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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(Venice Commission)**

**PRELIMINARY ASSESSMENT  
OF THE DRAFT ELECTION CODE  
OF THE REPUBLIC OF AZERBAIJAN**

**based on comments by**

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**Mr Eugenio POLIZZI (Venice Commission, expert, Italy)**  
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## Introduction

*At its 45th Plenary meeting (Venice, 15-16 December 2000), the Venice Commission approved the programme of co-operation with Azerbaijan which had been proposed by Messrs Khanlar Hajiyev, President of the Constitutional Court, Mr Ramiz Mehdiyev, Head of the Presidential Administration and Mr Safa Mirzoyev, Head of the Administration of Parliament (CDL (2001) 5).*

*The main lines of the programme followed the mandate given to the Venice Commission by the Committee of Ministers (CM (2000) 170).*

*Initially, the Venice Commission discussed the electoral legislation of Azerbaijan in light of the presidential elections taking place at that time. Subsequently, an official demand by the Office of the President of the Republic of Azerbaijan for an expertise of the draft Election Code, in June 2002, allowed the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), to submit this preliminary assessment on the draft Election Code, in September 2002.*

*This draft Election Code governs the conduct of referendums and parliamentary, presidential and municipal elections in one document, with the rules divided between General and Special Sections. These concern: referendums, elections of deputies to the Milli Majlis of the Azerbaijan Republic, elections to the President of the Republic, and municipal elections.*

*This opinion is based on:*

- *the Constitution of Azerbaijan;*
- *the Azerbaijan Draft Election code (Unofficial translation of IFES 2002);*
- *the Law on Parliamentary Elections of the Republic of Azerbaijan (CDL (2000) 65);*
- *the Comments adopted by the Venice Commission on the Law on Parliamentary Elections of the Republic of Azerbaijan (CDL-INF (2000) 17);*
- *the Guidelines on Elections, adopted by the Venice Commission on 6 July 2002 (CDL-AD (2002) 13);*
- *OSCE/ODIHR Preliminary Comments on the Draft Parliamentary Election Law of the Republic of Azerbaijan, 30 May 2000;*
- *OSCE/ODIHR Final Comments on the Law on Parliamentary Elections of the Republic of Azerbaijan, 16 Aug. 2000;*
- *OSCE/ODIHR Final Report Republic of Azerbaijan, Parliamentary Elections, 5 November & 7 January, 15 January 2001;*
- *the comments by Mr. Georg Nolte (substitute member for the Venice Commission, Germany);*
- *the comments by Mr. Eugenio Polizzi (Expert for the Venice Commission, Italy);*
- *the comments by OSCE/ODIHR experts, Messrs Joe MIDDLETON and Rumun MALEEV.*

*Comments in this draft Preliminary Assessment do not take account of the recent referendum in Azerbaijan. Considering this fact, additional comments could be provided when a revised text will be submitted to us.*

## General comments

1. This Draft Election Code (hereafter: the Code) governs the conduct of referendums and parliamentary, presidential and municipal elections in one document, with the rules divided between General and Special Sections. These concern: referendums, elections of deputies to the Milli Majlis of the Azerbaijan Republic, elections to the President of the Republic, and municipal elections. The general part is apparently divided into four sections: but there is no Section Three. The approach is, as a matter of principle, a good one. The adoption of a single Code governing national elections and referendums is to be welcomed. This codification should ensure greater consistency in the rules governing referendums and all forms of elections.

2. A certain number of recommendations previously made by the Venice Commission and the OSCE/ODIHR are now reflected in the draft Code, in particular:

- There are enhanced provisions for the publication of constituency results, broken down by precinct, by the Constituency Election Commissions.
- The threshold for allocation of seats between participants in the parliamentary proportional vote has been reduced from 6% to 5% and the number of signatures required for approval of a party list in the parliamentary proportional list has been reduced from 50,000 to 40,000.
- The use of numbered ballot papers is envisaged, which should contribute towards the security of the ballot. The use of envelopes will promote the same objective.
- Voter lists will now be revised on an annual basis. This should help to ensure that all voters, including internally displaced persons, will enjoy the right to vote.

These comments do not take account of the recent referendum in Azerbaijan. Considering this fact, we must notice that additional comments could be provided when a revised text will be submitted to us.

3. However, the Code is very detailed and complicated; there are major repetitions, which should be avoided. Several provisions contain only minimal differences between the different types of elections. This is the case with **Articles 120, 121, 155, 156, 192, 193, 222 and 223**, and many other clusters of articles. The multiple repetitions, often with only slight differences in wording, run against transparency and the right of citizens to have a clear knowledge of the law. When the same principle regulates the different kinds of elections, it should be stated in the general section and avoid the repetitions in the sections dealing with different forms of elections.

4. There is a high risk of inexperienced candidates or political parties to violate certain technical norms of the Code. In addition, election contestants may be either discouraged from presenting their candidacy or may be submitted to unexpected and harsh sanctions.

### **Principle of proportionality**

5. The sanctions for violations of norms must be proportionate. Several provisions establish too severe sanctions (see for example [Article 89.5](#)). In these cases, a cancellation of registration is disproportionate and a financial sanction or a

court proceeding would be a more proper sanction. In the end, there will be sanctions by the electorate.

### **Election commissions**

6. a) The rules on the formation of electoral commissions remain unchanged. There have been clear concerns about the perceived lack of impartiality on the part of electoral commissions in recent years. This is not surprising given the strong influence over commissions at all levels enjoyed by the governing party, an influence which the present rules facilitate. There is a real danger that if concerns about the impartiality of electoral administration are not addressed in the Code, public confidence in the entire electoral process could be profoundly undermined.

b) The election commissions have a lot of powers and too many duties (registration of candidates, selection of complaints, electoral process, etc.), with not enough members and an insufficient guarantee about experience. These members may not have enough time to fulfil these duties.

c) The composition of these election commissions is important, as is the training of members of polling stations. The members of the different levels of election commissions must be recruited on a basis of experience. The Code could envisage more guarantees about this recommendation of training, because the whole electoral process rests on these commissions.

d) Moreover, for the Constituency and the Precinct election commissions, the composition could be completed by a magistrate from a local court, who would have control over different commissions within his/her territorial jurisdiction. This magistrate would also write conclusions about the organisation of elections, attached to the commissions' protocols. See [Article 24.1 and 24.2](#).

e) In the same way, these election commissions should be formed earlier than stipulated in the Code (ex. **Article 35.1** for the Precinct election commissions, formed at least 40 days prior to the voting day).

f) Moreover, election contestants should have the possibility of applying to the relevant court in all cases of refusals by election commission.

### **Transparency**

7. a) Provisions on transparency in the superior electoral commissions, particularly regarding the issuance of protocols to interested parties, must be substantially enhanced. For instance, minor mistakes, in petition sheets could be rectified within a certain period of time. Security measures around the production and distribution of protocols should be increased.

b) Existing laws and the draft Code provide that protocols of election results are issued at Precinct Election Commission level immediately at the conclusion of the count. It is absolutely essential that this rule is extended in the General Part of the Code to the Constituency election commissions. They must be required to issue certified copies of protocols on request with a full breakdown of results for each

precinct within the constituency; otherwise the Precinct Election Commission protocols are virtually worthless, as they cannot be cross-referenced with the Constituency election commissions' results. It is far from clear that such an obligation to issue copies of protocols arises in the Code as presently drafted.

### **Suffrage and voter list**

8. The draft Code makes important and valuable provisions for the annual preparation of voter lists. If properly implemented, this should help to ensure that voter lists are accurate for elections and referendums and that any errors or omissions have been corrected in good time. However, it is recommended that the Code sets out explicit obligations for the Precinct Election Commission in verifying the accuracy of the information provided by the local authorities. The Code should specify deadlines by which (i) the relevant information must be provided by the relevant authorities to the Precinct Election Commission, (ii) the Precinct Election Commission must deliver the second copy of the updated list to the Constituency Election Commission, and (iii) the Constituency Election Commission must send the aggregated information to the Central Election Commission (**Article 29.5**).

### **Registration of candidates / Signatures**

9. a) The rules on the number of signatures required in order to register a party list or presidential candidate remain excessively stringent. The numbers required should be further reduced and the geographical restrictions on where signatures must be collected should be eased. Moreover, voters should be permitted to sign signature lists for more than one candidate or party list in all elections. Candidates and parties must be given an opportunity to correct minor defects in their registration papers. See [Article 147.2](#).

b) An electoral commission is permitted to annul a registration up to ten days before the election if it discovers that the information submitted in the application was invalid. This is a draconian power which should be exercised only by a court. The electoral commission should ensure that the submitted information is correct before it makes the decision to register the candidate or party list. See **Articles 66.4, 148.1 and 183.2**.

### **Election campaigns: general issues**

10. The campaign period for candidates in the Milli Majlis elections begins 45 days before the election, as opposed to 65 days for the political parties. This is an improvement compared to previous legislation, but the period for both should be 65 days as 45 days is unlikely to suffice.

### **The media**

11. The draft Code imposes important requirements on the mass media to provide equal opportunities for all election participants and prohibits the State media from engaging in partisan reporting.

### **Observers**

12. a) The Code should foresee the right for non-partisan domestic observers to be accredited as such in an election; this is a serious shortcoming (only regulated in a Central Election Commission regulation)<sup>1</sup>. See **Article 8** of the OSCE Copenhagen Document; these rules should be included in the Code, not left to be determined by the Central Election Commission (**Article 38.3**).

b) In a nutshell, the draft Code seems to establish diverse rules for different types of observers. Domestic and international observers should enjoy the same rights and duties.

c) Public associations, including those receiving foreign funding, should be permitted to observe the election process.

d) Observers should have the right to observe the entire electoral process, including printing and distribution of ballot papers.

### **Cancellation of candidates**

13. It is essential that cancellation of a candidate's or party's registration, or refusal to register, is a sanction of last resort. The Code should provide a range of sanctions to avoid disproportionate responses to relatively minor violations (see general point n° 5).

### **Election funds**

14. The Code requires all referendum support groups, candidates and parties to obtain substantial numbers of signatures in order to register. In doing so they demonstrate that they enjoy a significant element of public support. It is therefore unfair to require unsuccessful campaign groups, candidates and parties to reimburse the public funds they have received in support of their campaigns. Moreover, such a rule is likely to act as a powerful disincentive against political activism.

### **Election results**

15. The draft Code should provide for the announcement of preliminary results. This will enhance confidence in the election results.

### **Claims**

16. The rules on consideration of complaints are likely to be ineffective in practice and deny voters and other interested parties a timely and effective remedy. They also deny adequate access to a court for the resolution of election disputes.

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<sup>1</sup> Article 8, Copenhagen Document: “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 endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings”.

## Comments by article

### 1. Preamble

All five principles underlying Europe's electoral heritage contained in the Venice Commission Guidelines on Elections are not reflected in the Code. The principles of free and secret elections should be included in the preamble as well as in [Article 2.1](#). If a referendum may be binding or not according to the national constitution or legislation, there must at any rate be no confusion between an opinion poll and a referendum. The referendum is an official procedure allowing the people to give its opinion on a question, and has to respect a series of rules including the principles of the European electoral heritage, whereas an opinion poll is just a way to get informed about the opinion of the public at a certain time. Moreover, the result of the referendum is binding according to the draft (see Article 140), at least if it is positive. It should be made clear that it is also binding when it is negative.

### 2. Article 1

#### a) “*Pre-election campaign*”:

a.i) It is recommended to conserve the expression “*(Pre-)election campaign*” but delete the words “*or not to participate in the election*”. These remarks apply also to the previous paragraph, which should be revised in the following way: “*with purpose to call upon to citizens of the Azerbaijan Republic to participate in the referendum, to support or not to support the issues submitted to referendum*”. The Venice Commission and the OSCE/ODIHR have already pointed out that such the vote “*is completely out of the ordinary in established democracies*” and that “*it may lead to challenges of the legitimacy of the elections and may thereby undermine the democratically elected regime*”. This comment concerns also [Articles 5.1, 10.2, 165.3, 166.3, 203.2 and 232.6, 233.2 and 235.2.2](#).

a.ii.) It is advisable to use the definition of “*Pre-election campaign*” for the term “*election campaign*” and delete the term “*Pre-election campaign*” from the Code. At the same time, there is a suggestion to replace “*election campaign*” by “*election activities*” (essentially in four instances where the Code uses the locution: Articles **82, 83, 87** and **192**<sup>2</sup>), to avoid the risk of confusion between the terms. Indeed, it is strange to speak about a campaign after the election day.

