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

**DRAFT OPINION**

**ON THE FEDERAL LAW ON THE ELECTION  
OF THE DEPUTIES OF THE STATE DUMA**

**OF THE RUSSIAN FEDERATION**

**on the basis of comments by**

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## I. Introduction

1. At the request of the chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), the European Commission for Democracy through Law (“the Venice Commission”) has prepared the present opinion on the Federal Law on Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation (“the Law on State Duma Elections”; CDL-REF(2012)002rev).<sup>1</sup>

2. The Law on State Duma Elections establishes the electoral framework of Russia’s lower Chamber, together with the Constitution and the Federal Law on Basic Guarantees of Electoral Rights and the Rights of Citizens of the Russian Federation to participate in a Referendum (“the Law on Basic Guarantees”). As agreed with the chair of the Monitoring Committee, the present opinion will therefore deal with some aspects of the Law on Basic Guarantees when necessary.

3. This opinion is also based upon:

- The Constitution of the Russian Federation;
- The Final Report of the Organization for Security and Co-Operation in Europe (“OSCE/ODIHR”) on the Election Observation Mission to the Russian Federation Elections to the State Duma of 4 December 2011;
- The Report of the Parliamentary Assembly of the Council of Europe on the observation of the parliamentary elections in the Russian Federation (4 December 2011) (Doc. 12833, 23 January 2012).

as well as upon the following documents of a general character:

- Venice Commission, Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);
- Venice Commission, Code of Good Practice in the Field of Political Parties (CDL-AD(2009)021)
- OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (CDL-AD(2010)024);
- Venice Commission, Interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043);
- Venice Commission, Report on the Impact of Electoral Systems on Women’s Representation in Politics (CDL-AD(2009)029);
- Venice Commission, Declaration on Women’s Participation in Elections (CDL-AD(2006)020);
- Venice Commission, Electoral Law and National Minorities (CDL-INF(2000)4);
- Conference on Security and Co-operation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE;
- Venice Commission, Report on Electoral Systems. Overview of Available Solutions and Selection Criteria (CDL-AD(2004)003);
- Venice Commission, Guidelines on an Internationally Recognised Status of Election Observers (CDL-AD(2009)059).

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<sup>1</sup> Official translation of the Federal Law on Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation.

4. The Venice Commission invited Ms Alanis Figueroa (member, Mexico), Ms Biglino Campos (member, Spain) and Mr Craig (substitute member, United Kingdom) to act as rapporteurs. On 16 and 17 February 2012, Mr Tuori and Mr Hamilton, as well as Mr Markert and Ms Ubeda de Torres, from the Secretariat of the Venice Commission, had meetings with the different authorities concerned – in particular both Chambers of Parliament and the Central Election Commission -, as well as with members of the civil society, political parties not represented in the *Duma* and associations which have tried to register as political parties and have not been successful. The present opinion is based on the comments by the members as well as on the input obtained in those meetings.

5. The Venice Commission is aware that President Medvedev proposed amendments to the electoral legislation, but it was not in a position to assess them at this stage.

6. *This opinion was adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... session (Venice, ...).*

## II. Scope of the opinion

7. According to the Constitution, the Russian Federation is a democratic, federal and republican State.<sup>2</sup> Russia's State power is exercised through a separation of three powers: executive, judicial, and legislative.<sup>3</sup> The legislative power rests on the Federal Assembly, composed by the Council of the Federation, which functions as a high Chamber, and the State Duma, which functions as the lower Chamber.<sup>4</sup> The Council of the Federation is not directly elected; rather, territorial political representatives designate its deputies.<sup>5</sup> The State Duma is composed by 450 deputies elected through proportional representation who stay five years in office, as established in a 2008 constitutional amendment.<sup>6</sup>

8. The opinion of the Commission is based on the text of the law, but takes also into account the context of the last elections for the State Duma, which took place on 4 December 2011. As a result of these elections, the governing party, United Russia, maintained its majority presence in the State Duma, although it diminished from 315 deputy seats to 238. Immediately after the elections took place, a number of allegations of irregularities were raised<sup>7</sup> and demonstrations took place, which resulted in several arrests.<sup>8</sup>

9. The present opinion does not deal with all details of the Law on State Duma Elections, but focuses on the most important provisions and in particular on those which could be amended in order to ensure a better conformity with the principles of the European electoral heritage. The issue of registration of political parties will be mentioned shortly, since *another draft opinion (CDL(2012)013) is being prepared on the law on political parties.*

## III. Complexity of the Electoral Legal Framework

10. The electoral legal framework is disseminated in several pieces of legislation, as stated in Article 2 of the Law on State Duma Elections: these are first of all the Constitution, the

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<sup>2</sup> Russian Constitution, art 1.

<sup>3</sup> Russian Constitution, art 10

<sup>4</sup> Russian Constitution, art 11

<sup>5</sup> Russian Constitution, art. 95.3

<sup>6</sup> Russian Constitution, art 95, 96

<sup>7</sup> --, 'Russian media see election flaws' BBC (5 December 2011) <<http://www.bbc.co.uk/news/world-europe-16033460>>

<sup>8</sup> --, 'Russia election: Hundreds rally against Putin in Moscow' BBC (5 December 2011) <<http://www.bbc.co.uk/news/world-europe-16042797>>

Law on State Duma Elections and the Federal Law on Basic Guarantees of Electoral Rights. However, other rules relating to elections may be found in the Law on Political Parties, the Law on the “State Automated System of the Russian Federation Vibory”, in the Law on the “Guarantees of Equality of the Parliamentary Parties in the Coverage of their Activity by the State-run Public TV Channels and Radio Channels”, in the “Law on Mass Media and the Law on Assemblies, Meetings, Rallies and Pickets”, in the Code of Administrative Offenses and the Law on Rallies, Meetings, Demonstrations, Marches and Picketing.

11. Such a framework is overly complex, duplicative, and open to interpretation, and may lead to its inconsistent application, as this happened in the recent elections.<sup>9</sup> In particular, paragraph 23 of the report of the Parliamentary Assembly on the 4 December 2011 elections to the State Duma states that “there was a degree of confusion about, and inconsistent application of, legal provisions. The lack of clarity in the legal framework allowed for it to be implemented mostly in favour of one party over the others.”

12. Such complexity goes against the requirement established in the Code of Good Practice in Electoral Matters that the electoral procedure be as simple as possible in order to safeguard the freedom of citizens to vote and to be elected.<sup>10</sup>

13. The existence of both the Law on State Duma Elections and the Law on Basic Guarantees could be the result of the Russian federal power allocation. On the one hand, the Law on Basic Guarantees could be understood as the implementation of the Russia Federation competence on “the regulation and protection of the right and freedoms of the individuals and citizens” stated in Art 71 of the Russian Constitution and binding all the subject of Russian Federation. On the other hand, the Law on State Duma Elections should only rule the election of one of the chambers of the Federal Parliament. For this reason, it does not apply to the subjects of the Russian Federation. However, this fact does not justify the reiterations, complexity and ambiguities of the system.

14. To remedy this, the Commission would strongly encourage a consolidation and simplification of the electoral legal framework in order to avoid repetition and to foster clarity and precision in the application of the law. The elaboration of a comprehensive electoral code applying to all elections should be envisaged.

#### **IV. Analysis of the Law on State Duma Elections**

##### **Chapter I. General Provisions**

15. Article 5 deals with electoral rights of citizens at the elections of the State Duma. Firstly, it states who is entitled to elect and to be elected. Secondly, Article 5 imposes restrictions and provides for causes of deprivation of these rights that meet only partly the requirements of the European electoral heritage set up by the Code of Good Practice in Electoral Matters adopted by the Venice Commission.<sup>11</sup>

16. However, some aspects of this provision appear as excessive. This is the case of the rules on ineligibility to be elected, applied to double citizens or persons with a right to reside on the territory of another state, if they are actually resident of the Russian Federation (Article 5.4.1 of the Law on State Duma Elections and Article 8.3<sup>1</sup> of the Law on Basic Guarantees).

