



Strasbourg / Warsaw, 4 October 2018

CDL(2018)026  
Or. Engl.

Venice Commission Opinion No. 933/2018  
ODIHR Opinion-Nr.: ELE-UZB/333/2018

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

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

**REPUBLIC OF UZBEKISTAN**

**DRAFT JOINT OPINION  
ON THE DRAFT ELECTION CODE**

**on the basis of comments by**

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## I. Introduction

1. By letter of 5 July 2018, Mr Mirza-Ulugbek Abdusalomov, Chairperson of the Central Election Commission of the Republic of Uzbekistan, requested an Opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and of the Council of Europe's European Commission for Democracy through Law (Venice Commission) on the draft Election Code of the Republic of Uzbekistan.<sup>1</sup> By letter of 23 July 2018, ODIHR and the Venice Commission confirmed the readiness to provide a joint legal opinion on the draft Election Code.

2. Messrs Oliver Kask and Pere Vilanova Trias were appointed as rapporteurs for the Venice Commission, and Ms Tatyana Hilscher-Bogusevich as the expert for ODIHR.

3. A delegation composed of Messrs Oliver Kask, Pere Vilanova Trias and Gaël Martin-Micallef on behalf of the Venice Commission, and Mr Richard Lappin and Ms Hilscher-Bogusevich on behalf of ODIHR visited Tashkent on 6-7 September 2018. The delegation met with the Central Election Commission, both chambers of the parliament, the State Center of Personalization under the Cabinet of Ministers, as well as representatives of political parties and of the Ecological Movement of Uzbekistan. Regrettably the delegation was not able to meet with representatives of the civil society. This Joint Opinion takes into account the information obtained during the above-mentioned visit.

4. *The present Joint Opinion was adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... Plenary Session (Venice, ...).*

## II. Scope of the Joint Opinion

5. The scope of this Joint Opinion covers only the draft Election Code submitted for review. It does not constitute a full and comprehensive review of all available legislation on elections in the Republic of Uzbekistan. Provisions pertaining to elections to the Senate, the indirectly elected upper chamber of the parliament, are considered only to the extent that they affect the provisions on other direct elections and the overall framework.

6. The review is based on relevant Council of Europe and other international obligations and standards, OSCE commitments and international good practice.

7. This Joint Opinion focuses on aspects that were previously assessed by both organizations and those that could benefit from further review and improvement. It considers assessments of election legislation in the framework of previous ODIHR election observation reports and the 17 December 2012 Joint Opinion on Draft Amendments and Addenda to the Law "On Elections to the Oliy Majlis of the Republic of Uzbekistan" and "On Elections to the Regional, District and City Councils (*Kengash*) of People's Deputies of Uzbekistan".<sup>2</sup>

8. The present review is based on an unofficial English translation of the draft Election Code commissioned by ODIHR. Errors from translation may result.

9. This Joint Opinion is provided with the aim of assisting the authorities of the Republic of Uzbekistan, political parties, and civil society in their efforts to bring the legal framework

<sup>1</sup> Draft Election Code as of 25 July 2018 ([CDL-REF\(2018\)038](#)).

<sup>2</sup> See [ODIHR reports on elections in Uzbekistan](#) and the 2012 joint opinion, [CDL-AD\(2012\)025](#).

for elections in line with OSCE commitments, Council of Europe's standards and other international obligations for democratic elections.

### III. Executive Summary

10. The draft Election Code unifies five different laws, which regulated the conduct of presidential, parliamentary and local elections, outlined guarantees of citizens' suffrage rights and established the framework for activities of the Central Election Commission (CEC). The codification of several election-related laws into the draft Election Code enhances the clarity and accessibility of legislation, in line with previous ODIHR recommendations.

11. The draft Election Code contains a number of provisions that address certain previous ODIHR and Venice Commission recommendations and are in line with international good practice. The following provisions and changes are positively noted:

- Removal of provisions for reserved seats in the lower chamber of the parliament previously filled through indirect election, in line with the principle of direct elections;<sup>3</sup>
- Introduction of a maximum permissible deviation in the size of electoral districts, in line with the principle of equal suffrage;<sup>4</sup>
- Inclusion of explicit requirements of openness, transparency, accessibility and collegiality in the work of election commissions;<sup>5</sup>
- Inclusion of reasonable candidate support signature requirements, in line with the principle of universal suffrage;<sup>6</sup>
- Allowing voters to sign in support of more than one electoral contestant;
- Provisions for the establishment of a single electronic voter register, which could enhance the integrity and accuracy of voter registration, including the ability to cross-check against multiple records;
- Equality of opportunities and conditions for contestants, during the campaign period, is enshrined in the law, in line with the principle of equality of opportunity.<sup>7</sup>

12. However, the draft Election Code fails to address a number of long-standing recommendations, many of which pertain to restrictions on or an absence of guarantees of fundamental freedoms. In order to further improve the compliance of the draft amendments with international human rights standards and OSCE commitments, ODIHR and the Venice Commission make the following key recommendations:

- A. To review the overall campaign finance regulations in order to ensure transparency and accountability of the use of public money and administrative resources [pars. 75-79];
- B. To avoid undue restrictions on voting rights based on incapacitation, on-going criminal proceedings and conviction [par. 42];
- C. To review the length of residency requirement, in respect of candidacy rights [pars. 53-56];
- D. To review procedures for the appointment of lower-level commissions to better safeguard their independence [pars. 34-38];
- E. To ensure transparency of tabulation and publication of election results [pars. 97-106].

<sup>3</sup> Venice Commission's Code of Good Practice in Electoral Matters ([CDL-AD\(2012\)023rev2](#)), Guideline I. 5 and paragraph 56 of the explanatory report.

<sup>4</sup> Code of Good Practice in Electoral Matters, Guideline no. I. 2.2 iv., paragraphs 15-16 of the explanatory report.

<sup>5</sup> Ibid., see in particular paragraphs 79-81 of the explanatory report.

<sup>6</sup> Ibid., Guideline I. 1.3 ii., paragraph 8 of the explanatory report.

<sup>7</sup> Ibid., Guideline I. 2.3, paragraph 8 of the explanatory report.

*These and additional recommendations, as highlighted in bold, are included throughout the text of this Joint Opinion.*

13. Furthermore, the Venice Commission and ODIHR recommend addressing the following additional recommendations:

- To follow the Joint Venice Commission-OSCE/ODIHR Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes in order to provide for specific and clear norms to tackle the possible misuse of administrative resources undermining free and equal vote;
- To provide provisions for independent candidacy;
- To avoid undue disqualification of prospective candidates, verification procedures for language proficiency and candidate support signatures could be clarified
- To reconsider the blanket prohibition on the media to disseminate false information or information discrediting the honor and dignity of contestants which may allow for subjective interpretation and restrict the freedom of expression;
- To explicitly provide for non-partisan citizen election observation at all stages of the electoral process;
- To remove the possibility of dual mechanisms for submitting complaints;
- To provide for inaction-related complaints to all levels of the election administration as well as to stipulate deadlines for complaints against inactivity of election commissions;
- To prescribe that every voter, party, candidate and observer can file a complaint on every aspect of the electoral process, including requests for recounts and the invalidation of election results;
- To reconsider the prohibition to publish opinion polls and other election-related research shortly before election-day which may unduly restrict the freedom of expression.

14. Previous ODIHR final election observation reports<sup>8</sup> and the 2012 Joint Opinion<sup>9</sup> noted additional limitations on fundamental freedoms, including on expression, association and assembly, as contained in the broader legal framework for elections. Given the focus of this Joint Opinion on provisions of the draft Election Code, the present Opinion does not assess whether previous concerns related to the broader fundamental freedoms were addressed. Conclusions drawn and recommendations made by both organizations on matters not covered by this Opinion remain valid.