#### b) “*Election constituency*” is repeated twice under Article 1, with different meanings:

- *Election constituency* – geographical unit where the voters electing a representative (representatives) to any elective State body are registered;
- *Election constituency* – an area organised in conformity with the present Code for conducting elections.

The following choice of definition is suggested:

*Election constituency* – geographical area organised in conformity with the present Code for conducting elections. The voters who are registered in this area elect a representative (representatives) to any elective State body.

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<sup>2</sup> Instances where the Code uses the locution “*election campaign*”: Articles 40, 42, 48, 55, 57, 72, 78, 79, **82, 83, 87, 91, 94, 108, 110, 155, 157, 161, 192, 194, 198, 222** and 224.

**Remark:** it is recommended to delete references to referendum because there is no constituencies for this scrutiny.

c) **“Ensuring suffrage”**: It is advisable to delete the definition:

- its meaning remains uncertain;
- and it is not found elsewhere in the code.

d) **“Active and passive suffrage”**: the definitions are repetitive with the definition of “suffrage”. The definitions of “active suffrage” and “passive suffrage” in Article 1, which are explained in the [Articles 12 and 13](#) should be deleted.

### 3. Article 2.1

See the remark in the [Preamble](#).

### 4. Article 3

The words “or any other status” in between “public unions” and “Azerbaijan Republic’s citizens” should be included. This would take account of Article 14 of the European Convention of Human Rights.

### 5. Article 5

See the first remark in [Article 1 a\)](#), about the vote “against all (single lists of candidates”.

The following definition is suggested: (Only one paragraph) – Citizens of the Azerbaijan Republic must personally vote. They can vote for a candidate or a list of candidates during elections and for or against issues to be discussed by referendum.

### 6. Article 9

a) It would be better to delete “Unless otherwise stipulated in this Code” which is unclear for the reader. Moreover, “suffrage is exercised” would be better as “active suffrage is exercised”.

b) The definition of *residence* can give rise to misunderstandings. According to the Guidelines on Elections by the Venice Commission (I. 1. a. cc. ii.), “residence means habitual residence”.

c) Moreover, the Code should give more precision about the place where the suffrage takes place, more precisely in a definite polling station, stipulated by the relevant Precinct Election Commission. The geographical area of each polling station should determine precisely the place where the voter can vote (determined by a meeting of the Precinct Election Commission every five years, when voting stations are determined); i.e. each street must be connected to a definite polling station.

d) **Article 44** and **Article 9** are saying something different, because it States that voters can be included in the voters lists when “residing in precinct territory at least 6 months out of 12 months prior to announcement of elections”. That is quite different from the “permanent place of residence”, which should be retained.

See also [Article 34.4](#) about the remark *c)*, and [Article 44.2](#) about the remarks *b)* and *d)*. This comment applies also to [Article 145.1](#).

### 7. Article 10.1 and 10.2

Probably paragraph 10.1 is mistaken: the vote can be for only one candidate or against all; it is unlikely that it could be against one candidate.



Paragraphs 1 and 2 of Article 10 seem to be contradictory: unless the “*or against*” part of paragraph 1 is deleted.

In any case, it should be better to delete in the two paragraphs the rule “against ...”; see the first remark in the [Article 1 a\)](#) about the vote “against all (single lists of) candidates”.

## 8. Article 11

The words “*Notwithstanding the rights to freedom of expression and of association*” before “*State secures free conducting...*” should be included. The rights to freedom of expression and association according to Articles 10 and 11 of the European Convention of Human Rights do not only belong to citizens but to all persons within the jurisdiction of a member State. This means that non-citizens (Stateless persons and foreigners), although they do not have the right to vote, do have the right to freely express their opinion and to associate during election campaigns.

This has already been remarked by the previous comment of the Venice Commission: “*This rule should contain a clause that the prohibitions apply notwithstanding the freedom of expression and freedom of information. Such a clause would, in particular, be important for those foreigners who reside in Azerbaijan and who wish to participate in political debates and election campaigns*”.

See [Article 15.2 and 15.3](#).

## 9. Article 12

The words “*having universal suffrage*” should be deleted since they add nothing, and could cause misunderstandings. It should be made clear that the expression “*active suffrage*” extends to the right to vote in all elections, which could permit to replace the words “*having universal suffrage*” by this last expression “*active suffrage*”.

It is advisable to modify the article as regards citizens being 18 on the actual day of the election with the precision: “*the day of election included*”, which replaces “*on the day of election*”.

See the comments in [Article 1 d\)](#).

## 10. Article 13

The norm is unclear. There should be a general principle on passive suffrage: indeed, it would be better to make clear, directly, who can be a candidate in the different types of elections and who can be an initiator for referenda. Such rules are found in the Code under [Articles 63.1, 143, 179 and 213](#).

## 11. Article 14

The previous comments of the Venice Commission on the law on parliamentary elections seem not to have been considered. Yet in Article 14 of the Code there is still no clear distinction between the cases of ineligibility and incompatibility. The norm of Article 14 should make a distinction between paragraphs 1 to 5 on the one hand, as to cases of incompatibility; and 6 to 8, on the other hand, as cases of ineligibility.

## 12. Article 14.3.1

With regards to Article 17 of the European Convention on Nationality, persons with dual citizenship do not have to choose citizenship of the State in order to exercise

their political rights, notably to exert a mandate, and they have the same rights and duties as other nationals<sup>3</sup>.

See [Article 64](#).

### 13. Article 14.3.6

The provision is too harsh and should consider two forms of proportionality, in the term and in the degree of the infraction. Firstly, the provision does not make distinctions between trivial offences and serious crimes. Moreover, the Code should articulate more clear provisions between paragraphs 6 and 7. Secondly, for the sake of the principle of proportionality, a time limit should be established for possible candidates whose sentence was served more than 15 years ago.

### 14. Article 15.2 and 15.3

The provision violates Articles 10 and 11 of the European Convention of Human Rights insofar as it applies to foreigners and Stateless persons (see **Point 8**, [Article 11](#)). This means that non-citizens (Stateless persons and foreigners), although they do not have the right to vote, do have the right to freely express their opinion and to associate during election campaigns. This has already been remarked by the Venice Commission (see again **Point 8**, [Article 11](#)).

## Section Two. General provisions

### 15. Article 16.2

The addition of the following sentence: “...election commissions shall ensure the preparation and holding of elections, *and after the election day*” is recommended. It concerns the control of operations (immediately) after the election, especially the counting of ballot papers and the announcement of the results.

### 16. Article 16.3

a) The confirmation of the principle of independence of election (referendum) commissions from the State, local self-government bodies, as well as from political parties and non governmental organisations is recommended. The wording is not accurate because the commissions are State institutions themselves and it would be important to rule out any interference by the Government rather than by private entities like political parties or non governmental organisations.

b) The provision clearly rules out intervention by State organs. However, adding the words “*according to legislation*” at the end of the provision is recommended in order to make it clear that the imprecise wording of Article 16.3 cannot be the basis for sanctioning an individual.

### 17. Article 16.4

The provision should mention also State organs, together with municipalities and private parties, as entities bound by the election commissions’ acts and decision. Also

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<sup>3</sup> A previous comment of the Venice Commission applies about **Article 64** even more: “*such a provision could conflict with international standards, and in particular with Article 17 of the European Convention on Nationality, which provides that “nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party”.*”

public order forces should be bound to election commissions decisions, within the boundaries of their authority.

Replacing “*shall be obligatory for municipalities...*” by “*shall be obligatory for all territorial entities...*” (not only for the municipalities) is recommended.

### **18. Article 16.5**

The Code should provide guarantees for protection of data on voters<sup>4</sup>.  
See also **Articles 25.1.17, 32.1.13, 43.9, [96.2 and 96.4](#), and [105](#).**

### **19. Article 16.6**

- a) The article establishes a range of principles by which electoral commissions should operate. Requirements to act impartially, to ensure that information is disseminated, to refrain from unlawful actions are expressed to be “*principles*”, a guide to behaviour, rather than binding obligations. Moreover, the actual meaning of some of these principles, such as **Article 16.6.9 and 16.6.11**, is far from clear.
- b) This Article should also clearly stipulate that decisions of superior commissions are binding on inferior commissions.

### **20. Article 16.6.13**

It provides that the election commissions should not explain decisions made. The giving of reasons, however, is an essential part of resolving election disputes and complaints against the acts and omissions of electoral commissions. This principle should be removed and substituted with a requirement to give reasons, at least in relation to the determination of complaints and appeals.

### **21. Article 18**

The possibility of having substitute members of the election commissions, who were nominated and elected in the same conditions than the title members might be envisaged.

### **22. Article 18.10**

The article requires that minutes are taken at all meetings of electoral commissions. In accordance with administrative good practice, this article should include a requirement that the minutes are circulated in advance of the following meeting and are approved as the first item on the agenda of that meeting. Moreover, a one-third minority of any commission, by raising a petition to the chair, should be afforded the right to have issues included on the agenda of an electoral commission meeting.

### **23. Article 19.1**

- a) The requirement in article 19.1 for weekly publications to give a page of free space to electoral commissions should be limited to publicly owned publications referred to in **Article 78.1**. About this subject, see comments on [Articles 78 and 79](#).
- b) There is no justification for requiring private weekly publication to give space to electoral commissions, particularly when no compensation is envisaged.

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<sup>4</sup> See Point no. 4 of the previous comments of the Venice Commission (document: CDL-INF (2000) 17).

**24. Article 20.2**

The second paragraph allows election commissions to reject a candidate representative. The Code does not clarify what the legal grounds for such a refusal are. It is difficult to see any justification for the intervention of election commissions in the nominations of representatives. This provision should be repelled.

**25. Article 21.1**

The Venice Commission recommends that the Central Election Commission should include “*at least one member of the judiciary*”<sup>5</sup>. It would be better to include also one member of the judiciary in the Constituency election commissions, or a member who would have jurisdiction over several Constituency election commissions.

**26. Article 21.2**

The provision that “*an election commission member can only be member of only one election commission, indistinctly with a decisive or a consultative voting right*” could be written in simple terms.

**27. Article 21.3**

This rule should be spelt out explicitly: “*the bodies appointing members of electoral commissions must not be free to dismiss them at will*”<sup>6</sup>.

**28. Article 21.4.3**

This paragraph seems to be made redundant by paragraph 1 of the article.

**29. Article 21.4.4**

The term “*close relative*” should be defined.

**30. Article 21.5**

It is recommended to make clear that the new member is nominated by the same authority as the previous member.

**31. Article 21.9**

Members with decisive voting rights may not be subjected to criminal or administrative penalties during the preparation of an election without the consent of a procurator. It is suggested that consent should only be given by a senior procurator, possibly the Procurator-General. If it follows from the article that this rule also applies to members with consultative voting rights, the Code should make this clear.

**32. Article 21.11**

The meaning of the article is unclear. Electoral commission members with consultative vote clearly need to remain in post beyond the end of registration of candidates, through to the end of the processing of the results. The first part of Article 21.11 seems to contradict the second part.

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<sup>5</sup> See no. II. 3. a. dd. i. of the Guidelines on Elections by the Venice Commission.

<sup>6</sup> See no. II. 3. a. ff. of the Guidelines on Elections by the Venice Commission.

### 33. Article 21.12

This paragraph could be simplified.

### 34. Article 22.1

It is strongly recommended that the term of office of electoral commissions, stipulated in the article to be six years, is reduced. At most, electoral commissions should operate for the same term as Parliament and President, namely five years. In the case of parliamentary elections, a six-year mandate will contradict the principle according to which the election commissions should reflect the political composition of the Parliament.

### 35. Article 24.1 and 24.2

a) The composition of the Central Election Commission is unclear. On the one hand, half the members of the Central Election Commission are appointed by the Milli Majlis, and half by the President of the Republic; on the other side, one third will represent the majority group of the Parliament, one third the minority and one third, the non partisan deputies. The contradiction would be solved if both bodies respected the 1/3 ratio, but it ought to be stated in the Code together with rules that explain how the appointing bodies (President and Milli Majlis) will reflect the will of the parties that are supposed to be represented in the Central Election Commission.

b) The existing rules for the appointment of electoral commissions ensure a degree of political plurality in electoral commissions at all levels. However, through a system of direct appointment of inferior commissions, they also give the majority party in the presently constituted Parliament an exceptionally strong influence over not only the Central Election Commission but all subordinate commissions. More importantly, recent election experience suggests at least a strong perception that the commission members appointed by theoretically “*independent*” sections of Parliament tend, in reality, to vote in line with the governing party<sup>7</sup>.

