

The electoral administration will have to address these challenges, but also face additional pressure and will have to ensure (and convince different stakeholders) that it operates in an independent and non-partisan way.

According to the Initiative, one of the means to enhance the efficiency of the electoral administration is the proposal that both INEC and the Electoral Tribunal become nation-wide institutions responsible respectively for the organization of elections and for adjudicating electoral complaints and appeals on the whole territory of Mexico. Electoral management bodies and electoral tribunals at sub-national level are abolished. Both the management of elections and judicial appeals are centralized and will be handled by the new INEC and the Electoral Tribunal respectively. The number of permanent public officials in the electoral administrations will be considerably reduced and an important number of electoral management specialists will be hired on an ad hoc basis, which carries an inherent risk to the credibility of the management of the electoral process.

In Mexico the main features of the electoral system as well as the rules for the establishment and operation of the electoral management body (INE) and the electoral justice are enshrined in the Constitution. Any electoral system and electoral administration can be improved, and it is a legitimate objective to promote institutional changes and the reform of the electoral system of a country with the aim of creating conditions for transparency, efficiency and accountability of electoral management bodies. However, changing a system that works well in general and enjoys the trust of different electoral stakeholders based on several electoral cycles and years of democratic evolution carries an inherent risk of undermining such trust.

The stated objective of this constitutional reform is to ensure objectivity, independence and impartiality of the electoral administration (INEC) and the Electoral Tribunal. Any constitutional reform should be a product of thorough analysis of the existing problems and challenges and of large consensus between political parties and the society. The possible impact of such constitutional amendments, as well as their immediate implications for the electoral system, administration of elections and complaints and appeals procedures should be subject to further public discussion. The Venice Commission would like to recall that the composition of the electoral management body needs to ensure that all political parties, candidates and voters may trust that it will function impartially.

CDL-AD(2022)031, Mexico - Opinion on the draft constitutional amendments concerning the electoral system of Mexico

As for the activities of electoral commissions, the rules of procedure must be clear. Commissions' activities and decisions must be transparent, inclusive and consensus-oriented, but at the same time, the effectiveness of the electoral administration should not be hampered by endless debates or even dead-lock situations. Transparency, inclusiveness and effectiveness of the commissions' work may still be improved in a number of CoE member states.

CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

Article 8.2 establishes the basic principle of the independence of election commissions, with the corollary that they must be free from state interference. Were this basic principle properly applied, it should resolve any contested case concerning the independence/impartiality of the electoral commissions. However, experience in the Russian Federation like in other countries shows that the mere reference to such a principle is generally not sufficient and should be accompanied by other rules which ensure proper independence of and trust in the electoral management bodies.

The detailed tasks of the CEC are set out in Article 21.9 of the Law on Basic Guarantees of Electoral Rights, and Article 25 of the Law on the Election of the State Duma. Thus the CEC must exercise control over observance of the electoral rights of citizens of the Russian Federation and the right of citizens to participate in a referendum; develop standard quotas for technological equipment such as voting booths, voting boxes for precinct commissions, and arrange for the manufacture of such material; ensure implementation of measures related to the preparation and conduct of elections, referendums, and improvement of the electoral system in the Russian Federation, including legal education of voters, and professional training of other commission members; implement measures aimed to ensure a uniform procedure for allocation of air time and space in print media to registered candidates, electoral associations etc; determination of vote returns and establishment of the results of elections, including procedure for release of the vote returns; implement measures for the funding of the preparation and conduct of elections/referendums; distribute the funds allocated from the federal budget as financial support to the preparation and conduct of elections, referendums; control the proper use of the above funds; give legal, methodological, organizational, and technical support to commissions; implement international cooperation in the field of electoral systems; set standards by which lists of voters, referendum participants and other electoral documents and documents related to the preparation and conduct of referendums are to be produced; consider appeals (grievances) against decisions and actions (omissions) of lower commissions, and take reasoned decisions on such appeals (grievances).

Although the law is detailed and precise when enumerating these kinds of organic competences, the regulation of the citizens' complaints is not clear at all. Article 26.22 only states that the Central Electoral Commission shall "consider complaints (applications) concerning decisions and actions (inaction) of the territorial election commission and their officials and take reasoned decisions regarding such complaints (application)". Article 90 of the Law on State Duma Elections is slightly more detailed. It states that election commissions shall be obliged to consider applications received during election campaign, carry out inquiries and provide written answers to the claimants within five days. However, Article 90 fails to mention who is entitled to file a complaint, the procedure and deadlines for submitting it and types of appeals to Court of Justice. Article 20.4 of the Law on Basic Guarantees regulates more precisely this election commissions' competence since it contains rules about competence, procedure and terms for filling appeals apply to each election commission. However, it is difficult to decide if the appeals of Article 20.4 of the Law on Basic Guarantees coincide with the complaints mentioned in Article 25 of the Law on Elections. If not, the result could be confusing and limit the rights of citizens and political parties.

This problem appeared in practice at the occasion of the 4 December 2011 parliamentary elections. As established by the report of the Parliamentary Assembly, only five complaints were decided upon by the CEC. The CEC qualified most correspondence concerning allegations of violations of the election legislation as "applications" and did not treat them as complaints that needed to be dealt with in accordance with legal procedures, thus not complying with the requirement that all complaints must be acted upon and responded to in writing within five days.

Articles 26, 27 and 28 deal with powers of lower election commissions and they present similar problems. For this reason, the previous conclusions can be extended to them.

CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation

The independence and impartiality of the CEC in implementing its mandate are key elements in ensuring that elections are held in conformity with international standards. General Comment 25 of the United Nations Human Rights Committee calls for "an independent

electoral authority… to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws".

The draft Electoral Code shifts the procedure of appointment to an independent, professional model (which is an appointment model only and should not be mistaken for having an independent commission as called for by General Comment 25). This model is defined as a system where parties are not involved in the appointment of CEC members, but instead appointment is made through an application procedure that should be free of political influence.

The fundamental basis for this approach is a trust in the neutrality of the state institutions. If such a model does not ensure that electoral stakeholders in Armenia trust the neutrality of professionals appointed by the state structure, consideration should be given to implementing a partisan model that finds an agreeable balance between government and opposition groups.
The goal of any method of appointment, politically based, independent or mixed, is to create a body that is deemed by all election stakeholders as able to function in a manner which ensures that one side does not wield undue influence over the process.

Finally, as underlined in previous Joint Opinions, the Venice Commission and OSCE/ODIHR emphasize again that legislation alone cannot guarantee that members of election commissions will act professionally, honestly and impartially. Good faith implementation of the existing and possible new provisions on electoral commission formation and administration remains crucial and could increase confidence in the electoral administration.

CDL-AD(2011)021, Joint interim opinion on the new draft electoral code of Armenia

Remuneration of Electoral Commission Members (Article 33, Paragraph 9 of the Electoral Code): Article 23 of the draft amendments modifies the remuneration conditions of election commission members. Of particular importance is the fact that, during the period of elections, not only chairmen, deputy chairmen and secretaries of the respective Territorial Electoral Commissions and Precinct Electoral Commissions shall be remunerated, but also ordinary members of TECs and PECs (with the only exception of court judges, appointed to TECs, and members of PECs formed in diplomatic or consular missions abroad). The fact that, in principle, all members of the CEC, TECs and PECs shall be remunerated is a positive amendment, which may strengthen their commitment to the commission's duties and reduce the risk of bribes. At the same time, a failure to carry out responsibilities for no compelling reason shall now be punishable by law, according to the amendments.

CDL-AD(2006)026, Joint Opinion on Draft Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR

However, there are still a number of states where different electoral laws are applied for different organs to be elected in the same territory. In Ukraine, for instance, there is a multiplicity of laws which regulate separately the presidential elections, the parliamentary elections, the local elections as well as specific aspects of the electoral administration process (e.g. Central Electoral Commission; draft law on State Register of Voters). In order to reduce the number of redundant provisions and enhance the consistency and the public understanding of the electoral legislation, it may be technically preferable to enact a unified electoral code, containing the general aspects of any election, and – in different parts of the law – the particularities of different elections (see also CDL-AD(2006)002, para. 11). As such the adoption of a single Ukrainian electoral code was recommended, "… as it would make it easier for citizens to understand, for political actors to handle, and for electoral commissions and courts to deal with electoral matters" (CDL-AD(2006)003, para. 10). Similar recommendations have been made, for example, with regard to "the Former Yugoslav

Republic of Macedonia" and Slovenia.

Given the paramount importance of democratic elections for a nation, usually the electoral process is administered by sovereign national authorities. However, under the unique context of post-conflict situations – like those in Bosnia and Herzegovina or Kosovo – the international community might be involved in organizing or supervising the elections. This might be especially helpful for conducting elections in an initial post-conflict period. Nevertheless, the declining role of international representatives, for example, in the Electoral Commission of Bosnia and Herzegovina is welcomed in order to establish a sustainable, fully national State institution (see CG/CP (11) 13).

In many old and established West European democracies where the administrative authorities have a long-standing tradition of impartiality, elections (and referendums) are organized by a special branch of the executive government, usually vested in the Ministry of the Interior or the Ministry of Justice. This is acceptable insofar as in those countries the respective government of the day normally does not intervene in the electoral management process.

However, in states with little experience of organizing democratic elections, the impartiality of the electoral administration vis-à-vis the executive government can not be taken for granted. This is why the Code of Good Practice in Electoral Matters makes a strong demand for independent electoral commissions in those countries. In fact autonomous electoral commissions which are independent from other government institutions are increasingly viewed as the basis of impartial electoral management in developing or new democracies throughout the world.

Thus, it is a positive development that formally independent electoral commissions are in the meantime common in Central and Eastern Europe. The establishment of independent electoral commissions can be regarded as an important step towards strengthening the impartiality and neutrality of the electoral administration process. However, it should be clear that legal guarantees of independence are not always fully respected in practice.

Furthermore the independent status is not necessarily accompanied by budgetary independence. Unpredictable ad hoc budgets and a lack of resources may make it quite difficult for electoral administration bodies to work properly. In some countries the administration of previous or recent elections was marked by financial problems. This was, for example, the case in Montenegro's elections of 2003, which were, however, carried out in an independent and largely effective manner.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues

It should be noted that, although appointment powers for the CEC and TEC are held by various sources under the draft amendments, the process of appointment must be completed by Presidential decree. It is recommended that additional text be included to make it clear that the need for a Presidential decree is merely a formality and that the President has no power to veto, negate, or prevent an appointment by reason of this formality. In fact, it would be preferable to also include text that places an affirmative obligation on the President to expeditiously issue the decree.

CDL-AD(2005)019, Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR

Finally, it must be noted that many of the deadlines in the Code, particularly those related to the preparation of voter registers, designation of voting centers, and registration of political

parties and candidate are not realistic for professional and efficient election administration. A proper election requires preparation. Preparation takes time. Most of the deadlines in the Code are simply too compressed and all deadlines in the Code require review. The OSCE/ODIHR and Venice Commission recommend that all deadlines in the Code be reviewed and adjusted as necessary to ensure there is adequate time to prepare for all election processes.

