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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT JOINT OPINION ON THE ELECTORAL CODE OF "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

by the Venice Commission
and
the OSCE/ODIHR

on the basis of comments by

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I. INTRODUCTION

1. Following a request for opinion by the Minister of Justice of the Republic of Macedonia, Ms Meri Mladenovska-Gjorgijevska, on 21 November 2005, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) delivered a Draft Joint Opinion on the Draft Electoral Code of "the Former Yugoslav Republic of Macedonia" on 20 February 2006. Following enactment of the new Electoral Code and its publication in the Official Gazette on 31 March, the Venice Commission and ODIHR now present the present opinion on the Electoral Code, in view of, inter alia, upcoming parliamentary elections.

2. The present opinion is based on:
- The Constitution of the Republic of Macedonia, adopted on November 17th 1991 (Official Gazette Nos. 52/91, 1/92, 31/98 & 91/2001);
- Electoral Code as of 29th March 2006 (Official Gazette No. 40, 30th March 2006); hereafter "the Code" (CDL-EL(2006)021);
- The Electoral Code, working version (CDL-EL(2006)003; undated; unofficial English translation; hereafter "the Draft Code");
- The Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia;
- The Law on Local Elections (Official Gazette Nos. 46/96, 48/96, 56/96 & 12/2003, and 17/97; Decision of the Constitutional Court No. 2/97);
- The Law on Election of the President of the Republic of Macedonia (Official Gazette Nos. 20/94 & 48/99);
- The Law on Election of Members of Parliament of the Republic of Macedonia (Official Gazette No. 42/2002; 25 June 2002);
- The Law on Political Parties (Official Gazette No. 41/94);
- The Law on Polling Stations (Official Gazette No. 50/97);
- The Law on [the] Voters' list (Official Gazette No. 42/2002; 25 June 2002);
- The Law on Election Districts for Election of Members of Parliament (Official Gazette No. 43/2002; 26 June 2002);
- Ohrid Framework Agreement, 13 August 2001, Press Release, Presidential Cabinet of the Republic of Macedonia (14 August 2001);
- OSCE/ODIHR, final reports on elections:
- *Municipal elections, 13 & 27 March, 2005 (Warsaw, 10 April 2005);*
- *Referendum, 7 November 2004 (Warsaw, 2 February 2005);*
- *Presidential elections, 14 & 28 April 2004 (Warsaw, 13 July 2004);*
- *Parliamentary elections, 15 September 2002 (Warsaw, 20 November 2002);*
- *Presidential elections, 31 October & 14 November 1999 (Warsaw, 31 January 2000);*
- *Municipal elections, 10 September 2000 (Warsaw, 17 November 2000);*
- *Parliamentary elections, 18 October and 1 November 1998 (Warsaw, 1 December 1998);*

- Observation of parliamentary elections in "the former Yugoslav Republic of Macedonia" (15-19 October 1998; Doc. 8257, 3 November 1998)

- Parliamentary Assembly (APCE) and Congress of Local and Regional Authorities of the Council of Europe (CLRAE), final reports on elections:

- APCE, Ad hoc Committee to observe the presidential elections in "the former Yugoslav Republic of Macedonia" (31 October and 14 November 1999; Doc. 8604, 22 December 1999);

- APCE, Ad hoc Committee to observe the presidential elections in "the former Yugoslav Republic of Macedonia" (31 October and 14 November 1999; Doc. 8604, 22 December 1999);

- APCE, Observation of parliamentary elections in "the former Yugoslav Republic of Macedonia" (15-19 October 1998; Doc. 8257, 3 November 1998);

- CLRAE, Report on the Referendum in "the Former Yugoslav Republic of Macedonia" (7 November 2004; CG/BUR(11)75, 15 December 2004);

- CLRAE, Report on the local elections observation mission in "The former Yugoslav Republic of Macedonia" 10 and 24 September 2000 (CG/CP(7)12 rev);

- OSCE/ODIHR, Existing Commitments for Democratic Elections in OSCE Participating States (Warsaw, October 2003);

- Venice Commission, Code of good practice in electoral matters (CDL-AD(2002)023rev);

- Venice Commission & OSCE/ODIHR, Joint Opinion on the Draft Electoral Code of "the Former Yugoslav Republic of Macedonia" (CDL-AD(2006)008, adopted by the Venice Commission at its 66th plenary session, Venice, 17-18 March 2006);

- Guidelines and Report on the Financing of Political Parties (CDL-INF(2001)008);

- Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues (CDL-AD(2004)007rev);

- Guidelines on Media Analysis during Election Observation Mission prepared in co-operation between the OSCE's Office for Democratic Institutions and Human Rights, the Council of Europe's Venice Commission and Directorate General of Human Rights, and the European Commission (CDL-AD(2005)032).

II. EXECUTIVE SUMMARY

3. The Electoral Code (hereafter "the Code") provides a better integrated and unitary legislative framework for the administration of elections. The Code makes numerous improvements in the provisions currently included in the main election laws, including the Laws on the Election of Members of Parliament, on the Election of the President, and on Local Elections. In addition, other election-related laws, such as those on the Voters' List, Polling Stations and Election Districts (for parliamentary elections) have been incorporated in revised form into the Code.

3'. The Draft Code previously reviewed by the Venice Commission and ODIHR already contained numerous improvements in the legislative framework. In particular, it was found that the Draft Code would do much to address the problem of misfeasance at polling stations, including by election officials, by strengthening the supervisory role of

the State Electoral Commission (SEC) and other electoral commissions. Nevertheless, the review also identified significant uncertainties and concerns about a range of matters – including the composition of electoral bodies, language issues, regulation of the campaign and responsibility for the Voter List – as well as many more detailed points.

3''The new Code addresses several of these issues in such a way that would result in a major transformation of Macedonian electoral administration. In particular, the Code replaces the combination of judges and political party representatives on election bodies at all levels with reliance on selected professionals (on the SEC) and civil servants and other public workers, chosen randomly. The provisions on the language of electoral proceedings and materials have been made more detailed and extended to apply in all elections. In addition, many more detailed improvements have been made, partially in response to previous Venice Commission-OSCE/ODIHR comments.

4. Enactment of the Electoral Code will help avoid redundancies and possible discrepancies in legislative provisions. Even so, some provisions could nonetheless be improved upon even more in terms of legal drafting and methodology. The Code has some articles which would more appropriately be placed in the Constitution;[1] while other provisions (such as those concerning the detailed responsibilities electoral commissions) might be better left to rule-making.

5. While the Code will help safeguard the rule of law and democratic governance of elections, the adoption of electoral legislation should be watched closely to prevent political parties amending it in their favour before elections. The stability of electoral law is of great importance, particularly in a pre-election period.[2]

6. Perhaps most importantly, the Code would make it clear that the SEC and Municipal Election Commissions (MEC) have the responsibility to supervise the work of subordinate electoral bodies. It is hoped that this will prompt the commissions to take a more proactive approach to addressing irregularities. The commissions would be empowered to remove subordinate election officials, and further disciplinary action could be undertaken by the SEC through initiation of a misdemeanour procedure, or by the Civil Service authorities for state personnel involved in electoral administration. The SEC should use its supervisory authority to fashion constructive remedies to problems in election administration, not continue to approach such matters primarily through the resolution of formal complaints seeking the annulment of results and repetition of voting.

7. Some of the other main aspects of the Code include:

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[1] *E.g., Article 123 requires the President of the Republic to give an oath before Parliament, and Article 138 describes a procedure for the presidency to be declared vacant.*

[2] *See Venice Commission Code of good practice in electoral matters (CDL-AD(2002)023rev), II. 2. "b. 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, or should be written in the constitution or at a level higher than ordinary law."*

Composition of Election Commissions: The President and members of the SEC would be professionally-qualified individuals selected by Parliament through a process involving the Opposition as well as Ruling parties. The Code would remove judges from a direct role in electoral administration, and in particular eliminate the selection of judges for service on election commissions based on nomination by the governing and opposition groups in Parliament (a method which raised concerns about the independence and neutrality of the judiciary).