Indeed, the composition of the Central Election Commission largely depends from the President of the Republic and his own majority party. The previous comment of the Venice Commission is still relevant; the composition of the Central Election Commission must be independent from the composition of the Milli Majlis, that means independent from the representation of each political party in the Milli Majlis. Moreover, regarding the composition with one-third of neutral members, the role of such neutral members could, in part, be played by judges, also by respected civic organisations in the fields of human rights and democratisation. The best solution would be to seek a balance between major political parties in order to avoid predominant influence of one party over all election commissions.

See also [General comments, Point 6, Articles 31 and 35](#).

c) The article, which assigns a role for “*independent lawyers*” in the Central Election Commission, should make clear that this means lawyers in private practice (or, at least, that the rule excludes lawyers engaged in State service).

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<sup>7</sup> See no. II. 3. c. of the Guidelines on Elections by the Venice Commission.

**36. Article 24.3**

“*State body*” should be replaced by “*the President of the Milli Majlis*” if it is the meaning required in the Code.

**37. Article 25 and 26**

The Code should clearly distinguish between the Central Election Commission’s powers and duties. The latter should include an obligation to adopt its own internal rules of procedures, which should be published in the mass media. The accreditation of observers should be part of the Central Election Commission’s functions.

**38. Article 25.1.1, 25.1.5, 25.1.8, 25.1.13 and 25.2**

Moreover, the Central Election Commission ensures the public display of the main election regulations and methods<sup>8</sup> to each inferior election commission, which must distribute this information in each polling station (for instance by notice boards the day of election).

**39. Article 25.1.16**

The relationship between the unified registration system and the voters lists is not regulated. See [Article 43.1](#).

**40. Article 26.1, 26.2, 26.3 and 26.4**

In order to avoid misunderstandings there is a proposal that these four provisions begin with the words “*Notwithstanding its tasks under Article 25, the Central Election Commission ...*”. Otherwise it could be argued that Article 26 limits the powers of the Central Election Commission under **Article 25**.

**41. Article 27.2**

This may be a problem of translation: the order in the English translation allows for the interpretation that the consent of the prosecutor is only needed for the imposition of criminal liability, whereas this should clearly be true for administrative penalties as well. It is therefore suggested to put the words “*or administrative penalties*” before “*without consent of a general prosecutor*”.

**42. Article 28.1**

The hierarchy within the Central Election Commission in this article should be clarified, especially concerning the Chairman who is not the chief with powers of decision-making. Thus, the Central Election Commission as a body can override decisions of its Chairman. It would be preferable for the Central Election Commission to be expressly given the power to establish some rules of procedure for its work (for instance, the Central Election Commission should determine if the Chairman has a preponderant voting right in Central Election Commission’s decisions). Moreover, the Chairman, deputy and secretaries should be elected among its members. Similarly, the Chairman of the Central Election Commission should not represent the majority party in the Milli Majlis.

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<sup>8</sup> Methods means in this context the implementation of the global organisation of the electoral process (geographical area of each polling station, etc.).

This comment also applies to [Article 90.5](#).

#### **43. Article 28.3**

Several deadlines are too short in the Code, concerning information about meetings or the distribution or publishing of information.

In this article, the deadline of 24 hours to inform the members of the Central Election Commission before the meeting takes place seems too short, and the Chairman should inform the members of such a meeting 3-5 days prior to the meeting, insofar this is as possible. This term is indicated “*at the latest*”. The advisable time, and not only the deadline, should be indicated.

See notably [Articles 33.3](#), [34.7](#) and [37.1](#) for the same comment.

#### **44. Article 28.5**

Decisions of the Central Election Commission should enter into force upon their publication, and not upon their adoption.

#### **45. Article 29.1**

Consideration should be given to the previous comments of the Venice Commission, which suggests it would be more appropriate to give a boundary commission the task of drawing the limits of the electoral districts<sup>9</sup>. There is no provision for such a boundary commission, which should be provided for in the Code.

See also [Article 29.5](#).

#### **46. Article 29.2**

The article provides for the inclusion of voters residing abroad within an ordinary voter list. This seems to create a disproportionate burden for the organisation of elections. There is relatively little difficulty in allowing overseas residents to vote in nationwide constituency elections (i.e. for the party list votes in parliamentary elections and in presidential elections). However, trying to identify which particular constituency an overseas voter should be assigned to, and ensuring that the appropriate “local” ballot paper is delivered to the voter who is residing abroad, ensuring that the ballot papers are all delivered back to the constituencies and are then properly processed without causing inordinate delay to the determination of the results, all creates a very substantial amount of work and slows down the election process.

#### **47. Article 29.3**

Although some criteria of distribution have been openly stated as requested by the Venice Commission, the equality and proportionality of distribution is not however enshrined in the law, as was also suggested.

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<sup>9</sup> Guidelines on elections (I.2.b.vii.) advise:

*When constituency boundaries are redefined – which they must be in a single-member system – it must be done:*

- *impartially;*
- *without detriment to national minorities;*
- *taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.*



#### 48. Article 29.5

The Code should provide for an independent Committee which plays this role in the process of redrawing of the boundaries of election districts<sup>10</sup>.

See the comment about [Article 29.1](#).

#### 49. Article 31

The comments relating to [Article 24.1 and 24.2](#) apply here as well. These comments apply also to [Article 35](#).

Article 31.4 establishes a “*supra-majority*” rule in the appointment of members of the Constituency Election Commission: two out of the three candidates nominated by the members of the Central Election Commission representing non-partisan deputies are agreed with the majority and minority party nominees on the Central Election Commission (one each). It is recommended that this rule is reinstated for the creation of the Central Election Commission and introduced for the formation of Precinct election commissions.

The number of Precinct election commissions’ members should be raised from 6 to 9 in order to reflect the increased amount of work entailed by new provisions in the draft Code such as annual update of voter registers, new voting provisions.

#### 50. Article 32

The article, which lists the “*authorities and directions*” of electoral commissions, fails to refer to the important task of considering election disputes and appeals. That duty is only referred to in relation to the Precinct election commissions (**Article 36.1.9**).

#### 51. Article 33.3

See the comment about [Article 28.3](#).

#### 52. Article 33.5

This article is unclear, and should be considered if the chairperson and secretaries of the Constituency Election Commission did not sign the decisions either because they were opposed to the decision or because they were not present.

#### 53. Article 34.4 and 34.5

a) The conditions under which extraordinary voting stations can be created are not explicit enough. They should be restricted to such situations in which a substantial number of voters is unable to go to the regular voting station.

See the comment on [Article 9 c](#)).

b) Rules of formation of Precinct election commissions in ships should be regulated in the Code not in Central Election Commission’s regulations.

c) This rule should be spelt out explicitly: “*Military personnel should vote at their place of residence whenever possible. Otherwise it is advisable that they be registered to vote at the polling station nearest to their duty station*”<sup>11</sup>.

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<sup>10</sup> See no. I.2.b.vii. of the Guidelines on Elections by the Venice Commission.

<sup>11</sup> See no. I. 3. b. xi. of the Guidelines on Elections of the Venice Commission.



**54. Article 34.7**

See the comments on [Article 28.3](#).

**55. Article 35**

The composition of Precinct Election Commissions follows the model of Central Election Commission. Previous comments apply also to lower commissions.

The comments relating to [Article 24.1 and 24.2](#) apply here as well. The topic of the composition of the Constituency election commissions is dealt within [Article 31](#).

**56. Article 35.2**

It is not clear why Article 35.2 should not be applied to Precinct election commissions according to [Article 35.10](#). Article 35.2 should have no exception. All Precinct election commissions' members should be appointed by the relevant Constituency Election Commission, even for the Precinct election commissions created within the places where voters are temporarily located and within military units. Chairmen could have a nominating and consultative power. All electoral commissions should have a multiparty representation.

**57. Article 35.6**

It goes too far to expect of captains of ships to be able to function as an election commission. The danger of incompetence, fraud and abuse is much too high. It is therefore advisable to exclude the possibility of voting on ships and rather provide for an alternative (land-based) mode of voting for passengers and crew.

Maybe, it would be better to envisage a system of vote by proxy, in order to avoid the mobile ballot box.

The same applies also to [Article 100.8](#) and [Article 102.3](#).

**58. Article 35.9**

The article should indicate that candidate and party observers are entitled to observe not "*from the time voting commences*" but (in accordance with [Article 38.7](#)) from the time at which the Precinct Election Commission commences work on polling day, which will be some time before the first voter casts his/her vote.

Redundant with [Article 38.8](#).

**59. Article 35.10**

a) In any case, the members of the Precinct election commissions (created under the conditions of Article 35.10) cannot be members of any political party.

b) The Precinct Election Commission where voters are temporarily located (hospitals, sanatoriums, rest homes, etc.) should be formed by the relevant Constituency election commissions.

**60. Article 36.1.8**

The Code should indicate (in this article or elsewhere) a secure mode of transmission of the results protocols to avoid the risk of fraud during this transmission. Which authority could ensure the transmission (or transport) and which entity could control this transmission?

**61. Article 37.1**

This is unnecessarily short notice. Members should have at least 24 hours' notice. See comments on [Article 28.3](#).

**62. Article 37.3**

The article should be corrected to comply with the two-thirds requirement for taking decisions: 4 votes are necessary to adopt a decision if 5 or 6 Precinct Election Commission's members are present, and 3 votes are required if 4 members are present.

**63. Article 38**

It is maybe a mistake of translation: Article 38.9 is followed by a second **Article 38.8** and a second **Article 38.9**.

**64. Article 38.8**

The Code should be deleted because it adds nothing and is redundant with [Article 35.9](#).

**65. Articles 38.3, 38.8, 38.9 and 40**

a) International observers' competence cannot be restricted to the observation of the election day. All accredited observers must be allowed to observe the whole election process, from the registration of candidates and voters to the publication of results. The Code must precise these periods of observation and the common status of observers.

See also the [Article 40.1](#) about the common status<sup>12</sup>.

b) All references to "*observers*" in the Code should be clear as to which observers are contemplated: including or excluding international observers? In any case, domestic and international observers should enjoy the same rights and duties.

c) The rules on who may act as a domestic observer and how they are registered are important. They should be briefly but clearly defined and they should also be included in the Code, not left to be determined by the CEC (Article 38.3).

d) 38.3. The draft fails to include a provision on the role of non-partisan domestic observers. This is a serious shortcoming that contradicts Paragraph 8 of the Copenhagen Document and that should be remedied.

e) The list in (the first) Article 38.9 should make specific reference to places of detention.

**66. Article 39**

This article should be deleted because it is impracticable and can lead to abuse on the part of the authorities. Observation may be partisan, as long as observation by opponents is ensured. The state should not subject every election observer to risk prosecution or other sanctions by requiring that election observers act like judges. This is furthermore in contradiction with **Article 38** which provides for partisan observers. See comments on **Article 38, d**).

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<sup>12</sup> See no. II. 3. b. aa. of the Guidelines on Elections of the Venice Commission.

### **67. Article 39**

The article sets out a number of “principles” of observation. The purpose of enumerating such principles in the Code is far from clear. This article should be deleted because it is impracticable and can lead to abuse on the part of the authorities. Observation may be partisan, as long as observation by opponents is ensured. What is meant by “open” observations? The suggestion that observation should be “*in accordance with truth*” seems somewhat pointless. Who is to determine whether observation is “*in accordance with truth*”? What are the consequences if it is not?

### **68. Article 40.1**

Observers may also write observations during the whole election process (under the terms of [Articles 38.8 and 40](#)), in the commission’s protocols or attached to it, or to the protocols on voting results and the election returns.

### **69. Article 40.1.6**

The need for observers to “*look through*” ballot papers only arises in relation to those instances where there is a dispute about the validity of the ballot or the voter’s intention. In those circumstances, an observer will need to have close inspection of the ballot paper. In other cases, observers should not be permitted to look through ballot papers or otherwise handle them at all.

### **70. Article 40.1.8**

- a) It is implicit from the context of the article that the right to receive copies of protocols described here applies to the Precinct Election Commission only. The need for a requirement to issue copies of protocols also applies to the Constituency election Commissions and the Central Election Commission.
- b) The article provides for a fee to be charged by electoral commissions for the issuance of certified copies of protocols. The justification for this innovation is far from clear. The issuing and use of protocols to check the accuracy of the results is a vital part of the process of ensuring transparency and the Code should ensure that the process is not obstructed. The cost to an electoral commission of producing a verified protocol is minimal, given that observers etc. can compile their own protocols on blank forms which the electoral commission merely needs to check, sign and stamp. In those circumstances only a very low fee could be justified and the cost in time and effort of processing the fee payments is unlikely to justify the revenues thereby raised.

### **71. Article 40.1.9**

The right to file complaints about actions (lack of actions) or decisions of the Precinct or other election commissions directly with superior election commissions or the court is a clear breach of the international observer’s code of conduct, and its non interference obligation.