Articles 175 through 179 contain sanctions for violations of the provisions of the Electoral Code. Article 179 clause (1) stipulates that certain violations are an administrative offence "when these violations have not affected the election result". This implies that if those violations would have affected the election result, they would not be considered administrative offences but criminal offences. The same applies to the text of Article 178 clauses (1) and (2). The OSCE/ODIHR and Venice Commission recommend that this be clarified.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

II.- Fundamental recommendations that remain to be implemented according to the information provided by the Presidential Administration

Transitory provisions after the final vote and the first execution of the Election Code. The transitory provisions on formation and functioning of the Central Election Commission should be added on the Code. Indeed it is important to have an efficient Central Election Commission in the pre-electoral process for the next elections.

CDL-AD(2003)003, Main recommendations for amendments to the draft electoral code of Azerbaijan of the European Commission for Democracy through Law (Venice Commission, Council of Europe)

The composition of the central electoral commission is certainly important, but no more so than its mode of operation. The commission's rules of procedure must be clear, because commission chairpersons have a tendency to let members speak, which the latter are quick to exploit. The rules of procedure should provide for an agenda and a limited amount of speaking time for each member – e.g. a quarter of an hour; otherwise endless discussions are liable to obscure the main business of the day.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

1. The competencies of central EMBs

Article 102(2)(e) defines the possibility of cancelling registration, accreditation and confirmation of electoral subjects as in the current Code. ODIHR and the Venice Commission reiterate their previously expressed view regarding de-registration of electoral contestants as a sanction applied by the election administration, namely that such severe interference with suffrage rights as de-registration should be a measure of last resort, applied only for the most serious violations, and subject to effective judicial oversight, in line with international standards and good practice. In a 2020 decision related to de-registration of a political party in 2014 parliamentary elections in Moldova, the ECtHR found that de-registration powers were abused and that there was no effective judicial oversight. ODIHR and the Venice Commission therefore recommend to encode that any appeal against such a decision automatically suspends it in order to correspond to effective judicial oversight. While steps in the right direction have been taken, they recommend to further review the list of grounds for de-registration in order to ensure that this measure is applied as a last resort against only

the most serious actions that cannot be remedied by any other means, in conformity with the principle of proportionality. The international electoral practice also recommends that any cases of de-registration should be done transparently, against pre-determined criteria, and "bearing in mind the principle of equality of treatment of all political parties, as well as the principle of pluralism".

Article 102(2)(f) introduces a possibility for the CEC to ex officio request the cancellation of the registration of political parties as the main or complementary sanction. In addition to the considerations related to the de-registration of electoral contestants, regarding the need for caution with the cancellation of registration of electoral subjects, special care should be taken with the cancellation of party registration. According to international standards, the de-registration or dissolution of a political party is a drastic measure that may not be taken lightly and may only be applied in very limited and grave circumstances, such as in cases "where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country". ODIHR and the Venice Commission recommend that the draft Code specify the circumstances that would lead to the de-registration of a political party.

The draft Code, among other provisions on liability, stipulates in Article 102 that if an observer violates the electoral regulatory framework, the electoral body that accredited the observer has the right to cancel the accreditation. According to Article 102, any propaganda action for or against a political party, other socio-political organization or electoral competitor, initiative group, a participant in the referendum, referendum options or attempt to influence the voter's option shall be qualified as violations. This provision is overreaching and could be contrary to the principles of freedom of expression unless it is meant to apply to the behavior of election observers while observing. Namely, domestic electoral observers, as citizens, must have a status compatible with the status of being a voter, and the legal framework for elections should not put citizens at a disadvantage for expressing a political opinion, participating in campaign events, and discussing contestants and their platforms etc., outside of the duties of observers. In this regard, it is advisable to review this provision in order to apply sanctions for abusing the status of an observer (campaigning while observing, etc.). It is also recommended to apply gradual sanctions also to domestic observers and start with a warning rather than opt directly for revoking accreditation.

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections and adopted by the Venice Commission

GUIDELINES ON THE HOLDING OF REFERENDUMS

II. Conditions for implementing these principles

4. Procedural guarantees

4.1. Organisation and supervision of the referendum by an impartial body

b. The central electoral commission or another impartial authority should have the following powers:

- to check the validity of any proposed referendum question and approve its final wording;

- to provide official information – including, when voting on a specifically-worded proposal, the legal text submitted to referendum;

- to make official public statements in real time relating to violations or major infringements of the relevant rules;

- to supervise the conduct of the campaign, take all necessary measures to ensure that it is properly held;

- to enforce its decisions and to sanction possible breaches;

- prior to vote, and in order to avoid having to declare a vote totally invalid, to correct faulty drafting, for example:

• when the question is obscure, misleading or suggestive;
• when rules on procedural or substantive validity have been violated; in this event, partial invalidity may be declared if the remaining text is coherent; sub-division may be envisaged to correct a lack of substantive unity.

In countries with a longstanding tradition of administrative authorities' impartiality in electoral matters, the Code, like the Code of Good Practice in Electoral Matters, does not require that independent commissions are in charge of the whole process (point II.4.1.a). In any case, an impartial body – be it or not a central electoral commission in charge of organising the vote – should deal with a number of issues specific to referendums, relating inter alia to the question put to referendum, official information, supervising the conduct of the campaign and controlling party financing, which are detailed under point II.4.1.b.

CDL-AD(2022)015, Revised Code of Good Practice on Referendums

Secondly, the Law "On the Central Election Commission" provides that the CEC, an independent election body, is responsible to "ensure the implementation and protection of the electoral rights of the citizens of Ukraine and their right to take part in referendums" and "ensure equal application of the legislation of Ukraine on elections and referendums on the whole territory of Ukraine". The fact that the draft amendments exclude the CEC from deciding on the possibility to hold elections or voting in certain territories in accordance with the election law or even providing input into the decision-making process, raises concerns. While the significant postponement of elections/referendums in certain territories can be characterized as having a political nature and could therefore be finally decided by a political body, decisions that would result in the absolute disenfranchisement of the whole or part of the electorate should involve the CEC, which has been designed as an independent and impartial election body mandated to protect electoral rights.

The decision on the impossibility to hold elections or referendums in certain territories entails both security and electoral considerations and it is therefore logical to involve both security and electoral bodies in this decision-making process. The CEC, if retaining decision-making authority on this matter, could decide on (or advise if not the ultimate decision-maker) other steps short of suspension, in line with electoral legislation, while taking into account assessments from or compiled by the NSDC [National Security and Defence Council] related to the safety and security of organizing elections in certain communities. In any case, the CEC should be given the opportunity to participate in the decision making process by providing electoral expertise and proposing other less restrictive measures to ensure security, in line with the electoral legislation**.** The Venice Commission and ODIHR recommend revising the draft law in order to ensure adequate involvement of both the CEC and NSDC in the decision-making process.

CDL-AD(2021)045, Ukraine- Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law "On improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referenda in certain territories and polling stations".

The Venice Commission and the ODIHR recommend that specific measures for holding

elections during emergency situations including pandemic periods be stipulated in law or in infra-legal texts well in advance to the forthcoming early parliamentary elections, including at the initiative of the Central Electoral Commission in its regulatory limits.

CDL-AD(2021)025, Armenia - Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 21 April 2021

With regard to voter registration and voter lists' corrections, a court is the competent body for appeal in second or third instance in the majority of the countries, in line with the Code of good practice in electoral matters. Voter registration and the correction of voter registers are sensitive issues as voters may lack confidence in the election administration or the central administration dealing with this type of complaint, which is often competent for settling such complaints in first instance. The involvement of judges therefore remains a guarantee on appeal. This presupposes that the judiciary is impartial and neutral vis-à-vis the Executive or an administrative authority. The absence of appeal to a court is therefore problematic, however less than the absence of any appeal against an administrative decision of first instance, which is even more problematic.

Regarding the sensitive issue of election results, most of the countries provide in the law the possibility to partially or fully invalidate election results – and sometimes correct election results or ask for a total or partial recount. It would be suitable for such decisions to be taken by the highest electoral body – including the central election authority of the country; its decision should be reviewable by the highest judicial body or the Constitutional Court or a specialized electoral court when such a judicial body exists.

CDL-AD(2020)025, Report on election dispute resolution

The Draft law stipulates that the referendum process shall be administered by the CEC, district and precinct referendum commissions (Article 39 of Draft Law). The Central Election Commission is a permanent body, while district and precinct commissions shall be set up for a certain term, separately for each referendum process. Balanced representation of both supporters and opponents of the referendum at different levels of referendum commissions is necessary in a democratic process. The Code of Good Practice on Referendums establishes that: *"Political parties or supporters and opponents of the proposal put to the vote must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality between political parties may be construed strictly or on a proportional basis."*

CDL-AD(2020)024, Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR, on the draft law 3612 on democracy through all-Ukraine referendum - issued pursuant to Article 14a of the Venice Commission's Rules of Procedure

In most established Western European democracies where the administrative authorities have a long-standing tradition of impartiality, elections are organized by a special branch of the executive government, the function often vested in the Ministry of the Interior. This is acceptable insofar as in those countries the respective government of the day normally does not intervene in the electoral management process.25. As agencies responsible for governing elections, electoral management bodies must develop expertise in cybersecurity practices. With the increasing use of digital technologies in electoral processes, many of them need technical assistance to protect against cybercrimes, as defined in the CoE Convention on Cybercrime (2001), such as illegal access to computer systems, illegal interception or data and system interference, threatening the confidentiality, integrity and availability of election computers and data. In fact, there have been (foreign) cyberattacks on critical electoral infrastructure in a number of countries, such as Ukraine.

CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

According to the Venice Commission, the specific rules on the postponement of elections should not be adopted by the executive branch of power nor by a simple majority in parliament but laid down in the constitution or an organic law.

It is also recommended that the decision to postpone the elections be decided by parliament, if it exceeds a certain duration. "If the postponement concerns only part of the country or if the elections are to be postponed only for a short period (less than two months), a decision can be made by the election administration or the government. Where, by contrast, a postponement is for more than six months, this should be decided by the legislative body. One option is to require a qualified majority in the parliament for the longer postponement of elections. However […] only one institution should be competent to decide on the matter. Different stakeholders, including political parties, election management bodies and experts (e.g. in pandemic, health authorities) have to be consulted beforehand."

These decisions, and all those that affect these extraordinary electoral processes, must be adopted in a transparent and, where possible, consensual way, taking into account the exact circumstances thoroughly (for an epidemic: health information, the country's capacity, the levels of expansion of the disease...). They must be open to independent review, preferably before a court of law.

The following elements of practice during the Covid-19 crisis may be of interest. In Poland – a last-minute change proposed by the government to introduce postal voting exclusively was rejected by the Senate. The government then decided to postpone the election and the new schedule was established by the President of the lower house. In the Czech Republic, the government decided to suspend a special election, but on 1 April 2020, the original Government decision to suspend the by-elections was declared null and void by the Supreme Administrative Court (Pst 19/2019 – 12). The Court concluded that the competence to suspend elections was reserved to parliament (§ 10 of the Constitutional Law on the Security of the Czech Republic). In Austria, the provincial parliament decided to postpone the elections in Vorarlberg while the Governor and the provincial parliament postponed the elections in Styria and, to date, these decisions have not been submitted to parliamentary scrutiny or judicial review. In Spain, the presidents of the regions decided to postpone the regional elections in the Basque Country and in Galicia and fixed a new date. In France, the Government decided to postpone the second round of municipal elections.