15. It is seen positively that the draft Election Code is being developed in advance of the next elections, anticipated at the end of 2019. This approach is in line with international good practice, whereby fundamental elements of the electoral law should not be open to amendment less than one year before an election.<sup>10</sup>

16. As a preliminary remark, it should be noted that successful electoral reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders;<sup>11</sup> and 3) political commitment to fully implement the electoral legislation in good faith. In particular, the Venice Commission and ODIHR stress that an open and transparent process of consultation and preparation of the amendments increases the confidence and trust in the adopted legislation and in state institutions in general.

<sup>8</sup> <https://www.osce.org/odihr/elections/uzbekistan>.

<sup>9</sup> 2012 joint opinion, [CDL-AD\(2012\)025](#).

<sup>10</sup> Ibid., Guideline II. 2 b.

<sup>11</sup> See paragraph. 5.8 of the 1990 OSCE Copenhagen Document which requires "legislation, adopted at the end of a public procedure..."

17. ODIHR and the Venice Commission remain at the disposal of the authorities of the Republic of Uzbekistan for any further assistance that they may require and stand ready to review the final version of the Election Code.

#### **IV. Analysis and Recommendations**

##### **A. The process of development of the draft Election Code**

18. The development of the draft Election Code was initiated following the adoption by the President of the Republic of Uzbekistan of a decree on the national development strategy for 2017-2021.<sup>12</sup> The strategy mandated, among others, a decisive improvement of the quality of legislative processes, effective safeguarding of citizens' rights and freedoms, strengthening of the role of political parties, and development of a competitive environment among them.

19. During the expert visit, ODIHR and the Venice Commission delegation was informed that the draft Election Code was developed by a working group, comprising representatives of the CEC, the Ministry of Justice, other specialized state institutions, political parties, the Independent Institute for the Formation of the Civil Society, as well as researchers, scientists and experts in legal and electoral matters.<sup>13</sup> According to the authorities and political parties met, the working group held a number of meetings and discussions in the course of the Code's development.

20. In a welcome step, the draft Election Code was published for public review on the government legislative online portal and the CEC website. The delegation was informed that feedback from stakeholders was also sought through in-person meetings across the country. According to the authorities, a considerable number of comments and proposals to the published draft Election Code were received, which were being reviewed and taken into consideration as deemed appropriate. The authorities further noted that in preparation of the draft Election Code international practice and, in line with an OSCE commitment mandating follow-up, previous ODIHR recommendations were considered.<sup>14</sup>

21. According to the authorities met during the visit, an inclusive consultation process for the preparation of the draft Election Code. However it has not been possible for the ODIHR and the Venice Commission delegation to assess by itself this level of consultation beyond the stakeholders met during its visit on 6-7 September 2018. Therefore, ODIHR and the Venice Commission are not able to confirm the level of inclusiveness when it concerns non-political actors, such as the civil society and academics.

22. Positively, the draft Election Code is being developed in advance of the next elections, anticipated at the end of 2019. This approach is in line with the Venice Commission's Code of Good Practice in Electoral Matters, whereby fundamental elements of the electoral law should not be open to amendment less than one year before an election.<sup>15</sup> In the course of

<sup>12</sup> [The Strategy of Actions on Further Development of the Republic of Uzbekistan](#) (in Russian), decree by the President of the Republic of Uzbekistan, 7 February 2017.

<sup>13</sup> For a list of bodies and institutions involved in the working group, see the [information](#) (in Russian) about the draft Election Code published by the CEC.

<sup>14</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations".

<sup>15</sup> Paragraph II. 2 b. of the [Code of Good Practice in Electoral Matters](#) stipulates that "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election."



the expert visit, the authorities stated their availability for reviewing and adjusting the draft Election Code prior to adoption based on the conclusions contained in the present Opinion.

## **B. Structure of the draft Election Code**

23. The draft Election Code unifies five different laws, which regulated the conduct of presidential, parliamentary and local elections, outlined guarantees of citizens' suffrage rights and established the framework for CEC activities.<sup>16</sup>

24. Past ODIHR election observation reports noted that the dispersed nature of the election legislation impaired its coherence, clarity and implementation, and assessed it overall as not conducive to holding of democratic elections.<sup>17</sup> Therefore, the codification of several election-related laws into the draft Election Code constitutes a positive step, in line with previous ODIHR recommendations.

25. The draft Election Code is concise and generally well structured, featuring 18 chapters and 100 articles organized into general provisions and those applying to specific types of elections. Interlocutors during the visit welcomed the brevity and clarity of the draft Election Code as facilitating understanding by the stakeholders, accessibility, and its application in practice, in line with international standards and OSCE commitments.<sup>18</sup> During the expert visit, the Chairperson of the Central Election Commission informed the delegation of experts that CEC regulations will be adopted in the future and in the context of the next elections to complement potential gaps of the Election Code. Indeed if the conciseness of the draft Election Code should be praised, it remains crucial that a clear interpretation of the Code be made by the institutions in charge of implementing the text and organizing elections.

## **C. Electoral system**

26. One key positive change introduced in the draft Election Code is the elimination of reserved seats for the Ecological Movement of Uzbekistan (EMU) in the lower chamber of the parliament (*Oliy Majlis*).

27. According to previous legislation, of the 150 members of the lower chamber, 135 were directly elected from single-member, majoritarian constituencies and 15 members were indirectly elected by the EMU at its conference held on election-day. Given that members of the upper chamber are also indirectly elected or appointed by the president, the provision on reserved seats in the lower chamber to be filled through indirect election was contrary to OSCE commitments<sup>19</sup> and the Venice Commission's Code of Good Practice in Electoral Matters.<sup>20</sup> Therefore, the removal of reserved seats in the lower chamber constitutes a positive change, in line with previous ODIHR and Venice Commission recommendations.<sup>21</sup>

28. The draft Election Code vests the responsibility for establishing electoral districts for presidential ("within boundaries of the Republic of Karakalpakstan, regions and the city of

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<sup>16</sup> The need of including provisions of the Law on Referendum into the text of the draft Election Code was discussed by the working group; however, it was decided to keep these provisions in a separate legal act given the different nature of the process.

<sup>17</sup> ODIHR Final Report on the 4 December 2016 early presidential election, p. 5-6.

<sup>18</sup> Paragraph 5.8 of the 1990 OSCE Copenhagen Document requires that legislation should be adopted at the end of a public procedure, be published and accessible to everyone, these being the conditions for its applicability.

<sup>19</sup> Paragraph 7.2 of the 1990 OSCE Copenhagen Document provides that all seats in at least one chamber of the national legislature should be freely contested in a popular vote.

<sup>20</sup> Code of Good Practice in Electoral Matters, I. 5 and paragraph 56 of the explanatory report.

<sup>21</sup> 2012 joint opinion, paragraph 8.