### **72. Article 40.2**

The list of activities which observers must avoid should include any inquiry into how a voter has voted or intends to vote.

**73. Article 40.3**

This provision is not specific to observers' rights and duties and should therefore be put in its proper place somewhere else in the Code.

Concerning the fees for the copies, see **Article 40.1.8**.

**74. Article 42.9**

The international observers must also have the right to meet with voters.

**75. Article 43**

The provision should expressly State that voters lists are permanent<sup>13</sup>.

**76. Article 43.1 and 43.10**

Article 43.1 provides that additions and amendments to voter lists cannot be made on polling day. This provision and **Article 101.7** require amendment to reflect the use of supplementary voter lists, used by voters who have been issued with a deregistration card to vote away from home. It is also unclear how this rules fits in with [Article 45.2](#), which allows for the correction of mistakes in voter lists on election day.

Deadlines specified in Article 43.1 and 43.10 for the preparation of voter lists are inconsistent and should be amended.

**77. Article 43.1**

Additions and amendments to voters lists could be possible at any time, and especially in the last weeks or days by a claim (recourse), for instance by citizens. Regarding this question, Guidelines on Elections by the Venice Commission (I. 1. b.) advise that electoral registers must be permanent, and there must be regular updates, at least once a year. Such rules seem to have been implemented.

Because of the importance of voters' registration in the electoral exercise, it is recommended that the procedures and steps of formation of the unified registration system be clearly stated, giving each party, and citizens in general, the right of control of the lists in a permanent way, not depending only on the forthcoming election exercise, according to the suggestion of the quoted guidelines. For instance, the registration list could be consultable at the Central Election Commission throughout the year (the Central Election Commission being a permanent body), by each citizen. See [Article 25.1.16](#).

**78. Article 43.5**

Voters lists for the precincts where voters are temporarily located must not be approved solely on the basis on information provided by heads of the offices where voters are located. A sick person who is unable to move must nevertheless have the possibility of registering as a voter independent of the director of the hospital in which he is. Furthermore, relatives must be able to provide additional information to the heads of the institutions.

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<sup>13</sup> This was recommended by ODIHR; see also no. I. 1. b. i. of the Guidelines on Elections of the Venice Commission.

**79. Article 43.8**

- a) The voter's address must comprise the street and the street number, or the place where they live (address of the hospital, rest homes, and other places where people are temporarily located). The voters list could contain also the relevant voting station.
- b) "*a place where a voter mostly resides*" should be referred to **Article 44.2** (it is explained place where a voter leave at least 6 months out of 12). See comments on **Article 44.2**.

**80. Article 44.2**

See the comments in the [Article 9, b\) and d\)](#).

**81. Article 44.5**

The article should make specific provision for the inclusion in voter lists of persons held in detention who have not been sentenced by a court.

**82. Article 44.7**

It is desirable that the Code, rather than a Central Election Commission instruction, should indicate what documents are valid by way of identification documents in place of a passport. For instance, on notice boards the election day.

**83. Article 44.8**

The article provides that a voter may be included in the voter list of one precinct only. It should indicate the consequences will arise when this rule is broken, taking into account that a voter may be included in a voter list through no fault of his own (by administrative error or otherwise).

**84. Article 44.9**

It would be better to inform the voters concerned by exclusion from the voters list, by letter, for instance.

**85. Article 45.1**

The voters list should be available to the public earlier than 35 days before the elections<sup>14</sup> in order to have sufficient time for possible procedures concerning corrections (additions and deletions)<sup>15</sup>.

**86. Article 45.2**

- a) The rule according to which voters lists can be corrected on election day is in contradiction with [Article 43.1](#). See the same comment in the Guidelines on Elections by the Venice Commission (I. 1. b. iv.). This comment applies also on **Article 101.7**.
- b) The article should make clear that voters can identify errors in the voter list which concern other persons (for instance, indicating that a particular voter no longer resides at an address or has died). The Precinct election commissions would clearly have to verify such information for itself before removing voters from the list.

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<sup>14</sup> See no. I. 1. b. iii. of the Guidelines on Elections of the Venice Commission.

<sup>15</sup> See no. I. 1. b. iv. to vi. of the Guidelines.

### 87. Article 45.3

a) The scheme for election complaints and appeals in the draft Code is both unusual and problematic. If someone is dissatisfied with the act or omission of a Precinct Election Commission, s/he may only appeal to the Constituency Election Commission once s/he has made a complaint to the Precinct Election Commission, the complaint has been considered and the decision on the complaint has been communicated. Equally, s/he can only complain to the Central Election Commission once the Constituency Election Commission has considered and rejected the complaint. Only then can s/he apply to the Court of Appeal for a remedy. This is a very time-consuming scheme which is likely to deprive voters, candidates and other interested parties of an effective remedy. The draft Code permits a direct appeal to a court, but only if the decision or omission complained of violates citizens' voting rights.

There should not be a choice of filing a complaint either before the Precinct Election Commission or a court<sup>16</sup>, and the Code should envisage that a voter is able to take action before only one entity<sup>17</sup>. More precisely, the right to apply directly to a court for a remedy should be a general right extended to voters, candidates, political parties and other participants in the electoral process for the effective protection of all rights associated with elections and referendums.

b) At any rate, in order to make the reading of the law easier, it would be preferable to mention all the appeals available, judicial and non-judicial, in a special section of the electoral law<sup>18</sup>.

c) The election commissions can accept complaints, but cannot submit cases to court selectively, and act as a judicial body. The Code should make it clear that, once a complaint has been made to an electoral commission, the commission (including the Central Election Commission) must consider the complaint. It should be clear that electoral commissions do not have the power to refuse to consider a properly made complaint and refer it to a court.

The Code should make clear that the only situation in which an electoral commission should decline to consider a complaint or appeal is where the same matter has already been referred to a court and is awaiting judicial consideration.

d) No rule is found about appeals by candidates or parties on violations of their passive suffrage: refusal of registration or cancellation of registration, or related actions. Yet, **Article 149.5**, **Article 184.3**, and **Article 217.5** all provide (with a clear case of commented repetition) that in case of a decision on the refusal to register a candidate, the relevant commission informs the interested person and submits a copy of the decision. Specific and clear rules should be entered to protect the candidates' rights against such a decision, providing their right to appeal either to the superior election commission or to the court.

e) Complaints about errors in a voter list need to be considered in less than three days if the complaint is made immediately before or on polling day.

f) The Code should indicate how a citizen seeking to vote abroad can appeal against a refusal to include him in a consular voters' list.

There is no harmonisation between this article and [Article 107](#).

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<sup>16</sup> See no. II. 3. c. cc. of the Guidelines on Elections of the Venice Commission which provide: "*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.*"

<sup>17</sup> See no. I. 1. b. iv., v. and vi. of the Guidelines on Elections.

<sup>18</sup> See no. II. 3. c. of the Guidelines on Elections.

### **88. Article 46.1**

It is hard to understand why a political party that is already established according to law, and is also registered with the relevant administrative authorities, should need a new registration with Central Election Commission in order to be able to nominate lists of candidates in an election exercise. It appears a cumbersome and unnecessary requirement. In the same way, it is hard to accept that a newly established party (registered with the relevant administrative authorities less than 6 months before the announcement of the election day) should not be allowed to participate in an election. See also [Article 54.8](#).

### **89. Article 48**

The article lists 22 principles that should be followed by political parties and blocs. The second paragraph States that *“follow of the principles mentioned...is voluntary, except compulsory circumstances defined by the law”*. The second paragraph draws the list of principles that are legally irrelevant. However, most of the principles are provided for in other parts of the Code, and find there a proper sanction. Most of the same *“voluntary”* principles are listed under [Article 62](#) as *Activity principles of Campaign Groups on Referendum* and again under [Article 72](#) as *Participation Principles of Registered Candidate in Elections*. It is a clear case of multiple repetition that should be avoided.

### **90. Article 48.1**

a) Since the principles are not binding but voluntary (see [Article 48.2](#)), it would be better to exchange the word *“must”* for *“should”*.

b) The article sets out a long list of ‘principles’ which political parties should follow. If this provision does not impose legally binding obligations, the point of including it in the Code is questionable. If it does, the Article needs much clearer drafting. There is no justification for requiring a party to accept the legally approved results of elections ([Article 48.1.16](#)), if that means that the party is inhibited from criticising the conduct of elections or questioning the validity of their results. Such a *“principle”* conflicts directly with the right to freedom of expression. Similarly, citizens may lawfully choose not to participate in elections. Political parties should therefore not be inhibited from encouraging citizens to exercising their lawful right not to vote ([Article 48.1.20](#)). This provision should be read like [Article 72.1.19](#).

### **91. Article 48.1.4**

It should not be a duty for a party to *“create”* all necessary conditions for other political parties, but rather *“not to obstruct”* the exercise of the rights of other parties.

### **92. Article 52**

The whole content of Article 52 is repeated in [Articles 53 and 54](#). Article 52 should be deleted.

### **93. Article 53.1 & 56**

It would be a good idea to indicate in these articles the number of signatures required to support candidates.



**94. Article 53.2**

The candidates should have to show evidence of their habitual residence in order to candidate in the precinct where they live.

**95. Article 53.3**

a) It is, in principle, legitimate to require transparency with respect to criminal records. There is, on the other hand, a human right not to be forced to publish one's criminal record if the conviction has taken place a long time ago. A time limitation of 15 years should be stipulated for the requirement to declare a criminal conviction in an application.

b) A second point with respect to this article concerns criminal actions which have been committed abroad: Article 53.3 does not speak of sentence, but of criminal action. Candidates must only submit actual court convictions in a foreign country, or the reference to foreign criminal activity should be omitted entirely. Otherwise the human right of presumption of innocence would be violated. The same issue arises in several other provisions of the Code, such as [Articles 54.8, 56.3, 57.5, 164.4, 201.3 and 231.2](#).

**96. Article 53.4**

About the right to indicate his/her party affiliation in the nomination documents. Such a provision will confuse the voters and could lead to a situation where several candidates from the same party run in a particular constituency.

**97. Articles 53.7 and 54.10**

About the conditions for refusal of certification of nomination of a candidate, there are slight differences in wording that are not justified between both articles. Irregularities in the documents should in a first instance allow for a late regularisation; while "*violation of rules defined by the code*" is too vague for implying a refusal of nomination certification without making any difference between minor violations and serious offences.

**98. Article 54.1 and 54.3**

The article provides details of minutes of meetings by political parties where decisions on nomination of candidates have been taken. Such details appear to be an internal affair of the political party and the interest of the election commissions in them is debatable.

**99. Article 54.8**

See comments on [Article 53.3, b\)](#).

See comments on [Article 46.1](#) about the six months.

**100. Article 54.10**

See comments on [Article 53.7](#).



### **101. Article 55.1**

Possible exceptions to the principle of equality between candidates are provided by the norm. But the exceptions are not clearly referred to and it would be better to determine a strict number, if any.

### **102. Article 56**

See the comment on [Article 53.1](#).

### **103. Article 56.1**

It is not clear why independent candidates (self nominated or nominated by initiative groups) can start collecting signatures from the day of the notification of the initiative (53.2) and before the decision of the commission, while political parties have to wait for the decision of the commission (56.1). In fact, **Articles 147 and 148** of the Code have different and contradictory provision for elections to Milli Majlis, referring the difference in the initial term of collection to single mandate candidates on one side; and list of candidates, on the other. **Article 183.1** for election of President of Republic, provides that collection of signatures commences, in all cases, on the day the Central Election Commission is informed.

Therefore, Article 56.1 is unclear, unnecessary and contradictory to other norms, and should be deleted.

### **104. Article 56.3**

See the comments on [Article 53.3](#).

### **105. Articles 57 and 66**

a) Citizens who are 18 years old and fully capacitated can collect signatures, but not companies (legal entities) that are listed together with State, government bodies and municipalities as subjects not permitted to collect signatures. While the rationale for the exclusion of public bodies is clear, the same cannot be said about private companies, once it is accepted that the job can be contracted upon payment and it is not a voluntary exercise.

Same comment for [Article 66](#).

b) The only reasonable basis on which a signature list can be rejected should be that it does not contain the number of valid signatures required by law.

### **106. Article 57.2**

It provides that the use of improper pressure or incentives to persuade voters to sign a voter list “*can*” be the basis for invalidating the signatures and/or a refusal to register or cancellation of the registration of a candidate or candidate list. This harsh sanction should only be imposed as a result of serious and repetitive actions of such kind. The Code must be quite clear as to whether the court does, in fact, have a discretion to apply these sanctions and, if so, how that discretion should be exercised.