CDL-AD(2020)018, Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights

There is no general rule which state institution should be competent to decide the postponement of elections. In many countries, it is constitutionally provided that elections are not held during a state of emergency. Where this is left to the discretion of an institution, the decision whether or not to hold elections may be either for the parliament, the president, the government or a higher-level election commission. Due to the importance of the issue, it is recommended that such a decision be taken by the parliament. In any case, a provision either in the constitution or organic law (e.g. electoral law) foreseeing a postponement should be included. If the postponement concerns only part of the country or it the elections are to be postponed only for a short period (less than two months), a decision can be made by the election administration or the government. Where, by contrast, a postponement is for more than six months, this should be decided by the legislative body. One option is to require a qualified majority in the parliament for the longer postponements of elections. However, a

state may choose to deal with the issue, only one institution should be competent to decide on the matter. Different stakeholders, including political parties, election management bodies and experts (e.g. in pandemic, health authorities) have to be consulted beforehand.

If the elections are postponed, the legitimacy of the parliament is to some extent limited. Thus, the parliament should abstain from adopting amendments to the constitution, organic laws or other important reforms under political debate which are not necessary to return to the normal situation.

Due to the difficulties to guarantee free campaigning and public debate on reforms with a longer effect, referendums, especially constitutional referendums, should be postponed until the end of the state of emergency. Holding referendums would go against European standards enshrined in the Code of Good Practice on Referendums.

CDL-AD(2020)014, Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections - taken note of by the Venice Commission on 19 June 2020

The 2014 Joint Opinion indicated that "[i]n 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 required due to this contingency, which may indicate that such seats remain vacant. If this is the intention, then it should be stated explicitly." The provisions remain unchanged. This situation applies also to municipal elections. Nevertheless, new provisions stipulate that "the Central Election Commission (CEC) will adopt a decision on any unregulated matters", which seems to allow the possibility for the CEC to introduce by-regulations to clarify the distribution of any remaining seats, even if such provisions for different types of elections should be preferably stated in the same text.

Article 57 (1) par. 48 stipulates that the CEC has to adopt rules for the application of the Electoral Code. This is a positive amendment, which explicitly underlines the sub-legislative role of the CEC while implementing and, if needed, interpreting the Electoral Code as well as concerning regional and section election commissions, which operate through decisions and instructions of the CEC. This explicit competence of the CEC may also contribute to filling certain gaps in the Electoral Code.

CDL-AD(2017)016, Bulgaria - Joint opinion on amendments to the electoral code

In a positive step and in line with previous recommendations, the draft code now authorizes the CEC to regulate all issues related to the electoral process, unless they are regulated by another competent state body. This should contribute to the uniform implementation of election-related legislation.

CDL-AD(2016)019, Armenia - Joint Opinion on the draft electoral code

The competencies of the CEC to "consider and approve territorial borders, covered by the territorial election commission" to "approve borders of the electoral districts" and to "determine a number of mandates for electoral districts", included in Article 19(1) envisage fundamental elements of the election law. According to the Code of Good Practice in Electoral Matters, such issues "should not be open to amendment less than one year before an election or should be written in the constitution or at a level higher than ordinary law". As well, the unduly short time period of 5 days provided for in Article 36(6) should also be reconsidered.

Article 37(5) determines that at the presidential and parliamentary elections polling stations for the citizens of the Kyrgyz Republic staying in the territories of foreign countries, shall be established by the CEC on recommendation of the Ministry of Finance of the Kyrgyz

Republic. A recommendation of the Ministry of Foreign Affairs would be more appropriate.

Article 87(9) of the draft law retains the provision that the CEC's decision denying "registration of the candidates' list may be appealed to the superior election commission or the court". The Venice Commission and the OSCE/ODIHR previously recommended that this provision be clarified, as there is no election commission superior to the CEC. This recommendation remains unaddressed.

CDL-AD(2014)019, Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic

The draft does not provide clear criteria for constituency delimitation nor for periodicity of review. Article 74 provides that the delimitation of boundaries is the responsibility of the Central Electoral Commission. This creates a double risk: a risk of politicization for the Central Electoral Commission, as well as the risk of overloading it. Indeed, in order to ensure the fairness of the electoral process, decisions of the Central Election Commission may be challenged by any of the electoral stakeholders. This would include any single decision concerned with the delimitation of constituencies and could lead to an exponential increase in the number of complaints, as well as requiring more resources for the Central Electoral Commission. With regard to the periodicity of review, the OSCE/ODIHR states that "Redistricting should be conducted periodically to ensure that equality among voters is not diminished due to population movement." "When necessary, redrawing of election districts shall occur according to a predictable timetable and through a method prescribed by law and should reflect reliable census or voter registration figures. Redistricting should also be performed well in advance of elections, be based on transparent proposals, and allow public information and participation." According to the Code of Good Practice, "in order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation." Population variance among constituencies should also be taken into consideration.

CDL-AD(2014)003, Joint Opinion on the draft Law amending the electoral legislation of Moldova

(…) In line with previous recommendations, the draft electoral law should be revised to provide the CEC with strong regulatory functions with regard to candidate registration and the right to overrule an unsound decision of the DEC on candidate registration.

CDL-AD(2013)016, Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine

See also *CDL-AD(2009)040, Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine*

See also *CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR*

Article 82 deals with the final result of the election as pronounced by the Central Election Commission, CEC, on the basis of data contained in submissions from the ECSRFs and some other electoral commissions. The CEC must compile a protocol on the results of elections of the deputies of the State Duma, which must include a great deal of information, which is based on the data that has come to it from ECSRFs and TECs. The CEC shall declare the election invalid if violations committed in the course of voting or establishment of the vote returns make it impossible to reliably determine the results of the voters' expression

of will; or if the vote returns are declared invalid at such number of electoral precincts that the number of voters in them, included in the voter lists at the end of voting, in the aggregate comprise not less than 25 percent of the total number of voters included in the voter lists at the end of voting. The CEC shall declare the elections to be legally null and void if not a single federal list of candidates received 7 percent, or more than 7 percent of the votes cast; or if all federal lists of candidates in the aggregate received 60 percent or less than 60 percent of the votes cast. The remainder of Article 82, as well as Article 82-1 and Article 83, deal with the distribution of seats between parties and candidates inside the party, in particular those on federal and regional lists. The threshold is in principle 7 % (Article 82.7); parties obtaining between 5 and 6 % of the vote are given one seat and those between 6 and 7 % are given two seats (Articles 82-1.2-3).

CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation

Under Article 14.1(c), "in exceptional cases," the CEC is "entitled under its resolution to determine the election activities and terms of the forthcoming election/polling" if the requirements and terms stated in the law are "impossible to meet". This text should be clarified.

CDL-AD(2011)043, Joint opinion on the draft election code of Georgia

The draft Electoral Code tasks electoral commissions to ensure the exercise and protection of electors' right of suffrage. The Central Electoral Commission (CEC) has the overall responsibility for organizing elections and the responsibility of supervising the legality of elections (…).

Article 60 of the draft Electoral Code provides for electronic voting over the Internet by voters in the diplomatic and consular service of Armenia abroad. This provision also applies to the family members of such voters. The CEC is responsible for establishing the procedures for electronic voting in a manner that guarantees the free expression of the wishes of voters as well as the confidentiality (secrecy) of the voting. Electronic voting is to occur no later that "up to five days prior to the voting day."

The introduction of electronic voting – especially when conducted in an uncontrolled environment, as indicated by the CEC – should only be an alternative means to paper voting. Remote electronic voting is particularly controversial because it cannot guarantee secrecy and it cannot be "observed" through the methods commonly applied to observation of voting in the controlled environment of a polling station. The adequacy of electronic voting in situations where confidence in the impartiality of the election administration is limited should be carefully evaluated. Should there be a decision to implement electronic voting, its legal basis should be drafted in an equally detailed and accountable manner as for traditional paper-based voting. It should also be in line with the Armenian Law on Personal Data. The Venice Commission and OSCE/ODIHR recommend reviewing whether electronic voting is necessary for voters in the diplomatic and consular service of Armenia abroad and their family members.

CDL-AD(2011)021, Joint interim opinion on the new draft electoral code of Armenia

According to point II.3.3.a of the Code of Good Practice in Electoral Matters, the appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible. The quoted standard is followed by most countries observed in this study. The number of countries not providing a final appeal to court is small. Although the questionnaire did not cover national legislations in the matter handled in

point II.3.3.c of the Code of Good Practice in Electoral Matters – which states that the appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative); neither the appellants nor the authorities should be able to choose the appeal body – overlapping of competences does not appear to be an issue in the countries which answered the questionnaire for the questions related to the cancellation of electoral results.

In most countries the decisions on certifying the electoral results are taken by central electoral bodies or district electoral bodies. Such is the case in Albania, Armenia, Austria, Bosnia and Herzegovina, Croatia, the Czech Republic, Estonia, Finland, Georgia, Hungary, Korea, Latvia, Lithuania, Malta, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Sweden and “the former Yugoslav Republic of Macedonia”. The returning officer (part of the electoral administration) is entitled to certify the results in Cyprus and in the United Kingdom.

In the Netherlands the central electoral body certifies the results but a final decision is made by the Parliament. In Belgium the results are certified by the corresponding house of Parliament, which is also entitled to examine the complaints. Parliament is the decision-making body also in Liechtenstein, Luxembourg and Switzerland. In Germany the competence for certification of electoral results is vested in a parliamentary committee.

There are countries where judicial bodies are involved in the certification procedure even without any complaints. A court has to certify the results in Azerbaijan, Bulgaria and Moldova.

In Turkey the electoral results are also certified by a body of judicial nature, the Supreme Board of Elections, whose members are selected from amongst the judges by the General Assembly of the Court of Cassation and by the General Assembly of the Council of State (highest administrative court). This body is also a central body for the administration of elections and considers the complaints on the results of elections as a last instance.

In France, the electoral administration has no power to declare the elections invalid or to cancel the results, but it has the power to ask the appropriate judicial bodies to decide on such an issue. Otherwise, the declaration of election results by administrative bodies is followed by a time-limit to introduce complaints. In presidential elections the competent judicial body certifies the results after the time-limit has passed and complaints have been reviewed.

CDL-AD(2009)054, Report on the cancellation of election results adopted by the Council for Democratic Elections

This provision indicates that the CEC cannot take into consideration any complaint that presents allegations of fraud, even fraud that brings the legitimacy of the election results into question, when the complaint is submitted on election day or the days thereafter. In other words, the CEC is legally obligated to determine the results in disregard of credible allegations suggesting that the results are not legitimate. In such a situation, the CEC is no longer an important state institution ensuring the legitimacy of election results, but rather is a mere mechanical functionary adding numbers on paper. This is of concern because it is a reversal of the very legal principle that required the judicial remedy for the fraudulent conduct in the 2004 presidential election. In 2004, the Supreme Court of Ukraine noted, among other things, that 65 complaints were pending with the CEC at the time the CEC decided the official election results.

The Supreme Court noted that it was impossible to establish the will of the voters (election results), in part, due to the pending and unresolved 65 complaints filed with the CEC.