Language Issues: The Draft Code goes far to ensure that electoral proceedings and materials are subject to the use of a second official language under the Ohrid Framework Agreement (OFA), which is incorporated into the Constitution, in municipalities in which a minority constitutes 20% or more of the population. Still, there appear to be a few issues yet outstanding regarding the use of minority languages in the electoral process in relation to the OFA.

Regulation of the Campaign: The SEC is not explicitly granted regulatory powers which would enable it to take legally enforceable action with respect to persons or entities outside electoral administration. The regulation of activities related to the election campaign – such as media, broadcasting, campaign violations and campaign finance reporting – would continue to be exercised by other State bodies. The pertinent provisions reflect some improvements, but also continue to contain some problem areas.

Voters' List: The Code makes clear that primary responsibility for maintenance and updating of the voters' list lies with the Ministry of Justice.[3] But the Ministry of Justice will continue to rely on information provided by other agencies, particularly the Ministry of Internal Affairs; and methodological and technical operations to the voters' list itself will continue to be performed, for the time being, by the State Statistical Office. There is no clear resolution of the issue of voting by citizens who do not reside in the country.

8. In addition to these areas, there are numerous other specific issues with respect to the Code. These are laid out in detail in the analysis and recommendations.

III. BACKGROUND

9. The OSCE-ODIHR has deployed election observation missions for several elections, as well as a national referendum, in the Former Yugoslav Republic of Macedonia. Many of these missions have been expanded to form International election observation missions (EOMs) including institutions of the Council of Europe and other international organisations. Following the most recent mission, for the March 2005 municipal elections, the Macedonian authorities indicated their intention to follow up on the recommendations and requested assistance in this regard.

10. With the advice of a Working Group including external representatives, the Government developed a Draft Electoral Code, which received first reading in Parliament

[3] *See, e.g., Arts. 41 (1), 48 (3), 51 (1), 53 (3), 63 (1).*

in January 2006. The Venice Commission and OSCE/ODIHR provided comments on the Draft Code, and many changes were made on matters that were the subject of the Venice Commission-ODIHR comments as well as other matters prior to enactment of the Code, which came into effect with its publication on 21 March 2006.[4]

A. ELECTORAL SYSTEM

11. The methods of election for various offices are established under the Constitution and prior to enactment of the Code, through specific election laws for the main types of elections – the Law on Election of Members of Parliament; the Law on Election of the President; and the Law on Local Elections (municipal councillor and mayoral positions). The Code would not change the method of election to any office, which remains as follows:

- Under the Constitution, a candidate is elected to the Presidency if s/he obtains an absolute majority of the votes of all registered voters, provided that more than 50% of the registered votes cast a ballot.5 If not, a second round is held between the two leading candidates and the one who gets more votes is elected President; but the above-mentioned turnout requirement must be achieved for the election to be valid. If not more than 50% of the registered voters cast a ballot, the election has to be repeated from the outset. Relating an election outcome to the number of listed votes often creates unnecessary problems and discussions, since ideally accurate voter lists are difficult to compile. Experience in other Council of Europe and OSCE member States, which had similar legal provisions confirmed that the utility of such provisions is questionable. Thus, the constitutional provisions, which are reflected in the Code, permit a cycle of failed elections and should be changed.

- Under the Code, as under the previous Parliamentary Election Law (2002), 120 parliamentarians are elected through proportional representation elections in six districts with equal numbers of available mandates (exactly 20 seats from each) and approximately equal numbers of registered voters. The boundaries of the districts do not correspond to any legal administrative or territorial division. This is a rather unusual arrangement. List proportional systems in multi-member constituencies have the advantage that the constituencies need not be equal in size since the number of seats from each constituency will be determined by the number of voters or citizens. Therefore administrative units will most often form the constituencies under list proportional systems. The "former Yugoslav Republic of Macedonia" has chosen not to take advantage of this feature and they therefore have to undertake the rather complicated task of drawing constituencies and to administer elections in constituencies which may divide administrative

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[4] *Joint Opinion on the draft Electoral Code of "the former Yugoslav Republic of Macedonia", CDL-AD(2006)008.*

[5] *Remark: the Articles 120 and 132 refer to the candidate who wins the "majority votes". The term "majority" can be misunderstood and the term "more than half of" or "more than 50% of" would be more accurate.*

units. There is nothing wrong in doing this but it seems to be an unnecessary complication. Unlike previous law, the Code does not specify a legislative threshold (percentage of the national or district vote required to achieve representation); and its description of the award of mandates according to the d'Hondt formula, for the municipal councils as well, remains vague. The language could be more precise in stating that the number of votes per list is divided by the divisors 1,2,3,4, etc.[6] Article 127 (5) uses, in the English translation, the term "quotients" instead of "divisors" whereas the corresponding Article 130 (6) uses the correct term.

Article 121 (3) states that "the candidate who wins [the] majority votes of the voters who have cast their ballot, shall be elected" president. This means that even invalid (including blank) votes are taken into account. If one of the two candidates has got 48% of the votes, the other candidate 46% and there are 6% invalid votes, the election is undecided, even with a high turnout. It would therefore be better to simply state the candidate with the highest number of votes is elected. The wording of Article 133 (3) for the mayor election could be used instead.

- Election of municipal councillors is through proportional representation. Mayors are elected directly, and a candidate may win outright by achieving an absolute majority, but only if a quorum of one-third of voters turn out. Otherwise, there is a second round between the two leading candidates in which the candidate who receives more votes is the winner; there is no turnout requirement for the second round and therefore no possibility of failed elections. Under the Law on Territorial Organization, 2004, which implemented the decentralization objectives of the OFA, there are 84 municipalities and an additional local government (with mayor and council) for the City of Skopje, which includes several municipalities.

B. SELECTED ISSUES

12. International observers have generally concluded that the legislative basis for elections was sufficient for the conduct of democratic elections, but have repeatedly pointed out problems with vagueness, omissions and inconsistencies in the election laws. Observers have also regularly reported the occurrence of widespread irregularities, some of which are related to limitations in the legislation and its interpretation by electoral authorities.

13. The observations made by international observers to date should be kept in mind in connection with reviewing the Code. Some of the main issues that have been raised concerning the legislative basis for elections are as follows:

1. Powers and Responsibilities of Election Commissions

[6] *Articles 127 and 130.*

14. The lists of SEC and other electoral commission responsibilities are quite (perhaps overly) lengthy and detailed.[7] But despite having a long list of responsibilities assigned to it, the SEC and other commissions did not view themselves as having a supervisory role.

15. Thus, while election bodies at all levels are responsible under the law to "take care for the legality of preparation and conduct of elections",[8] for the most part they have not overseen and controlled the actions of subordinate election bodies. The reluctance to take a proactive approach to electoral administration was especially pronounced with respect to the SEC's role in the conduct of municipal elections, but applied during all elections.

16. Instead, election commissions have tended to address problems in election administration only in response to formal complaints. The commissions have also approached complaints very legalistically, with the result that many problems in electoral administration have not been corrected either during the elections or in the period for complaint and appeal. In part, this resulted from an interpretation of the election laws under which the only remedy for violations is for the SEC to annul the results from polling stations and hold repeat elections there.

2. Previous Composition of Election Commissions

17. The State Election Commission (SEC) has been composed of a president appointed by the President of the Republic; four judges of the Supreme Court are appointed by Parliament upon nomination of the governing and opposition groups in Parliament; and four other members nominated directly by the same political parties. Observers reacted negatively to over-reliance on judges in electoral administration, and particularly the system of selecting judges for this purpose, since it raised serious issues concerning the independence and neutrality of the judiciary.