### **107. Article 57.4**

Except in municipal elections, voters may only sign in support of one candidate or list of candidates. It is difficult to see why voters should be prohibited from signing more

than one form in any event, particularly when it is extremely difficult to verify whether voters have in fact signed in another list. The rule should be removed.

### **108. Article 57.5**

- a) In order for the voter to make a reasonable choice, information concerning all candidates or a list of candidates should be included.
- b) See comments on [Article 53.3](#).

### **109. Article 57.9**

The last sentence is difficult to understand, possibly due to a problem of translation.

### **110. Article 57.12**

It is unclear why the number of voters signatures should not exceed 15% of the required number defined in the Code. This provision should be deleted. See also [Article 66.6](#).

### **111. Article 58.1**

The experience of the 2000 parliamentary elections showed that the timeframe for submitting registration documents to the relevant Constituency Election Commission was not adequate for candidates in single-mandate constituencies. Some candidates could not participate in the election campaign in due time because some appeals were still pending. It is of concern that this remains unaltered in the Draft (Article 58.1). The period for submission of registration documents should be moved from 55-35 days to 65-45 days before polling day. This change will be consistent with the start of the election campaign on the 45<sup>th</sup> day before polling day (**Article 76.3**).

### **112. Article 58.3**

The Code (as a duty of the election commissions) should also ask the candidate about his/her finances (income, properties owned, inheritance, etc.) at the beginning and at the end of his/her mandate, in order to compare and analyse them. Regarding these observations, the election commission could penalise the candidate if the finances' evolution seems disproportionate (between before and after the mandate).

### **113. Article 58.5 and 60.3**

Article 58.5 and 60.3 make the only references to election deposits in the entire Code. It is unfortunately far from clear what these articles mean or how they will work. Article 58.5 appears to envisage that a candidate or party can pay a voluntary deposit when submitting their registration documents, not instead of signatures but in addition. If registration is refused on the basis of violations of the rules on collecting signatures, the candidate or party may still be registered by surrendering the deposit (this appears to be the most rational interpretation of the first part of Article 60.3). There is no provision for the refund of such registration deposit should the candidate or party exceed a certain score<sup>19</sup>. It is strongly recommended that these parts of the draft Code are revised.

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<sup>19</sup> Guidelines on Elections, no. I. 1. c. vi., advise that the deposit should be refunded if the party has fared well in the elections.

The 25% of the election funds are too high a deposit, especially for new candidates or candidates who do not come from a political party.

#### **114. Article 59**

The procedure for checking the signatures is substantially the same in the Code as under Article 43 of the Milli Majlis law. The ODIHR and Venice Commission comments have not been implemented and are still valid. The scope of this rule is to know whether the required number of valid signatures has been reached. The only ways to give a correct answer to this question are either to check all signatures on the sheet or to count the valid signatures until the necessary number has been obtained, even if this process is lengthy. What is important is the number of valid signatures and not the number of invalid signatures.

See also [Article 59.14](#).

#### **115. Article 59.8.3**

The provision from Article 59.8.3 is superfluous because of **Article 59.8.4**.

#### **116. Article 59.2**

The validation of signatures must be completed by the start of the election campaign<sup>20</sup>. If Article 59.2 is read together with **Articles 60.1 and 76.3**, this requirement does not seem to be satisfied for election campaign by individual candidates.

#### **117. Article 59.14**

As previously stated in [Article 59](#), **Article 43.14** should therefore be deleted and replaced by a rule which proceeds from the basis of valid signatures. This remark applies even more for the present draft article<sup>21</sup>.

See [Article 60.2.4](#).

#### **118. Article 60**

These comments are applying to **Articles 69 and 108**, and see the comments on **Article 60.2**.

#### **119. Article 60.2**

a) Does the relevant Election Commission have to submit a copy of the decision to register the candidates to all voters? By a system of posters, on sites reserved for public posting (or on notice boards)?

See [Article 88.6](#).

b) Article 60.2 sets out a list of reasons for refusing a registration. This list must be very clearly defined and exhaustive. At present, it is not; the last item on the list is “*other reasons established by this Code*”. There are too many possible reasons for the refusal of a list of candidates. It must not be forgotten that the right to stand for election is one of the most important human rights, as protected by the European Convention of Human Rights. In any event it is imperative, where possible, that

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<sup>20</sup> See no. I. 1. c. v. of the Guidelines on Elections.

<sup>21</sup> This is confirmed by no. I. 1. c. iv. of the Guidelines on Elections.

candidates and parties are given an opportunity to correct any errors or defects which have led to their registration being refused. In such cases the party or candidate should be invited to resubmit the application within a reasonably short period. It is advised to add that refusal of registration is subject to the principle of proportionality<sup>22</sup>.

See [Articles 69.2, 89.5 and 108.1](#).

#### **120. Article 60.2.4**

Comment on [Article 59](#) applies to this article too.

#### **121. Article 60.2.7**

“*Other reasons established by this Code*” is too imprecise. It should read: “*Other reasons for refusal of registration as established by this Code*”.

#### **122. Article 60.3**

The point on the electoral deposit is not clear.

See the comment on [Article 58.5](#).

#### **123. Article 60.5**

The norm is repeated again under [Article 108.2.1](#), where it is specified that the “*invalidity*” must be of importance. It is suggested that repetitions are avoided and that paragraph be deleted. The issue is treated more thoroughly under [Article 108](#).

#### **124. Article 62**

See comments on [Article 48](#).

#### **125. Article 63.1**

See comments about [Articles 12 and 13](#).

#### **126. Article 63.2**

According to the second sentence of the article, the campaign groups on referendums seem to be linked to a constituency. The purpose of this provision is unclear.

#### **127. Article 64**

The provision about citizens with dual citizenship is too severe. These citizens should be able to choose Azerbaijani citizenship to exercise their civic rights.

Appears to be a repetition of [Article 14.3.1](#).

#### **128. Article 65.4**

The reference in Article 65.4 to **Article 65.2** should be to **Article 65.3**.

#### **129. Article 65.6**

The article should make it clear that a referendum campaign group representative who ceases to fulfil that function may be replaced.

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<sup>22</sup> See previous comments of the Venice Commission (CDL-INF (2000) 17).

**130. Article 65.7**

According to **Article 65.3** which refers to [Article 64](#), authorized representatives cannot be civil servants.

**131. Article 66**

See comments on [Article 57](#), especially [Article 57.12](#).

**132. Article 67.2**

There appears to be an inconsistency between Articles 67.2 and **69.1** regarding the registration of referendum campaign groups and between **Articles 146.9** and **154.9** regarding the possibility of changing the order of a party list.

**133. Article 69**

See comments on [Article 60](#).

**134. Article 69.2**

The comment for [Article 60.2](#) applies here as well.

**135. Article 70.3**

It suggests that candidates can retain their job in State positions, in apparent contradiction with the previous paragraph (**70.2**) that requires them to be released from their employment. This could be a translation mistake. Paragraph 70.5 is clear on the prohibition of campaigning by these candidates. Apparently, therefore, there could be candidates who work in State positions that can retain their job as long as they do not campaign. But such campaign limitation for registered candidates who are civil servants does not apply to free air time on TV.

**136. Article 72**

See comments on [Article 48](#).

**137. Article 74.3**

a) The reason for withdrawing candidacy: *“illness that seriously affects his/her health”* is much too vague and does not mention the body which determines whether this is the case. This body would also have to be a court. This comment also affects [Article 108.4](#) and **Article 146.9**.

b) In addition, there is no convincing reason why a list of candidates should be withdrawn if the first three candidates on the list are considered dead (or 25% of them). The public will know of the deaths of candidates and will be able to form their opinion on whether the list is still a good choice for them. The Code should envisage that the list of candidates or the party which formed the list has to inform voters about the *“new”* first three candidates.

**Chapter Thirteen**

**About Election Campaigns:** The rules about election campaigns (often called pre-election campaigns) are very similar, if not identical, to those stipulated in the Law on Elections to Milli Majlis. The OSCE/ODIHR and Venice Commission's comments largely still apply to the draft Code.

#### **Article 75.1**

The words "*Notwithstanding the right of freedom of expression*" should be put before "*the following have the right to conduct ...*". Otherwise the norm could be read as a limitation of this right which is surely not the intention of the drafters.

### **138. Article 76**

a) There is a problem of interpretation, essentially because of the hour indicated. The text is not clear in the different paragraphs of this article about the end of the campaign. If the election day is a Sunday, does it mean the campaign finishes on the Saturday at midnight? So the campaign finishes at midnight between Saturday and Sunday? Or, does it mean the campaign finishes on the Friday at midnight, because it is one clear day before the elections?

For elections and referendums, pre-election and pre-referendum campaigns should be prohibited on election (referendum) day and the day before election (referendum) (**Article 76.1, 76.3, 76.4 and 76.5**).

b) It is recommended to avoid risks of troubles during the campaign, also to provide for a possibility of response for a candidate, who has been attacked by libel or speech by another competitor.

#### **Article 76.1**

The word "*or*" should be replaced by the word "*and*". This would better express the intention of the drafters and be a precise rule.

#### **Article 77.1**

The last two requirements are not acceptable. The "*method of collecting information*" is not something which can be described shortly and precisely and the "*statistic figures of future results*" is a term which seems clear but which is not at a closer inspection (does it mean that the mass media concerned must publish all statistics it has gathered?).

### **139. Articles 78 and 79**

Private media do not have to publish pre-election campaign material, but they must respect equality when information about candidates is displayed.

See comments on [Article 19.1](#).

### **140. Articles 80 and 81**

It is not clear whether the term "*the TV-radio companies and periodicals*" means all such mass media (State-owned and private) or just the State-owned media.

#### **Free air time and space in the election campaign.**

It is provided that only election/referendum participants who have achieved a fixed threshold can retain the funds allocated to them by the election commissions and not to pay the cost of free air time and space allocated. The threshold is, in some cases, quite high as for referendum campaign groups ([Articles 125 and 126](#)). The risk of

fully paying the fees of “free air time and space” amounts to a deterrent for campaign groups from taking part in the referendum campaign.

For candidates to Milli Majlis the 3% threshold for single member constituencies and 1% for the Nation wide constituency (**Article 160.1**) is a way to reduce the number of weak candidates and parties and push them towards coalitions.

#### **141. Articles 81 and 82**

Though private TV and radio companies can provide paid airtime for registered candidates, they have to respect the principle of relative equality with the others. A medium cannot provide airtime to a candidate and then not speak at all about the other candidates during sections of “global” information (notably with Article 82.4).

#### **142. Article 82.2**

There is no conceivable reason why “*referendum campaign groups members of which are more than 25 thousand cannot use this airtime*”.

#### **143. Article 82.7**

The provisions in the article on the allocation of paid air-time and the reference to a leading journalist are not clear.

#### **144. Article 85.3 and 85.4**

A minimum access of all candidates to periodicals should be provided for<sup>23</sup>.

#### **145. Article 87.6**

The possibility for observers to attend pre-election meetings in military units is welcome.

#### **146. Article 87.7**

The security and public order forces must not block or disturb the meetings. They should be present near the entrances but not inside.

#### **147. Articles 88 and 89 in general**

Freedom of expression and in particular freedom of the press (**Article 10** of the European Convention on Human Rights (ECHR), **Article 47** of the Constitution of Azerbaijan) are of the utmost importance during an election campaign. Chapter VIII must be interpreted in conformity with these freedoms, and restrictions to these freedoms must be prescribed by law, be motivated by the public interest and respect the principle of proportionality.

#### **148. Article 88.1**

(Former Article 56.1). The expression “rules defined by the legislation” is very general and should preferably be replaced by “the law on the mass media and the criminal code”. For the time being, it is understood that the expression used refers only to these laws, which are not the object of the present opinion.

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<sup>23</sup> See no. I. 2. c. ii. of the Guidelines on Election of the Venice Commission.

### 149. Article 88.3, 88.4 and 88.5

(Former Article 56.3 to .5).

a) This provision would seem to violate **Article 10** of the European Convention of Human Rights. It is a basic element of the freedom of expression that there is no (prior) censorship, no prior restraint, no duty to deliver publications to authorities prior to publication. Although the provision does not seem to condition publication upon submission of the campaign material to the election commission, such a duty would seem to violate the principle of proportionality since such a restriction is not necessary in a democratic society. It is virtually certain that opposing parties will bring illegal materials to the attention of the authorities.

b) It is legitimate, however, that the name of a person or organisation that is responsible for the publication be indicated in the material.

See also comments on [Article 88.9](#).

### 150. Article 88.6

The information could be displayed on notice boards.

See [Article 60.2, a\)](#).