CDL-AD(2009)040, Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine

The decisions of superior election commissions are mandatory for subordinate commissions. The draft law provides various mechanisms by which a superior election commission can ensure that a subordinate commission complies with its duties. The CEC can convene a meeting of a DEC and a DEC can do the same for a PEC. As an ultimate sanction, all members of a DEC or a PEC may be dismissed en masse by the commission which formed that particular commission if the subordinate commission has systematically violated the constitution or laws of Ukraine (Article 36.1). Other provisions allow individual members of commissions to be dismissed (Article 36.3). Given that dismissal is a drastic step, it may be desirable for the CEC to report after each election each instance in which these powers were exercised and the reasons for their use. The system of reporting should be developed in line with reporting requirements for election commissions currently iterated in Article 34 of the draft law.

A superior election commission may invalidate a decision of a subordinate election commission which violates the law or is adopted in excess of the subordinate commission's powers. The subordinate commission's decision may also be declared illegal or cancelled by a court (Article 32.15). These are important powers to ensure legality. It should also be made clear that a superior commission or court may adopt a decision to remedy any unlawful omission of a subordinate commission with immediate binding effect. There is a degree of repetition of the rule in Article 33.15 and in Article 113.8. The latter provision makes clear that the CEC or the courts, rather than necessarily invalidating the decision of a lower election commission, may order reconsideration of an issue or action by a lower commission which occurred on voting day or during counting and results tabulation. It would be preferable to address these issues in the same part of the law.

It is important that the CEC does not determine the final results of the election until it has received the rulings on any complaints filed with the electoral commissions and the courts which may have a bearing on the outcome of the election.

CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR

Article 23 of the Electoral Code provides that the CEC can issue "acts", which are either "decisions" or "instructions". Article 23(3) requires that every "normative act" be voted on by the CEC. Article 24 governs the voting process for CEC decisions. Although Article 24 does not specifically mention "instructions", Article 24(1)(d) does reference "acts of a normative nature that aim to regulate issues related to elections". The Venice Commission and the OSCE/ODIHR recommend that consideration be given to amending Article 24 to specifically include "instructions" as subject to the voting rules of Article 24. Further, consideration should be given to amending Article 24 to provide greater detail on the contents of a CEC decision. Article 144, which governs the content of a CEC decision on electoral appeals, is illustrative. Article 24 could be amended to require that all CEC decisions provide a factual explanation of the circumstances and facts and legal analysis that supports the decision.

CDL-AD(2009)005, Joint Opinion on the Electoral Code of the Republic of Albania

Article 17, par. 1 states that the election administration of Georgia is an independent administrative body and Article 19, par. 3 provides that members of the election commissions are not representatives of their appointing or electing subjects and must exercise their activities in an independent manner subordinate only to the Constitution of Georgia and the Law. The primary mandate of the CEC is to ensure the holding of elections and to control the implementation of the Election Code throughout the country and ensure its equal application

in accordance with the Code (Article 29, par. 1a.)

CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia

According to Article 41(1) the Central Election Commission (CEC) has overall responsibility for organizing elections within the law. The territorial election commissions (TECs) are responsible for organizing elections within districts according to Article 42 of the Code.

The independence of the CEC, and the reinforcement of its duty to fully regulate all levels of electoral administration in all phases of the election, is important in order to ensure elections in conformity with international standards. The Code and the CEC regulations could be developed further, in order to ensure a more effective intervention of the CEC in cases when a suspicion may arise about irregularities (like an exceptional turnout or margin of victory of a candidate or a very high proportion of invalid ballots), and not only in the cases of formal complaints. Moreover, any formalistic approach should be avoided in the consideration of complaints and complaints should be examined in substance.

The powers vested in the CEC and TECs according to Articles 41 and 42 could imply that they do not need to wait for complaints to be filed in cases of potential irregularities of the election process. They should conduct their own reviews and investigate cases of possible fraud. The Code outlines their general authority and duties and implies the possibility of such actions. The introduction of an explicit article stating that the CEC and the TECs should review all work of the subordinate commissions and should investigate and act on irregularities should be considered. Articles 63.1 and 63.2 (and Articles 41 and 42) should be amended to require the TECs and the CEC to conduct independent reviews of the results from precinct election commission (PEC) level and up in cases of obvious mistakes or justified doubts on turnout or invalid votes.

In previous elections, the CEC has also hesitated to issue regulations where it is not explicitly stated in the Code that a regulation should be issued. Article 41(1) already includes sub-paragraphs which should enable the CEC to issue any regulations necessary to conduct democratic elections (sub-paragraphs 2, 7 and 10), but it is recommended to include an additional paragraph stating explicitly that the CEC may issue regulations whenever deemed necessary to implement the law.

In substance, there are still shortcomings in the legal framework relating to this issue, as has been consistently highlighted in previous joint opinions and OSCE/ODIHR election reports. Currently complaints about the decisions, actions or inactions of a PEC are heard by the TEC and complaints about the decisions, actions or inactions of the TEC are to be appealed to the Administrative Court. The CEC retains a residual jurisdiction to overturn decisions of the TEC that do not comply with the law. It is not clear how and when the CEC may exercise this oversight jurisdiction. In the 2008 presidential elections, some TECs had refused applications for recounts on the basis that they were groundless. These decisions were appealed to the CEC, but the CEC did not exercise its powers to set aside the TEC decisions. The Code should clarify on what grounds the TEC can refuse to undertake a recount. It should also ensure that the CEC makes a considered decision in the case of an appeal or is requested to forward the case to the Administrative Court.

CDL-AD(2008)023, Joint Opinion on the Election Code of the Republic of Armenia

An amendment to Article 6.7 of the Election Law grants the Central Election Commission of Bosnia and Herzegovina power to impose penalties “ex officio” as well as when “adjudicating” complaints. The OSCE/ODIHR final report on the 2006 elections noted that the “adjudicating authorities could also initiate investigations ex officio.” The “ex officio” powers of the Commission should be considered carefully as the Commission must not only be an impartial

tribunal, but must also appear to be impartial. As noted by the UN Human Rights Committee in General Comment 32: “The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.”

CDL-AD(2008)012, Joint opinion on amendments to the Election Law of Bosnia and Herzegovina by the Venice Commission and OSCE/ODIHR

According to Article 15 (1), the CEC creates the electoral bodies and electoral councils to organize and conduct the elections. Article 16 lists the electoral bodies, which include the CEC, constituency councils and electoral offices of polling stations. No other electoral bodies are provided for. The wording of Article 15 (1) is not clear about which organs have to be formed in the time limit stated in that Article.

According to Article 26, the staff of the CEC is confirmed by the executive committee and recommended by the CEC. It is not clear whether the executive committee is bound by the recommendation. It is of great importance for the impartiality of electoral bodies to decide on their personnel independently from political or administrative bodies. Thus, it might be suggested to give the CEC the decisive role in selecting and hiring personnel.

CDL-AD(2007)033, Opinion on the Law of the Gagauz Autonomous Territorial Unit on the Election of the Governor of Gagauzia (Moldova)

According to paragraph 2 of the article 17 of the Law on the Central Electoral Commission of Ukraine it is responsible for the implementation of the Constitutional and legislative provisions concerning the electoral process. It has even the power to propose necessary changes to the legislation on elections and referendums according to paragraph 6 of the same article. Another important attribution of the Central Electoral Commission is the possibility to adopt decisions on the practical issues concerning the organization of the parliamentary elections (paragraph 3 of the article 19). Some of the unclear provisions of the electoral law can be completed through a set of specific decisions adopted by the Electoral Commission of Ukraine and it should use this power more actively. For example, such aspects as the work of the electoral administration, the complaints and appeals procedure and voters’ lists might need additional regulation.

In order to minimize the above-mentioned shortcomings the Central Electoral Commission should fully use its powers in implementing the existing legislative provisions on pre-term elections. Its role is essential in organizing the work of the lower commissions, registering the candidates and checking the voters’ lists. In the context of early elections the political climate is tense and there is a risk of confrontation between political forces. The Central electoral commission’s role is essential during the pre-electoral period and it should not be subjected to undue pressure from other state authorities and from different political forces. If the Central Electoral Commission uses its powers there should be no obstacles to holding of early elections in a manner compatible with the European standards.

CDL-AD(2007)021, Opinion on legislative provisions concerning early elections in Ukraine

The election administration has a central role in preparing and conducting legitimate, fair and unbiased elections. Electoral commissions should be composed in a balanced way and not be under the strong influence of the executive. Their work must be transparent. There must be a possibility to appeal the decisions of the election commissions to a court of law.

CDL-AD(2006)028, Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR

(…) electoral laws should be precise, clear and easily understandable for electoral officials, candidates and voters alike. Taking into account these criticisms, further electoral reforms should be careful not to add more and more detailed provisions to the electoral law. Instead a review of the election legislation should be undertaken in order to clarify and simplify complex provisions and to remove inconsistencies and unnecessary repetitions. This would enhance public understanding of the electoral legislation. It would also facilitate voter education and the training of election officials. With a growing professionalism of the electoral administration and a decreasing mistrust among election stakeholders, it will be possible to leave some margin for the adaptation and interpretation of the electoral law to independent electoral commissions.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues

All members of electoral commissions should be guaranteed the opportunity to participate in full in the administration of the election. Such guarantees are particularly important for members appointed in the extended composition of the REC and PBs. In order to provide such guarantees, the law should establish the right of all members to be notified in a timely manner of sessions, provided with full access to election documentation, and to attend and participate on an equal basis in all sessions**.** As none of these rights are expressly stated in the law, the OSCE/ODIHR and the Venice Commission recommend that the law be amended to include express guarantees of these rights for election commission members.

Article 23 of the law requires the body responsible for maintaining the voter list to issue “certificates of suffrage”. It would appear that these are required by those seeking inclusion on a candidate list (Article 44) but not by voters on polling day. However, Article 72 a requires “certificates of suffrage” for persons voting by mobile ballot box. Thus, it is not clear what other purposes are intended for these certificates. The OSCE/ODIHR and the Venice Commission recommend that the law be amended to clearly state the purposes, when needed, and procedures for issuing, obtaining, and surrendering to election administration authorities a “certificate of suffrage”.

CDL-AD(2006)013, Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in The Republic of Serbia by the Venice Commission and OSCE/ODIHR

The content of Article 1 (‘definition of terms’) would possibly be better placed in the body of the text. For instance, the definition of “State Register of Voters” could initiate the present article 2 (‘main objectives of the State Register’), which defines its objectives. That article would hence have two paragraphs: one defining the Register, and the second, its objectives. In fact, as far as the definition of the responsibility of the CEC is concerned, the following can be said: while Article 1 provides that the term “administrator of the State Register shall mean the Central Election Commission”, an almost identical definition is repeated in 10.2 (“The Central Election Commission shall be the authority of maintenance of the Central Register of Voters and the main administrator thereof) and in 13.2 (“The Central Election Commission shall be the Main Administrator of the State Register”, which exists with other administrators -regional, local: art. 13.1-, so modifying the definition in article 1). And, after these variations, in some occasions the Law still refers to the “Central Election Commission”, instead of using the alternative definition (see article 14.2). It is recommended to use consistent definitions throughout the whole text.

CDL-AD(2006)003, Joint Opinion on the Draft Law on the State Register of Voters of Ukraine, submitted by people's Deputies of Ukraine, Mr O. Zadorozhny and Mr Yu. Klyuchkovsky by the Venice Commission and OSCE/ODIHR

It has also been clarified that the CEC can impose sanctions to electoral competitors, in case of violation of the provisions of the Electoral Code, by imposing a warning or a fine (Article 69.2). Yet, consideration should be given to clarify the instances, scope and effect of the exercise of such prerogative.