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<sup>9</sup> OSCE/ODIHR Final Report, p. 5.

<sup>10</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.3.2.i. and par. 31.

<sup>11</sup> CDL-AD(2002)023rev, I.1.1.

17. Article 5.4.2 is also too extensive. Deprivation of the right to be elected should be limited to cases of criminal conviction for a serious offence, upon a specific decision of a court of law and in conformity with the principle of proportionality, and not be extended to administrative penalty for committing administrative offenses and to “extremist” activities without a criminal character (Article 5.4.2.4 of the Law on State Duma Elections combined with Article 76.8.g of the Law on Basic Guarantees).

18. Moreover, the obligation to mention any record of conviction that has not been withdrawn or spent in the act of candidacy (Article 38.4.2) as well as in the list of signatures (Article 40.3) and the ballot (Article 73.6) may *de facto* lead to preventing citizens who would not fall under Article 5.4.2 from being candidates.

19. Article 6 establishes terms and proceedings for calling the elections. The decision to call the elections shall be taken by the President of the Russian Federation no earlier than 110 days and no later than 90 days prior to the election day. This period of time coincides with the terms established in other democratic countries and should be sufficient for guaranteeing the proper development of the electoral process.

20. However, in the case of Duma elections, the voters’ list is not a permanent document but it is the result of a complex process repeated for every election. The procedure for collecting voter’s signatures in order to register non parliamentary parties’ candidates is also highly complex. For these reasons, the term established in the Law seems to be too short for the proper fulfilment of the legal requirements by political parties or election commissions. Moreover, the term for appealing the resolution of the Central Election Commission on the registration of a federal list of candidates is five days (Article 44.7) but there is no deadline for the Supreme Court decision. This lack of regulation could infringe the right to participate in elections in equal conditions and due process of law.

21. Article 7 deals with the right to nominate candidates. Its content is very limitative, due to the following reasons:

- Only political parties are allowed to nominate candidates, which is very restrictive since it prevents independent candidacies or formation of electoral blocs.

- Political parties are entitled to participate in the elections only if they are registered according to the complex and detailed procedure laid down in Chapter III of the Federal Law “on Political Parties”.

22. Article 8 and Article 9 deal with the preparation and conduct of elections by the election commissions. In conformity with international standards, these Articles impose independence and transparency in the preparation and conduct of elections. However, levels and procedure of formation of election commissions are set up in Chapter III of the Law on Elections which in turn refers to the Basic Law on Guarantees. This overlapping could generate some disturbing effects on the legal certainty principle and on the correct functioning of the election commissions, issues that will be analysed below.

## **Chapter II. Election Precincts. Voters’ Lists**

23. The proper maintenance of electoral registers is vital in guaranteeing universal suffrage.<sup>12</sup> However, Chapter II does not fulfil all conditions that have to be met if the registers are to be reliable.

24. According to Article 15, voters’ lists are not permanent documents since they must be prepared by the relevant election commission separately for each election precinct in

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<sup>12</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.1.2.

accordance with the form established by the Central Election Commission. The permanent character of the electoral registers is however an important guarantee of universal suffrage.<sup>13</sup> It might be replaced by a transfer of data from another permanently updated register to the voters' register, but such a guarantee is not enshrined in the law. The Commission suggests that electoral registers be made permanent, rather than only compiled before the start of each election.

25. Article 16 of the Law establishes the requirements to include citizens of the Russian Federation in the voters' lists, such as nationality and habitual residence. These restrictions on the vote are compliant with the principle of universal suffrage, since the right to vote may be subject to restrictions of age, nationality, and residence, among others.<sup>14</sup> However, the Commission notes that this Article is particularly complex, and, since it is of such vital importance for voters, it would encourage its simplification.

26. There are different cases in which a voter can be entered into the voters' list the day preceding the day of elections or on the very day of election (e.g. Article 16.4, 16.9 and, perhaps, Article 16.10). At any rate, in order to avoid frauds, registration should not take place at the polling station on election day.<sup>15</sup>

27. Furthermore, the procedure for the compilation of voters' lists is very complex and detailed. The apparent absence of a unique and permanent register for the whole Russian Federation could be a serious obstacle for the exercise of voters' rights and it carries the risk that a citizen is entered into the list of voters at different polling stations.

### **Chapter III. Election Commissions**

#### Composition of election commissions

28. Election commissions are central to the electoral regime established by the Law on State Duma Elections. This is made clear by Articles 18-29, which specify the basic composition and types of election commission. It is even more evident when one considers the role played by election commissions in the running of the election itself, which is dealt with by Chapter XI, Articles 78-88.

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

30. Articles 18-29 deal with election commissions more in detail. There are various levels of commissions. The Central Electoral Commission, CEC, sits at the apex of the scheme, but there is also provision in descending order for electoral commissions of subjects of the Russian Federation, ECSRFs, territorial election commissions, TECs, and precinct election commissions, PECs. Political parties can nominate non-voting members to the election commissions.

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<sup>13</sup> CDL-AD(2002)023rev, I.1.2.

<sup>14</sup> Code of Good Practice in Electoral Matters, I.1.1.

<sup>15</sup> Code of Good Practice in Electoral Matters, I.1.2.iv.

31. Article 19 of the Law on State Duma elections provides that the rules concerning the creation of the CEC and ECSRFs are contained primarily in the Law on Basic Guarantees. The rules concerning the CEC are contained in Articles 20-21 of this law.

32. Thus in terms of composition of the CEC Article 21 of the Law on Basic Guarantees of Electoral Rights provides that the CEC should have a five year period of office and should be composed of 15 members. Five members are appointed from candidates proposed by factions in the Duma, or individual members of the Duma etc. Five members of the CEC are appointed by the Federation Council of the Federal Assembly of the Russian Federation from among candidates nominated by the legislative (representative) bodies of state power of subjects of Russian Federation and top executives of subjects of the Russian Federation (the heads of the highest executive bodies of state power of subjects of the Russian Federation). The remaining five members of the CEC are appointed by the President of the Russian Federation.

33. Independent and impartial electoral commissions are necessary to ensure that elections are properly carried out. The creation of a permanent central body, the Central Electoral Commission (CEC), complies with European standards.<sup>16</sup> However, there is a lack of procedural safeguards to ensure the independence and impartiality of the electoral authorities, particularly of the Territorial Electoral Commissions (TEC) and the Precinct Electoral Commissions (PEC).

34. The Law on Basic Guarantees establishes some guarantees of the independent status of Central Electoral Commission members. This Law establishes a five-year term and the members of the Central Election Commission cannot be removed from their duties except by the causes and in the forms established by law. There are also detailed norms about the incompatibility and ineligibility of the members. However, except in the case of the five members appointed by the Duma, there are no sufficient guarantees of the pluralistic composition of the Central Electoral Commission. Nor are there guarantees of the impartiality of its members since the majority of them may share the same political orientation. This would go against the principles of the European electoral heritage, as enshrined in the Code of Good Practice in Electoral Matters.<sup>17</sup> Moreover, legislation does not ensure that members of election commissions – including the Central Election Commission - are experts in electoral legislation and receive standard training.<sup>18</sup>

35. The composition of the ECSRFs is dealt with in Article 23.6 of the Law on Basic Guarantees of Electoral Rights, which provides that 50% of members are appointed by the legislative body of state power, and 50% by the head of the highest executive body of state power of the subject of the Russian Federation. Here again, political balance is not ensured.

36. The formation of other election commissions is also regulated in the Law on Basic Guarantees and is quite complex. In general, the problems mentioned above when referring to the Central Election Commission are repeated or increased because the members of lower level election commissions are appointed by higher election commissions in the case of territorial election commissions (Article 26.5 Law on Basic Guarantees) and precinct commissions (Article 27.4 Law on Basic Guarantees). The Law on Basic Guarantees states several requirements and limitations to these appointments. Thus, it disposes that the appointment must be done on the basis of proposals made by political parties and public associations (Article 26.6, 27.5). No more than one representative of each political party or public association can be appointed to an election commission (Article 22.4). However, there are no clear fixed rules about the criteria that should guide these appointments. In practice,

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<sup>16</sup> Code of Good Practice in Electoral Matters, II.3.1.