### 151. Article 88.9

(Former Article 56.9). This provision relates to “*false*” material. A reference to criminal law and tort law would be suitable. According to international standards, prior prohibition is in conformity with freedom of expression only in exceptional cases. In any case, a prior prohibition must be decided by a court. Electoral propaganda by its very essence lacks objectivity. That is why only the courts should be able to prohibit such material, and only when a criminal offence or a tort is about to be committed. In general, the limits placed on political speech should be less strict than for ordinary speech.

See [Article 88.3, 88.4 and 88.5](#).

### 152. Article 89.1

(Former Article 57.1). Here again, prohibition should not go further than what is forbidden by ordinary criminal legislation and tort law. The incitement to change the constitutional basis of government may be forbidden, according to international standards, only when it is proposed to introduce such a change by force. Proposing changes in the constitution is part of normal political debate. Incitement to violate the territorial integrity of the country should also be understood as referring to violent action or to similarly aggressive methods which pose comparably grave dangers and contradict the law. In general, the specific nature of political speech during an election campaign has to be taken into account and the authorities have to be rather tolerant, in particular the general prosecutor.

The only change in the draft code that reflects the recorded comment is in Article 89.1, the new requirement of “*force*” in the call to change the constitutional system. It is an improvement, but not sufficient to protect the basic freedoms of speech during an election campaign.

The words “*Subject to the freedom of expression*” should be included before “*It is prohibited to abuse the mass media during the conduct of the pre-election campaign*”. This is important since the terms “*citizens’ honour and dignity*” are imprecise and can



equally be abused. It is unclear what is meant by “*other campaign forms that are prohibited by law*”. These should either be spelled out expressly or this part of the sentence should be deleted.

### **153. Article 89.2.1**

The article prohibits the giving of gifts and other valuables to voters. This provision should make clear that items of nominal value, such as badges, stickers and posters can be distributed freely to voters.

### **154. Article 89.3**

(Former Article 57.3). Like all provisions on limitations to fundamental freedoms, this provision has to be interpreted restrictively; that means that the only advertisements subject to this provision are advertisements that let a link with a candidate or a party appear clearly.

### **155. Article 89.4**

(Former Article 57.4). The formulation “*distribution and broadcast of information which impugns the prestige, dignity, and honour of the candidate*” is problematical for two reasons: First, the provision must be limited to false information. The distribution of true information, even if it impugns the honour of a candidate, is in principle guaranteed by Article 10 of the European Convention of Human Rights. Second, the term “*prestige*” is a very broad and imprecise term and should be deleted. It is unknown as a possible limitation of the freedom of expression.

### **156. Article 89.5**

(Former Article 57.5). The cancellation of the registration of a candidate or a political party is a very severe sanction and sufficient grounds to provide for it are not given. Criminal sanctions for violation of the law should be sufficient. The courts should take these principles into account when applying the law.

This rule certainly goes too far and violates the principle of proportionality. It is unknown in other European election laws. It would permit the cancelling of the registration of a candidate upon mere insults (“*of citizens honour and dignity*”) or the violation of “*other rules*”. The rule would be acceptable, however, if it would be limited incitements to capture the government by force, or to change the constitution by force, or to incite racial and religious hatred. In any case, there must be a warning before action such as a cancelling of the registration can take place.

The same applies for [Article 108.1](#) and [Article 60.2, b](#)).

### **157. Article 89.6**

The article requires law enforcement bodies to prevent spurious and illegal pre-election publications and materials. Again, “*spurious*” is a highly subjective term. Presumably “*illegal*” materials are those produced otherwise in accordance with the Code, but it is not clear why the law enforcement bodies need to be told to enforce this part of the Code as opposed to others.

**158. Article 89.7**

This article gives the possibility to election commissions to create a working group responsible for “*observing the pre-election campaign conducted in the mass media outlets*”. Though it is a positive innovation the draft does not provide sufficient details on the formation, composition, powers and competencies of such a group. Its composition should reflect the need for impartiality.

It should be made clear that only courts possess the power “*to stop illegal pre-election campaigning*”.

**159. Article 90.3**

About the funds required to organise an election and not transferred in time or fully, this is not a viable provision to include in an Election Code. The money should be transferred to the Central Election Commission and if it is not, the Central Election Commission should seek an administrative remedy to force the relevant authority to comply with its obligations to fund the elections. If any bank is to fund the elections it is surely the Central Bank of Azerbaijan. The Central Election Commission should not be left in the position where it is forced to run from one bank to another trying to raise funds to pay for an election.

**160. Article 90.5**

See the comment for [Article 28.1](#).

**161. Article 91.6**

The words “*and assistance*” are unclear and should be deleted. If “*services in kind*” are envisaged, this should be stipulated in the Code. In addition, paragraphs 2 to 5 of Article 91 are missing in the English version of the draft.

The provisions in Article 91.6.12 appear to be duplicated in **Articles 94.1 and 94.2**.

**162. Article 92.2**

The article should indicate the time-scale, such as three working days, within which a bank must open and make available a campaign fund account.

**163. Article 92.3**

It would be more appropriate to prohibit the incurring of expenses after polling day, with all liabilities to be settled within a short period thereafter.

**164. Article 92.4**

Second and third items: the possibility for candidates to withdraw is not suitable and could lead to pressure. At least, it must be ensured that candidates can challenge their application for withdrawal if they assert that they were coerced to withdraw.

See **Article 93.1.2**, [202.5](#) and [220.2 and 232.7](#).

**165. Article 94.4**

The right to return unspent funds is perfectly understandable; an obligation to do so is a completely different matter. Implementation of the proposed rules will be very complicated and enormously cumbersome. Candidates and parties will have to

calculate the amounts to be returned as a proportion of the unspent funds. They will then have to go the considerable effort of tracing the original donors and returning the funds. Even for those who made donations through a bank transfer this will be laborious, and for other donors much more work will be required. Moreover, depending on how much money is left unspent, and given the cost of making bank transfers to return funds, the sums involved may well be tiny or in any event disproportionate to the cost and effort of returning them. It would be far more expedient if unspent funds were either transferred to party funds (in the case of donations to political parties) or directly to the State.

Such remarks are also valid for referendums ([Article 124.2 to 124.4](#)) and Presidential election ([Article 157.4](#)). See [Article 226](#).

### **166. Article 95.3**

To require three different financial reports seems excessive. This is true given the fact that banks are required under **Article 96.2**. to report regularly about the movements on the special accounts.

### **167. Article 96.2 and 96.4**

See the comment on [Article 16.5](#).

### **168. Article 97.3**

It does not seem to be fair to burden the employer of a member of an election commission with the payment of his or her salary insofar as the member does not continue to work for the employer during the relevant time. After all, according to **Article 90.1** the financing of the conduct of the elections is to be done by the State budget. See **Article 98.3**.

### **169. Article 98.3**

The comment for **Article 97.3** applies to this provision as well.

### **170. Article 99.2 notably**

The physical installation of the voting rooms must make easier the movements of voters between the area with the ballot papers, the polling booth and the ballot box.

### **171. Article 99.6**

It provides that the ballot boxes must be prepared in such a way that one can tell whether they are full after being sealed. It is not clear what this means. If transparent ballot boxes are envisaged, this should be made clear.

### **172. Article 100.2**

The requirement that ballot papers are numbered is a welcome enhancement of ballot security, as is the proposed use of voting envelopes (**Article 102.8**). However, the Code should make clear that ballot papers are uniquely and sequentially numbered. It would also be very desirable for result protocols to be uniquely and sequentially numbered. Moreover, the Special Part of the draft Code fails to make the necessary references to the use of voting envelopes (**Articles 166.3, 203.2 and 233.2**).

**173. Article 100.3**

It should be made clear that the ballot paper is the same (uniform) in the whole constituency.

**174. Article 100.6**

The Precinct Election Commission should ensure that the number of ballot papers received accords with the number stipulated by the Constituency Election Commission. The ballot papers received should be counted at the same time that the ballot papers are stamped by the Precinct Election Commission and a record made verifying that the numbers tally. If they do not, the Constituency Election Commission needs to be informed immediately.

**175. Article 100.8**

See the comment on [Article 35.6](#).

**176. Article 101, 101.2**

The voter should not have the possibility of voting in another election precinct other than his territory of residence. So, he/she must be registered on the voters list on the day of the election. There is a too important risk of fraud, dual vote or several registrations.

**177. Article 101.4**

It would probably be wise to leave a gap of one or two days between the period in which the Constituency and the Precinct Election Commission can issue deregistration cards. This would leave time for the extracts from voter lists where the issuance of such cards has been recorded to be sent from the Constituency Election Commission to the precincts.

**178. Article 102.1**

“*Other means*” could be electoral notice boards for instance.

**179. Article 102.2 and 102.3**

“*Almost impassable distant places*” is too vague and should be developed.

**180. Article 102.3**

- a) See the comment on [Article 35.6](#).
- b) Article 102.3 also provides that elections on ships and in distant places may be held not later than ten days prior to polling day. This should surely read “*not earlier*”.
- c) As regards the use of mobile ballot boxes, the article should make it clear that requests to vote in this way may be made orally or in writing, directly to the Precinct Election Commission or indirectly through another person, provided always that the request is subsequently confirmed in writing (**Article 103.2**).

### **181. Article 102.5**

- a) The voter could sign the voters list not when he is given the ballot paper but when he inserts it in the ballot box. It presents two advantages: first, the two operations are made in the same place in the polling station, and in front of the chairman and secretaries, quasi simultaneity is important; secondly, if there is a registration problem on the voters list or trouble in the voting room or other problems during the process, the voter will not have signed the voters list without casting their vote.
- b) Another point: a member of the polling station should check at the entry of the polling station the identity of voters.

### **182. Article 102.6**

It is strongly recommended that ballot papers are not signed at all, or if they are, that they are signed before voting commences, not as they are issued. The danger is that a signature may be written in such a way as to identify the ballot paper and compromise the secrecy of the ballot.

### **183. Article 102.7**

The third sentence of Article 102.7 raises serious problems<sup>24</sup>. The provision in this paragraph should deal only with the situation of disabled people.

### **184. Article 102.11**

The Precinct Election Commission must invalidate the ballot papers for which the voters have been influenced, if they have not voted at that point. On the contrary, an observation must be made on the final polling station's protocol, explaining the circumstances and the number of votes spoiled.

### **185. Article 102.12**

The article permits officials of local executive authorities to be present in polling stations to preserve law and order. Local officials have no place in polling stations whatsoever except to cast their own vote and must leave immediately as soon as they have done so. Given the substantial problems of improper interference encountered in recent years, the Code should leave no doubts about this essential rule. Law enforcement agents should enter polling stations only when requested to do so by the Precinct Election Commission to *restore*, not preserve, order, and must leave again immediately once order has been restored.

### **186. Article 102.13**

It States that a separate document about a spoiled ballot is prepared "*later*" "*immediately*". It must be one or the other. The draft Code should indicate the procedure by which a spoiled ballot paper is cancelled (cutting in half is recommended).

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<sup>24</sup> According to no. I. 4. b. of the Guidelines on Elections of the Venice Commission, "*Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited*".

**187. Article 103**

This provision contains very broad possibilities for using mobile ballot boxes<sup>25</sup>. It is advisable that the drafters reconsider the use of mobile ballot boxes in order to decrease the possibility of fraud.

**188. Article 103.2**

It is strongly recommended that voters using the mobile ballot box are required, as under the existing law, to record the details of their ID document in their application to use the mobile box.

**189. Article 103.3**

- a) The mobile ballot box must be in use only on the day of the election. The number of requests must be verified by the superior election commission. These requests must be added in a separate document, attached to the final polling station's protocol.
- b) The mobile ballot box team should be permitted to take a defined small number of ballot papers (perhaps three) to allow for spoiled ballots.
- c) "... are marked on the voters list": By whom?

**190. Article 104**

When voting hours end, the Precinct Election Commission's chairperson announces loudly: "*only voters who have already received ballot papers and those in the voting compartments (booth) can vote.*" It is an accepted rule that voters already in the queue are allowed to vote.

**191. Article 104.1**

Article 104.1 sets out the steps to be taken before the ballot papers are counted. This should include a count from the voter list and supplementary list of voters who have voted using a deregistration card and of voters who have been issued with ballot papers for use in the mobile ballot box. Both items should be recorded in the final protocol (not in a separate act) so that unusually high numbers are evident and clearly recorded.)

See [Articles 205.4](#), [206.14](#) and [234.3](#).

**192. Article 104.3**

It is advisable to add a precise list of cases of invalidate ballot papers.

**193. Article 104.4**

This article must be clarified. If there are two or more ballot papers in the same envelope, the commission must count one ballot if they are all identical. If there are differences, of any sort, or if ballot papers are blank, they must be all invalidated.