18. For Parliamentary Elections, regional election commissions (REC) were formed for each election district. But for all types of elections (including state *referenda*) municipal election commissions (MEC) are formed in each municipality and for the City of Skopje. The SEC appointed the presidents of the regional and municipal election commissions from among judges of different courts, based on a 2/3 vote. The regional election commissions also had other judicial members who are appointed upon nomination by the governing and opposition groups in Parliament. While this system helped create a certain political balance in electoral administration, it intensified concern about the effect on the judiciary.

3. Regulation of the Campaign

19. The SEC, which was previously established under the Parliamentary Election Law, does not have direct regulatory authority over various aspects of the electoral campaign. Instead, the Parliament itself, as well as other State bodies, adopt policies and take up matters in the various areas related to the campaign – including media in general, the

[7] *Id., Articles 31 (SEC) & 37 (MECs).*
[8] *See, e.g., Draft Code, Article 28 (1).*

electronic media, campaign violations, and limitations and reporting on campaign finance. While noting improvements in certain areas, especially media and broadcasting, observers have continued to point out various issues, including with respect to equal access of election contestants to the media (especially in connection with advertising) and incomplete and after-the-fact reporting of campaign contributions and expenditures.

4. Irregularities at Polling Stations

20. The last area that must be addressed as part of this background is that international and other observers have regularly reported widespread irregularities and illegalities in election procedures at the polling station level. Many of these have been of an extremely serious nature, sometimes involving organised ballot-box stuffing with the cooperation or even participation of Election Board presidents and members. Often such incidents also include intimidation and threatened or actual violence by political activists. The most flagrant violations are geographically localised, and have often occurred over and over again in the same locations during different elections. Little if any effective sanction has been applied to the malefactors, and some persons have continued to be appointed to electoral boards even after having being associated with past irregularities.

IV. MAIN ISSUES

A. COMPOSITION, STRUCTURE AND OPERATIONS OF ELECTION BODIES

1. Composition

21. In the Code, the term "election management bodies" is used to refer to the various electoral commissions – State Election Commission (SEC) and Municipal Election Commissions (MEC), as well as the Election Boards (EB) which conduct the voting.[9] Hereinafter, unless otherwise specified, the term MEC will be used collectively to refer to the 84 MECs as well as the City Election Commission of Skopje. Up to now, the composition and establishment of election management bodies has been described in separate legislation referring to the various kinds of elections, including Parliamentary and Municipal.

22. Previously, the composition of election bodies followed a "balanced, mixed" approach – one under which a core membership of professionals (on electoral commissions, judges from various courts chosen by lot) was supplemented by members (also including judges) nominated by the main governing and opposition parties in Parliament. As is common in systems of this nature, the balance of party nominees to appointed professionals increased as the level in the hierarchy of election bodies decreased.

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[9] *In the Draft Code reviewed previously, the term "electoral body" was introduced to replace "election management bodies". For the most part, the usage "electoral body" has been removed, but some instances remain in the Code.*

27'. The provisions of the Code on the appointment and composition of election management body would result in a transformation of electoral administration. The "balanced, mixed approach" followed previously would be replaced at all levels with a "neutral, professional" model.[10] In the SEC, the President and four members would be required to have appropriate professional credentials, and will be appointed by Parliament through a process involving both the ruling and opposition parties. In other election management bodies, including the MECs and Electoral boards, the members would be drawn at random from the ranks of civil service and other governmental personnel residing in the area. This will be the case for future elections, except that for the next parliamentary elections two members of the electoral boards will be appointed upon the proposal of the Ruling and Opposition parties, one for each side (Article 193 [3-5]).

27''. Consistent with the neutral/professional model, individuals may not be appointed to an election management body if they have been sentenced for a criminal offence related to elections or if as electoral officials they had been responsible for irregularities that resulted in the annulment of voting. They cannot be elected officials of the Government or Parliament, nor persons employed in certain governmental bodies (among others, the Ministry of Justice and Ministry of Defence). (Article 18 [1-2].)

27'''. Service on Election management bodies is mandatory for those who are selected. The only grounds for refusal to serve are health and family reasons, found valid by the appointing body based on submitted valid documentation. (Article 18 [3]).

27''''. For purposes of appointing civil servants and other government workers to MECs and electoral boards, two classes of service are distinguished: "Employees in State, municipal administration and administration of the City of Skopje" are those government employees with civil servant status. "Employees in the public administrations" includes other government employees, at various levels, without such status. (Article 2 [16-17].)[11]

27'''''. Notably, appointments to election management bodies are to be made consistent with "adequate and equitable representation" of minorities and women, with the latter to occupy 30% of the positions and adequate and equitable representation for recognized minorities on MECs and electoral boards in municipalities in which at least 20% of the population is from a particular minority (Article 21).

23. Under the previous election laws, deputies were appointed for the presidents and members of all election bodies, and this practice would be continued under the Draft Code. In a welcome change, the Code provides greater specifics concerning the formal role of the deputies – namely, that deputies participate in the work of the body only in the

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[10] *See, e.g., OSCE/ODIHR, "Existing Commitments …" Part One, Par. 4.2, which reads in pertinent part: "The impartiality of the election administration can be achieved through either a mainly professional or politically balanced composition." See also the Venice Commission Code of good practice in electoral matters (CDL-AD(2002)023rev), II. 3.1. d & e.*

[11] *The terms "state employee" and "public employee" will be used hereinafter to refer to these two categories, respectively.*

absence of a member.[12] (On the other hand, a new definition in the Code includes deputies as "members" of election management bodies.)[13]

24. Regarding the appointment of deputies, however, it could be viewed as inappropriate to have deputies or alternates for members of electoral commissions. The office of member of an election commission should be considered personal and it should not be possible to delegate its functions to another. (This does not mean that there should not be a panel of possible substitutes, in case a member of the Commissions falls sick or is unable for some other compelling reason to participate.) At the same time, it is recognized that the institution of deputies is well-established in Macedonian official practice.

a. State Election Commission

It is imperative for elections that the bodies in charge of organising them enjoy full trust and confidence with all the groups participating in the elections. The models vary from one country to another and what may work well in some countries may not at all be suitable in another. In particular the perception of the independence of the professional staff of the government may vary a lot and the model for selecting members of election administrative bodies needs to take such perceptions – justified or not – into account.

25. Under the Code, the SEC will be constituted of a President, Deputy President and five other members who serve five-year terms. To be proposed for membership, an individual must be a citizen (but not registered voter) of the country having permanent residence there; have received higher education and have had at least eight years of legal experience in political and electoral systems; and must not be a member of an organ of a political party.

26. The process for appointment of SEC members is as follows: Parliament announces the vacancies in the Official Gazette and daily newspapers; the Committee on Election and Appointment Issues prepares a panel of applicants; the Opposition parties propose the President and the Ruling parties propose the Deputy President; and Parliament selects the President and members by a 2/3 vote.

27. It should be noted that the new SEC will be appointed in this manner within 15 days of the coming into effect of the Code (Article 195), whereupon the status of the previous members would be suspended (Article 27 [6]) and the law under which they were appointed (the Parliamentary Election Law) would be repealed (Article 192). Thereafter the SEC would have only 20 days to adopt by-laws required under the Code (Article 196).

This procedure should secure that all members are not selected by a (small) majority of the Parliament. However, there is a risk of a stale mate in the process. With a proportional election the distribution of affiliation would be assured.

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[12] *Id., Article 22 (2).*
[13] *Id., Article 2 (4).*

The gender rule of at least 30% of the members from each gender would secure at least three female commissioners.