<sup>17</sup> CDL-AD(2002)023rev, II.3.1.

<sup>18</sup> CDL-AD(2002)023rev, II.3.1.g and par. 83-84.



most election commissioners have been appointed by state and local authorities, thus creating an informal link between them.<sup>19</sup>

37. Furthermore, some provisions of the Law on Basic Guarantees can seriously endanger autonomy and neutrality of elections commissions. That is the case, for example, of Article 22.5. It allows that half of the members of election commissions be state and municipal officials. Furthermore, the chairman of territorial and precinct commission can be removed from position by decision of higher election commissions (Article 28.11 of the Law on Basic Guarantees).

38. According to Article 75.15 of the Law on the State Duma elections, a member of a precinct election commission shall be immediately barred from participation in its work if he or she commits any violation of the election legislation. Such a provision should be qualified in order to be applied in conformity with the principle of proportionality. The same is true concerning the rules on dissolution of an election commission for violation of the electoral rights of citizens (Article 31 of the Law on Basic Guarantees).

39. The present composition of election administration leads to a high degree of distrust in the independence and impartiality of election commissions at all levels.<sup>20</sup> It should therefore be reconsidered in order to be more balanced.

#### Powers and functioning of election commissions

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

41. Although the law is detailed and precise when enumerating these kinds of organic competences, the regulation of the citizens' *complaints* is not clear at all. Article 26.22 only states that the Central Electoral Commission shall "consider complaints (applications) concerning decisions and actions (inaction) of the territorial election commission and their officials and take reasoned decisions regarding such complaints (application)". Article 90 of the Law on State Duma Elections is slightly more detailed. It states that election

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<sup>19</sup> OSCE/ODIHR Final Report, p. 5.

<sup>20</sup> OSCE/ODIHR Final Report, pp. 2, 6; Report of the Parliamentary Assembly of the Council of Europe on the observation of the parliamentary elections in the Russian Federation (4 December 2011), par. 33.

commissions shall be obliged to consider applications received during election campaign, carry out inquiries and provide written answers to the claimants within five days. However, Article 90 fails to mention who is entitled to file a complaint, the procedure and deadlines for submitting it and types of appeals to Court of Justice. Article 20.4 of the Law on Basic Guarantees regulates more precisely this election commissions' competence since it contains rules about competence, procedure and terms for filling appeals apply to each election commission. However, it is difficult to decide if the appeals of Article 20.4 of the Law on Basic Guarantees coincide with the complaints mentioned in Article 25 of the Law on Elections. If not, the result could be confusing and limit the rights of citizens and political parties.

42. This problem appeared in practice at the occasion of the 4 December 2011 parliamentary elections. As established by the report of the Parliamentary Assembly, only five complaints were decided upon by the CEC. The CEC qualified all correspondence concerning allegations of violations of the election legislation as "applications" and did not treat them as complaints that needed to be dealt with in accordance with legal procedures, thus not complying with the requirement that all complaints must be acted upon and responded to in writing within five days.<sup>21</sup>

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

#### General remarks

44. More generally, the provisions concerning commissions are complex and contained in a number of different laws. It is not always easy to understand how they inter-relate or what the practical impact of the provisions actually is in terms of the independence of the commissions. [Thus to take one example, Article 29 guarantees openness of electoral commission meetings. This gives rights to, *inter alia*, registered candidates and members of electoral associations to attend commission meetings. This may serve to enhance impartiality and independence of TECs and PECs, but it might equally be capable of intimidating ordinary commission members in the discharge of their business.]

45. The Commission therefore recommends that legislation that regulates the composition and powers of election commissions foster their independence from the State.

### **Chapter IV. Observers, Foreign (International) Observers, Mass Media Representatives**

#### National observers

46. Article 30 of the Law on State Duma Elections regulates the presence of national observers in the elections. A political party that has registered candidates can have observers, and a Russian citizen who can vote can also be an observer. Those who hold public office, heads of top executive bodies and others such as judges cannot be observers. There are detailed rules concerning certification of observers.

47. While this Article allows the presence of partisan observers, the Commission notes that the participation of non-partisan or civil society observers<sup>22</sup> is not provided for. In practice, civil society groups may be allowed to observe elections only as media representatives

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<sup>21</sup> Report of the Parliamentary Assembly of the Council of Europe on the observation of the parliamentary elections in the Russian Federation (4 December 2011), par. 58-59.

<sup>22</sup> Cf. Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), par. 87.

(Article 32 of the law)<sup>23</sup>. Election observation is one of the most important procedural safeguards of an election. The presence of national partisan as well as non-partisan observers is very important. Therefore, the Commission highly recommends that the law be adjusted to ensure their presence, a recommendation supported by the OSCE in its final report.<sup>24</sup>

48. The rights of observers are specified in Article 30.6. Article 30.7 provides for a number of limitations; in particular, it prohibits the observers from doing “anything that could interfere with the work of election commissions”. This limitation is set up in too general terms, and precinct commissions could interpret it in a restrictive way, hindering the faculties recognised to observers by law. This would go against international principles.<sup>25</sup>

#### International observers

49. International observers play a very important role when it comes to the impartial verification of the lawfulness of an election,<sup>26</sup> and election observers should be given the widest possible opportunity to participate in the election process,<sup>27</sup> which includes the pre-voting phase, the voting day, and the post-voting phase.<sup>28</sup>

50. Article 31 deals with international observers and once again refers to other norms, stated in international treaties or federal laws. Article 30 of the Law on Basic Guarantees does not clarify international observers’ position. It is not always clear which provisions apply to all observers, and which ones only to national, respectively to foreign/international observers. Article 30.13 of the Law on Basic Guarantees states that foreign (international) observers “shall conduct their activities in compliance with the federal law”, which adds references.

51. For example, Article 29.5 specifies that foreign/international observers can be present at polling stations, and that they can also be present in other election commissions when they determine the vote returns, election results, work on the protocols of vote returns, election results and when votes are being recounted. Moreover Article 79(20) states that foreign/international observers can check the correctness of the vote counting in PECs. Article 86.1 in addition makes provision for foreign/international observers to check the electoral returns broadly interpreted for any electoral commission. Foreign/international observers are only allowed to make observations about the conduct of the election after it has been concluded (Article 31.9). This restriction appears as disproportionate, since public remarks before the end of the electoral process should help improving the electoral process when it is still time to do so. Article 31.10, prohibiting international observers from taking advantage of their status to carry out activities unrelated to monitoring preparation and conduct of elections, could also lead to excessive restrictions to fundamental rights.

52. Article 31.5 of the Law establishes that the mandate of foreign or international observers ends on the day that the official result of the election is announced. The Commission suggests the extension of this mandate up to the final resolution of the electoral disputes.

53. More generally, the basic problem of Chapter IV seems to be the discretion recognised to the Central Electoral Commission in order to provide certificates, the moment in which

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<sup>23</sup> Report of the Parliamentary Assembly of the Council of Europe on the observation of the parliamentary elections in the Russian Federation (4 December 2011), par. 21.

<sup>24</sup> OSCE/ODIHR Final Report, p. 2.

<sup>25</sup> Code of Good Practice in Electoral Matters, II.3.2.

<sup>26</sup> Code of Good Practice in Electoral Matters, par. 89.

<sup>27</sup> Guidelines on Election Observers (CDL-AD(2009)059), par. 11.

<sup>28</sup> Guidelines on Election Observers, ch. II.

they should be issued, powers granted to international observers and conditions for revoking accreditations.

54. Moreover, according to Article 75.15 of the Law on the State Duma elections, an observer shall be immediately removed from the polling station if he or she commits any violation of the election legislation. Like for members of election commissions, such a provision should be qualified in order to be applied in conformity with the principle of proportionality.

## **Chapter V. Political Parties**

### Registration of Political Parties

55. The main law concerning political parties in Russia is the “Law on Political Parties”, rather than the State law on Duma Elections.<sup>29</sup> However, the provisions in this chapter do establish certain requirements for a political party to participate in the elections to the State Duma. Article 35, which details the requirements to appoint the authorised representatives of political parties, provides that such an appointment is subject to registration by the CEC (par. 7).