**194. Article 104.7**

Do the votes have to be recounted immediately after the announcement of the results?

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<sup>25</sup> According to Point I. 3. b. vi. of the Guidelines on Elections by the Venice Commission "*Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud*".

### **195. Article 104.9**

It would preferable to transfer all election material to the relevant Constituency Election Commission together with the protocols within 24 hours after the polling day so that the Constituency Election Commission can make necessary checks in case of discrepancies in protocols.

### **196. Article 104.11**

It should indicate that the third copy of the Precinct Election Commission's protocol must be displayed at the polling station *immediately* and remain on display for a reasonable number of days.

### **197. Articles 104.8 to 104.11 and 135**

While the first copies of counting protocols are to be sent immediately to the Constituency Election Commission, and the second copies are to be kept by the secretary of the Precinct Election Commission, the third copy is displayed on the board for information.

Only in the special sections (**Articles 174.1, 209.1**) is it provided that upon requests by observers, registered candidates, agents of political parties and blocs, protocols are submitted to the requesting parties, *after members of election commissions approve information on voting results in electoral precincts and voting results in the constituency and the relevant protocols.*

The quoted rule should be moved to the general section, being valid for each election. Moreover, it is recommended that the norm be clarified in the sense that observers, and other subjects entitled, are to be given a copy of the protocol immediately after its signature and before delivery to the superior commission.

The issue of aggregation of results has been of great importance in past elections in the Republic, and the law must give any interested party or observer the possibility double checking the regularity of the aggregation process from the Precinct election commission to the Constituency Election Commission.

### **198. Article 104.15**

It allows the Precinct Election Commission to reconstitute itself and issue a “repeat” protocol if it discovers that it made a mistake in the original one. This is an extremely unusual provision and creates substantial scope for abuse. The Precinct Election Commission should make sure that it counts the ballot papers and completes the protocol carefully and accurately. Once the protocol has been signed and the first copy sent to the Constituency Election Commission, the Precinct Election Commission should seal the election materials and consider its work over, unless the Constituency Election Commission spots an error and requires a recount. There should be no scope for the Precinct Election Commission to start re-examining the ballot papers and revising the results once the first protocol has gone, at which stage observers and representatives are also likely to leave. There should be clear finality in the work of the Precinct Election Commission. The same concerns apply in the Constituency Election Commissions.

See the same remark for **Articles [168.11](#), [205.8](#) and [235.10](#)**.

**199. Article 105**

See the comment on [Article 16.5](#).

**200. Article 107**

- a) Apparently there is no harmonisation between **Article 107 (107.2 and 107.4 especially)** and **Article 45.3** on complaints about decisions on voters' lists. Terms are different, and no regulation is set about the relationship between complaint to the superior commission and to the court. See comments on [Article 45.3](#).
- b) There should be short time-limits for lodging and deciding appeals (three to five days for each at first instance) and an explicit provision according to which "*the applicant's right to a hearing involving both parties must be protected*".

**201. Article 107.1**

A basic rule of the rule of law requires that time limits for complaints can only begin to run from the time when the person concerned had an opportunity to take notice of the decision. Therefore the following phrase should be added at the end of the provision: "*The time limit of 7 days begins to run with the publication of the decision or from the time when the persons concerned could take notice of it*".

**202. Article 107.7**

Under this article, a person candidate who has been elected cannot refuse to testify as a witness in administrative, civil or criminal investigations regarding complaints about violations of citizens' rights. This rule, however, requires modification: the rule against self-incrimination requires that such evidence cannot be admissible against the candidate in subsequent proceedings against him. Unless this is made clear, the rule as presently formulated may well violate the candidate's right to a fair trial under the European Convention on Human Rights.

**203. Article 108**

This article must be compared to **Articles 60** and [60.5](#).

It contributes to the confused nature of the Code, because these articles separate cases of refusal of registration of candidates.

It sets out numerous circumstances in which a candidate's or party's registration may be refused or cancelled. These measures (in particular, cancellation) are obviously draconian steps which should only be imposed in response to serious violations of the Code. Unfortunately, this is not reflected in this article, in which many of the violations are broadly defined. The Code should encompass a range of sanctions, up to cancellation of registration, to ensure that breaches of the rules are punished proportionately. Otherwise, these rules give considerable scope for abuse.

**204. Article 108.1**

See comments on [Articles 89.5](#) and [60.2](#).

**205. Article 108.2**

The article lists a number of cases when the election commission can refuse to register a candidate, in cases of specific violations of rules of conduct provided by the Code.



Violations are rather specific, and their number has to be considered *exhaustive*. It would be better, however, to specify the obligation of refusal, rather than the power to do it, and to limit such an obligation only to serious offences, after a first public warning. However, the cases under 108.2.9, 108.2.11 and 108.2.12 seem too vague in several aspects for such a sanction as the refusal of registration: the paragraphs must be rephrased and the last one should be deleted.

See [Article 60.5](#).

#### **206. Article 108.2.2**

This provision must take into account that the freedom of expression guarantees political advertisement before the actual election campaign begins. Therefore the words “*Notwithstanding the right to freedom of expression*” should be included at the beginning of the provision.

#### **207. Articles 108.2.5, 108.2.6, 108.2.7 and 108.2.8**

0.05% is much too low to satisfy the principle of proportionality. A lesser sanction than a refusal to register should be found (e.g. public condemnation, payment of a fine).

#### **208. Article 108.2.9**

These grounds for refusal to register are far too broad. For example, they could be understood as making it impossible for the owner of a company to register as a candidate. Instead, it should be ensured that rich or influential people do not abuse their powers. They should not be excluded, however, because they occupy influential positions in their professional life. This would be a violation of their human right to stand for election.

#### **209. Article 108.3**

It must be made clear that the principle of proportionality applies in all situations covered by this provision. The cancelling of a registration is a denial of the right to be elected. This may only be done under compelling circumstances. Such circumstances are not present in the cases of **Article 108.3.3**, and **Article 108.3.9-12**.

#### **210. Article 108.3.2**

The translation of this provision seems to be incomplete. In any case, it must be ensured that soldiers have an opportunity to develop their own judgments and to take notice of the election campaign.

#### **211. Article 108.4**

Redundant with **Article 74.3**. See comment on [Article 74.3](#). This is a disproportionate sanction that has no justification. This provision should be repelled.

#### **212. Article 108.5**

This provision is far too general and open to all sorts of abuse and should therefore be deleted. The term “*abuse*” is unclear. It does not satisfy the requirement of Article 10 of the European Convention of Human Rights.

**213. Article 109.1**

Here again, the principle of proportionality must apply. Small or technical violations of certain rules do not justify a cancellation of elections.

**214. Article 110**

The terms "*impugning the honour and dignity of a candidate*" could lead to abuse. The definition of criminal offences should take place in criminal legislation. The following language should be added to Draft **Article 110.1.6**: "*Notwithstanding the right of freedom of expression*" at the beginning of the draft article and "*according to the existing general legislation on defamation*" at the end of the draft article.

**215. Article 110.1.1**

It must read "*other illegal methods*".

**216. Article 112**

It provides that issues directed to "*excessive limitation*" of human rights may not be put to a referendum. This is obviously a very ill-defined test. The issue, surely, is whether the proposal being put to a referendum would give rise to breach of human rights under Azerbaijan's Constitution or would violate Azerbaijan's human rights obligations under international agreements, including the European Convention. The Constitutional Court is perhaps best placed to decide these issues.

**217. Article 116**

The draft Code should clarify the role of Milli Majlis and the President in the decision on how a referendum should be conducted. Both constitutional provisions (**Articles 95 and 109**) quoted by Article 116 of the Code provide that Milli Majlis and the President "*appoint*" a referendum. There has to be a difference or a distinction in their respective roles, which is a constitutional matter.

The limitations under **Articles 112 and 116.2** are fair.

It is also unclear as to when the proper authority will allow the registration of a referendum issue: something similar to the ruling from the Constitutional Court as per **Article 113** on changes to the Constitution. No mention of the matter is made in **Chapter 11** of the Code, under "*registration of referendum campaign group*". It also appears unreasonable that a decision be left to the Milli Majlis or the President, because it would happen after the collection of signatures.

If it is meant that Central Election Commission has such a preliminary power, then a specific provision should be entered in the Code.

**218. Article 116.2**

It must read "*conduct of referendum*", not "*conduct of elections*".

**219. Article 124.2 to 124.4**

See [Article 94.4](#).

## **220. Articles 125 and 128**

In these articles, a referendum campaign group is obliged to repay the campaign costs received from the State and to pay the value of free airtime provided under the Code unless at least half the voters in the constituency where the referendum took place voted in favour of the proposal. First, the Code should indicate whether this means half the registered voters or half the voters who participated in the referendum. Second, and more importantly, this rule is manifestly unfair and dangerous. It is unfair because the campaign group has already raised a very substantial number of signatures in order to conduct the referendum in the first place. That fact demonstrates that the issue is important for a substantial proportion of the population and is worthy of consideration by means of a referendum. It is a dangerous rule because it is likely to impose a very substantial disincentive on the conduct of referendums. There will be very few groups of citizens who can afford to take the risk of pursuing a referendum, losing the referendum and facing what are in effect substantial penalties. If Azerbaijan wishes to embrace the notion that referendums have a significant part to play in a democratic society, these rules should be removed.

See [Articles 80 and 81](#).

## **221. Articles 125 and 127**

The relation between the rule that successful referendums do not return funds received from election commissions (**Article 125**) and the rule that unused money must be transferred to the State budget (**Article 127**) is not clear. The principle of equality requires that unused funds be returned to the State budget (if they originate from there), no matter whether the campaign group was successful or not.

## **222. Chapter Nineteen**

Most of this part about the general voting process is superfluous because it has already been specified in **Chapter Fifteen**.

## **223. Article 130.4 and 130.5**

a) The terms “*Referendum Commission*” and “*Election Commission*” are used indifferently. It is preferable to use only “*Election Commission*” for all polls and all levels of election commissions.

See also **Article 133** for the same problem.

b) It would seem expedient for the Central Election Commission, which is a permanently functioning body, to oversee both referendums and elections.

## **224. Articles 132, 167, 204 and 234**

The counting protocols do not include information on the number of voters casting their ballot with voting cards. Given the sensitivity of the matter, the number of voters who cast their ballot with voting cards, through not being on the voters list, be added to each protocol (see comment under **Article 101**).

## **225. Articles 133**

See comment on **Article 130.4 and 130.5, a)**.

**226. Articles 134.2 and 136.3**

a) Such provisions are not adequate for a referendum. It is inadmissible to apply the same rules as in one-member constituencies. The rules defined in Article 134.2 should apply only at national level.

See also [Article 205.2](#).

b) Repetition concerning the participation of voters.

**227. Article 136.1**

The article envisages the publication of the final referendum result not later than ten days after the referendum. The publication of “*final results*” does not presuppose that all possible complaints have been finally determined, otherwise the ten days period could be too short.

**228. Article 136.3**

It provides that a referendum is valid if more than 25% of voters on the voter lists have participated in more than half of the referendum constituencies. As regards constitutional amendments, which require approval by referendum, this is a surprisingly low threshold.

**229. Article 137.1.1**

It is not clear what situations are covered by this provision.. It should be formulated in a more precise way.

**230. Section Six**

Remark: About the referendum of 24 August 2002, the mixed system has been abolished.

**231. Article 143**

(See the comment about [Article 13](#).)

**232. Article 144**

It is not clear how Article 144, which is referred to in Articles 150.1 and 150.2, applies to those articles.

**233. Article 145.1**

See comments on [Article 9](#), b).

**234. Article 145.4 and 145.5**

Does it mean that one paragraph excludes the other? Does the deadline mentioned in Article 145.4 have priority over Article 145.5?

It is possible to simplify (“... *or* ...”).

**235. Article 147.2**

There are close to 8 million inhabitants in Azerbaijan. Divided into 100 electoral constituencies this would mean that there are 80,000 inhabitants in every

constituency. Between those 80,000 inhabitants are perhaps 60,000 voters. 1% of those voters would be 600. Therefore, the required number of signatures should not exceed 600<sup>26</sup>.

See [Point 9](#) of the General comments.

### **236. Article 151**

It is advisable to envisage a reimbursement with documents to prove these expenses.

### **237. Chapter Twenty four**

Same remarks as **Chapters Thirteen and Fourteen**. The provisions of **Chapter Twenty four** are often repetitive.