Tashkent”) and parliamentary elections (150 districts) with the CEC,<sup>22</sup> while regional, sub-regional and municipal commissions are responsible to form districts for elections to the respective local councils.<sup>23</sup>

29. Constituency borders are fundamental elements of an electoral law, and their establishment and redrawing has a significant impact on the electoral process. For this reason, the Code of Good Practice in Electoral Matters stresses the importance of a non-partisan process by an independent commission, which *inter alia* does not disadvantage national minorities.<sup>24</sup> International good practice provides that the boundary delimitation process be inclusive and transparent and be initiated well in advance of elections based on clear, publicly announced rules. **The Venice Commission and ODIHR recommend that the legislation also mandate broad and inclusive consultations with an input by all relevant stakeholders.**

30. Positively, Article 24 stipulates that districting shall be carried out taking into account the respective administrative and territorial structures and that “as a rule, electoral districts shall have an equal number of voters”. For districts established for the elections to legislative bodies, the draft Election Code sets the maximum permissible deviation in the size of districts to 15 per cent. However, this limitation is too high to be applied as a general norm and could challenge the principle of equal suffrage. The Code of Good Practice in Electoral Matters recommends that “the maximum admissible departure from the distribution criterion [...] should seldom exceed 10% and never 15%, except in really exceptional circumstances”.<sup>25</sup> Application of the two different principles – that districts should be based on administrative units and that they should have an equal number of voters – leaves a wide margin of appreciation to the competent body on the concrete delineation of the district borders. **ODIHR and the Venice Commission therefore recommend that the maximum permissible deviation in the size of districts be reduced and that the draft Election Code be clarified in this respect.**

31. The draft Election Code provides in Article 24 that the information about the size of electoral districts is to be published by the respective election commission not later than 75 days before elections. This provision is unclear as to whether the boundaries of districts are to be revised before each election. Moreover, the draft Election Code is unclear about the type of information that has to be published.

32. In line with international good practice, the legislation should provide for a periodic review of district boundaries to ensure that vote equality is not affected due to population changes. ODIHR recommends in this regard that “when necessary, the redrawing of election districts shall occur according to a predictable timetable and through a method prescribed by law and should reflect reliable census or voter registration figures. Redistricting should also be performed well in advance of elections, be based on transparent proposals, and allow public information and participation.”<sup>26</sup> According to the Code of Good Practice in Electoral Matters, “to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation.”<sup>27</sup>

<sup>22</sup> Article 12 of the draft Election Code.

<sup>23</sup> Article 24 of the draft Election Code.

<sup>24</sup> Code of Good Practice in Electoral Matters, I.2.2 vii. and paragraph 17 of the explanatory report; paragraph 7.3 of the 1990 OSCE Copenhagen Document.

<sup>25</sup> Code of Good Practice in Electoral Matters, I.2.2.iv and paragraph 15 of the explanatory report; see also the Report on constituency delineation and seat allocation ([CDL-AD\(2017\)034](#)).

<sup>26</sup> [Existing Commitments for Democratic Elections in OSCE Participating States](#), October 2003, point 3.3, p. 14.

<sup>27</sup> Code of Good Practice in Electoral Matters, I. 2.2 and explanatory report, paragraph 16.



33. During the expert visit, the authorities clarified that district boundaries may be redrawn before each election to reflect the changes in the numbers of voters. **ODIHR and the Venice Commission recommend that a periodic review of district boundaries be explicitly provided for in the law and be carried out at least one year in advance of an election.**

34. Article 93(6) stipulates that “[t]he elections shall be declared uncompleted if the turnout rate is less than thirty-three per cent of the total number of the registered voters.” Stipulating a turnout requirement could result in continuous cycles of failed elections. **The Venice Commission and ODIHR recommend therefore removing the turnout requirements or at least clarifying the provision in a way that avoids potential endless cycles of failed elections.**

#### **D. Election administration**

35. The draft Election Code establishes a four-tier hierarchy of election commissions, including the Central Election Commission (CEC), District Election Commissions (DECs), regional, sub-regional and municipal election commissions, and Precinct Election Commissions (PECs). The appointment procedures and the composition of election commissions remained largely unchanged.

36. The CEC is a permanent body appointed by the parliament for an indefinite term. ODIHR has previously expressed concern that the appointment procedure for CEC members does not guarantee the body’s independence and recommended reviewing such a process.<sup>28</sup> In addition, ODIHR has noted in past reports that most CEC members maintain other employment in addition to their CEC responsibilities. Article 11 of the draft Election Code now stipulates that not less than 7 of 15 CEC members should work on a permanent basis. Other types of paid activities, except related to scientific and pedagogical aspects, are not permitted.

37. A number of provisions and requirements for membership in election commissions are aimed at ensuring the independence of commission members. Article 9 contains a general premise that election commissions and their members perform their duties independently from any state bodies, public associations or officials. Article 11 lists a number of incompatibilities that apply to CEC members, including membership of political parties, of other commissions, candidates, proxies, and military and state security personnel. Article 23 contains a more elaborate list of incompatibilities with membership in other election commissions. This includes mayors (*hokim*) of oblasts, districts and cities, officials of the prosecutor’s office, courts, close relatives of candidates, and individuals, who have a direct employment relationship with candidates.

38. The above provisions are welcome in that they contribute to creating the framework for the independence of commission members. However, past ODIHR observation reports have pointed out that “PEC members often concurrently worked in *mahalla* committees or were employees of institutions collocated with polling stations. In many instances, PEC chairpersons were also the heads of institutions where the polling station was located, and some PEC members were also their subordinates, which potentially discourages dissent and challenges their ability to make independent decisions.”<sup>29</sup> Provisions of the draft Election

<sup>28</sup> ODIHR Final Report on the 29 March 2015 presidential election, p. 6-7.

<sup>29</sup> ODIHR Final Report on the 4 December 2016 early presidential election, p. 8.

Code do not address the above concerns and do not sufficiently ensure the impartiality of lower-level election commissions.<sup>30</sup>

39. Regarding the election administration as a whole, the Code of Good Practice in Electoral Matters states that “[o]nly transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process [...]”<sup>31</sup> This includes at all levels of the election administration the method for appointing election commission members, the allocation of responsibilities among them and decision-making process, in other words the functioning of election commissions. **ODIHR and the Venice Commission recommend that the requirements for appointing election commission members at all levels be further developed to better safeguard their independence and impartiality.** This could include provisions preventing potential conflict of interest when hierarchical employment relations are replicated in the composition of PECs.

40. The draft Election Code would benefit from clear rules on release from office or termination of the mandate of those election commission members whose close relatives are registered as candidates in the election.<sup>32</sup>

41. Based on Article 59(1) and (4), an election commission may decide on the change in the composition of the lower level election commission for the re-run elections. The aim and criteria for this decision remain unclear and question the independence of the election administration.

42. Positively, the draft Election Code includes a number of provisions aimed at ensuring openness, transparency, accessibility and collegiality in the work of election commissions. Article 8 obliges commissions to prepare and to conduct elections openly and transparently, including through holding sessions open to international observers, political parties and mass media, and publication of decisions and of information about their activities. Article 14 requires the CEC to publish its resolutions and decisions on the CEC website on the day of their adoption. These are noteworthy principles and their application in practice will require consideration.

## **E. Active suffrage**

### **1. Voting rights**

43. The draft Election Code retains unaltered provisions on voting rights. The right to vote is granted to citizens from 18 years of age by election-day. Voters recognized as incapacitated by court or serving a prison sentence, irrespective of the severity of the crime, are ineligible to vote. Blanket restrictions on suffrage based on mental disability or conviction are contrary to Council of Europe’s standards and OSCE commitments, in breach of the principle of universal suffrage.<sup>33</sup> The European Court of Human Rights has, for example,

<sup>30</sup> See Paragraph 20 of United Nations Human Rights Committee (UNHRC) General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and the Code of Good Practice in Electoral Matters, guideline II. 3.1 b and paragraph 71 of the explanatory report of the Code of Good Practice in Electoral Matters.

<sup>31</sup> Explanatory report of the Code of Good Practice in Electoral Matters, paragraph 68.

<sup>32</sup> See in particular Article 11.5 *in fine* of the draft Election Code.