56. The ability of all political parties to access the ballot should be equal and free from discrimination.<sup>30</sup> The European Court of Human Rights has dealt with the issue of denial of registration to candidates to the State Duma and, at least in one instance, has found that the authorities have acted with the lack of a clear legal basis.<sup>31</sup> As regards registration of political party themselves, the Court recently established that the domestic law concerning registration of parties is not formulated with sufficient precision,<sup>32</sup> and that Russian authorities interfere beyond any legitimate aim in the internal functioning of political parties.<sup>33</sup> Additionally, the OSCE documented in its final report on the 4 December 2011 elections that several non-registered parties and civil society activists complained of the strict restrictions to political party registration, claiming that this led to a lack of choice for voters.<sup>34</sup> The Commission would thus recommend a reassessment of the electoral legislation concerning requirements for the registration of political parties in order for all parties to be allowed to participate in elections without discrimination.

## **Chapter VI. Nomination and Registration of Federal Lists of Candidates**

### Federal list of candidates – absence of constituencies

57. The lists of candidates are established at federal level (Article 36), even if they may be divided into regional lists, according to a rather complicated procedure. In the biggest country of the world, moreover with a federal structure, such system tends to create a distance between the voters and their representatives. A minimal step would be to make regional lists coincide with the subjects of the Federation. The drawing of proper constituencies should however be envisaged.

58. The Venice Commission takes note that President Medvedev proposed amendments to the law on State Duma Elections which would reintroduce constituencies.

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<sup>29</sup> Law on State Duma Elections, Article 33.

<sup>30</sup> European Commission for Democracy Through Law (Venice Commission), ‘Guidelines on Political Party Regulation’ (15-16 October 2010) CDL-AD(2010)024 (Guidelines on Political Parties), par. 143.

<sup>31</sup> Krasnov and Skuratov v Russia (App nos. 17864/04, 21396/04) ECtHR 19 July 2007 [60].

<sup>32</sup> Republican Party of Russia v Russia (App no 12976/07) ECtHR 12 April 2011 [85].

<sup>33</sup> Republican Party of Russia v Russia [89].

<sup>34</sup> OSCE/ODIHR Final Report, p. 4.

### Limitation of the right to present candidates

59. Articles 36 and 37 of the Law on State Duma Elections establish the rules governing the nomination of the federal lists of candidates that each political party must submit to participate in the election; Article 36 establishes the rules for parties to nominate candidates within the party, while Article 37 details how citizens who are not members of a particular political party can still be nominated by said political party. However, there is no regulation that allows for independent candidates.

60. Only political parties which are registered not later than a year before the voting day can register candidates (Article 38.1). Even if there were no restrictive provisions on registration, this requirement would appear excessive. The Venice Commission suggests that all parties registered before the registration of candidates starts are allowed to present candidates, and that unregistered groups may present lists of independent candidates.

61. The Commission has stated, in its Guidelines on Political Parties, that the right of individual candidates to run for office completely free from party associations is an important one,<sup>35</sup> and the CSCE's Copenhagen Document also highlighted its importance.<sup>36</sup> Thus, the Commission would recommend that the Law on State Duma Elections be revised in order to include non-partisan candidates in the elections.

62. The proceedings imposed to political parties in order to nominate a federal list of candidates are very strict and must be complied with in a very short period of time.

63. More generally, the rules on registration of candidates could be interpreted in a restrictive way. This could be for example the case of the information on the size and sources of the income of each candidate (Article 38.4.2). Such provisions should at least be interpreted in conformity with the principle of proportionality.

64. Moreover, collection of two hundred thousand voters' signatures in a very short period of time from different parts of Russia is necessary for parties which are not yet represented in the State Duma (Article 39, in particular par. 3, and par. 4). Such rule appears excessive due to the already stringent rules on political parties' registration. Prohibiting submitting a number of signatures exceeding the number required by more than 5 percent (Article 42.2.1) could lead to the invalidation of a list which would otherwise have a sufficient number of signatures, if the number of invalid signatures is higher than these 5 percent.

65. According to international standards, all signatures should be checked, except when it has been established beyond doubt that the requisite number of signatures has been collected.<sup>37</sup> Selective verification of signatures (Article 43.9, 18-20) should be avoided. What is important is that a sufficient number of signatures is obtained, not that the number of invalid signatures – or the number of signatures collected in places where collection of signatures is prohibited - is low (cf. Article 44.3.3-4). Put together with the rule quoted in the previous paragraph, this provision may lead to refuse the registration of a list which would normally have obtained the required number of signatures. Opponents to a party could introduce forged signatures in a number proper to make its list of signatures invalid. Moreover, the control of validity of signatures should be ensured in a way that prevents any arbitrariness and in conformity with the principles of data protection. The broad list of bodies that are allowed to verify signatures – including any administrative body and -citizens on contract -, as established in Article 43.7 of the Law on State Duma Elections as well as in

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<sup>35</sup> Guidelines on Political Parties (CDL-AD(2010)024), par. 130.

<sup>36</sup> Copenhagen Document [7.5]

<sup>37</sup> CDL-AD(2002)023rev, I.1.3.iv.

Article 38.3 (and Article 28.19) of the Law on Basic Guarantees, should be revised in this regard.

66. As a result of all these elements, the process of presenting candidates to elections stated in Chapter VI seems to be thought not to promote, but rather to hinder passive suffrage.

67. Moreover, Article 38.24-26 of the Law on Basic Guarantees is still more restrictive, by providing for a very extensive number of formal and material grounds for not registering a list of candidates, without any reference to the principle of proportionality. See also Article 76.6-8 of the latter law on the cancellation of a candidate's registration.

68. The Venice Commission therefore recommends revising the provisions on registration of candidates in order to help and not to restrict political competition.

### Representation of Women and Minorities

69. The Commission takes note of the fact that there are no specific provisions concerning the representation of women or national minorities in the Law on State Duma Elections. The effective representation of women and national minorities is part of the principle of equal suffrage.<sup>38</sup> According to the Code of Good Practice in Electoral Matters, "Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis".<sup>39</sup>

70. One of the most effective ways to ensure the balanced representation of women in a parliament elected by way of proportional representation is to institute gender quotas that specify the minimum percentage of female candidates that should be included within the party lists, usually with certain provisions concerning ranking order in that list.<sup>40</sup>

71. Additionally, electoral law must guarantee equality for persons belong to national minorities.<sup>41</sup> One of the ways to do this is to encourage the creation of political parties that represent minorities,<sup>42</sup> or to ensure that parties include minority candidates in their lists, so as to have a fair balance of majority and minority candidates represented.<sup>43</sup>

72. The Commission notes that the Russian Constitution establishes that equality between men and women must be guaranteed,<sup>44</sup> and that all citizens, regardless of race or culture, must be treated equally.<sup>45</sup> It could therefore be envisaged that the Russian electoral legal framework incorporate provisions of the kind mentioned above, to properly ensure the representation of women and of national minorities, in line with the Constitutional guarantees already in place.

### **Chapter VII. Status of Candidates**

73. Article 45 establishes equality of candidates: *prima facie* all candidates have the same rights and duties.

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<sup>38</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) , II.2.4 and II.2.5.

<sup>39</sup> CDL-AD(2002)023rev, I.2.5. See also Declaration on Women's Participation in Elections (CDL-AD(2006)020).

<sup>40</sup> European Commission for Democracy Through Law (Venice Commission), 'Report on the Impact of Electoral Systems on Women's Representation in Politics', CDL-AD(2009)029, par. 19.

<sup>41</sup> Code of Good Practice in Electoral Matters, II.2.4.

<sup>42</sup> European Commission for Democracy Through Law (Venice Commission), 'Electoral Law and National Minorities', CDL-INF(2000)4 (Electoral Law and National Minorities), III.A.

<sup>43</sup> Electoral Law and National Minorities, III.B.1.a.