Article 31 still uses the term "supervise" for the SEC's relationship with other election bodies, not 'instruct', even though the term instruct is used at other places. The list of tasks is otherwise very detailed and there is a danger that such detailed lists may be incomplete. More general but still definite rules may often be better when describing the tasks of the most superior election management body.

b. Other Electoral Management Bodies

i. Former Regional Electoral Commissions

28. The Draft Code continued to refer to the Regional Electoral Commissions (REC), which were formed in connection with parliamentary elections, which are conducted in six districts. It was pointed out in the previous Opinion that the Draft was inconsistent on this point, however, and that plainly a decision was needed about what if any role the RECs would have in parliamentary and particularly other elections. The new Code, however, eliminates all reference to the RECs and these bodies will cease to exist.

ii. Municipal Election Commissions (MEC)

34'. MECs will be composed of a President and four members (plus deputies), appointed by the SEC for five-year terms. They will be randomly selected from state employees with higher education (Article 34). Appointees to MECs, "as a rule" should be residents of the municipality (Article 36). This would not necessarily guarantee that the commission gains general trust with all stakeholders in the election and the MECs may not be seen to have an independent position with such a composition, since the administration may not be seen to be fully independent of the political leaders of the municipality.

Two or three of the five members have to be females.

The secretary of the MEC is appointed by the President of the MEC, not the full commission, which seems strange for such an important position.

iii. Electoral Boards

Electoral boards will also be composed of a president and four members, with deputies, appointed by the relevant MEC. Electoral boards' presidents and deputy presidents will be selected at random from state employees, and other electoral board members similarly from the ranks of other public employees with four years experience in their jobs. EB members should also "as a rule" be residents of the municipality in which the EB is located (Article 38.).

c. Related Issues

29. The Code does not contain detailed provisions related to the inauguration or conditions of service on election management bodies. Professional appointees to the SEC and MECs would receive five-year terms. In the case of the SEC, the terms of existing appointees would be "suspended" (see above), but it is not clear whether existing MECs would continue or a new composition would be appointed under the provisions of the new Code. In either case, the entire professional membership of the various commissions could potentially change over all at once, possibly shortly before an election.

30. Not only would this approach cause a loss of expertise, but could also lead to questions being raised about the motivations for such extensive turnover. For these reasons, consistent with the limits of the Code, Parliament should consider phasing in (or "staggering") the terms of new appointees to election bodies so that a regular rotation of membership can be instituted.

31. In addition, there is no provision regarding protecting members of all election management bodies from being relieved of their duties except for valid cause.[14] Thus such appointees might be removed even if they are providing satisfactory service, which could place them under considerable pressure in a time of political competition. Such pressure could be exercised through Parliament, with respect to appointment of the composition of the SEC; or the SEC in terms of its powers (discussed at greater length below) to supervise the work of subordinate commissions and their personnel, removing such personnel if necessary.

32. With respect to the SEC itself, members can be discharged "due to unprofessional carrying out of the function", based on 2/3 of the other members proposing such action to the Parliamentary Committee on Election and Appointment Issues. It is not clear whether in such a case the member in question would receive any due process.

2. Operations

33. A provision concerning the method of operation of election management bodies states: "The work of the election management bodies shall be public, thus the authorized representatives of the submitters of lists and accredited observers shall have the right to be present at the work of election management bodies." (Article 24.) This is a valuable provision, which will help ensure that the political parties and other list submitters – some of which formerly participated directly in electoral administration – can obtain equivalent information about electoral administration activities.

34. Under previous law, the work of the SEC was supposed to be "open", but in fact there was generally no access by list submitters (other than those represented on the SEC), the

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[14] *See OSCE/ODIHR, Existing Commitments …, Part One, Par. 4.2 (in pertinent part): " … Appointments to election administration positions at all levels should be made in a transparent manner, and appointees should not be removed from their positions prior to the expiration of their term, except for cause." (references omitted). See also the Code of good practice in electoral matters, II. 3.1. f.*

press or the public. While public access may be difficult to arrange, it would seem desirable also to permit the press to be present at all SEC meetings – with the possible exception of closed meetings about certain matters not suitable for public discussion.

B. SUPERVISORY AND DISCIPLINARY AUTHORITY

35. Under the Code, the SEC and MECs are given explicit supervisory authority over subordinate election bodies and officials.[15] The addition of supervisory responsibility to the enumerated competences of these bodies is an important enhancement of their authority to control electoral administration and correct problems. In the past, the SEC and other election bodies often took the position that they were not empowered to supervise subordinates and respond to irregularities, instead acting only when a complaint was submitted supported by legally-sufficient evidence.

36. It remains to be seen whether the general attribution of supervisory responsibility to the SEC and other election commissions will effectively address the culture of impunity that has sometimes been observed among election officials, particularly at the electoral boards' level. Under the Code, the SEC and other electoral commissions would still have little direct power over subordinate officials, except to dismiss them for cause. The addition of specific provisions on this aspect is, however, most welcome.[16]

37. There is also a provision in the Code aimed at persons who violate the law in connection with an election, preventing them from being proposed to serve on an election body in a later election if their work during a previous election resulted in annulment of results.[17] This sanction does not appear to be broad enough, however, since not all significant alleged irregularities would lead to annulment.

38. One thing that has been lacking in the legislative provisions on the disciplinary powers of election commissions is the authority to impose administrative sanctions on subordinate officials who commit or permit irregularities and illegalities in election administration. However, the Code adds two significant new disciplinary tools: First, the SEC is empowered to "initiate and lead a misdemeanour procedure in accordance with law." (Article 31 [3]; but the precise nature of such a proceeding is outside the scope of this commentary.) Second, unlawful activities by the president or members/deputies of the MECs would be subject to disciplinary proceedings under the Law on Civil Servants.[18]

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[15] *See Id., Articles 31 (1) (SEC to "take care of legality in the … elections … and shall supervise the work of the election management bodies" … and shall control the work of the election bodies and undertake measures in the event of determining a violation of the legality in the preparations …"); & 35 (municipal election commissions to "take care for the legality in the preparation and conducting of the elections … and shall supervise the work of the electoral Boards"; and "control the legality of the work of the electoral boards and shall intervene in cases when violation of legality has been determined in the preparations".*

[16] *Id., Articles 31 (2.3) (SEC to dismiss members of election body who act illegally); & 37 (2.2) (municipal election commissions to respond similarly to illegalities by electoral board members).*

[17] *Id., Article 18 (1).*

[18] *Code, Article 35 (3).*

The absence of enforcement authority against electoral officials who violate electoral laws and regulations was a main drawback in the Draft Code previously reviewed by the Venice Commission and OSCE/ODIHR. The organisations therefore especially welcome these new measures to address this issue. It is be hoped, furthermore, that electoral commissions, particularly the SEC, will also act on their inherent authority, to recover any funds (including stipends or expenses) provided to violators, and if appropriate impose additional financial sanctions.

C. LANGUAGE ISSUES

39. Provisions of the Ohrid Framework Agreement related to language have been incorporated into the Macedonian Constitution, law and other legal instruments. Discussion of this issue has tended to focus on the requirement that the language of a recognised minority shall be a second official language in any municipality in which 20% or more of the population speaks the second language. The Ohrid Framework Agreement also, however, addressed other linguistic issues, such as the right of individuals to have personal documents in their own language, and to communicate with the authorities in that language.

40. The language-related provisions of the Code, which occur throughout the document, reflect major progress in implementing the Ohrid Framework Agreement criteria for the use of constitutionally-recognised minority languages, including in municipalities in which a minority passes the threshold for use of a second official language (in addition to Macedonian). The most significant change in this respect from the previous Draft is that full implementation of the use of a second official language in qualified municipalities is not limited to local elections there; it would also apply, for the most part, in other elections as well. As this issue was also addressed in the previous Venice Commission-OSCE/ODIHR Opinion, this change is particularly welcomed.