<sup>33</sup> Guideline I. 1.1. d. iii. of the Code of Good Practice in Electoral Matters; see also the Interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections ([CDL-AD\(2010\)036](#)).

ruled against member States keeping such blanket restrictions in their law.<sup>34</sup> ODIHR has previously recommended reconsidering these restrictions.<sup>35</sup> **ODIHR and the Venice Commission therefore recommend that these undue restrictions be removed from the draft Election Code.**

## 2. Voter registration

44. The quality and accuracy of voter registration has been of concern in past ODIHR reports, largely due to inconsistent approaches to voter list compilation and an absence of mechanisms for detecting and eliminating possible multiple registrations.<sup>36</sup> In addition, concerns have been expressed with regard to the accuracy and management of records of voters residing abroad.

45. In addressing previous ODIHR recommendations on developing a centralized voter register to address the above issues, Article 26 of the draft Election Code provides for the establishment of a Single Electronic Voter Register (SEVR) based on the State Information System. According to a generic listing of functionalities in the draft Election Code, the SEVR is meant to facilitate and automatize voter data collection and management processes as well as to eliminate election-day registration. A centralized register could also facilitate the collection and publication of data on the number and type of changes made to voter lists, which has been previously recommended by ODIHR as a means to enhance transparency.

46. The envisaged establishment of a centralized voter register constitutes a positive step. The draft Election Code, however, does not contain sufficient details on which authority will manage the SEVR, on the responsibilities and interaction of the various bodies, on how SEVR will be compiled and updated, and on its use before and on election-day. During the expert visit, the delegation was informed that the processes related to the establishment and functioning of SEVR would be outlined in detail in a regulation being developed by the Cabinet of Ministers. The delegation was also informed that PECs would proceed to a door-to-door campaign in order to check the voter lists and that the inaccuracies would be corrected accordingly online. This additional procedure is welcome but will have to be assessed in light of the next election cycles.

47. In absence of detailed regulations on the envisaged functioning of SEVR, a comprehensive assessment is not possible at this point. It remains to be seen in practice and upon the development of additional regulations on how the SEVR serves to improve the quality and accuracy of voter registration. Without prejudices to the content of the future Cabinet of Ministers regulation, consideration could be given to including more detailed provisions into the draft Election Code. This step would be in line with the overall objectives

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<sup>34</sup> See judgments *Hirst (2) v. the United Kingdom*, 6 October 2005, application no. 74025/01; *Frodh v. Austria*, 8 April 2010, application no. 20201/04, par. 25; *Greens and M. T. v. the United Kingdom*, 23 November 2010, applications nos. 60041/08 and 60054/08; *Scoppola v. Italy* (No. 3) [GC], 22 May 2012, application no. 126/05 and *Anchugov and Gladkov v. Russia*, 4 July 2013, application nos. 11157/04 and 15162/05.

<sup>35</sup> Article 29 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”. Paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 (Hungary) stated: “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”. See also Paragraph 7.3 of the 1990 OSCE Copenhagen Document, which states that the participating States will “guarantee universal and equal suffrage to adult citizens,” whereas paragraph 24 provides that “[a]ny restriction on rights and freedoms must ... be strictly proportionate to the aim of that law”. See also Paragraph 14 of General Comment No. 25 to Article 25 of the ICCPR.

<sup>36</sup> See, for instance, the ODIHR Final Report on the 4 December 2016 early presidential election, p. 8-9.

of codification, contributing to the conciseness and integrity, as well as stability of legislation.<sup>37</sup>

48. Provisions on the compilation and updating of voter lists by PECs remain largely unchanged. Voters are granted the right to review their records in voter lists during a 15-day public scrutiny period at polling stations or via the State Information System. PECs are obliged to decide upon requests for changes in voter records within 24 hours of submission and to decide immediately for requests submitted one day before or on election-day.

49. However, Article 30 appears to create a parallel procedure for the submission of requests to modify voter data, which allows written applications to be brought before PECs or for a corresponding form to be completed on the CEC website. While the latter could render the process easier and more convenient to voters, parallel mechanisms may result in overlapping processes, inconsistent decisions and inaccuracies. **ODIHR and the Venice Commission therefore recommend avoiding such parallel mechanisms.**

50. Article 28 of the draft Election Code provides in specific cases the publication of voter lists for the scrutiny two days prior to the elections. This short deadline does not leave enough time for complaints and appeals even if the election commission deals with the matter speedily. **The Venice Commission and ODIHR thus recommend prolonging the deadline.**

51. The voter list is not updated for the re-run elections.<sup>38</sup> **The Venice Commission and ODIHR recommend reconsidering this provision in order to avoid disenfranchisement of some voters who have attained the right to vote in the meantime.**

## F. Passive suffrage

### 1. Independent candidacy

52. The draft Election Code only grants the right to nominate candidates in all types of elections to registered political parties. The possibility for local self-governance bodies to nominate candidates to local councils, which was previously enshrined in the law, was removed. The formation of electoral coalitions is not provided for.

53. Despite previous ODIHR and Venice Commission recommendations,<sup>39</sup> and contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document and other international obligations and standards, citizens cannot stand as independent candidates.<sup>40</sup> During the expert visit, the delegation was informed that the possibility of reinstating the right of self-nomination through initiative groups was being discussed in the framework of the working

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<sup>37</sup> Paragraphs 5.7, 5.8, and 7.1 of the 1990 OSCE Copenhagen Document commit participating States to guarantee human rights and fundamental freedoms, including those pertaining to elections, by law. See also the Guidelines II. 2 of the Code of Good Practice in Electoral Matters. In addition, ODIHR Guidelines for Reviewing a Legal Framework for Elections, p. 9, point out that “[a]lthough a government has the flexibility in determining the structure of the legal framework, the primary instrument in the field of elections must be a written law, as opposed to custom or a collection of administrative policies. As the instrument of choice, written law provides the benefits of equity, certainty, visibility and transparency, and makes the matter subject to judicial interpretation and review, as well as open to recourse by citizens.”

<sup>38</sup> Article 59(1) of the draft Election Code.

<sup>39</sup> See for instance paragraph 9 of the 2012 joint opinion ([CDL-AD\(2012\)025](#)).

<sup>40</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document states that OSCE participating States should “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” Paragraph 17 of the UNHRC General Comment 25 to Article 25 of the ICCPR also affirms that “the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.”

group. **The Venice Commission and ODIHR recommend that the draft Election Code be amended to address this long-standing recommendation to guarantee the right of independent candidates to stand for election.**

## 2. Candidacy requirements

54. The draft Election Code retains a number of limitations on candidacy rights, as included in previously separate laws. Citizens at least 35 years of age, with a full command of the official language and having resided in the country for at least 10 years before election-day are eligible to stand as a presidential candidate.<sup>41</sup> For parliamentary elections, the right to stand is granted to citizens over 25 years of age who have the right to vote and have permanently resided in the country for at least five years before election-day.<sup>42</sup> Citizens declared incapacitated by a court decision, convicted of intentional and/or grave or particularly grave crimes, those under on-going prosecution for a criminal case, active military or security personnel, and professional clergy of religious organizations – as applicable to presidential and parliamentary elections correspondingly – are ineligible to stand. Similarly, candidates to local councils must have permanently resided in the country for at least five years and comparable incompatibilities apply.<sup>43</sup>

55. As previously noted by ODIHR and the Venice Commission, limitations based on the length of residency, incapacitation and conviction should respect the principle of proportionality in line with international obligations and standards.<sup>44</sup> The exclusion of those who are still to stand before a court is contrary to the principle of presumption of innocence.<sup>45</sup> Similarly, while the Venice Commission and ODIHR recognize the secularity of the institutions of Uzbekistan, representatives of the clergy should however not be excluded from the passive suffrage right. In addition, ODIHR has noted that there are no legal provisions or practical mechanisms on how language proficiency is to be verified, raising questions of objectivity and application.<sup>46</sup> Especially for the elections to the Legislative Chamber (Oliy Majlis) and local elections, the language proficiency requirement is contrary to the principle of universal suffrage,<sup>47</sup> as it should be up to the voters to decide on their best

<sup>41</sup> Article 60 of the draft Election Code.