<sup>44</sup> Russian Constitution, art 19.3.

<sup>45</sup> Russian Constitution, art 19.1.

74. Article 46 of the Law on State Duma Elections imposes several restrictions to avoid the use of public means in favour of any political party that contends for elections. This should ensure the *neutrality of State Authorities*. The Law specifies the meaning of the expression “take advantage” by enumerating several strictly forbidden behaviours, such as the involvement of subordinated people, the use of public premises and the use of telephone and so on.

75. In particular, it establishes that any candidate, who occupies a state or municipal position, or a high-influence job, may not take advantage of their office or official position. Also persons, who are not candidates, cannot take advantage of their office or official position. This complies with the requirements of neutrality in elections established in the Code of Good Practice in Electoral Matters<sup>46</sup> and the Copenhagen Document.<sup>47</sup>

76. Moreover, Article 47 contains protections for registered candidates. Thus Article 47.1 provides in effect that the employer must relieve the candidate from work or service from the day of the candidate's registration by the Central Election Commission to the day of the official publication of the results of elections of deputies of the State Duma. Article 47.2 protects the candidate from dismissal and provides that the period during which a candidate participates in elections of deputies of the State Duma shall be included in his overall employment record. Article 47.3 stipulates that a registered candidate shall not be subjected to criminal prosecution, arrest or administrative court convictions without the consent of the Prosecutor-General of the Russian Federation

77. The preceding provisions are reinforced by Article 55.7, which states that no election campaign shall be conducted and no kind of campaign materials shall be produced and distributed by bodies of state power, other state bodies, or bodies of local government. In addition, Article 55.8 states that persons who hold state or elected municipal office shall not engage in electioneering on TV and radio channels and in the print media unless such persons are on a registered federal list of candidates.

78. However, the Commission takes note that the OSCE reported that in the recent elections there was a noted lack of neutrality, that the distinction between the state and the governing party was often blurred, and that many candidates took advantage of their official position.<sup>48</sup> The Commission strongly recommends that procedural safeguards be put in place to prevent this and ensure that all candidates are in full compliance with Article 46. The Law should for example forbid the use of public means in any kind of action or campaigning that could play in favour of any candidate. Separation from current office prior to becoming an official candidate is one option. The Venice Commission also suggests implementing a system through which complaints may be filed regarding the violation of this Article, to be decided by an independent authority.

79. Paragraph 43 of the Parliamentary Assembly report on the Observation of the parliamentary elections in the Russian Federation denounces that, in the campaign, the distinction between the state and the ruling party was frequently blurred. For example, the report remarks that billboards were observed stating that metro construction works were performed by the local branch of United Russia. This was perceived by other parties as campaigning for United Russia, paid out of state funds.

80. This kind of propaganda should be avoided. For example, the Law could forbid any kind of activity financed by authorities with public funds which contain references to the

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<sup>46</sup> Code of Good Practice in Electoral Matters, I.2.3 and explanatory report, par. 18-19.

<sup>47</sup> Copenhagen Document [5.4].

<sup>48</sup> OSCE/ODIHR Final Report, p. 10.

achievements reached by public institutions ruled by parties that contend elections. Furthermore, the inauguration of public works or services should be limited during the election period.

## **Chapter VIII. Informing of Voters and Electioneering**

### Equal Access to Media Outlets

81. The general principle concerning *balance in the media* is contained in Article 10.4, which states that: 'equal conditions of access to state mass media for election campaigning shall be guaranteed to the political parties which registered their federal lists of candidates'. The more detailed provisions are to be found in Chapter VIII.

82. Equal access to the media by all political parties is paramount in order to fulfil the requirement of equality of opportunity in an election.<sup>49</sup> Article 51 of the Law on State Duma Elections establishes that all political parties must have equal access to both visual and written media. Article 51 contains the rules about electioneering: Informational materials carried by the mass media or disseminated by other methods must be objective and accurate and not violate the equality of political parties provided for in this Federal Law. Mass media organisations shall be entitled to inform voters freely with an exception of restrictions imposed by this Federal Law, and the Law on Basic Guarantees. In TV and radio news programs and in newspaper publications, the reports concerning election events must be presented in the form of separate news items, without any comments. Such news items cannot be paid for by political parties/candidates; and must not discriminate against or give preference to any political party, in particular with regard to the time devoted to highlighting their election activities, and the amount of space allocated in the print media for such reports. There are protections for journalists to prevent them from being fired during coverage of the elections. There are also rules preventing information being made public about the election on the day of voting, before voting has ended.

83. A number of media outlets in Russia are government-owned or at least partly government-funded, and the OSCE reported that this led to a disproportionate coverage of the governing party by the media in contrast with other parties competing in the election.<sup>50</sup> Additionally, the observers noted an unequal treatment of the political parties by service providers in favour of the governing party.<sup>51</sup> Accordingly, the Commission suggests the adoption of legal provisions that ensure that there is an effective sanction for a violation of neutrality when it comes to access to the media. An independent oversight body to ensure that all parties receive equal treatment in this regard would also help ensure the compliance of all participants with such standards.

84. As Paragraph II.1 of the Code of Good Practice in Electoral Matters states, "democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press". An open debate of ideas is vital in a democratic system, especially in an election period. Actually, freedom of the press is more vital in campaigning than in any other moment of political life, since it permits to express opinions on candidate programs and to criticize public powers. Voters cannot form their will properly without free debate of ideas, not only between candidates, but also by journalists and citizens in the media.

85. As established by the case-law of the European Court of Human Rights, restrictions of these freedoms must have a basis in law, be in the public interest and comply with the

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<sup>49</sup> Code of Good Practice in Electoral Matters, I.2.3.a.ii., explanatory report, par. 18ff.

<sup>50</sup> OSCE/ODIHR Final Report, p. 13.

<sup>51</sup> OSCE/ODIHR Final Report, p. 4.



principle of proportionality. According to this principle, fewer restrictions may be admitted concerning private media than public media.

86. However, there are a number of limitations on media that can restrict freedom of speech disproportionately. For example, Article 51.4 imposes neutrality on public or private media and prohibits any comments or information given on election campaigning events. Article 55.2 defines as election campaign any action performed by members of the press if their professional actions are repeatedly performed to encourage voters to vote for or against some federal list of candidates.

87. It is true that the restrictions cited above are in the public interest, since their aim is to guarantee equality. However, these limitations put the proportionality principle at risk because the damages caused to freedom of expression are heavier than the benefits generated to equality. It must be added that similar ends could be reached with less dangerous means for the freedom of the press.

88. Article 57 provides for the distribution of air time on TV Channels and space in print periodicals, as well as for equal access to media. According to Article 57.4, state-owned and municipal TV and radio broadcasters and print media outlets are obliged to ensure that political parties have equal terms and conditions for electioneering and, in particular, for the presentation of their election programs to voters. According to Article 57.5, nation-wide state-owned TV and radio broadcasters and print media outlets shall offer free air time and free print space to political parties for electioneering. Article 57.6 contains an analogous obligation for regional state-owned TV and radio broadcasters and print media outlets. Article 57.9-11 contains the rules relating to non-state-owned TV, radio broadcasters and print media. The basic approach here is that they may provide air time etc. for a charge, but that the amount charged must be the same for all parties. The limitation of these rules to media registered not less than one year before the day of the official publication of the decision to call the elections is however difficult to understand.

89. This “strict” equality is one of the possibilities that the Code of Good Practice in Electoral Matters admits in order to ensure equality of opportunity (par. I.2.3). However, Article 57.1 and 2 provide free time and space only to political parties that registered federal lists of candidates and received more than 3 per cent of voters at the most recent Duma election. This distribution is in breach of equal treatment between parties and seriously damages small parties in favour of main parties.

#### Other issues

90. Article 55.7 prohibits campaigning by a number of categories of people. If such restrictions may favour neutrality of the state when applied to public officials, they do not appear as justified concerning members of the press (Article 55.7.8). The extension of such prohibition without any exception or qualification to foreign nationals (Article 55.7.6)<sup>52</sup> or persons having been sentenced for whatever violation of Article 56.1 of the Law on basic guarantees – referring to the Law “on Countering Extremist Activity”<sup>53</sup> – appears as disproportionate.