53'. Similarly, it is to be noted that the minutes forms and other electoral materials are to be provided in a second official language in addition to Macedonian, to election management bodies within municipalities in which 20% or more of the population speaks the second language.[19] This responds to international observations that the absence of materials in the second language in areas with a large minority population has caused electoral officials not to fill in the forms, especially minutes (protocol) of the results, completely or correctly.

53''. Nonetheless, it would still appear that the Code does not fully implement the Ohrid Framework Agreement requirements in certain respects. Instead, the Code continues to adhere to practices developed during recent elections, and even some elements of those practices have not been fully reflected. It might be the case that these omissions could be addressed through operation of the Language Law, electoral regulations, or other instruments. Failing to address all the linguistic issues related to elections through the Code, however, could continue the uncertainty on these matters and lead to *ad hoc* and potentially controversial responses during electoral periods.

[19] *Id., Article 31 (4)*

41. The provisions on language in the Code are very complex, and include the following:

- Election bodies in municipalities which have the necessary minority population are required to use that minority language, in addition to the Macedonian language, as an official language;[20]

- It is not entirely clear in what language (script) voters' list records concerning individuals must be kept,[21] but in any event implementation of any requirement on this subject would be indefinitely deferred;[22]

- Candidate lists in qualified municipalities would be printed in the Macedonian and the relevant minority language, both for presidential and parliamentary elections and municipal elections,[23] but it is not clear whether submitters of such lists would be required to submit them in both languages except during local elections;[24]

- With respect to ballot-papers, the name of the list submitter and candidate(s) would be printed in any recognised minority language as well as the Macedonian language at the request of the submitter,[25] and bilingual entire ballots would be available in qualified municipalities (*viz.,* those in which at least 20% of the population speak a minority language);[26]

- Voting instructions in polling stations are required to be in all constitutionally-recognised minority languages, but there is no requirement that posted candidate lists also be in all languages;[27]

- For Parliamentary elections, consolidated candidate lists for the first time are required to be published in a daily newspaper in the language of a minority (*viz.*, the ethnic Albanians) which constitutes at least 20% of the national population;[28] but list submitters are not required to use a minority language in addition to Macedonian, except if the population of that minority in a parliamentary election district (not municipality) is at least 20% of the entire population there.[29]

42. These provisions are highly detailed, and plainly considerable attention has been given, in developing the linguistic provisions in the Code, to design them in a way which is consistent with the Ohrid Framework Agreement principles and addresses sound

[20] *Id., Article 23 (3).*
[21] *Id., Article 41 (3).*
[22] *Id., Article 194 (1).*
[23] *Id., Article 69 (5).*
[24] *Id., Article 58 (2).*
[25] *Id., Article 93 (3).*
[26] *Id., Article 93 (4).*
[27] *Id., Article 90.*
[28] *Id. Article 69 (2).*
[29] *Id., Article 58 (3).*

electoral practices, but does not cause unnecessary antagonism. Additional comments should also be made on other linguistic issues concerning elections:

43. The provisions in the Code do not specify the language(s) of the title of the ballot-paper and other parts of the heading, including the name of the municipality and polling station.[30] They also do not address whether voting instructions would be printed on the ballot-papers or made available only in some other way. Further, there is nothing in the Code concerning the language(s) to be used in informational posters. While the SEC has in the past ordered the production of such materials in minority languages, they have sometimes been in short supply at polling stations in minority areas.

56'. While more a cultural than linguistic issue, it is to be noted that the flag of the country is to be placed on presidential and parliamentary ballots, but not on the ballots for local elections.[31]

44. The failure to address the issue of registration of voters in their own script may continue to cause problems. This situation has been observed to have resulted in difficulties in the past with respect to the transliteration in the Macedonian alphabet of the names of Albanian and other minorities that use the Latin alphabet.

45. All of the issues discussed above have been problematic in one way or another in post-Ohrid Framework Agreement elections, according to the reports of international observers.

D. VOTERS' LISTS

1. General

46. The Code would the Law on the Voter List,[32] and substitute for it a separate part in the Code.[33] State responsibilities for maintaining the voters' list would be assigned to the Ministry of Justice.[34] But plans to shift technical as well as management activities related to the voters' list to the Ministry of Justice have been deferred, and the State Statistical Office would continue to conduct technical and methodological operations in the interim.[35]

47. Under the Part on the voters' list, as under the previous separate legislation, the voters' list is updated prior to an election, and made subject to special inspection by voters. After the voters' list is corrected in response to complaints and appeals by voters

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[30] *See Articles 95 (presidential ballot), 96 (MP ballot), & 97-98 (local ballots).*
[31] *Id.*
[32] *Id., Article 182.*
[33] *Id., Part IV (Articles 41-56).*
[34] *Id., Article 41 (1). The former responsibilities of the Ministry of Internal Affairs have been transferred to the Ministry of Justice, although the Ministry of Internal Affairs and other agencies receiving civil status information would continue to provide information relevant to the voters' list to the Ministry of Justice.*
[35] *Code, Article 183 (2).*

it is certified by the SEC. Finally, the SEC is supposed to "sign the voters' list, *i.e.*, the excerpts of the voters' list" before releasing them for delivery to the electoral boards.[36]

48. The latter provision has been interpreted as requiring every member of the SEC personally to sign every extract – one for each type of election being held in every polling station (nearly 3,000 in number). This ritual is exhausting for the SEC members and consumes a considerable amount of their time in a key electoral period (15 days prior to an election). It was recommended in the previous Venice Commission-ODIHR opinion that this provision be amended in connection with adoption of the Code, so that some other evidence of certification of the extracts by the SEC could be adopted. But this recommendation has not been followed, and several references to "signing" of voters' list extracts continue to exist.[37] In fact, at one place a previous reference to "certified" voters' list extract has been changed to read "signed".[38]

49. Under the general provisions of the Code, the voters' list is a public document,[39] while the Part on the voters' list requires excerpts to be made available for public inspection at regional offices.[40] The Part also provides that, "The personal data in the voters' list shall be protected in accordance with a Law, and shall not be used for any purpose other than exercising the citizens' right to vote …".[41] To avoid a threat to privacy and personal data protection, especially concerning voters' addresses, consideration should be given to providing by law or through regulation that only partial data on the voters' list could be made public (e.g.., including only names, year of birth and polling station).

50. After its own review of the voters' list and corrections thereto, the SEC may return the voters' list with errors noted back to the Ministry of Justice.[42] As errors may be found too late to be corrected in the extracts sent to polling stations, some jurisdictions permit additional corrections to be made subsequently, with the information about last-minute changes being communicated to election boards prior to election day.

2. Residence

51. The main issue with respect to the voter's list in past elections had to do with excess entries, which are thought to have been mainly the names of persons who were residing out of the country, but continue to have a registered residence in-country. This situation could present opportunities for fraudulent voting by other persons or through ballot-box stuffing. It also makes it more difficult to achieve a possible turnout threshold in those types of elections which require it – namely, first and second round presidential elections;

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[36] *Id., Article 31 (2.32).*
[37] *E.g., Id.,, Articles 59(9), 54 (1).*
[38] *Id., Article 89 (1).*
[39] *Id., Article 4 (1).*
[40] *Id., Article 48.*
[41] *Id., Article 55 (1). (In the previous Draft, the provision referred to the Law on Protection of Personal Data.)*
[42] *Id., Article 54.2.*

first round mayoral elections; and all kinds of *referenda* – and in this manner also invites fraudulent practices in order to reach the threshold.