<sup>42</sup> Article 69 of the draft Election Code.

<sup>43</sup> Article 87 of the draft Election Code.

<sup>44</sup> Paragraph 15 of the UNHRC General Comment 25 on Article 25 of the ICCPR states that “any restrictions on the right to stand... must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” See also paragraphs 7.3, 7.5 and 24 of the 1990 OSCE Copenhagen Document, and Guideline I. 1.1 c of the Code of Good Practice in Electoral Matters. Additionally, Article 2.b of the 2002 Commonwealth of Independent States (CIS) Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms states that “The right of a citizen to elect and be elected... shall be given effect without any limitations of discriminatory nature on the basis of gender, language, religion or faith, political or other beliefs, national or social origin, belonging to a national minority or ethnic group, property or other similar status.” See also, for example, the judgments of the European Court of Human Rights (ECtHR) in *Scoppola v. Italy* (No. 3) [GC], no. 126/05, 22 May 2012, *Greens and M.T. v. The United Kingdom*, no. 60041/08 and 60054/08, 23 November 2010, and *Hirst v. The United Kingdom* (No.2) [GC], no. 74025/01, 6 October 2005. In these rulings, the ECtHR noted that the disenfranchisement of prisoners without regard to the gravity of the crime committed and the duration of the sentence was disproportionate and incompatible with the right to participate in elections. In its judgment in *Kiss v. Hungary*, no. 38832/06, 20 May 2010, the ECtHR noted that for the cases of disenfranchisement based on legal incapacitation “an indiscriminate removal of voting rights, without an individualised judicial evaluation ... cannot be considered compatible with the legitimate grounds for restricting the right to vote.” In many countries, candidates having resided in foreign countries during the pre-election period still have a wide public support and possess a good knowledge of the situation in the country. For example in Estonia, out of four post-Soviet era presidents only one had resided in the country for even the last year before elections.

<sup>45</sup> Paragraph 5.19 of the 1990 OSCE Copenhagen Document states that “everyone will be presumed innocent until proved guilty according to law”.

<sup>46</sup> ICCPR, Article 14(2); see also ODIHR Final Report on the 29 March 2015 Presidential Election, p. 10.

<sup>47</sup> Code of Good Practice in Electoral Matters, I. 1.1.

representation even if the use of state language in everyday work of the bodies is compulsory. **ODIHR and the Venice Commission reiterate the need to review candidacy provisions and to remove the remaining undue limitations on passive suffrage rights.**

56. The draft Election Code foresees many formal requirements for the nomination of candidates. In some cases, political parties registered just before the deadline for registration of candidates might legitimately have the same or even higher level of support among the voters than other political parties. The restriction for them to nominate candidates is in contradiction with the principle of universal suffrage. Requirements for the candidates' registration include the obligation to present a certificate from another state institution, such as the Ministry of Justice. They also include the registration of the political party, minutes of the internal meetings of the political party, data on the profession, place of work and residence of the candidate, and general (without any clearer requirements) information on the future candidate for the President of the Republic.<sup>48</sup> For the registration of candidates, the electoral commissions do not need this information or can collect it directly from the Ministry of Justice, as there are no criteria for denying the registration based on candidates' profession, *inter alia*.

57. Article 88(6) stipulates some criteria for the political parties to choose their candidates. The principle of democracy urges for the freedom of the political parties to decide on the nominations of the candidates to be left open. Based on the referred Article, the relevant election commission might be considered as competent to assess the candidates' compliance with these criteria. **ODIHR and the Venice Commission recommend that the draft Election Code be reviewed concerning the requirements for the nomination of candidates while leaving the political parties to decide internally on their nominations.**

### 3. Candidate support signature – Collection

58. As part of the registration procedure for national-level elections, candidates are required to collect voter support signatures. In line with international good practice, presidential candidates are required to collect signatures of at least one per cent of the total number of voters from at least eight administrative and territorial units.<sup>49</sup> Political parties are required to collect 40,000 signatures (amounting to less than one per cent of the total number of voters) to participate in parliamentary elections.<sup>50</sup> For both types of elections, not more than eight per cent of the total number of required signatures may come from one territorial unit.

59. Article 38 permits a voter to support more than one political party seeking to contest an election. This change facilitates pluralism and competitiveness, in line with international good practice, and addresses a previous ODIHR recommendation.<sup>51</sup>

60. Article 38 also provides that at the request of a voter, a signature collector may enter the required voter information into the signature list on the voter's behalf. While this may appear to be a useful simplification of procedures, both for voters and signature collectors, without adequate oversight and other integrity guarantees, this could leave space for

<sup>48</sup> See Article 61(1) point 3.

<sup>49</sup> Article 62 of the draft Election Code. Paragraph I. 1.3 ii. of the Code of Good Practice in Electoral Matters stipulates that "the law should not require collection of the signatures of more than 1% of voters in the constituency concerned".

<sup>50</sup> Article 66 of the draft Election Code.

<sup>51</sup> Paragraph 77 of the [2010 OSCE/ODIHR and Council of Europe Venice Commission Guidelines on Political Party Regulation](#) states that "in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list for only one party".



possible manipulation and signature forgery. **ODIHR and the Venice Commission recommend considering additional integrity measures related to signature collection.**

#### **4. Candidate support signature – Verification**

61. Candidate support signatures are verified by the CEC within seven days. Article 39 provides that the CEC verifies 15 per cent of the required number of signatures submitted by each political party and the information of the signatories. The provision stipulates that the 15-percent sample of signatures shall include an equal number of signatures from each administrative unit, including the Republic of Karakalpakstan, all regions of the country, and the city of Tashkent. Articles 62 and 66 stipulate that in case of falsifications of signatures, the CEC will deny registration to prospective candidates.

62. As previously noted by ODIHR, these provisions allow for prospective candidates to be disqualified based on inaccuracies or invalid signatures in a limited sample, even if the remaining signatures would suffice to fulfill the legal requirement.<sup>52</sup> Moreover, there is a lack of detail on the amount of problematic signatures that could lead to disqualification. In this respect, the Code of Good Practice in Electoral Matters states that “[c]hecking of signatures must be governed by clear rules [...]” and that “[t]he checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked”.<sup>53</sup> **Therefore and in order to ensure equal treatment, ODIHR and the Venice Commission recommend that the signature verification procedures be adjusted to include clear guidance and procedures and in principle cover all signatures, not just a selected sample.**

63. For presidential, parliamentary and local elections, the respective election commissions are obliged to “notify [...] political parties about the discrepancies and deviations from the requirements of the present Code revealed in the documents submitted for registration”.<sup>54</sup> It is, however, not clear which aspects are referred to, whether parties will be granted a possibility to correct the revealed mistakes and if so, within what timeframes. **The Venice Commission and ODIHR recommend that these provisions be clarified.**

64. The draft Election Code would benefit from clear criteria for the competent election commission to refuse the registration of candidates if some discrepancies are still left, for example, the same candidate is nominated in more than one constituency (would he/she be registered in one of the constituencies); the requirement of gender balancing is not met; only a very small number of support signatures are invalidated; or the candidate does not meet the language proficiency requirements. **ODIHR and the Venice Commission thus recommend that the draft Election Code provides for clear criteria with regard to refusal of candidate registration.**

#### **5. Withdrawal of candidacy**

65. According to Article 42 of the draft Election Code, political parties can withdraw nominated candidates up to five days before an election and candidates can withdraw their own candidacy any time before election-day. The possibility of a late replacement facilitates centralized control by parties over the candidates, who may in practice be dependent on the party leadership, undermining their independence. In addition, late changes of candidates may confuse voters or leave them uninformed, impacting their choice, and may necessitate

<sup>52</sup> ODIHR Final Report on the 29 March 2015 presidential election, p. 11.