91. Article 55.10, on the possibility for an election commission to ask for submission of an election campaigning material, should not be understood as allowing for a restriction to freedom of expression.

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<sup>52</sup> The same question could also be raised concerning the general prohibition of donations to electoral funds by foreign nationals (Article 64.7).

<sup>53</sup> The “Law of Countering Extremist Activity” will be examined in another opinion of the Venice Commission.

92. Article 62.5.2.3 of the Law on State Duma elections restricts candidates from disseminating any negative information regarding other political parties or candidates (*negative campaigning*). European standards are violated by any electoral law which prohibits insulting or defamatory references to official or other candidates, since the protection of free speech is paramount to achieving a truly free election.<sup>54</sup> The Commission recommends the modification of the provision prohibiting negative campaigns in the electoral process of the State Duma.

### **Chapter IX. Funding of the Election of Deputies of the State Duma. Electoral Funds**

93. Under Article 63 of the Law on State Duma Elections, the preparation and realisation of elections is paid through public funds, which is consistent with international and European standards.<sup>55</sup> However, under Article 64.1 political parties must establish their own electoral campaign funds, and they do not receive public funding. This leads to a practical inequality between the governing party and other political parties, since, as was reported by the OSCE, the governing party spent far more than other competing political parties in the recent elections of 4 December 2011.<sup>56</sup>

94. The regulation of the funding of political parties and electoral campaigns is a very important factor of the regularity of the electoral process.<sup>57</sup> The Commission's Guidelines on Political Parties establish that public funding, and its corresponding regulations, are a way to prevent corruption, support the role played by political parties, and, quite importantly, a way of ensuring that all parties are able to participate in elections according to the principle of equal opportunity.<sup>58</sup>

95. The Commission recognises that a cap on campaign expense is already in place,<sup>59</sup> However, it suggests that the establishment of public funding for political parties and further supervision and regulation is needed in order to achieve effective equality between the political parties participating in the elections. The Code of Good Practice in the Field of Political Parties strongly encourages the creation of an independent supervisory body in order to achieve the desired transparency in the matter of political party spending.<sup>60</sup>

96. Relatively small violations of rules on campaign financing (5 % excessive expenditure or expenditure from illegal sources) lead to the disqualification of a list (Article 44.3.7-8). Such provisions go against the principle of proportionality. Financial sanctions should be sufficient except perhaps in case of gross violations.

### **Chapter X. Voting**

97. In general, the provisions of Chapter X are in conformity with the principles of the European electoral heritage. However, some measures could be taken to improve transparency. Without entering all details, the following remarks may be done.

98. Article 72.2 states that polling stations shall have a hall with booths or other places for secret voting. Secrecy of the vote is one of the main guarantees of voters' freedom. For this

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<sup>54</sup> Code of Good Practice in Electoral Matters, par. 61.

<sup>55</sup> Code of Good Practice in Electoral Matters, par. 111; Guidelines on Political Parties (CDL-AD(2010)024), par. 176 ff.

<sup>56</sup> OSCE/ODIHR Final Report, p. 11.

<sup>57</sup> Code of Good Practice in Electoral Matters, par. 107ff; Guidelines on Political Parties (CDL-AD(2010)024), par. 176 ff.

<sup>58</sup> Guidelines on Political Parties, par. 38.

<sup>59</sup> Law on State Duma Elections, Article 64.3.

<sup>60</sup> European Commission for Democracy Through Law (Venice Commission), 'Code of Good Practice in the Field of Political Parties', CDL-AD(2009)021, par. 167 ff.

reason, booths should be closed spaces in which privacy must be guaranteed. The use of booths should be mandatory to avoid pressures on the exercise of voters' rights.

- Article 72.12 provides for stationary ballot boxes inside the polling station. Ballot boxes should be transparent to avoid ballot box stuffing.

- Article 74 deals with absentee certificates. According to this provision, a voter unable to come to the polling station on the voting day may receive an absentee certificate from the respective territorial election commission or the precinct commission. Upon presentation of the certificate, the voter is included in the voters' list at the election precinct in the territory in which he/she stays on the voting day. The proceedings for applying for an absentee certificate, issuing it, and registering it are quite complex and bureaucratic. However, different elements can limit transparency:

- The lack of a national and stable voters' register could make a double issue of absentee certificates possible.

- Article 74.5 does not specify the election commission which is competent. The proceeding and the authority in charge of issuing an absentee certificate are not clearly specified in Article 74.7.

- The use of the certificate is decided by the voter the very election day, without previous notice to election commissions. Article 16.9 allows the deliverance of an absentee certificate on election day on the basis of an oral request.

- A register with the name of the voters with absentee certificates drawn on the election day is kept (only) at precinct commission level.

- Finally, the Law does not establish sufficient checks to prevent the issue of unlawful absentee certificates or the abusive use of absentee certificates.

99. Article 75 rules on the voting procedure. According to Article 28 of the Law on Basic Guarantees decisions of election commissions are generally taken according to the collegiate model. However, during the voting procedure, each of the precinct commission voting members acts on his or her own. Each of them, acting alone, receives ballots from the chairman, controls identity documents, checks voters' lists and issues ballots to voters. Although observers may be present at the polling station, it is very difficult for them to follow closely all actions carried out by each member of the commission. Furthermore, the presence of observers at some of the actions mentioned above is quite threatening to voters' freedom and intimacy. As a general result, this procedure lacks the transparency and publicity necessary in a democratic system.

100. Article 76 deals with early voting and Article 77 rules on voting outside polling stations (mobile voting). Both Articles reproduce many of the problems discussed above:

- The cases in which it is possible to vote outside the polling stations are too general and the criteria for allowing such exceptions not defined precisely enough.

- A request for voting outside the polling station can be made on election day orally and even by a third party (Article 76.2).

- The Code of Good Practice in Electoral Matters points out that the use of mobile ballot boxes is highly undesirable, since they may very easily lead to misuse and electoral fraud.<sup>61</sup> The Commission also notes that the OSCE/ODIHR reported that the use of mobile ballot boxes for early voting and out-of-polling-station voting could very easily undermine the electoral process, since proper safeguards were lacking.<sup>62</sup> The procedure stated to apply for and to vote with mobile ballot boxes does not ensure transparency.

- The decision to send mobile ballot boxes must be taken by the precinct election commission immediately and at least two of its voting members have to leave the polling station.

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<sup>61</sup> Code of Good Practice in Electoral Matters, par. 40.

<sup>62</sup> OSCE/ODIHR Final Report, p. 7.

- The high number of mobile ballot boxes allowed in each polling station and the short period of time stated to make the decision of sending them can pose a problem for appointing observers.

- The process of voting outside polling stations as established by the legislation does not guarantee secret suffrage.

101. Taking this into account, the Commission recommends the inclusion of strict conditions to allow for the use of mobile ballot boxes, as well as to reinforce the means to prevent fraud in their use, for example by using transparent boxes.

## **Chapter XI. Counting of Votes and Election Results**

### Transparency in Vote Counting

102. The Law on State Duma elections contains detailed provisions designed to ensure accountability and transparency in the counting and transmission of results. The general principle is contained in Article 9, which provides that the preparation and conduct of elections to the Duma shall be exercised openly and transparently. The further rules are contained primarily in Articles 78-88. These rules must however be seen against the background of the legal provisions concerning ballot papers and voting arrangements contained in Articles 72-77, which will therefore be dealt with first.

103. Considerable effort and thought has been put into the Law on State Duma elections in order to ensure both *ex ante* (Articles 72-77) and *ex post* (Articles 78-89) that the counting and transmission of results is fair, and that electoral fraud is prevented. In particular, Article 79 of the Law on State Duma elections outlines the procedure to be followed for vote counting once the voting time is over. It establishes that vote counting should be open and transparent, and that votes should be counted at the polling station, which complies with the recommendations of the Commission.<sup>63</sup> The Law on State Duma elections therefore contains highly specific provisions aimed at securing the honesty of the election through *ex ante* rules to dealing with the printing of ballot papers, the distribution of absentee ballots etc. It also has detailed provisions designed to ensure that the counting and transmission of results *ex post* is accountable and transparent. These operate at each stage of the process in ascending order from PECs, to TECs, ECSRFs and then on to the CEC itself. The information that must be provided is specified in great detail, as are the procedures that must be complied with when counting votes and distributing ballot papers.