CDL-AD(2006)001, Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR

Prior to these draft amendments, previous amendments relating to electoral administration were adopted by the Parliament, on 22 April 2005. This reform led to a newly composed Central Election Commission (CEC). The CEC is now composed of members selected on the basis of their professional skills, and therefore is no longer a partisan Commission. The Venice Commission regrets that it was not requested to comment on this important reform. On this aspect, it can be underlined that the Venice Commission's Code of Good Practice in Electoral Matters promotes political pluralism in the electoral administration, at central and lower levels. Nevertheless, the Venice Commission supports the newly composed CEC in its wish to co-operate with all political forces and the civil society involved in the electoral process. The new CEC explicitly expressed its wish to constructively work with the Venice Commission. In this respect an assistance mission took place in September/October 2005.

CDL-AD(2005)042, Opinion on the Draft Organic Law on "making Amendments and Additions into the Organic Law - Election Code of Georgia"

The Central Electoral Commission may, on its own initiative, quash the decisions of the Territorial Electoral Commissions (Article 40 paragraph 4). However, the Central Electoral Commission may not review the decisions of Territorial Electoral Commissions about "electing a member of the parliament in majority system, head of the local self-governing body or member of community council." No criteria are provided to establish when it would be appropriate for the Central Electoral Commission to exercise the authority to annul a decision of the TEC. Thus, it would appear that the CEC would have wide discretion to exercise this authority under any circumstance. This should be considered carefully as such power is very broad. Further, the rationale for granting the CEC such broad powers but then creating a specific exception for a decision electing a National Assembly member in a majority constituency is unclear. It is also unclear whether the Territorial Electoral Commission has the right to review the decisions of the Precinct Electoral Commissions.

CDL-AD(2005)027, Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR

Article 23 should be clarified concerning the rights and duties of a member of the CEC. Clause (6) compels a member to vote for or against a proposal and prohibits abstention. This provision is likely included due to the new 5-2 voting requirement on some issues. However, this provision assumes that there will never be a situation where a member should abstain due to an actual or apparent conflict. This assumption is erroneous. The possibility exists that a member of the CEC may have a relationship with a candidate or complainant that requires the CEC member to abstain in order to maintain the appearance of propriety. This is especially true since Article 24 provides that a member may be dismissed for any behavior or act that "discredits the position and the image of the CEC member". The OSCE/ODIHR and Venice Commission recommend that clause (6) of Article 23 be amended to permit a CEC member to abstain, provided the member explains the reason for abstention and the reason is due to an actual or apparent conflict. Further, clause (4) of Article 23 should be

amended to require a member to also vote “in accordance with the law” and not merely “following his convictions”.

Article 29 sets forth that the CEC declares the result of elections at a national level. However, according to Articles 37 and 43 the results are declared by the ZECs and the LGECs in their respective areas. According to Article 153 of the Constitution the declaration of any election results appears to be the prerogative of the CEC. Thus, the question arises as to when the result is final. The OSCE/ODIHR and Venice Commission recommend Articles 29, 37, and 43 be amended so that they are consistent.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

The preparation and administration of elections should be carried out by collective election bodies headed by the “central election body”, acting independently, impartially and within the scope of competence and powers established by the constitution and/or laws and other statutory acts (Article 13, paragraph 1). Only independence, impartiality and transparency from politically motivated manipulation will ensure proper administration of the election process. The central electoral body or commission should have a permanent status and a special composition, facilitating maximum impartiality. Article 13 does not, however, refer to this particular aspect.

CDL-AD(2004)010, Opinion on the draft ACEEEO [Association of European Election Officials] Convention on Election Standards, Electoral Rights and Freedoms

The election commissions have a lot of powers and too many duties (registration of candidates, selection of complaints, electoral process, etc.). The members may not have enough time to appropriately fulfil all these duties.

CDL-AD(2002)035, Joint Assessment of the Revised Draft Election Code of the Republic of Azerbaijan

2. Decision-making

Article 96(1) states that each objector shall establish the facts on which their claims are based and shall be liable for the veracity and quality of the evidence submitted. The draft Code thus places the burden of proof on voters and electoral contestants, including in disputes with election administration. It should be recalled that the legal relationships within the electoral period are of public nature and, with some exceptions, are regulated by public law. Placing the burden of proof on voters and electoral contestants in their disputes with public bodies may leave the former without an opportunity to substantiate their appeals when the evidence is in possession of the public bodies. ODIHR and the Venice Commission recommend to review this provision so that the election administration and other administrative bodies are required to substantiate the legality of their decisions.

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections and adopted by the Venice Commission

Decisions of the CEC shall be taken by a two-thirds majority of present members. 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.

CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria

According to Article 20(2), decisions in election commissions are made by a two-thirds majority. As a matter of good practice, it is recommended that electoral commissions take decisions by a qualified majority or by consensus. With members of electoral commissions being appointed by political parties, there is a risk of polarization, if not politicization of discussions in election commission with a possibility that key decisions may be blocked. It is recommended that the two-thirds majority rule be reassessed in light of the experience gained in the next elections.

CDL-AD(2011)013, Joint opinion on the election code of Bulgaria

Finally, the OSCE/ODIHR and Venice Commission again underscore that a partisan approach in the functioning of the election administration, whereby party interests are being placed above the common objective to deliver an electoral process in line with international standards, is not conducive to the professional conduct of democratic elections. In this regard, it is recommended considering further streamlining Central Election Commission decision *making mechanisms in order to avoid deadlocks that could be motivated by partisan interests.*

CDL-AD(2009)005, Joint Opinion on the Electoral Code of the Republic of Albania

Article 23(6) of the Code had compelled a Central Election Commission member to vote for or against a proposal and prohibited abstention. The OSCE/ODIHR and Venice Commission previously expressed concern that this provision assumed that there will never be a situation where a member should abstain due to an actual or apparent conflict. In a positive response to the recommendation of the OSCE/ODIHR and Venice Commission, clause (6) of Article 23 has been deleted. An amendment to clause (4) of Article 23 also implements the recommendation that Article 23 should be amended to require a Central Election Commission member to vote “in accordance with the law”.

CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

A similar problem exists with regard to the decision making process. Reasonably, the Code of Good Practice in Electoral Matters highlights that it would make sense for decisions to be taken by a qualified (e.g. 2/3) majority, so as to encourage debate between majority and minority parties. Reaching decisions even by consensus is preferable (CDL-AD(2002)023rev, para. 80). On different occasions, the Venice Commission recommended introducing a higher quorum and/or qualified majorities to increase the inclusiveness of the electoral commissions’ decisions (see for example CDL-AD(2003)021, para. 12, CDL-AD(2004)016 rev, para. 12).

However, qualified voting requirements can also be abused to obstruct the decision making process, particularly under the condition of a strongly politicized electoral administration. Such obstruction politics have been criticized, for example, in the Albanian case (see CDL-AD(2004)017rev2, para. 13). Generally speaking a balance is necessary between making the decision making process inclusive and representative on the one hand, and effective on the other. Institutional incentives (like qualified majorities) to ensure general agreement on electoral administration decisions have to be combined with solutions to overcome deadlock situations.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

Article 30 stipulates in clause (5) that normative acts, registration of the candidates and subjects, declaration of election results and winners, and decisions related to complaints on the declaration of the results are approved when no less than five members of the CEC vote in favor. Every other decision is taken by a majority of the members present. Further, all decisions must be signed by the chairman and the deputy chairman and by all the members that are willing to sign. These requirements led to deadlock in CEC decision making on several occasions during the 2003 local government elections. The 5-2 voting requirement permits "militant" commission members to block the electoral process and bring democratic processes to a complete halt, placing in limbo the suffrage rights of voters. Also in clause (5) it is stipulated that decisions of the CEC must be signed by the chairman and the deputy chairman. However, it may be the case that either one is ill or cannot attend the meeting for other reasons. During the 2003 local government elections, the CEC functioned without a deputy chairman. The OSCE/ODIHR and Venice Commission recommend that clause (5) of Article 30 be amended to provide that a decision is approved when a simple majority of all members of the CEC votes in favor of the decision and that this voting requirement apply to all issues, and that the dual signing requirement be deleted.

In addition to the constitutional issue presented, the new provisions are problematic as they permit the two main parliamentary parties, through their representatives on the CEC, to block decision making. This is due to the requirement of qualified majority voting in the CEC on every issue of significance. As a result, a de facto veto power has been given to each of the two main political parties on every significant issue. The OSCE/ODIHR and Venice Commission recommend that Article 30 of the Code be amended to provide that a decision is approved when a simple majority of all members votes in favor of the decision. This should apply to voting in all election commissions, including the CEC, on all issues.

Clause (9) of Article 30 permits "when, due to various reasons, the [CEC] meeting cannot proceed normally, the chairman and deputy chairman have the right to suspend its continuation for up to 24 hours". This provision is not only vague, but is subject to abuse as it permits delay on a decision where the chairman or deputy chairman realizes he or she will be on the losing side of a vote on a decision. Delaying the vote permits the losing side to seek to apply pressure through other means and disrupts attempts to observe decision making of the CEC. The OSCE/ODIHR and Venice Commission recommend that clause (9) of Article 30 be deleted from the Code. A CEC meeting should continue until all agenda items that can be addressed have been addressed, and then the meeting should be adjourned until the next scheduled meeting, which will have a new agenda that is made available publicly and which may include matters that could not be concluded at the prior meeting.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

Decisions of electoral commission. Decisions of the electoral commissions have to be made by the quorum and the majority of votes required by the law. It is not acceptable that most CEC decisions were made by its executive officers and secretariat outside of formal sessions. Complaints should certainly not be decided by individual electoral commission members without a formal vote of the commission, as has still happened in recent elections. A serious effort should be made to ensure that the decision-making process of electoral commissions corresponds to the law.

CDL-AD(2003)021, Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR

There are many ways of making decisions. It would make sense for decisions to be taken by a qualified (e.g. 2/3) majority, so as to encourage debate between the majority and at least one minority party. Reaching decisions by consensus is preferable.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

Article 32.5 The provision for nominating members within one week is too short; one month is much more reasonable.

CDL-AD(2002)009, Opinion on the Unified Election Code of Georgia

3. Transparency

Numerically, this change would create proportional representation districts with an average of 10 representatives elected in each of them. Such proportional representation districts with a relatively small number of elected representatives tend to favor large parties, especially in small constituencies (which exist in Mexico, since the electoral geography is based on the federal structure); moreover, as the proposed proportional system is based on closed lists, it will enable the political parties (in fact party leadership) to have the upper hand on the selection of those candidates who have a chance to be elected. This gives parties rather than citizens more influence on who gets elected. Under such system the respect of essential democratic principles and transparency is a serious challenge and there should be some kind of external scrutiny of the respect by the political parties of the rules of internal democracy, notably during the process of selection of candidates for their electoral lists. The current provisions of the Constitution and of the electoral laws are very demanding on the selection of candidates in Mexico. The respect for the democratic principle and for transparency are guaranteed by the electoral authorities. Any changes concerning the electoral administration should guarantee the same level of protection of the right to stand for election.

CDL-AD(2022)031, Mexico - Opinion on the draft constitutional amendments concerning the electoral system of Mexico

Article 19.1 of the draft law foresees accountability of the election administration bodies for their work to the body that elected them. Concerning the CEC, such accountability should be clarified and the independence of the CEC *vis-à-vis* the parliament be guaranteed.