<sup>53</sup> Code of Good Practice in Electoral Matters, I. 1.3 iii. and iv.

<sup>54</sup> Draft Election Code, Articles 62, 70 and 89, respectively.

late procedures on and adjustment to already printed and distributed ballots (for instance, Article 56 stipulates that early voting starts 10 days before election-day). **ODIHR and the Venice Commission recommend adjusting the deadline for candidate withdrawal to avoid replacements too close to election-day.**

## G. Election Campaign

66. Regulations on the conduct of the election campaign are included in Chapter 9 of the draft Election Code. It establishes that the campaign period starts on the day of a candidate's registration and lasts until the day before election-day. Forms and methods of permitted campaign activities are narrowly described in a list to be found in Article 45; however, positively, it is stipulated that other, non-prohibited methods of campaigning may also be used. Prohibited forms of campaigning include the distribution of free or provided on privileged terms goods or services, as well as cash disbursements.<sup>55</sup>

67. The provision allowing candidates to start campaigning upon their registration by the respective commission results in a staggered beginning of the campaign. **ODIHR and the Venice Commission recommend that the campaign begin on the same day for all contestants in order to ensure equality of campaign opportunities.**<sup>56</sup> This would lead to more predictability for the contestants, too, as the campaigning requires longer preparations.

68. A number of articles in the draft Election Code contain welcome guarantees of equality of campaign conditions for contestants, including an obligation for election commissions to ensure such equality.<sup>57</sup> Candidates and political parties are granted equal access and equal amounts of free airtime and space in state media,<sup>58</sup> equal conditions for campaigning through private media, equality of conditions and the possibility to produce and distribute campaign materials unhindered,<sup>59</sup> and equality of opportunities and conditions for the organization of meetings with voters.<sup>60</sup>

69. Past ODIHR reports indicate that the above guarantees of equality did not contribute to the freedom and diversity of observed campaigns. Instead, rigorously and restrictively applied equality provisions yielded campaigns that were characterized by an ostensible homogeneity of campaign formats, messages and materials, as well as seemingly orchestrated and routinized events, devoid of competitiveness.<sup>61</sup> An absence of mechanisms to ensure a clear separation between the State and party resulted in the blurring of this distinction, in contravention of OSCE commitments.<sup>62</sup>

70. In this respect, the Joint ODIHR and Venice Commission Guidelines for preventing and responding to the misuse of administrative resources during electoral processes state that "[t]he legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favor or disfavor any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles,

<sup>55</sup> Article 44 of the draft Election Code.

<sup>56</sup> Paragraph 7.6 calls on OSCE participating States to ensure that contestants are able "[...] to compete with each other on a basis of equal treatment before the law and by the authorities."

<sup>57</sup> Article 9 of the draft Election Code.

<sup>58</sup> Article 46 of the draft Election Code.

<sup>59</sup> Article 47 of the draft Election Code.

<sup>60</sup> Article 48 of the draft Election Code.

<sup>61</sup> ODIHR Final Report on the 4 December 2016 early presidential election, p. 11-12.

<sup>62</sup> Paragraph 5.4 of the 1990 OSCE Copenhagen Document mandates "a clear separation between the State and political parties; in particular, political parties will not be merged with the State".

infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.”<sup>63</sup>

71. In addition, a one-month advance authorization requirement for holding public assemblies, as included in a separate legislative act, unduly restricts the right to assembly.<sup>64</sup>

72. The draft Election Code remains worded only generally and does not directly address the above concerns. Conditions for genuinely free and competitive campaigning, on the basis of equal opportunities, are only then created, when both the law and its application in practice safeguard these principles.

73. Clarification could be introduced with regard to the role of political parties and election commissions in the organization of contestant meetings with voters. While Article 48 states that meetings with voters are held by the contestants themselves, Article 20 requires DEC to support the organization of such meetings and Article 48 provides that DEC and PECs will inform voters about the place and time of meetings based on the information provided by the contestants. **The Venice Commission and ODIHR recommend clarify that election commissions only have a facilitating role should such facilitation be requested to ensure unimpeded campaigning.**<sup>65</sup>

74. With regard to the campaign in media, Article 46 contains a prohibition to disseminate false information and information that discredits the honor and dignity of candidates. As pointed out earlier by the Venice Commission and ODIHR, this limitation is of concern. Firstly, these provisions could be open to subjective interpretation. Secondly, their application could unreasonably restrict the freedom of expression and impede a robust and vigorous campaign. It remains unclear whether the candidate considered as guilty for that violation could be deregistered. These prohibitions are therefore not in line with international standards. **ODIHR and the Venice Commission thus recommend reconsidering this provision.**<sup>66</sup>

75. Article 46(5) provides that the procedure, volume and duration of use of the mass media resources for the campaign shall be identified by the respective election commission upon agreement with the political parties. The draft Election Code should not leave open to the election commissions to decide on these important aspects without clear, transparent and predictable rules. **ODIHR and the Venice Commission recommend that the draft Election Code provide for clear, transparent and predictable rules as well as clear deadlines on use of mass media resources.**

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<sup>63</sup> Joint Guidelines on administrative resources, B. 1.1, [CDL-AD\(2016\)004](#).

<sup>64</sup> See Article 21 of the Decree of the Cabinet of Ministers of the Republic of Uzbekistan “On Measures of Further Improving the Order of Organization and Conduct of Public Events”, 29 June 2014. ODIHR has previously recommended replacing the authorization procedure with a simple notification. See also Joint Guidelines on administrative resources, A. 2 & A. 5.2.

<sup>65</sup> See in this respect paragraph 7.7 of the 1990 OSCE Copenhagen Document requires the participating States to “ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications [...]”

<sup>66</sup> Paragraph 9.1 of the 1990 OSCE Copenhagen Document. Also, General Comment No 34 of the UNHRC to Article 19 of the ICCPR affirms the crucial importance of the freedoms of opinion and expression for every free and democratic society and subjects possible restrictions to these freedoms to clear limitations (Paragraphs 2, 20, 22).

## H. Campaign financing

76. The draft Election Code contains few provisions related to the financing of electoral campaigns. They are limited to outlining public funding guarantees for contestants, stipulating the types of campaign activities that can be covered from public funds, and prohibiting financial and materials support from foreign sources. All other party and campaign finance regulations are included in other laws and legal acts, including the Law on Financing of Political Parties and the corresponding CEC resolution.

77. Past ODIHR reports raised a number of concerns with regard to the overall campaign finance regulations. The lack of a requirement for pre-election reporting by contestants, for parties to publish the income and expenditures, and for the CEC and the Chamber of Accounts to publish their conclusions undermines transparency. As stated in the Venice Commission and ODIHR Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes, “the legal framework should provide for transparency and accountability of the use of public money and public goods by political parties and candidates during electoral processes.”<sup>67</sup> **The Venice Commission and ODIHR thus recommend reviewing the overall campaign finance regulations in order to provide in the draft Election Code for transparency and accountability of the use of public money and administrative resources. Both institutions recommend in particular that legal requirements for periodic, timely and transparent reporting on campaign income and expenditure, including prior to election-day, be introduced. They also recommend that legal provisions also include effective, proportionate and dissuasive sanctions for non-compliance.**

78. To duly ensure accountability, transparency and oversight of political party and campaign financing, corresponding regulations as contained in different laws and legal acts need to be comprehensively reviewed and consistency of regulations ensured. Positively, the CEC informed the delegation of its intention to propose, subsequent to the adoption of the Election Code, amendments also to the Law on the Financing of Political Parties with a view to addressing the shortcomings identified.