104. However, the OSCE/ODIHR reported that problems in vote counting were present in every third polling station observed, as well as problems in the entry of result data, and correct application of the legal procedure.<sup>64</sup> A number of problems also appeared in the tabulation of results at the TEC level.<sup>65</sup> As the OSCE also pointed out, some of the CEC-issued instructions for administrative and electoral procedure were overly long and not user-friendly,<sup>66</sup> which may have had something to do with the irregular conduct of certain polling stations. In this regard, the Commission would suggest a simplification of the vote counting and result compiling procedure, as well as stronger safeguards against misconduct of the election commissioners.

105. For the rest, the elimination of such irregularities should not be found in a revision of the legislation, but in its proper implementation by independent and impartial bodies. Moreover, it is axiomatic that the holding of an election in conformity with international

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<sup>63</sup> Code of Good Practice in Electoral Matters, par. 45.

<sup>64</sup> OSCE/ODIHR Final Report, p. 18.

<sup>65</sup> OSCE/ODIHR Final Report, pp.20-21.

<sup>66</sup> OSCE/ODIHR Final Report, p. 6.

standards requires not only the correct application of the rules considered in this section, but also more generally respect for free speech and assembly during the election period. These rights must be respected not just by the electoral authorities, but also by other state organs such as the police.

106. Article 82 deals with the final result of the election as pronounced by the Central Election Commission, CEC, on the basis of data contained in submissions from the ECSRFs and some other electoral commissions. The CEC must compile a protocol on the results of elections of the deputies of the State Duma, which must include a great deal of information, which is based on the data that has come to it from ECSRFs and TECs. The CEC shall declare the election invalid if violations committed in the course of voting or establishment of the vote returns make it impossible to reliably determine the results of the voters' expression of will; or if the vote returns are declared invalid at such number of electoral precincts that the number of voters in them, included in the voter lists at the end of voting, in the aggregate comprise not less than 25 percent of the total number of voters included in the voter lists at the end of voting. The CEC shall declare the elections to be legally null and void if not a single federal list of candidates received 7 percent or more than 7 percent of the votes cast; or if all federal lists of candidates in the aggregate received 60 percent or less than 60 percent of the votes cast. The remainder of Article 82, as well as Article 82-1 and Article 83, deal with the distribution of seats between parties and candidates inside the party, in particular those on federal and regional lists. The threshold is in principle 7 % (Article 82.7); parties obtaining between 5 and 6 % of the vote are given one seat and those between 6 and 7 % are given two seats (Articles 82-1.2-3).

## **Chapter XII. Filling of vacant deputy seats**

107. According to Article 89.1, if the powers of a deputy of the State Duma are terminated before the expiry of the mandate, a political party may decide which other candidate may replace him or her. This appears contradictory with Article 83.8 which provides for detailed rules on filling vacancies. At any rate, the way of filling vacant posts should be established by the law before the elections and not by the parties after them.

## **Chapter XIII. Complaints about Violations of Electoral Rights of Citizens and the Responsibility for Violation of the Legislation of the Russian Federation on the Election of Deputies of the State Duma**

108. The right to an effective remedy and fair hearing by an impartial tribunal is a well-established international principle.<sup>67</sup> Accordingly, failure to comply with electoral law must be open for challenge before an effective appeal body.<sup>68</sup> Both challenges before ordinary courts or before electoral commissions are possible options in an appeal system; however, the explanatory report to the Code of Good Practice in Electoral Matters states first instance appeals before electoral commissions could be more desirable, due to their better knowledge of electoral law.<sup>69</sup> At any rate, a final appeal to a court must be possible.<sup>70</sup> Additionally, expedited consideration of electoral campaigns is necessary for the appeal system to be fair and effective.<sup>71</sup>

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<sup>67</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 14; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222, Article 23; Guidelines on Political Parties, (CDL-AD(2010)024), ch. XIII.2.

<sup>68</sup> Code of Good Practice in Electoral Matters, II.3.3.

<sup>69</sup> Code of Good Practice in Electoral Matters, par. 93.

<sup>70</sup> Code of Good Practice in Electoral Matters, II.3.3.a.

<sup>71</sup> Guidelines on Political Parties, par. 229.

109. Article 90 of the Law on State Duma Elections establishes the appeal system for decisions and actions that violate electoral rights by referring to the Law on Basic Guarantees, which details this procedure in Chapter X. Under this Law, an appeal may be heard either by the Supreme Court, an ordinary court, or electoral commissions.<sup>72</sup>

110. Article 75 is the key provision. The protections are framed in terms of violations of electoral rights, the definition of which is provided in Article 2.11 of the Law on Basic Guarantees (LBG): the guarantee of the electoral rights and the right to participate in a referendum is defined to mean, 'conditions, rules, and procedures established by the Constitution of the Russian Federation, a law or other regulatory acts and intended to assure implementation of electoral rights of citizens of the Russian Federation, and their right to participate in a referendum'.

111. Article 75.1 LBG provides a right of appeal to a court against acts or omissions of public bodies broadly conceived that violate electoral rights. Appeals against decisions and actions/omissions that violate electoral rights of citizens and the right of citizens to participate in a referendum can be submitted by voters, referendum participants, candidates, their agents, electoral associations, and their agents, other public associations, a referendum initiative group, its authorised representatives, observers, and commissions, Article 75.10 LBG.

112. The court to which an appeal is taken is specified in Article 75.2 LBG. Thus for example, appeals against decisions/omissions of the CEC go to the Supreme Court, while appeals against decisions/omissions of the ECSRFs go to state supreme courts. The resulting court decisions are binding on the commissions.

113. Article 75.6 LBG provides in the alternative for appeals against acts/omissions of election commissions that violate electoral rights of citizens to be submitted to the commission of the next higher level which can then: reject the appeal; cancel the disputed decision in full or in part; cancel the disputed decision in full or in part and demand the lower commission to reconsider the issue and make a decision. A prior application to a higher commission is not however a condition for submitting an appeal in court, Article 75(8) LBG, but a higher commission should suspend hearing a case concerning a lower commission if an individual has taken the same case to a court, Article 75(9) LBG.

114. The possibility for the applicant to choose between various appeals bodies, and in particular between election commissions and courts, may lead to *forum shopping*. The Commission recommends therefore abolishing this possibility of choice.<sup>73</sup>

115. Moreover, as already said, provisions on complaints to election commissions and the way for these bodies to deal with them should be clarified (*supra* par. 41-42), in order to prevent them from considering complaints as "applications" not needing a legal decision.

116. Article 76 LBG contains grounds for annulment of candidates that have been placed on the registered list. The relevant rules are long and complex. Suffice it to say for the present that registration of an individual candidate may, under Article 76(7) LBG, be cancelled by a court for, inter alia, violation of campaign finance rules; taking advantage of an official position; bribery; extremism; instigating social, race, national or religious dissent, derogation of national dignity, propaganda of exclusivity, prevalence or inferiority of citizens by their attitude to religion, social, racial, national, religious or linguistic affiliation, or promoted and publicly displayed Nazi attributes or symbols; and concealment by the candidate of

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<sup>72</sup> Federal Law on Basic Guarantees of Electoral Rights and the Rights of Citizens of the Russian Federation to Participate in a Referendum, Article 75.

<sup>73</sup> Code of Good Practice in Electoral Matters, II.3.3.c.

information as to his/her conviction. There are related rules concerning cancellation by a court of a list of candidates, Article 76(8) LBG and Article 91 of the Law on State Duma elections. This very extensive list appears very difficult to reconcile with the principle of proportionality; at any rate, it should be applied in a restrictive manner.