CDL-AD(2020)026, Montenegro - Urgent joint opinion on the draft law on elections of members of parliament and councilors, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure

As for the activities of electoral commissions, the rules of procedure must be clear. Commissions' activities and decisions must be transparent, inclusive and consensus-oriented, but at the same time, the effectiveness of the electoral administration should not be hampered by endless debates or even dead-lock situations. Transparency, inclusiveness and effectiveness of the commissions' work may still be improved in a number of CoE member states.

CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

Article 22(8) of the draft law, similar to existing legal provisions, requires CEC decisions to be published on the CEC website within 24 hours of adoption. However, the minutes

reflecting CEC discussion of the issues prior to the decision, although required to be signed by members, do not have to be published on the CEC website. The OSCE/ODIHR has previously recommended that the minutes of CEC meetings also be published on the CEC website as a means to enhance transparency. This recommendation remains unaddressed.

CDL-AD(2014)019, Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic

To avoid criticism on gerrymandering and to guarantee the necessary confidence in the Central Electoral Commission, the draft should provide for a transparent districting process, performed well in advance of the next parliamentary elections and be based on clear, publicly announced rules, taking into account the existing administrative divisions, and historical, geographical and demographic factors. In particular, the delimitation of single-mandate district boundaries in areas with high levels of minority settlements needs to ensure respect for the rights of national minorities, and electoral boundaries should not be altered for the purpose of diluting or excluding minority representation. Moreover, as established in the Code of Good Practice, "the maximum admissible departure from the distribution criterion adopted depends on the individual situation, although it should seldom exceed 10% and never 15%, except in really exceptional circumstances"20 (see below the comments on the constituencies of Transnistria and Gagauzia).

CDL-AD(2014)003, Joint Opinion on the draft Law amending the electoral legislation of Moldova

The June 2013 joint opinion noted changes in the electoral law providing that the registration of candidates in the single-mandate districts is conducted by the relevant DEC. The change addressed a previous recommendation of the Venice Commission and the OSCE/ODIHR. The June 2013 joint opinion, however, did note that it was important for the CEC to exercise oversight of candidate registration by the DECs. Further, at the different roundtables in Kyiv, many participants expressed the concern that this change in the law could result in abusive practices at the DEC level. Thus, the June 2013 opinion stressed the importance of oversight of the CEC. Following the discussions and the views of ruling majority and opposition, as well as civil society, as stated in the Comments sent by the Ministry of Justice to the draft Joint Opinion on 9 October 2013, the Venice Commission and the OSCE/ODIHR consider that the distribution of competences in this respect between the DECs and the CEC should be agreed in an inclusive manner among all stakeholders.

The June 2013 joint opinion recommended revision of Article 30.3 of the electoral law to make it clear under what circumstances publication of Acts of the CEC is required prior to the start of the electoral process. The text of the article required Acts of the CEC, which have legal character, to be published prior to the election process "where possible". It was recommended to clarify the phrase "where possible" in order to make the provision effective and to avoid it to be arbitrarily ignored by the CEC. The July amendments do not address this recommendation as they do not clarify the phrase "where possible". However, the Ministry of Justice states in its comments that CEC Acts must be published before the start of the electoral process except where a specific time limit is stated in the electoral law. This statement assumes that the CEC will publish all Acts prior to the commencement of the electoral processes (excluding those with specific time limits). The text, though, still conditions the requirement to "where possible". Thus, additional clarification is needed to address this recommendation.

CDL-AD(2013)026, Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine

Article 13 of the parliamentary electoral law states that parliamentary elections should be prepared and conducted in a public and transparent manner. The Venice Commission and the OSCE/ODHIR have previously recommended the inclusion of more specific transparency mechanisms in the law to achieve this general principle of transparency. Both the draft electoral law and draft CEC law include provisions that address several previous recommendations of the OSCE/ODIHR and the Venice Commission for greater transparency in the work of the election administration and in making results public. Examples are noted below.

Articles 10.1 and 12.1 of the draft CEC law require the CEC to not only “consider” decisions but to also “discuss” decisions at its sessions. This should address the concern noted by the OSCE/ODIHR in the final report on the 2012 parliamentary elections that CEC meetings and decisions were held “behind closed doors.” Similar requirements for election commission “discussions” are found in Article 33.10 of the draft electoral law for DECs and PECs.

Article 30.3 of the draft electoral law should also enhance transparency as it requires Acts of the CEC, which have legal character, to be published prior to the election process. However, this provision requires publication only “where possible”. It is not clear what circumstances would make publication “not possible”, except for the date and time of the decision. It is recommended that the phrase “where possible” be clarified so that the provision is effective and cannot be arbitrarily applied by the CEC.

Transparency has also been enhanced by adding observers from non-governmental organizations to the list of persons authorized to be present for CEC meetings. This addition is included in Article 4.2 of the draft CEC law. This is a positive amendment to the CEC law.

Article 31.20 introduces a requirement for DECs to submit to the CEC “information on the applications and complaints lodged” and “results of their review”. This is a positive measure which should increase transparency and addresses previous recommendations for increased transparency in election administration.

Article 35 of the draft electoral law specifies that election commissions maintain written documents. Minutes, decisions, resolutions, reports, and protocols are some of the types of written documents identified in the Article. It requires that some of these documents, but not all – such as minutes, be made publicly available through various means of publication. However, all documents prepared by election commissions, including minutes, should be made available to the public. The OSCE/ODIHR and the Venice Commission recommend that all election administration documents, including minutes, decisions, resolutions, reports, and protocols be made available for public inspection at the relevant election commission headquarters and published on the CEC website.

The recommendation for complete transparency in the written documentation of election commissions is addressed partially. Article 35.5 of the parliamentary electoral law mandates that any decision of a commission be publicly available on the information stand of the commission no later than the morning after the day it was adopted.

Article 35 also specifies the information that needs to be included in all decisions of election commissions. This should ensure that complainants are supplied with the information necessary to appeal a decision of a commission and should promote consistency in the substantive content of decisions.

CDL-AD(2013)016, Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine

OSCE/ODIHR has previously expressed concern about the lack of transparency in the election administration, particularly at the CEC level when complaints were considered and decided. Article 4(1), Article 17(1), Article 18(7), and Article 19 of the draft election commissions law state significant legal requirements for transparency. However, these provisions are not self-enforcing and the CEC must exhibit good faith efforts in order to ensure that transparency is observed by the election administration in future elections.

CDL-AD(2011)025, Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic

Each registered party is permitted to send a representative to sessions of the CEC during the election process (Article 68.1). The representative is entitled to participate in the CEC's proceedings but may not take part in decision making; they have only an advisory role. This does ensure, however, that each party is represented, has an opportunity to advance the views of the party, and is able to see the documents and materials under discussion by the CEC. The OSCE/ODIHR and the Venice Commission have previously recommended that the list of rights accorded to party representatives in the CEC should include the right to be notified in advance of CEC sessions. This recommendation remains.

One simple but possibly very effective measure to enhance transparency would be for the CEC to make its register of complaints, including the CEC decision on the complaint, publicly accessible. Where necessary, such materials could be made anonymous to protect the privacy of individuals involved in the complaint. Such a measure would provide a ready indication of the extent to which complaints are referred to the CEC, the nature of such complaints, and the CEC's approach to dealing with them.

CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR

The 2004 opinion made recommendations that the Code include minimum requirements regulating the conduct of the Central Election Commission in order to increase public confidence and transparency. Many of these recommendations have been implemented by the Central Election Commission and some are addressed by its internal regulations. Although it would have been preferable to codify these practices in the Code as legal requirements, it is a positive development that the Central Election Commission has provided greater transparency in how it conducts its meetings, grants more access to its documents, and solicits public input to its meetings.

Consistent with a previous recommendation, the Code has been amended to delete clause (10) of Article 30, which allowed the Central Election Commission to meet in private to discuss "Central Election Commission administration". It was pointed out that this provision was contrary to the general principle of transparency of all election processes since the term "administration" certainly encompasses administration of the election processes. Deletion of this clause is a positive response to the recommendation.

CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

It is very important that the duties and responsibilities of each body are clearly determined by the electoral law. Sometimes, however, provisions regarding responsibilities of election commissions are vague, and the relationship between the different level of electoral commissions is not sufficiently specified. An example is the 2004 Law on Local Elections in "the Former Yugoslav Republic of Macedonia". Observers from the OSCE/ODIHR and the

Congress of Local and Regional Authorities of the Council of Europe recommended strengthening the responsibility of the State Election Commission over the action of subordinate election bodies there (CG/BUR (11) 122rev, page 14). Similarly, with regard to the 2002 parliamentary elections in Hungary, the National Election Commission's lack of binding authority over the decisions and actions of lower level commissions was criticized as possibly leading to inconsistent implementation and abuse.

Furthermore, there is a definite need for a continuous flow of information within the electoral administration structure. In practice instructions and clarifications of legal provisions are not always communicated from higher-level commissions to lower-level commissions clearly, and in a timely manner, which contributes to a lack of uniformity in the electoral procedures that can still be observed in a number of countries during the election process.

In any case, the Electoral Law should provide for a clear and transparent procedure of nomination and appointment of electoral commissioners. The lack of transparency of the nomination process has been criticized by Council of Europe electoral observers, for example, with regard to elections in Azerbaijan and "the Former Yugoslav Republic of Macedonia" (see CDL-AD(2004)016rev, para. 12.ii; CG/BUR (11) 122rev).

There are many aspects of the activities of electoral commissions that have to be regulated, and there are many ways to do so. Apart from all the technical details, there are some underlying principles that have to be respected. The rules of procedure must be clear. Commissions' activities and decisions must be transparent, inclusive and consensus oriented, but at the same time the effectiveness of the electoral administration should not be hampered by endless debates or even dead-lock situations. A way has to be found to combine the best possible transparency, inclusiveness and effectiveness of the electoral administration at the same time. Depending on what the specific problems of a country's electoral management are, recommendations focus on different, sometimes even contradictory, aspects.

With regard to the (effectively administered) elections in the Russian Federation, for instance, international electoral observers recommended that the transparency of the commissions' work should be enhanced by extending the guaranteed access of candidates, their financial representatives and proxies, as well as journalists, to even non-formal sessions. Also in other countries the lack of transparency of the commission's work has in fact caused serious concern.

As for the Ukrainian 2005 reform, in contrast, it was pointed out that extending the right to be present at commissions' meeting to many subjects (candidates, representatives of parties and mass media, foreign and international observers), combined with the "excessively high number" of commission members, may make it very difficult to perform their functions, which require continuous debating and decision-making (see CDL-AD(2006)002, para. 34). Here a solution has to be found for enabling as much transparency as possible without making commissions' work too difficult or even impossible.

CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues

The law includes some safeguards designed to promote transparency and openness in the preparation and conduct of parliamentary elections, including the following:

a. Article 60 of the law provides that submitters of candidate lists are permitted to have a representative monitoring the printing of the ballot papers.

b. A copy of the results at the polling station is required, under Article 76, to be displayed at

the polling station.

c. Each representative of a list submitter at a PB is entitled to a copy of the PB results protocol. Representatives for the four list submitters with the highest voting results are entitled to a protocol immediately. Other list submitters are entitled to a protocol within 12 hours.

d. Article 79 permits submitters of candidate lists to inform the REC of the name of a person authorized "to be present at the statistical processing of data" at the REC.