79. Article 95 of the draft Election Code retained a provision from the legislation being codified that any financial campaign contributions that political parties, public associations, enterprises, institutions, organizations and citizens would like to make shall be transferred to the CEC, which shall use these funds in the course of the campaign. As previously noted by ODIHR, this provision amounts to an undue limitation of the voters’ ability to financially support their preferred contestants during the campaign period. **ODIHR and the Venice Commission therefore recommend reconsidering this provision.**<sup>68</sup>

80. Overall, **the Venice Commission and ODIHR recommend that the Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes be followed and specific and clear norms to tackle the possible misuse of administrative resources undermining free and equal vote be included in the draft Election Code as such provisions are missing.**<sup>69</sup>

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<sup>67</sup> [CDL-AD\(2016\)004](#), A. 5.1.

<sup>68</sup> ODIHR Final Report on the 4 December 2016 early presidential election, p. 13. See also paragraph 170 of the [2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation](#) related to private financial contributions. Article 1 of the Council of Europe Committee of Ministers Recommendation Rec(2003)4 to member States on common rules against corruption in the funding of political parties and electoral campaigns states that: “the state and its citizens are both entitled to support political parties”.

<sup>69</sup> [CDL-AD\(2016\)004](#), in particular, A. 1.1.

## I. Participation of women

81. The draft Election Code contains welcome provisions aimed at enhancing the participation of women as candidates. Provisions stipulate that women shall comprise at least 30 per cent of the total number of candidates nominated by parties in parliamentary<sup>70</sup> and local elections.<sup>71</sup> Under a majoritarian system, legal quotas applied to candidacy do not necessarily guarantee a corresponding level of representation of women in elected bodies.

82. In addition, the draft Election Code does not stipulate what action should be taken in case the legal quota is not met and does not include any incentives or penalties. **ODIHR and the Venice Commission recommend that proportionate sanctions be included in the law to ensure compliance.** These may include financial measures, such as a reduction or denial of public funding, or stronger measures, such as denial or cancelation of list registration.<sup>72</sup>

83. The Venice Commission's Code of Good Practice in Electoral Matters and the related Declaration on women's participation in elections are clear in this respect. The Code of Good Practice states that "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>73</sup> The Declaration complements this point by stating that the parity principle may lead to admit:

"1. Elections by a list system

- The obligation to ensure a composition of the candidates' lists alternating men and women

- The refusal to register lists which do not respect such an alternating composition

2. Elections in single-member constituencies

- The obligation to ensure a balanced percentage of women and men amongst candidates of the same party

- Dissuasive sanctions in case of non-respect of this obligation".<sup>74</sup>

84. The draft Election Code does not contain any requirements of equality of representation of both genders in the election administration. ODIHR has noted in the past that women are generally under-represented in election commissions and recommended the adoption of measures aimed at enhancing their participation, especially in senior decision-making roles.<sup>75</sup> **ODIHR and the Venice Commission reiterate this recommendation.**

85. In addition, the draft Election Code does not contain requirements for the collection and publication of gender-disaggregated data, including on the composition of election commissions and voter and candidate registration. **The Venice Commission and ODIHR therefore recommend that such provisions be introduced, in line with international standards and OSCE commitments.**<sup>76</sup>

<sup>70</sup> Article 68 of the draft Election Code.

<sup>71</sup> Article 88 of the draft Election Code.

<sup>72</sup> [ODIHR Guidelines for Reviewing a Legal Framework for Elections](#), p. 21.

<sup>73</sup> Code of Good Practice in Electoral Matters, I. 2.5.

<sup>74</sup> Declaration on women's participation in elections ([CDL-AD\(2006\)020](#)).

<sup>75</sup> ODIHR Final Report on 21 December 2014 parliamentary elections, p. 7.

<sup>76</sup> Paragraph 40.13 of the 1991 OSCE Moscow Document commits participating States to "ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women". See also Article 7(b) of the CEDAW. Paragraph 26 of the 1997 General Recommendation 23 on CEDAW by the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) provides that "states parties have a responsibility, where it is within their control [...] to appoint women to senior decision-making roles".

## J. Complaints and appeals

86. Provisions of the draft Election Code governing the review of complaints and appeals are relatively limited in scope. Article 98 obliges election commissions to review and to respond to election-related complaints by natural and legal persons within three days. Complaints submitted less than six days before an election or on election-day are to be responded to immediately. Commissions are obliged to register complaints received and dealt with in a logbook and to notify the complainants of a decision taken in writing. However, there is no explicit obligation to publish decisions on complaints.

87. Based on Article 99, parties that nominated candidates, candidates and their proxies, observers and voters are entitled to challenge decisions and actions of election commissions at the superior commission or in court within 10 days of the decision. CEC decisions can be appealed at the Supreme Court, also within 10 days. Two main issues stemming from these provisions require further review.

88. Firstly, these provisions introduce a system where complaints can be dealt with by election commissions or courts of law. Such dual possibilities could lead to confusion, “forum shopping” by applicants, overloading of commissions and courts with repetitive claims, as well as possibly contradictory decisions. The higher election commission should, in principle, have the authority to decide whether a violation has taken place, and only in cases when the higher election commission fails to do so, the appeal could be submitted to the court. **ODIHR and the Venice Commission recommend abolishing the possibility of choice concerning the submission of complaints, in line with international standards, in particular the Venice Commission’s Code of Good Practice in Electoral Matters.**<sup>77</sup>

89. Secondly, Article 99 provides for challenges of decisions and actions by election commissions, but does not address inaction and possible failures by commissions to act on their legal obligations. Article 20 lists duties of DEC and obliges them to review and to decide on complaints against decisions and actions (inaction) by PECs. **ODIHR and the Venice Commission recommend that inaction-related complaints to all levels of the election administration be explicitly provided for. They also recommend that deadlines for complaints against inactivity of election commissions be stipulated as an exact date or time of inaction may be difficult to identify.**

90. Further, the Code of Good Practice in Electoral Matters recommends that the deadlines for submitting complaints and appeals should be short, three to five days.<sup>78</sup> This would avoid protracted debates about the validity of election processes and results. **The Venice Commission and ODIHR recommend that the draft Election Code be amended accordingly.**

91. Article 99 should be interpreted in a way that those persons denied the right to vote should also have the right to submit complaints to the courts and that the notion of “voter” would not exclude those persons not entered in the voter list from the right to recourse for judicial remedy.

92. Previous ODIHR reports noted the absence of provisions for requests of recounts or for the invalidation of results. The draft Election Code did not address this concern and therefore does not provide effective remedy on these key aspects of the electoral process.<sup>79</sup>

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<sup>77</sup> Code of Good Practice in Electoral Matters, especially II. 3.3 c.

<sup>78</sup> Code of Good Practice in Electoral Matters, II. 3.3 g.

<sup>79</sup> Paragraph II. 3.3 e. of the Code of Good Practice in Electoral Matters states that “The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the



**The Venice Commission and ODIHR recommend that the draft Election Code be amended to prescribe that every voter, party, candidate and observer can file a complaint on every aspect of the electoral process, including requests for recounts and the invalidation of election results. A reasonable deadline for such complaints should be stipulated.**

#### **K. Election observation**

93. The draft Election Code permits election observation by political parties, candidate proxies, mass media, and observers sent by international organizations and other states. These observers are granted access to all main electoral processes before and on election-day, have the right to attend sessions of election commissions, and to receive copies of results protocols. During the expert visit, representatives of political parties also welcomed the removal of a limitation of one party observer per polling station, which was set in laws being codified.