52. The Constitution does not require residence in-country for eligibility to vote. But, as was the case under the previous electoral laws, the Code specifies that, in order to be eligible to vote, a citizen must have permanent residence in the relevant constituency.[43] This is also reflected in the provision that voting is "carried out on the basis of the voters' list."[44]

66'. There is currently no system for Macedonian citizens to register or vote abroad. Citizens who are temporarily working or staying abroad may vote, in the constituency of their last registered residence in country, provided they have a valid passport and maintain their residential registration.[45] Deficiencies in reporting changes of residential status to the Ministry of Internal Affairs have, however, made implementation of these provisions to the voters' list problematic. Interestingly, a provision in the Draft Code requiring the Ministry of Internal Affairs to submit data concerning voters who have permanently moved out of the country, including on their country of residence,[46] was deleted prior to enactment of the Code.

3. Special Lists

53. Special excerpts from the voters' list are prepared[47] to enable certain types of voters to vote at special locations ("special voting") one day in advance of the regular election day.[48] Special voting is limited to voters on military drill or duty, and those who are in detention or imprisoned.[49]

54. It may follow from the context of Articles 41 (7) and 45 (referred to in Article 47) that special voting is conducted at military locations and places of detention by special electoral boards, or at the nearest regular polling station of the permanent residency – which is considered preferable if circumstances permit.[50] Nevertheless, previous practice taken into account, it would have been advisable to state that explicitly. There are no norms in the Code as to what constituencies special voters would vote in – *e.g.*, in which parliamentary district or municipality.

4. Mobile Voting

55. It should be noted that there is no provision for special lists of voters who are residing in other sorts of institutions, including state-run institutions such as hospitals and *sanatoria*. Lacking the opportunity to vote specially, such voters must request a mobile

[43] *Id., Article6.*
[44] *Id., Article 5 (2).*
[45] *Id., Article 41 (5).*
[46] *Id., Article 43 (1).*
[47] *Id., Article 46.*
[48] *Id., Article 113.*
[49] *Id., Article 46.*
[50] *Id., Article 113 (3).*

ballot box ("mobile voting") to be made available to them at their place of residence if they are severely ill or incapacitated. Such requests must be made not less than three days before an election.[51]

56. The Code also specifies that the request for mobile voting shall be made "pursuant to the Instruction of" the SEC.[52] During recent elections, the SEC has moved to limit requests for mobile voting of ill or disabled persons by requiring such requests to be accompanied by a medical certificate.

57. It is understandable that electoral authorities would seek to limit mobile voting. Not only is there an elevated risk of irregularities in connection with such voting, but numerous requests can strain the voting system. In addition, the three-day period for requests means that ballot packages have to be opened prior to election day, which raises security issues. At the same time, however, the limitation of requests for mobile voting by ill and disabled voters is of concern; but the recommendation in the previous Venice Commission-ODIHR Opinion that consideration should be given to reinstituting special voting for such voters was not followed.

5. Internally-displaced Persons' Voting

58. A transitional provision addresses special lists for voting by internally-displaced persons (IDPs).[53]

Moreover, Article 41 (7) states that voters shall be listed in the municipality where they reside. It is not clear from this whether internally displaced persons may choose to be included in the list either in their previous permanent residency or at their current residence, according to which will allow them to exercise their right to vote.

E. REGULATION OF THE CAMPAIGN

59. While the Code would enhance the authority of election commissions to supervise subordinate election bodies and officials, it would not enable the SEC to adopt legally-binding regulations applicable to organisations or persons outside election administration. This is evident from the formulation of one of the SEC's enumerated competencies to "give instruction, clarifications and recommendations on the application of the provision of this Law and other laws referring to election matters".[54]

60. The absence of regulatory authority for the SEC is particularly noticeable in the area of the election campaign, broadly viewed. A recommendation in the previous Opinion that consideration should be given in connection with the enactment of the Code to

[51] *Id., Article 111.*
[52] *Id., Article 111 (1).*
[53] *Id., Article 194 (3).*
[54] *Id., Article 31 (2.2).*

enabling the SEC to adopt, implement and enforce regulations in this area was not followed.

61. The absence of direct regulatory authority for the SEC means that significant aspects of the election campaign are controlled by other bodies. For example, alleged campaign violations are considered by the primary courts;[55] general media rules are adopted by Parliament and not enforced by any particular agency;[56] broadcasting rules are implemented by the Broadcasting Council;[57] and campaign finance reports are monitored by the State Audit Office and Parliament (but subsequently published by the SEC).[58]

62. The distribution of regulatory authority with respect to various aspects of the campaign may have hindered the development of clear and specific rules and enforcement mechanisms. For example, various deficiencies have been noted by observers in the following areas: equal access to the media (including on equivalent terms and conditions), especially for paid advertising; unbalanced media coverage of the campaign; excessive or unreported financial and in-kind contributions to campaigners; and strict evidentiary standards concerning alleged campaign violations.

76'. Another concern is that rules adopted directly by Parliament, particularly with respect to the broadcast media, might be influenced by the interest of the parliamentary parties in enhancing their electoral prospects. In the Code as enacted, there is a problematic provision under which media which do not explicitly accept and announce the Parliamentary rules on election coverage would be subject to substantial fines.[59]

76''. One article of the Draft Code (Article 73 [3]), based on previous law, provided for the exclusive remedies for broadcasting infractions, including 48-hour suspensions and "taking away the radio station from the owner". Perhaps due to the previous Venice Commission-ODIHR Opinion on this point, the relevant provision has now been changed to one that is more flexible, and based on referral for judicial action.[60]

63. It remains unclear to what extent, if at all, an independent organisation or individual could organise an election-related "campaign", putting forward its views about the contest, without connection to a political party or submitting a candidate list. In such case the Code does would not regulate how such a "campaign" could be conducted – e.g., in terms of the limits on funding, and on sponsoring advertisements. If independent organisations do not have the right for such campaign activities, that could be a problematic interference in the freedom of speech. Thus consideration might be given in future as to how to regulate, but not prevent, such efforts.

[55] *Id., Article 73.*
[56] *Id., Article 75.*
[57] *Id., Article 74.*
[58] *Id., Article 85.*
[59] *Id., Article 182 (1).*
[60] *Id., Article 74 (3).*

The English translation of Article 75 seems to include all media, not only electronic media. It is not obvious that printed media or Internet based media should have an "equal approach in the presentation of the electoral programmes of the candidates". Newspapers may still have party affiliation and can not be expected to follow such a rule.

On the other hand there should be requirements for a fair and equitable cover of the contestants also in the news and current affairs programmes in electronic media, in particular in the coverage of the incumbents.

F. COMPLAINTS AND APPEALS

64. The right to complain to election administration or appeal to the courts is preserved in the Code. Not only list submitters may submit a complaint or appeal regarding electoral procedures,[61] but also "every voter whose voter's right has been violated in the election procedure."[62]

65. Substantial improvements are made through the Code to the article, derived from the Parliamentary Election Law, pertaining to annulment and repetition of voting.[63] This article, in its previous forms, had created difficulties by requiring annulment of the results of voting at a polling station in various circumstances, and was sometimes also interpreted to require repetition of the voting there even if that could not affect the overall result.

66. The new article would still require the SEC to annul results in a variety of unquantified or loosely-defined circumstances – including "if the secrecy of voting has been violated;" "if the police have failed to respond to a request for intervention … provided there was a need for such intervention and this … influenced the conduct of the voting"; "in case … there is a larger number of ballots in the ballot box than the number of voters who turned out;" and "if some person or persons have voted for other person (persons)."[64]

67. But such mandatory annulments would now not necessarily lead to repetition of the voting at polling stations. This would be required only when the total number of voters registered at those polling stations could influence the overall results.[65] This might also appear to be a very generous provision for complainants, especially in view of the likely overly large number of voters on the voters' list extract at polling stations. But it should be remembered that in many elections very high and one-sided vote totals have been reported by some electoral boards.