It would be preferable not to allow any withdrawal of candidates, in order to avoid pressures (see previous comment on [Article 92.4](#)). If withdrawal is admitted, it seems difficult to envisage a correction of the names of candidates on all ballot papers. It will depend on the term between the new information and the election day. It could be possible to inform the voters in the polling station, (by a poster) on a notice board for example. See notably **Article 202.5**.

### **238. Article 157.4**

See comment on [Article 94.4](#).

### **239. Article 158**

The provision does not envisage the possibility that large donations be split into smaller pieces in order to circumvent a publication duty. Perhaps a provision should be included according to which this provision may not be circumvented by splitting a donation. This comment also applies to **Article 225.1**.

### **240. Article 160.1**

For the third indent, the expression “*which have withdrawn list of candidates due to the compelled circumstances*” is unclear.

### **241. Article 163.9**

The meaning of the first indent is unclear.

### **242. Chapter Thirty**

See **Chapter Fifteen (Section Four)**; the text is often repetitive.

### **243. Article 164.4**

See the comments on [Article 53.3](#).

### **244. Article 165.3**

See the remark in [Article 1, a\)](#).

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<sup>26</sup> According to no. I. 1. c. ii. of the Guidelines on Elections by the Venice Commission, “*the law should not require the collection of signatures of more than 1% of the voters in the constituency concerned...*”.

**245. Article 166.3**

See the remark in [Article 1, a\)](#).

**246. Articles 167.3, 204.2 and 234.3**

The draft does not provide a clear definition of the term “*supplementary voter lists*”. It should also be more explicit about the rules and documents required to be included in the supplementary voter lists.

**247. Article 168**

[Article 169.14](#) provides that the Central Election Commission can decide to recount the votes in the relevant constituency in case of mistakes, corrections or discrepancies in the protocols.

A similar norm should be applied to Constituency Commissions: in such cases, the decision to recount would be a necessary consequence of corrections or discrepancies in the Precinct Elections Commissions’ protocols.

**248. Article 168.2 and 168.3**

The article provides that a Constituency election commission *can* consider elections void in certain circumstances. This is a clearly not a point on which any discretion can be exercised: the word “must” or “shall” should be used.

The text is not clear (“... *can consider* ...”).

**249. Article 168.11**

See the remark about [Article 104.15](#).

**250. Article 169**

The number of voters should be determined on the basis of the numbers of signatures on the voters list compared to the number of ballot papers found in the ballot box.

**251. Article 169.1**

The Central Election Commission has five days after voting day to summarise and determine the results in the nationwide constituency. It is difficult to see why so much time would be needed. Such a delay is likely to undermine public confidence in the integrity of the electoral process. Similarly, the Central Election Commission has 60 days to announce the final results of parliamentary elections (**Article 174.4**). There is no evident justification for such a lengthy delay.

**252. Article 169.7**

Article 169.7 refers to a threshold of 6%. This should clearly be 5% (see Article 169.3).

**253. Article 169.14**

See comment on [Article 168](#).

**254. Article 171.1**

The Code should not indicate a time-limit for the submission of the results to the Constitutional Court, except at the end of all complaints (from candidates, former candidates or voters).

**255. Article 171.3**

The addition of the sentence: “*The Constitutional Court may extend the deadline for another 10 days if the checking is so complex that it requires more time*” is suggested.

**256. 171.5 & 171.6**

If the Constitutional Court judges that the results are not completely correct, it can annul the elections partially (in one or more constituencies) or in totality. New elections are scheduled in the territory in question.

**257. Article 172.2**

“... a deputy, from another constituency, cannot ...”

**258. Article 173.1**

The rule of 25 days is maybe a little strict. The deputy could submit the justification in a term of two months at most. But in the case of incompatibility, it must be exclusively the Constitutional Court which could remove the deputy, and not the relevant election commission.

**259. Article 174.1**

Considering results which are submitted to voters, candidates, mass media, etc., is it advisable for election commissions to submit them after the announcement by the Constitutional Court?

**260. Article 174.3**

The time of publishing the results from individual precincts is an exceedingly valuable rule although it is difficult to see any reasons for such a long period. The publication of detailed results should be more expeditious so that complaints can be lodged in case of discrepancies in protocols. It should extend to all national elections, including presidential elections. Transparency would be further enhanced if the Central Election Commission published the full results of national elections, including precinct elections, in a single source. This could be done relatively cheaply on a government website.

**261. Article 175.2 et seq.**

The references are understood to **Article 89.1** and not **89.2** of the Constitution.

**262. Article 175.4**

The question of the prohibition of political parties is not addressed here in detail. However, it should be reminded that, under **Article 3** of the additional Protocol from

the ECHR, the prohibition of a political party does not allow to deprive the members of Parliament belonging to this party from their parliamentary mandate<sup>27</sup>.

### **263. Article 179**

See the comment about [Article 13](#).

### **264. Article 182.3**

The limit of 100 days prior to the election day for the nomination of the candidates is too short a time-limit for the political parties, concerning the campaign notably.

### **265. Article 184.3**

The candidate must have the possibility appealing this decision to the Court of Appeals or the Constitutional Court.

### **266. Article 185**

In the case of postponement of Presidential elections, who will carry on the Presidency in the interim?

### **267. Article 187**

Article 187, which deals with payments to presidential candidates, appears to conflict with **Article 71.1**.

### **268. Article 194.3**

It is advisable that the candidate has to mandate another person to open a special election account for him/her. The Code should replace “*may request*” by “*must request*”.

### **269. Article 194.5**

The candidate cannot be held personally responsible for violations by other persons which are not his fault. He may be held responsible, however, for violating his duties of supervision.

### **270. Article 201.3**

See comments on [Article 53.3](#).

### **271. Article 202.2**

This is a too short notice (25 days) to edit and distribute ballot papers.

### **272. Article 202.5**

On the withdrawal of candidates, see comment on [Article 92.4](#).

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<sup>27</sup> In the Case of Selim Sadak and Others v. Turkey, Application No.s 25144/94, 26149/95, 26154/95, 27100/95 and 27101/95 (11 June 2002); <http://hudoc.echr.coe.int>.



**273. Article 203.2**

See the first remark in **Article 1, a)**.

**274. Article 204.2**

See remark about **Article 104.1**.

**275. Article 205.2**

Presidential elections should be declared void for the reasons mentioned in Article 205.2 only by the Central Election Commission at national level.

See comment on [Article 134.2](#).

**276. Article 205.8**

See the remark about [Article 104.15](#).

**277. Article 206.1**

The Central Election Commission has only five days in which to finalise the election results before submitting them to the Constitutional Court. Again, this appears to leave insufficient time for complaints and appeals to be finally determined.

**278. Article 206.4**

The protocol should be signed only by members having the decisive right to vote.

**279. Article 206.8**

It seems to be difficult to organise a recount of votes with participation of members of the Central Election Commission if there are several recounts in different constituencies. There should be the possibility to order a the level of a polling station.

**280. Article 206.14**

See the remark about [Article 104.1 a\)](#).

**281. Article 206.14.4 to 6**

Article 206.14.4-5: same sentence; it is maybe a problem of translation.

Article 206.14.6 must be incomplete.

**282. Article 207.1**

Does it mean that if there are only two candidates, the candidates obtaining more votes is elected without reaching the majority of 2/3 of the votes in the first ballot? Compare to **Article 206.11** and **Article 101.2** of the Constitution.

**283. Article 208**

If there is again less than 25 percent of voters included on the voters list participated in the repeat voting, this article should indicate if there is a third round organised, and in which conditions.

**284. Article 208.1**

Such an important decision should be a decision from the Constitutional Court.

**285. Article 209.1**

The Precinct Election Commissions' protocols should be posted immediately at the polling station (see **Article 205.6**).

**286. Section Eight****287. Chapter Forty Four**

What about the electoral system for the municipalities?

Possibility of a list of candidates?

**288. Article 211.1**

Municipal councils are elected by the citizens of the Republic of Azerbaijan, on the basis of a plurality system with multi-mandate constituencies.

There is no mention of the Venice Commission suggestion (Guidelines on Elections) according to which "*it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence*".

**289. Article 211.2**

The number of municipal members should be more important considering the number of people in each constituency.

Notably regards to the provision of **Article 239**.

**290. Article 213**

See the comment about [Article 13](#).

It would be better to authorise the election of citizens to Municipalities as soon as they are 18<sup>28</sup>.

Does this include persons with dual citizenship?

**291. Articles 213 and 215.1**

See the comments in the [Article 9, b\) and d\)](#).

**292. Article 216 and 220.5 and 220.9**

Do political parties have the right to propose candidates without collecting signatures? If not, they should not be allowed to withdraw candidates, and **Article 220.9** should be deleted.

**293. Article 217**

See the remarks about [Article 60.2 b\)](#) and *c)*.

**294. Articles 220.2 et seq., 232.7**

On the withdrawal of candidates, see comment on [Article 92.4](#).

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<sup>28</sup> See no. I. a. aa. iii. of the Guidelines on Elections by the Venice Commission.

**295. Article 222**

Due to the number of municipalities, this article should be revised in order to apply only to local media and to allow for airtime at national level for these parties which represented in most or a big number of municipalities.

**296. Article 226**

See comment on [Article 94.4](#).

**297. Article 231.2**

See comments on [Article 53.3](#).

**298. Articles 232.6, 233.2 and 235.2.2**

See [Article 1](#), a).

**299. Article 234.3**

See the remarks about [Article 104.1](#).

**300. Article 235.3**

Second item: in what cases may a court cancel the election?

**301. Article 235.10**

See the remarks about [Article 104.15](#).

**302. Article 235.1**

It is advisable to shorten the time-limit about the determination of results.

**303. Article 235.5**

Multi-mandate districts elected by plurality votes can cause electoral confusion and encourage many abuses. They can also produce very disproportional results.

## **Conclusions**

The adoption of a single Code governing national elections and referendums is to be welcomed. This codification should ensure greater consistency in the rules governing referendums and all forms of elections.

A certain number of recommendations previously made by the Venice Commission and the OSCE/ODIHR are now reflected in the draft Code, such as: the publication of constituency results; the threshold for allocation of seats; the use of numbered ballot papers and envelopes; the annual update of voters' lists.

However, this preliminary assessment details several points that must be improved in the draft Code. The most important points are as follows:

- The rules on the formation of electoral commissions remain unchanged. The composition of these election commissions is important, as is the training of members of polling stations; when neglected, it could jeopardize the impartiality of electoral administration. Moreover, these commissions have large powers and too many duties with not enough members to fulfil them. In the same way, these election commissions should be formed earlier than stipulated in the Code.
- Provisions on transparency in the superior electoral commissions, particularly regarding the issuance of protocols to interested parties, must be substantially enhanced. For instance, security measures around the production and distribution of protocols should be increased. Existing laws and the draft Code provide that protocols of election results are issued at the level of Precinct election commissions, immediately at the conclusion of the count. It is absolutely essential that this rule be extended, in the General Part of the Code, to the Constituency election commissions, so that all interested parties can audit the election results from the polling station level up to the central level.
- The draft Code is very detailed and complicated; there are major repetitions, which should be avoided. Several provisions contain minimal differences between the different types of elections, which results in a high risk, for inexperienced candidates or political parties, to violate certain technical norms of the Code.
- The sanctions for violations of norms must be proportionate. Several provisions establish too severe sanctions.
- The rules on consideration of complaints are likely to be inefficient in practice and deny voters and other interested parties of a timely and effective remedy. They also deny adequate access to a court for the resolution of election disputes. In summary, election contestants should have the possibility of applying to the relevant court in all cases of refusals by election commission.
- About suffrage and voter lists, the draft Code should set out explicit obligations for the Precinct Election Commission in verifying the accuracy of the information provided by the local authorities.
- The rules on the number of signatures required in order to register a party list or presidential candidate remain excessively stringent. Moreover, the possibility to annul a registration should be exercised only by a court. Finally, voters should be permitted to sign signature lists for more than one candidate or party list in all elections.
- Several provisions must be improved regarding the election campaign, such as the campaign period, or the free airtime and space during the campaign.
- The lack of provision on securing election observation by non-partisan domestic observers is a serious shortcoming. In summary, the draft Code seems to establish diverse rules for different types of observers. Domestic and international observers

should enjoy the same rights and duties, and the Code should clearly define who could be accredited as an observer.

- It is essential that cancellation of a candidate's or party's registration, or refusal to register, be a sanction of last resort. Candidates and parties must be given an opportunity to correct minor defects in their registration papers.

- Regarding election funds, several provisions must be improved, notably the provisions pertaining to the reimbursement of the public funds that candidates receive in support of their campaigns.

- The draft Code should provide for the announcement of preliminary results.

- The draft Code should improve the guarantees given to the right to vote, free suffrage and freedom of expression, which are a background of several comments on the preliminary assessment.