Although the above safeguards are provided in the law and Article 32 of the law states that the “work of election administration bodies shall be public”, the law makes no provision for the participation of either international or non-partisan domestic observers. Thus, the law fails to implement the OSCE commitment to provide for election observation.

Paragraph 8 of the 1990 OSCE Copenhagen Document states: *“The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for elections proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”*

This commitment requires OSCE participating States to ensure that observers have full access to the entire election process, including the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other electoral documents at all stages of the election process. Further, observers should receive appropriate credentials a sufficient period of time prior to elections to enable them to organize their activities effectively. Observers should be given unimpeded access to all levels of election administration, effective access to other public offices with relevance to the election process, and the ability to meet with all political formations, the media, civil society, and voters.

The Venice Commission’s Code of Good Practice in electoral matters provides that:
Observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not.
There are three different types of observer: partisan national observers, non-partisan national observers and international (non-partisan) observers. In practice the distinction between the first two categories is not always obvious. This is why it is best to make the observation procedure as broad as possible at both the national and the international level.

The OSCE/ODIHR and the Venice Commission recommend that the legal framework be amended to permit international and domestic non-partisan observers to observe all stages of the election process, including voting in polling stations, counting of ballots, and tabulations of the results. Further, the rights of domestic and international non-partisan observers should be guaranteed in the law, and criteria for their accreditation should be stipulated clearly.

Article 85 of the law requires the REC to publish the results of the elections. However, Article 85 does not require the REC to publish a table showing the PB results broken down for each polling station. A table of results showing the breakdown for each polling station allows the parties to ensure that the results are correctly entered from the polling station results protocol. The OSCE/ODIHR and the Venice Commission recommend that Article 85 be amended to require the REC to include detailed results for each polling station in the

publication of the election results. Further, these detailed results should categorize all types of ballots, including ballots cast by mobile ballot boxes, in order to allow electoral participants and observers to have a detailed insight as to how the results at the Republican level emerged from the polling stations.

CDL-AD(2006)013, Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in The Republic of Serbia by the Venice Commission and OSCE/ODIHR

The constitutionally questionable CEC appointment process and qualified majority voting requirement appear to have resulted from a lack of confidence in the CEC running so deep that the two major political parties deemed the new provisions essential for the conduct of future elections. In order to strengthen confidence in the CEC and increase CEC transparency, The OSCE/ODIHR and Venice Commission recommend the following points, to the extent that they are not already expressly stated in clear language in the Electoral Code, be specifically codified in the text of the Electoral Code: (1) the CEC shall publish written regulations governing its work, including how meetings will be conducted, no later than 120 days before an election; (2) all meetings of the CEC shall be public; (3) the CEC shall, no later than twenty-four (24) hours before a meeting, publicly post at the main entrance to its office and all of its offices in Albania a notice for each CEC meeting, and the notice shall include an agenda of all items and matters to be considered at its meeting; (4) any person has the right to be included on the agenda of the CEC to discuss electoral issues, suffrage rights, or any other matter relevant to the conduct of elections, but such a request must be made at least forty-eight (48) hours in advance of a meeting and the CEC may limit the time for presentations, taking into consideration other items on the agenda and the number of requests for discussion; (5) during the entire time period after an election date has been set and until final certification of the election results, the CEC shall meet regularly at 9:00 a.m. every day and the CEC will hold additional meetings as necessary during this period; (6) the CEC shall thoroughly and completely consider all matters presented to it and, when reaching a decision, the CEC shall first attempt to make a decision by consensus and, should it be impossible to reach a decision by consensus, the CEC shall take a formal vote and the decision is approved when a simple majority of all members votes in favor of the decision; (7) every decision of the CEC, whether by consensus or formal vote, shall within twenty-four (24) hours be memorialized in a written form and signed by the Chairperson of the CEC, and a copy of the written decision shall be maintained in the office of the CEC Secretariat and available for public inspection and copying, and, as soon as the written decision is signed by the Chairperson, it shall be forwarded to the Secretariat where it shall be immediately recorded in the Secretariat's records with a notation of the date and time received by the Secretariat where, after noting the date and time received, the Secretariat shall provide a notated copy to all members of the Commission, each person, candidate, or political party affected by the decision, the Secretary General of the Assembly, and any person who requests a copy of the decision; (8) every member of the CEC shall publicly take an oath administered by the President of the Republic, where the member affirms to: (i) promote conditions conducive to the conduct of free, fair, and democratic elections, (ii) ensure that the secrecy and integrity of the vote are respected, (iii) refrain from politically influencing any voter, (iv) perform all duties and functions with care, competence, honesty, and courtesy, (v) maintain strict impartiality in carrying out duties and functions and do nothing by way of action, attitude, manner or speech to give any other impression, (vi) not commit or attempt any act of crime or conflict of interest (including the commission or omission of an act in the performance of or in connection with one's duties in exchange for money, gift or promise of reward from any candidates, political party, or any representative or agent of a candidate or party), (vii) shall make every effort to oppose or combat any act of crime or conflict of interest that is discovered in the course of their duties, (viii) shall make every effort to attend meetings, training classes or workshops that are set up to facilitate the carrying out of CEC functions, and (ix) shall safeguard all election material entrusted to the

member and assist all observers and candidate and political party representatives engaged in legal observation activities.

Clause (10) of Article 30 allows the CEC to meet in private to discuss “CEC administration”. This provision is contrary to the general principle of transparency of all election processes. The term “administration” certainly encompasses administration of the election processes. All meetings of the CEC must be open to the public. Transparency is a critical cornerstone for free, fair, and genuine democratic elections. The OSCE/ODIHR and Venice Commission recommend that clause (10) of Article 30 be amended accordingly.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR

The openness of the appointment and the transparency of the work of the commissions are essential to establish the legitimacy of the electoral process.

CDL-AD(2004)016rev, Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan by the Venice Commission and the OSCE/ODIHR

The transparency of elections is one of the main provisions of the Electoral Code (see Art. 7). In practice, however, some important provisions to ensure the transparency of elections have been ignored in the past. Practical measures should be taken to improve the transparency of elections, in particular, with regard to the work of electoral commissions and returning of results, as well as with the regular information on voter turnout, in conformity with Article 7.6. A transparent procedure would be particularly welcome for the revision of voter lists.

Meetings of the electoral commissions. The CEC meetings were criticized as being often short and conducted in a manner that was not conducive to debate or discussion. Thus it is important that the CEC holds regular, scheduled and open sessions. The participation of commission members from opposition parties as well as of proxies, observers and the representatives of mass media should be ensured.

Publication of electoral commissions’ decisions. Greater efforts might be made to publicize decisions of electoral commissions, in particular of the CEC, and to disseminate them to election officials, candidates, proxies, observers, and the media. This would contribute towards a more consistent application of electoral rules.

CDL-AD(2003)021, Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR

Provisions on transparency have been strengthened, particularly regarding the issuance of protocols to interested parties and the mandatory display of election protocols at all election commissions’ levels.

CDL-AD(2002)035, Joint Assessment of the Revised Draft Election Code of the Republic of Azerbaijan

The meetings of the central electoral commission should be open to everyone, including the media (this is another reason why speaking time should be limited). Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

IV. Complaints and appeals against central EMB decisions

Positively, the draft Code provides more details on complaints and appeals procedures than the current Code. Different types of complaints are linked with the bodies to which these complaints may be channeled. This partly addresses concerns regarding the clarity of avenues for timely resolution of election-related complaints by the election administration and the courts, previously raised in the ODIHR reports. Article 99 of the draft Code describes how potential conflicts of jurisdictions could be solved, prioritizing judicial dispute resolution. This is a step in the right direction, but it should be reminded that, according to the Code of Good Practice in Electoral Matters, "[n]either the appellants nor the authorities should be able to choose the appeal body". While these provisions provide greater clarity for electoral dispute resolution, it is important to note that some elements of electoral dispute resolution are also regulated by administrative, civil and criminal legislation. ODIHR and the Venice Commission reiterate that the legislative framework for electoral dispute resolution should be consistent and coherent. When amendments are made to the electoral legislation, respective provisions of other legal acts should be harmonized with it.

Another fundamental requirement for a system of electoral complaints and appeals, flowing both from Article 3 of Protocol No. 1 of the ECHR and the Code of Good Practice in Electoral Matters, is that it provides an effective examination of the electoral complaint. In a 2020 decision related to deregistration of a political party in 2014 elections in Moldova, the ECtHR found in that" the procedures of the electoral commission and the domestic courts did not afford the applicant party sufficient guarantees against arbitrariness, and the domestic authorities' decisions lacked reasoning and were thus arbitrary." The positive changes to the complaints and appeal system in the law would mean nothing if the courts make no effort to consider evidence brought by the appellants and if they do not act with sufficient independence and impartiality. The professionalization of the CEC would enable it to continuously monitor the election campaign and provide better evidence in future election complaints. Finally, the rapporteurs were informed that new time limits and appeals on CEC decisions going directly to the Chişinău Court of Appeal (Article 91(5)) rather than through the first instance courts, would allow for better reasoning and assessment of evidence in the courts. ODIHR and the Venice Commission welcome these developments, though their effectiveness remains to be seen and should be evaluated after the first elections under the new law.

Article 94(1) lists those eligible to submit electoral appeals. In addition to voters and candidates, the changes extend the right to appeal to initiative groups, candidate nominees, referendum participants and registered political parties (entitled to participate in elections). However, there is no mention of the bodies of election administration, members of these bodies, or domestic election observers. Given that actions of the election administration at all levels may become subjects of appeals and that the draft Code contains provisions on personal liability of members of the election administration (e.g., under Article 102), it is recommended to explicitly provide the right to appeal for these subjects as well, in order to avoid situations when their appeals may be declared inadmissible and provide for an effective remedy.

While ODIHR previously assessed the deadlines for the electoral complaints as in line with good electoral practice, the draft Code (Article 100) further shortens them from five to three days to consider complaints (the deadlines for submission remain the same). Expedited deadlines are generally encouraged for electoral dispute resolution; however, it should be borne in mind that the rationale for setting short deadlines is to provide a timely and effective legal remedy given the nature of the election processes. An expedited resolution should not compromise the quality of examining complaints and appeals. The information note accompanying the draft Code mentions the uniformity of deadlines, including for the examination of complaints. In this regard, it should be noted that different kinds of disputes

raised during an electoral process may require different times for resolution. While the general deadline of three days is in line with good practice, it would be advisable for legislation to allow for more time when there is a need to conduct a more thorough investigation and examination of the facts.

According to Article 95(1), the calculation of deadlines for lodging appeals is linked to the day the action was committed, rather than the day an applicant became aware of the action committed, in all cases in which the applicant can demonstrate that it is not reasonable to expect beknowing the action when committed. Since Article 96 establishes an applicant's responsibility for timely application submission, ODIHR and the Venice Commission recommend to link the calculation of deadlines with the moment when the action in question became known or should have become known to the applicant.

Article 93 newly lists the conditions for admissibility of appeals. While providing all possible reasons for inadmissibility contributes to having a defined due process, allowing for dismissal of appeals “in other cases laid down in this Chapter” leaves it too broad and possibly open to flexible interpretation, which is at odds with international good practice which prioritizes the consideration of substantive grievances over opting for an overly formalistic approach. This option should be reconsidered.