117. Article 77 LBG and Article 92 of the Law on State Duma elections deal with repeal of decisions of election commissions that relate to votes and voting returns. Article 92(1) provides in effect that prior to the determination of the overall electoral results a higher level electoral commission can repeal the decision of a lower level electoral commission if there has been violation of the Law on State Duma Elections or of the Law on Basic Guarantees of Electoral Rights. If the violations prevent reliable establishment of the voters' will then the election in, for example, that precinct can be declared invalid. When the overall electoral result has been declared then the decision of a lower level commission can only be overturned by a court, Article 92.2-3. Allowing higher election commissions to rectify or set aside *ex officio* decisions taken by lower election commissions is in conformity with international standards,<sup>74</sup> but such rules should be applied systematically and not in a selective manner.

118. There are two more problems with Article 92:

- The first one affects paragraph 2, which deals with the reversal of the decision of a subordinate election commission. The main difficulty is the ambiguity and lack of detail about the appeal procedures the way the Court decides.

- The second one refers to reversal of decision of the Central Election Commission on the result of the election ruled in paragraph 4. According to it, the reversal is only possible on the basis of certain facts listed in the Article. The list is very detailed, but imprecise. These are in essence where a political party: violated the campaign finance rules; is guilty of bribery, which precludes establishment of the actual will of voters; has broken the electioneering rules in Article 62.1, and this precludes establishment of the actual will of voters; a leader of a political party has taken improper advantage of his office or position in the public service, and this violation precludes establishment of the actual will of voters. Article 92.5 provides additional grounds on which a court can repeal a decision of an electoral commission on vote returns further to the violation of the procedure of voter lists compilation and establishment of electoral commissions; illegal refusal to register a federal list of candidates if such illegality is recognised after the election day; and other violations of the electoral legislation, if those violations preclude establishment of the actual will of voters. There are analogous provisions relating to annulment of decisions in Article 77.2-3 LBG. It would be suitable to simplify these provisions and to focus on the possible impact of any irregularity, whatever its nature, on the outcome of the elections.<sup>75</sup>

119. The time limits for bringing claims are contained in Article 78 LBG and Article 90 of Law on the State Duma election. According to Article 78.2 LBG, an appeal against a decision of a commission about registration, refusal to register a candidate/list of candidates, or refusal to certify the list of candidates can be submitted within ten days after the decision appealed against was made. It is also open to a complainant to make an application for annulment of registration of a candidate/list of candidates to a court not later than eight days before voting day, Article 78.5 LBG.

120. There are also rules concerning the time within which the claim must be dealt with. The basic rule in Article 90.2 is that complaints made to election commissions before the election should be dealt with in 5 days; complaints made after the election must *prima facie* be dealt with immediately, although the time can be extended to 10 days if the complaint requires further investigation. A court must make a decision with regard to an appeal against a commission's

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<sup>74</sup> Code of Good Practice in Electoral Matters, II.3.3.i.

<sup>75</sup> Code of Good Practice in Electoral Matters, II.3.3.e.

decision on vote returns, the results of an election, referendum within two months after the day on which the appeal was submitted, Article 78.4 LBG.

121. Article 17.2 of the Law on State Duma Elections gives a person a right to complain to the PEC that he/she has not been placed on the voting list, or about other mistakes in the list. The PEC must address the matter, respond in 24 hours or not later than before polling day. The resolution by the PEC can be appealed to a higher election commission or a court, and there are once again time limits within which the response must be given. Applicants can be present when the complaint is considered and can submit evidence, Article 29.5.

122. The resolution of the CEC concerning the registration or refusal to register the list of candidates can be appealed to the Supreme Court, which must give its decision in 5 days, Article 44.7.

123. All these deadlines appear as reasonable and should lead to an expeditious treatment of appeals. By contrast, the time limit for complaints to court after the publication of the election results concerning violation of electoral rights during the election campaign is one year from the date of publication of those results (Article 78.3 of the Law on Basic Guarantees). This last deadline is excessive<sup>76</sup> and will probably make any cancellation of election results and repetition of elections very difficult.

124. The OSCE/ODIHR reported that several complaints were filed over the course of the elections of 4 December 2011, both at the PECs and at prosecutors' offices and the courts, and that many of these complaints were not dealt with or were summarily dismissed. The CEC heard one complaint, but refrained from ordering a recount, and the complaints before district courts had not been solved by the time the OSCE's observing mission departed.<sup>77</sup>

125. The Commission recommends strengthening and streamlining the electoral appeal system. The concentration of complaints before electoral commissions, followed by an appeal to ordinary administrative courts, would help the efficiency and specialisation of the appeal system. Moreover, procedural safeguards should also be put in place to ensure that complaints do not go unanswered or are summarily dismissed.

126. Some aspects should also be dealt with in a more precise manner. For example, it is not clear how far the existing rules can be enforced against, for example, those running the media who breach the obligations imposed on them under the Electoral Laws, and whether media bias, which affects the freedom of voters to form an opinion, could lead to the invalidation of elections.

127. For example, it may be worth considering whether an Elections Ombudsman might oversee this aspect of the work of election commissions.

## V. Conclusions

128. The legislation applicable to State Duma Elections is detailed and deals with nearly all aspects of elections. However, improvements are still needed in order to put it in full conformity with international standards. They will be summarised below.

129. The Law on State Duma Elections is a long, complex piece of legislation. It inter-relates with the Constitution and with other laws, notably those on Basic Guarantees of

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<sup>76</sup> Code of Good Practice in Electoral Matters, II.3.3.g.

<sup>77</sup> OSCE/ODIHR Final Report, p. 19-20.



Electoral Rights, and on Political Parties. The Venice Commission therefore recommends simplifying and consolidating the electoral legislative framework.

130. The main substantial issue to be addressed is that of impartiality of the election administration. Independent and impartial electoral commissions are necessary to ensure that elections are properly carried out. The present rules are insufficient to ensure the impartiality of the election administration. The Venice Commission therefore recommends modifying the rules on the composition of election commissions, and in particular their appointment procedures, in order to effectively ensure their independence and impartiality. This is crucial to ensure that elections are held in conformity with international standards.

131. The main other issues where improvement is required are the following ones.

132. The Law on State Duma Elections includes detailed rules on election observers. These rules should be amended in order not to be interpreted in a too restrictive way, and to avoid any discrimination between national and international observers. Moreover, non-partisan national observers should be admitted, and election observation should be extended to the post-electoral process, in conformity with international standards.

133. Neutrality of the authorities during the election campaign is essential for ensuring equality of opportunity between candidates. In particular, effective separation between state and party, as well as equal access to the media should be guaranteed. The rules aimed at ensuring such equal access should be reconsidered in order to prevent excessive restrictions to freedom of expression.

134. In order to ensure effective equality of opportunity, it is advisable to reconsider the rules on funding of the electoral campaigns and to envisage some public financing.

135. The Law on State Duma Elections, combined with the Law on Basic Guarantees, provides for a quite complete, but also complex system of complaints and appeals. It should be simplified but also clarified in order to fill any loophole and to prevent rejection of complaints without any legal reasoning.

136. Other issues which need consideration are addressed in the opinion and will not be dealt with more in detail in these conclusions, such as:

- Restrictions to the registration of federal lists of candidates, in particular concerning the verification of signatures;
- The issue of constituencies;
- The obstacles to the registration of political parties, which are dealt with in another opinion of the Venice Commission (*CDL(2012)013*);
- The prohibition of individual candidacies;
- The representation of women and minorities;
- The provision prohibiting negative campaigning;
- The rules on mobile voting, which should be reconsidered in order to ensure the respect of the principles of free and secret suffrage.

137. The Venice Commission also underlines that the conduct of genuinely democratic elections not only depends on a detailed and solid Electoral Code, but also on full and proper implementation of the legislation.

138. The Venice Commission takes notes of the steps taken by the Russian Federation, and in particular President Medvedev, in order to amend the legislative framework in the field of elections. It stands ready to assist the authorities in their efforts to bring the electoral legislation and practice in the Russian Federation fully in line with international standards.