68. In the absence of more general supervisory authority for the SEC in the past, the article under discussion became the main instrument for the SEC to decide complaints

[61] *Id., Article 148 (1).*
[62] *Id., Article 150.*
[63] *Id., Part IX (Article 151).*
[64] *Id., Article 151 (1).*
[65] *Id., Article 151 (2).*

concerning the conduct of voting at polling stations. The severe remedies prescribed in the article limited the SEC's ability to fashion more flexible remedies, such as nullifying only certain ballots. While many complaints and appeals were undertaken, only few were accepted, therefore. The rest were rejected, mainly for evidentiary reasons, even though there might have been good reason to believe that serious irregularities had occurred.

82'. This article provides in detail for situations in which the results of elections should be annulled. From one side, the detailed provisions on this matter might help remove any uncertainty and provide better predictability. From the other side, however, there might be situations which are unforeseeable in the election law. Competent electoral commissions should have some room to consider annulling results in other situations as well, if substantial violations have occurred during the electoral process (*e.g.*, electoral campaign or voters' lists).

G. PERMANENT ELECTION ADMINISTRATION

69. In line with the recommendations of international and other observers, the Code provides a further basis for the commencement of permanent election administration functions. This is reflected in the enumerated competencies of the SEC,[66] including to adopt a program and standards for education of election officials, establish common standards for election material, prescribe election and related forms, adopt a rulebook and compensation guide for members of election bodies, adopt an act for the organisation of the professional service of the SEC, establish contact with international observer associations and organisations, and adopt standing rules of procedure for itself and its professional service.

70. As noted, a professional service would be established for the SEC, headed by a Secretary-General. [67] Similar provisions were contained in the previous Parliamentary Election Law, but were not fully implemented. After this fact was noted in the previous Venice Commission-ODIHR Opinion, a provision was inserted into the Code including the Secretary-General as part of the composition of the SEC,[68] but not as a member.[69]

71. The Secretary-General and other members of the professional service would have civil service status.[70] Obviously, the effectiveness of the SEC's permanent operations will depend considerably on the level of regular funding it receives from the State Budget, as well as its success in retaining qualified staff and ensuring their autonomy.[71]

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[66] *Id., Article 31 (2).*
[67] *Id., Article 30.*
[68] *Id., Article 26 (4).*
[69] *Id., Article 30 (2).*
[70] *Id., Article 30 (6).*
[71] *See, e.g., OSCE/ODIHR, Existing Commitments …, Part One, Par. 4.3 (in pertinent part): "Election institutions should have sufficient funding and other state support to enable them to operate effectively. They should be assisted by a professional secretariat, preferably also autonomous, and receive the support and cooperation of other agencies." (reference omitted).*

V. OTHER COMMENTS

72. The comments in this section will be presented as a running commentary. The various items addressed herein are of differing levels of importance. When appropriate, recommendations have also been included in the discussion.

1. Eligibility for Elected Office

73. The Code contains detailed provisions regarding incompatibilities among various elective offices (Article 8). If such incompatibilities are not contained or inherent in the Constitution, then they should be thought through carefully. Thus there is a variety of comparative practice on service of parliamentarians as ministers, based on different policies and conceptions of the separation of executive and legislative powers. The choice is one which is best made on the basis of experience.

74. Under the Code, incompatibility of service in the military or security forces with elected office does not render a person ineligible for candidacy to a parliamentary mandate.[72] Rather, their military or security service would be suspended once they are registered as candidates; and the suspension would be continued if they were elected.

91'. It is unclear whether when such persons stand for election they would continue receive salaries during that period. If not, their right to be elected could be restricted in practice, since they might not have any income during the period of elections.

75. Experience has shown that it is not always wise to require the employment or other profitable activities of an elected Member of Parliament to be terminated upon election.[73] While such provisions are meant to encourage the commitment and professionalism of certain elected officials, including parliamentarians, they often have the counter-productive effect of making elected officials fixated on retaining office, while discouraging others (not yet elected) from seeking such office.

2. Incompatibility of Electoral and Other Official Service

76. The Draft Code provided that certain forms of official State service are incompatible with membership on the SEC.[74] This was welcome, since during past elections observers noted the incompatibility between the regular official responsibilities of certain SEC members and their work on the SEC. On the other hand, the language of the provision was not completely clear, and it was recommended that consideration should have been given to redrafting it in an appropriate manner. Unfortunately, however, this provision has been deleted from the Code as enacted.

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[72] *Id., Article 9.*
[73] *Id., Article 8 (7).*
[74] *Draft Code, Article 17 (2): "A person may not be a member of the State Election Commission if s/he has been elected and appointed by the Parliament and the Government …, provided that this Law does not regulate it in a different manner."*

3. Candidacies

94'. It should be noted that it is not a requirement for most candidacies (for MP, municipal councillor member or mayor) that the individual be a registered voter.[75]

94''. The Code is somewhat restrictive toward non-political party list submitters, in terms of requiring them to submit a substantial number of signatures.[76] On the other hand, a relevant provision of the previous Parliamentary Election Law has apparently been deleted. This required list submitters to propose candidates for all available mandates in the district. The elimination of this requirement could result in a greater number of "independent" candidates or partial lists.

4. Responsibility for Financial Infractions

77. The competent election commission are supposed to annul a list of candidates if with an effective court decision it has been established that funds obtained from criminal offences have been used during its election campaign.[77] It is unclear by whom the criminal offence has to be committed, and whether the campaign organiser would have to have personal knowledge or complicity. It should be remembered in this connection that the campaign organiser has general responsibility for the legality of the campaign as well as for the authorised activities of other persons.[78]

5. Termination of a Mandate

78. There is a very sweeping statement in one article that membership in Parliament cannot be revoked,[79] but another article does provide for termination of mandate in certain circumstances.[80] It would appear that the first article is unnecessary, and that the second could serve as a reasonable but limited basis for terminating a parliamentary mandate. Aside from circumstances necessarily leading to loss of mandate (e.g. resignation, incompatibility of office, death, and legal incapacity), this article provides for automatic termination in the event a Member of Parliament is convicted of a criminal offence for which a sentence of at least five years is prescribed.

If a member of the parliament or a council terminates his or her mandate, the seat is filled from the next on the list which the member came from. This is the most logical rule in list proportional systems. By-elections may change the political composition since such elections would often be for a single seat only and therefore be given to the largest party, regardless which list the terminated member came from. Articles 154 and 156 (2) specify what should happen if the list is exhausted. From the translation it seems that a by-

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[75] *Code, Article 7 (2).*
[76] *Id., Article 62.*
[77] *Id., Article 87 (2).*
[78] *Id., Article 72.*
[79] *Id., Article 10 (1). The available translation of the current Code reads "recalled", but the translation of Article 9 (1) the Draft Code commented upon previously read "revoked".*
[80] *Id., Article 152.*

election in such (very rare) cases is held to fill the vacancy only. In stead of by-elections one may consider going back to the distribution of seats during the original election and reallocating the seat to the list next in line to win a mandate. This may be fairer than a by-election which would in most cases give the seat to the biggest party.

97'. On the related point, the right to be elected would be denied if a person has received a final court sentence of imprisonment for not less than six months.[81] It is unclear whether the right is withdrawn permanently or only during the period of the sentence. If the right to stand for election is deprived for a longer period, a question of proportionality may arise, and also whether this determination should not rather be subject to the decision of the voters.

6. Campaign Finance

79. It would be convenient for checking purposes, were the submitters of candidatures to funnel all their receipts and expenses through a giro account. [82] But it would be naïve to imagine that other ways could not be found to support financially a candidate's campaign. Rather than relying on a *pro forma* disclosure mechanism, o ne should apply common sense to track excess expenditures, through monitoring of the evidence of money spent for television spots, posters, postal campaigns, costly brochures, and payments to agents.