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections and adopted by the Venice Commission

The decisions regarding voting and counting/tabulation procedures, which are very sensitive stages of the electoral process in any country, require the possibility of an appeal in second instance at least, as recommended by international standards. Contesting in first instance a voting procedure or a procedure concerning the counting and tabulation period means in most cases complaining about a situation occurring at the polling station, i.e. either during the pre-opening stage, during the polling or during the counting and tabulation stages – if they take place at the polling station. Such a complaint should as a rule go to the superior election commission or to a court when it regards an action or inaction by the central election body. At least this works for the countries having autonomous, i.e. separate election commissions vis-à-vis the public administration. In these systems, where most of the countries have a three-tier election administration, the election-day related operations contested will be dealt with by the competent district or regional – or equivalent – election commission. A complaint on a decision or action or inaction done by the intermediate level of election commissions will be generally contested before the central election body. Where such a separate structure of election administration does not exist, it can be justified that the complainant goes to the competent – most often local or regional – court to challenge a voting or counting/tabulation procedure in first instance. Indeed, there would be a risk of conflict of interest or of a lack of impartiality if a local, regional or central competent administration – a municipality or a directorate of a ministry for instance – were competent to judge on complaints on decisions or actions or inactions done by its own administration/employees. There is still a minority of countries where such complaints go to *ad hoc* committees or municipalities’ councils or similar bodies. As raised earlier, if in principle nothing prevents from exercising such a right to challenge a decision, action or inaction before other bodies than election commissions or courts, an *ad hoc* committee and even more an elected body do not seem to be the appropriate instances to deal with election-day related issues.

CDL-AD(2020)025, Report on election dispute resolution

Article 61(9) of the draft national elections law provides that the CEC’s decision on “registration refusal of the candidates’ list can be appealed at the superior election commission or court”. The Venice Commission and OSCE/ODIHR recommend that this provision be clarified, as there is no election commission superior to the CEC.

CDL-AD(2011)025, Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic

Amendments to Articles 146 and 148 adopt recommendations to clarify the deadline for filing an appeal to the Central Election Commission. An amendment to Article 146 also extends the deadline for appeals to the Central Election Commission from two to three days. This is also a positive amendment.

Amendments to Articles 147 and 149 adopt recommendations to clarify the deadline for the Central Election Commission to complete the preliminary verification to ensure that the form of the appeal meets all legal requirements. These are positive amendments.

Amendments to Article 159 adopt recommendations to extend the time within which the Central Election Commission must make a decision on an appeal. The deadline has been extended to ten days, which appears to be more realistic in light of the high number of appeals that have been filed with the Central Election Commission in past elections. These are positive amendments.

CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

Articles 146 through 179 provide adequate processes to ensure that citizens, candidates, and political parties can seek meaningful redress in the event of violation of legal rights. These articles are a significant improvement over the legal framework that existed before adoption of the Electoral Code. However, these articles can be improved and recommendations are accordingly made below.

The Electoral Code should be amended to provide more realistic deadlines for taking decisions on complaints and appeals. Due account should be taken of the requirement that an effective system of complaints and appeals must produce results expeditiously. Further, the Electoral Code should specify all procedural provisions that apply to the complaints and appeals process and these provisions should take precedence over the procedural provisions of the Administrative Code. These procedural provisions should require that a complaint be supported with the necessary documentation, *ab initio*, if it is to be considered by the ZEC, LGEC, CEC and Electoral College, thus permitting decisions to be made within the deadlines provided in the law.

Clause (1) of Article 146 states that an appeal can be lodged “within two days from the date the decision was taken”, while Article 148 clause (1) speaks of “within 48 hours of the date the decision was announced”. There could also be a difference between the date the decision was taken and the date a decision is announced. The OSCE/ODIHR and Venice Commission recommend that Article 146 and/or Article 148 be amended, as appropriate, to ensure consistency.

According to Article 147 clause (3), the CEC will make a preliminary verification of an appeal “within two days from its registration”. Article 149, however, provides that the CEC will make a preliminary verification “no later than 24 hours from the moment the appeal was deposited”. These provisions are, assuming that registration takes place at the same time as the deposit of the appeal, inconsistent. It is also confusing that both concepts of registration and deposit are used next to each other and, apparently, to describe the same action. The law should state very clearly all steps to be taken from the moment the appeal reaches the CEC to the moment the CEC takes and/or announces its decision. The OSCE/ODIHR and Venice Commission recommend that this be clarified.

Article 159 clause (1) stipulates that the CEC takes a final decision on an appeal within three days from its registration. However, this is not consistent with the deadlines in Articles 147 clause (3) and 151 clause (3). The deadlines in these articles add up to three days (if the two days in Article 147 clause (3) are fully used) before a hearing can be held, and then a decision still has to be taken. Furthermore, a deadline of three days is not in all circumstances realistic if at the same time the CEC wants to make an informed judgment and uphold principles of due process. The OSCE/ODIHR and Venice Commission recommend that Article 159 be amended to ensure consistency in deadlines and that all deadlines provide sufficient time for due process to all parties and the meaningful protection of legal rights.

Article 162 limits the right to appeal a CEC decision to the Electoral College to "electoral subjects". This is too limited and presents a problem as it limits access to appellate review to this select group. Article 162 also conflicts with Article 117, which permits certain CEC decisions to be appealed by an "interested person". The OSCE/ODIHR and Venice Commission recommend that Articles 117 and 162 be reconciled and amended as necessary to provide the right to appeal to voters and other electoral stakeholders who may have a legitimate interest in seeking appellate review.

Clause (2) of Article 171 provides that the Electoral College adjudicates appeals in a judicial panel consisting of five judges. Article 171 further provides that appeals are distributed among the judges "according to the procedures of this Code". However, there are no provisions in the Electoral Code that explain how appeals are distributed. The OSCE/ODIHR and Venice Commission recommend that the Code be amended to expressly state how appeals are distributed.

CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania of the European Commission for Democracy through Law (Venice Commission, Council of Europe) and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE

V. Appendix - List of opinions and reports quoted in the compilation

- *CDL-AD(2023)047, Georgia - Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia*
- *CDL-AD(2022)047, Georgia - Joint opinion of the Venice Commission and the OSCE/ODIHR on draft amendments to the Election Code and the Law on Political Associations of Citizens*
- *CDL-AD(2022)046, Serbia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration*
- *CDL-AD(2022)031, Mexico - Opinion on the draft constitutional amendments concerning the electoral system of Mexico*
- *CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections*
- *CDL-AD(2022)015, Revised Code of Good Practice on Referendums*
- *CDL-AD(2021)045, Ukraine- Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law "On improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referenda in certain territories and polling stations".*
- *CDL-AD(2021)033, Serbia - Urgent opinion on the draft law on the referendum and the people's initiative, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure, on 24 September 2021*
- *CDL-AD(2021)026, Georgia - Urgent Joint Opinion of the Venice Commission and the OSCE/ODIHR on the revised amendments to the Election Code of Georgia*
- *CDL-AD(2021)025, Armenia - Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 21 April 2021*
- *CDL-AD(2021)022, Georgia - Urgent joint opinion on Draft Amendments to the Election Code, issued pursuant to Article 14a of the Venice Commission's Rules*
- *CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic*
- *CDL-AD(2020)026, Montenegro - Urgent joint opinion on the draft law on elections of members of parliament and councilors, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure*
- *CDL-AD(2020)025, Report on election dispute resolution*

- CDL-AD(2020)024, *Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR, on the draft law 3612 on democracy through all-Ukraine referendum - issued pursuant to Article 14a of the Venice Commission's Rules of Procedure*
- CDL-AD(2020)023, *Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues*
- CDL-AD(2020)018, *Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights*
- CDL-AD(2020)014, *Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections - taken note of by the Venice Commission on 19 June 2020*
- CDL-AD(2018)027, *Uzbekistan - Joint opinion on the draft election code*
- CDL-AD(2018)009, *Report on the identification of electoral irregularities by statistical methods*
- CDL-AD(2017)016, *Bulgaria - Joint opinion on amendments to the electoral code*
- CDL-AD(2016)019, *Armenia - Joint Opinion on the draft electoral code*
- CDL-AD(2014)027, *Opinion on the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia*
- CDL-AD(2014)019, *Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic*
- CDL-AD(2014)003, *Joint Opinion on the draft Law amending the electoral legislation of Moldova*
- CDL-AD(2014)001, *Joint Opinion on the draft Election Code of Bulgaria*
- CDL-AD(2013)026, *Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine*
- CDL-AD(2013)016, *Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine*
- CDL-AD(2012)002, *Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation*
- CDL-AD(2011)043, *Joint opinion on the draft election code of Georgia*
- CDL-AD(2011)042, *Joint opinion on the electoral law and the electoral practice of Albania*
- CDL-AD(2011)032, *Joint final opinion on the electoral code of Armenia*

- *CDL-AD(2011)025, Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic*
- *CDL-AD(2011)021, Joint interim opinion on the new draft electoral code of Armenia*
- *CDL-AD(2011)013, Joint opinion on the election code of Bulgaria*
- *CDL-AD(2010)047, Opinion on the draft election code of the Verkhovna Rada of Ukraine*
- *CDL-AD(2010)013, Joint Opinion on the Election Code of Georgia*
- *CDL-AD(2010)012, Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus*
- *CDL-AD(2009)054, Report on the cancellation of election results adopted by the Council for Democratic Elections*
- *CDL-AD(2009)040, Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine*
- *CDL-AD(2009)032, Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia"*
- *CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR*
- *CDL-AD(2009)005, Joint Opinion on the Electoral Code of the Republic of Albania*
- *CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia*
- *CDL-AD(2008)024, Opinion on the issue of the immunity of persons involved in the electoral process in Armenia*
- *CDL-AD(2008)023, Joint Opinion on the Election Code of the Republic of Armenia*
- *CDL-AD(2008)012, Joint opinion on amendments to the Election Law of Bosnia and Herzegovina by the Venice Commission and OSCE/ODIHR*
- *CDL-AD(2007)035, Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR*
- *CDL-AD(2007)033, Opinion on the Law of the Gagauz Autonomous Territorial Unit on the Election of the Governor of Gagauzia (Moldova)*
- *CDL-AD(2007)021, Opinion on legislative provisions concerning early elections in Ukraine*
- *CDL-AD(2007)013, Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)*

- *CDL-AD(2007)007, Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States*

- *CDL-AD(2006)037, Joint Opinion on the Election Code of Georgia as amended through 24 July 2006 by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights*

- *CDL-AD(2006)028, Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2006)026, Joint Opinion on Draft Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2006)023, Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005 by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2006)018, Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues*

- *CDL-AD(2006)013, Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in The Republic of Serbia by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2006)003, Joint Opinion on the Draft Law on the State Register of Voters of Ukraine, submitted by people's Deputies of Ukraine, Mr O. Zadorozhny and Mr Yu. Klyuchkovsky by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2006)001, Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2005)042, Opinion on the Draft Organic Law on "making Amendments and Additions into the Organic Law - Election Code of Georgia"*
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- *CDL-AD(2005)027, Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2005)019, Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2005)008, Preliminary Joint Opinion on the Revised Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR*

- *CDL-AD(2004)017, Joint Recommendations on the Electoral Law and the Electoral Administration in Albania by the Venice Commission and the OSCE/ODIHR*

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