94. However, the provisions on permitted observers' activities contained in Article 33 and dispersed throughout the draft Election Code do not appear to explicitly permit observation of processes taking place after the vote count, including the transfer of results, tabulation by higher-level commissions, and other post-election processes. **ODIHR and the Venice Commission recommend that the provisions be clarified in this regard.**

95. Despite previous ODIHR recommendations and at odds with OSCE commitments and international good practice, the draft Election Code does not provide for citizen election observation.<sup>80</sup> This detracts from the transparency and lessens public confidence in the electoral process.

96. Several articles in the draft Election Code appear to provide some basis for the involvement of the civil society. For instance, Article 12 obliges the CEC to "hear the communications of [...] non-government non-profit organizations on the issues related to the preparation and the conduct of elections". Article 13 grants the CEC chairperson the authority to invite representatives of "public associations" to CEC sessions. Article 39 entitles civil society organizations to be involved in candidate support signature verification. The national development strategy for 2017-2021 explicitly calls for the institution in practice of mechanisms of public control, strengthening of the role of the civil society, and enhancing its political activeness. **ODIHR and the Venice Commission therefore recommend that the draft Election Code explicitly provide for non-partisan citizen election observation at all stages of the electoral process.**

97. **The Venice Commission and ODIHR underline that such recommendations also apply to early<sup>81</sup> and mobile voting**, which should be closely scrutinized considering the risks of manipulations.

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entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned".

<sup>80</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document states that "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." Guideline II. 3.2 of the Code of Good Practice in Electoral Matters states that "both national and international observers should be given the widest possible opportunity to participate in an election observation exercise." See also the 2003 [OSCE/ODIHR Handbook for domestic election observers](#); and the 2010 OSCE/ODIHR [Election Observation Handbook, sixth edition](#), referring *inter alia* the Declaration of Principles for International Election Observers, stressing such principles as the grounding of election observation in international human rights law, the long-term nature of elections, the need to establish minimum conditions for credible observation, and the important role of domestic election observers (p 16).

<sup>81</sup> Article 56 of the draft Election Code.

## L. Election-day

98. The draft Election Code contains welcome provisions aimed at facilitating electoral participation of persons with disabilities. Article 49 obliges local authorities to create the necessary conditions for persons with disabilities to be able to vote in regular polling stations. Article 50 requires polling stations to be equipped with ramps; however, it stipulates that such conditions are to be provided only “if such people are listed in the voter lists”. Given that information on persons with disabilities is not mentioned in Article 27 as data to be included in voter lists, it remains unclear how such information is to be gathered and which body is responsible for its comprehensiveness and accuracy. Furthermore and more fundamentally, international standards emphasize that the right to accessible infrastructure and premises, especially in places where public services and functions are performed, is a general right and should be ensured regardless of whether any voter has identified him/herself as using a wheelchair.<sup>82</sup> To ensure the effective practical implementation of accessibility provisions, it is recommended that the corresponding articles be adjusted to reflect the above concerns. **The Venice Commission and ODIHR recommend adjusting the relevant provisions of the draft Election Code in order to ensure an effective and practical implementation of accessibility provisions.**

99. During the expert visit, several interlocutors welcomed the relaxed ballot marking requirements in Article 54 of the draft Election Code, which grants voters more flexibility on the types of marks that can be used to indicate a choice on a ballot. This is a positive change. Ballot validity procedures should in principle ensure that ballots would not be disregarded whenever the intention of the voter is clear and unambiguous. Overall and as stated by the Code of Good Practice in Electoral Matters, “the voting procedure must be kept simple.”<sup>83</sup>

100. Ballot papers contain information on candidates’ positions occupied before elections. This information could give advantages to some candidates. **The Venice Commission and ODIHR thus recommend reconsidering such provision.**

101. Articles 57 and 91 of the draft Election Code both relate to counting procedures. Splitting these regulations into two separate articles results in some repetitions and creates ambiguity. **ODIHR and the Venice Commission recommend reviewing and possibly to consolidate these two articles.**

102. Article 57 of the draft Election Code provides for a novel practice of copies of PEC result protocols being submitted immediately upon completion of counting procedures to the respective DEC’s “by means of information and communication technologies”. While potentially contributing to the efficiency of results tabulation processes, any provisions for the use of technology need to be accompanied with detailed elaborations in the law on the technical solutions used and the procedures to be followed. These should cover, among others, aspects related to procurement, testing, auditing and public access to the technologies used.<sup>84</sup> **ODIHR and the Venice Commission therefore recommend providing the draft Election Code with detailed provisions and the procedures to follow on the technical solutions used for voting, counting and tabulation processes.**

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<sup>82</sup> Paragraph 25 of the General Comment 2 (2014) to CPRD provides that “[...] the duty to provide accessibility is an ex ante duty. State parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service.”

<sup>83</sup> Code of Good Practice in Electoral Matters, I. 3.2 i. and paragraph 31.

<sup>84</sup> See Code of Good Practice in Electoral Matters, I. 3.2. iv.; see as well the Venice Commission’s Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe ([CDL-AD\(2004\)012](#)), *inter alia* paragraphs 18 ff., paragraph 53, 56. See also [ODIHR Guidelines for Reviewing a Legal Framework for Elections](#), p. 65-69.

103. Positively, the draft Election Code obliges PECs to post result protocols immediately upon completion of counting at polling premises for public review and stipulates that protocols should remain on display for at least 48 hours. However, the transparency of the subsequent processes, including the tabulation of results by higher-level commissions, is not duly ensured. There are no requirements for DEC or later for the CEC to publish district-level results and/or protocols. Furthermore, the draft Election Code does not require detailed and comprehensive reporting on final election results. Article 12 requires the CEC to only publish “the total number of the votes cast and the number of votes cast for each candidate”. Similar requirements apply to regional, sub-regional and municipal election commissions with regard to the publication of results of elections to local councils in Article 18.

104. ODIHR has previously recommended that the public scrutiny of DEC tally sheets should be allowed and that preliminary and final election results should be published in a disaggregated form by district and polling station in a timely manner to enhance transparency and stakeholder confidence in election results.<sup>85</sup> **ODIHR and the Venice Commission reiterate the recommendation to publish election results in a disaggregated form.**

105. Additionally, Article 92(2) of the draft Election Code stipulates that “[i]n case of any discrepancies in vote counting reflected in the protocols of a precinct election commission, the district election commission shall have the right to propose to the precinct election commission to eliminate those discrepancies during its session.” This provision is unclear with regard to the method aimed at eliminating discrepancies. **The Venice Commission and ODIHR recommend clarifying the method to eliminate discrepancies regarding provisional results transmitted at DEC in order to avoid any arbitrary.**

106. It remains unclear what the consequences of the violation of Article 94 are. There might be cases where the ballot papers should be recounted and previous disputes are still pending after the ten-day deadline has passed. **The Venice Commission and ODIHR therefore recommend clarifying the text accordingly.**

107. The draft Election Code would benefit from special provisions on deadlines for supplementary elections (e.g. Article 90), in addition to the short deadlines for setting up electoral commissions.

#### **M. Prohibition to publish opinion polls**

108. Article 100 of the draft Election Code retains the prohibition to publish the results of public opinion polls, forecasts of election results or other election-related research during the five days before the elections and on election-day. ODIHR and the Venice Commission previously noted that this ban leaves a wide margin of appreciation to the implementing authorities and may unreasonably restrict the freedom of expression.<sup>86</sup> There is no need to prohibit at least publishing the exit poll results after the closing of the polling stations. The draft Election Code does not address this concern.

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<sup>85</sup> ODIHR Final Report on 4 December 2016 early presidential election, p. 22.

<sup>86</sup> 2012 Joint Opinion, paragraphs 34-35.