80. Election campaigns are a one-time effort, but after a particular campaign, the remaining funds are usually carried forward for the next party campaign, or utilised for the continuing political activities in preparation for future campaigns. It should not be seen as improper to maintain a campaign chest between elections. The provision on this subject[83] should be reconsidered in future.

81. Moreover, it could be unwise to retain the system of reimbursing expenses by based on the votes cast in favour of a particular list.[84] Candidates who are already well-known will have their advantages further increased if they are reimbursed in proportion to the number of votes they receive. Also, the vagaries of electoral support are well known and individual candidates should not be expected to gauge correctly their ultimate electoral strength. A reasonable deposit is often employed to deter frivolous candidacies, so that, for example, the deposit would be forfeited only if the candidate does not obtain a minimum number of votes (say one twentieth of the quota in proportional representation, or a similar minimum under other systems). There is no need to heap advantages on lists that are already well known and who would receive the full rate of reimbursement.

82. The reimbursement of the election expenses is determined by a decision of the Parliament, of the municipal council or the City of Skopje (Article 86 [3]). At the same time, the right to reimbursement in specific circumstances and amounts is separately

[81] *Id., Article 7 (2).*
[82] *Id., Article 71.*
[83] *Id., Articles 84-86.*
[84] *Id., Article 86.*

established.(Article 86 [1]. This seems to be contradictory, to which must be added the effect of another provision, under which the total budget for the election is divided 2/3 costs *versus* 1/3 reimbursements (Article 88 [2-3]).

7. Electoral campaign, rights, duration

83. Under the Code, regular parliamentary elections would be held every four years, usually during the last 90 days of the term of the outgoing parliament (Article 15 [1]). In the past, various efforts were made to specify a precise date for parliamentary elections; it is welcome that it is now recognised that such an effort could not be successful under the Constitution.

84. It should be provided that 20 days should be the minimum number of days for a campaign, unless the constitutional deadlines for an early election make that impossible.[85] It should also be made clearer the significance of the campaign period for the purpose of applying various provisions of the law.

7. Rallies

85. The previous Venice Commission-ODIHR Opinion noted that under Article 79 (2) of the Draft Code the organiser of a pre-election rally is responsible for keeping order and commented that this provision could restrict the right to assemble and conduct meetings, since it might be difficult to keep malevolent persons away. The Opinion recommended that responsibility for keeping order should mainly be the duty of the police, and that recommendation is now contained in the Code, which specifies in the corresponding article (80 [2]) that the Ministry of Internal Affairs is responsible for keeping order during campaign rallies.

8. Training of Election Officials

86. The Draft Code (Article 17 [1] thereof) would have made possession of a SEC training certificate a prerequisite for being appointed to an election body. The previous Opinion said that while that was, it should be clarified that all officials should receive training, if necessary after appointment, rather than as a condition of their appointment. The comment is also reflected in the Code, which eliminated the requirement in question but still requires training for electoral officials.

9. Signature Petitions

87. Nominations of candidates in a presidential election must be supported by a list of signatures of at least 10,000 registered voters, or 30 Members of Parliament.[86] In other types of election, organisations other than political parties must accompany their

[85] *Id., Article 74 (1).*
[86] *Id., Article 59.*

nomination of candidates with a petition containing a certain number of signatures of registered voters.[87]

112'. The scale of numbers of the signatures required for candidacy in municipal elections should be further simplified into fewer size classes, so as to avoid controversies about the number of inhabitants and signatures. One can never obviate absolutely against the presentation of candidates with very little chance of election; and the democratic process should allow for such cases.

88. The collection of qualified signatures is a relatively controlled process, since the signatures are collected at the offices of the Ministry of Justice.[88] But the absence of clear standards for the review of signature petitions makes it very difficult for the competent election commission to make a determination of the validity of a petition either on its own or in response to complaints.

10. Candidate Gender

89. The Draft Code contained a provision, similar to that in the previous Parliamentary Election Law, requiring that each gender have at least 30% of the places on candidate lists. The Draft also added a requirement that this percentage would apply to both the "lower and upper part" of such lists. The previous Venice Commission-ODIHR Opinion[89] proposed an alternative approach, under which it could be required that out of every three candidates in order on a list, each gender would be represented by at least one. This proposal was adopted in the Code as enacted.[90]

More precisely, Article 64 (5) regarding lists for the parliament and councils states that "in every three places at least one will be reserved for the less represented gender". This is at least unambiguous and if the rule is taken literarily it would not promote a best possible representation of the underrepresented gender. The following example illustrates the point:

Rank	**Alternative 1** **Legal according to Law**	**Alternative 2** **Illegal according to Law**
1	Male	Male
2	Male	Female
3	Female	Female
4	Male	Male
5	Male	Male
6	Female	Male

[87] *The number of signatures required varies according to the size of the constituency in question.*
[88] *Id., Article 63 (1).*
[89] *Venice Commission & OSCE/ODIHR, Joint Opinion on the Draft Electoral Code of "the Former Yugoslav Republic of Macedonia" (CDL-AD(2006)008).*
[90] *Code, Article 64 (5).*

In the example women are the underrepresented gender with two out of six candidates. From a women's point of view alternative 2 is clearly better that alternative 1, but in order of meeting the requirement of having at least one of each gender for every three, one of the women will have to take move down to a less prominent position in the bracket from position 4 to 6. Obviously the party can also add another woman, but they might not want to do that, and rather choose to move one of the two down.

In many countries this issue has been solved by formulating the following rule: "There shall be at least one candidate of each gender among the first three on the list, two of each gender among the first six on the list, three of each gender among the first nine on the list etc." This would make alternative 2 legal and the rule would not work against prominent positions of the less represented gender.

11. Gender of Election officials

90. The Draft Code provides that each gender have at least 30% representation in the composition of electoral bodies.[91] Although this provision might be difficult to implement, it is welcome since it has been noted informally that electoral boards with female representation have received higher ratings by observers. On the other hand, the language of the provision is vague, and it is not clear whether the 30% rule would apply to each election body, or to all such bodies taken together.

12. Registration of Groups of Voters

91. The previous Venice Commission-ODIHR Opinion noted that an article of the Draft Code would have required that submitters of candidate lists fill out a special form and enclose their "registration certificate from the competent court". As stated, the provision appeared to apply to independent slates of candidates – namely, those put forward by "groups of voters". Thus there was concern, that the provision would have required such groups to list civilly as well as within the electoral system before commencing the nomination process. That issue was addressed by reformulating the current article of the Code to make this requirement applicable only to political parties submitting candidate lists.[92]

13. Recording of Objections

92. In several places, the Code – in requiring objections to be filed by representatives of list submitters – provides that such objections may also be filed within a short period of time (five hours) at the next higher electoral body.[93] These are desirable provisions which

[91] *Id., Article 21 (3): "Every gender shall be represented at least by 30% in the composition of the bodies responsible for carrying out elections."*
[92] *Id., Article 65 (2).*
[93] *Id., Articles 100 (4)-(5), 105, 117 (5)-(6) (objections to work of electoral boards),. The provision relating to objections from the work of the MECs was deleted, presumably since that objection would go to the SEC, which is anyway the body to which a complainant would submit a regular complaint..*

address repeated allegations during previous elections that party representatives were not permitted to enter their objections into the record, especially at polling stations. While evidence for consideration in complaints should not be limited to those recorded in the minutes, the legal claims made should be limited to those recorded, as provided in the Code[94].

14. Early Closing of Polling Station

93. One provision permits electoral boards to close the voting early, "in case all the voters registered on the excerpt of the voters' list have cast their votes."[95] It is understandable that some electoral boards, especially in small villages, may conclude their work early. But unless the application of this provision is carefully controlled, it could easily lead to abuses.

94. First of all, most voters' list extracts probably contain names of voters residing abroad, and it not realistic to expect all voters registered there to turn up at a polling station. In addition, the electoral boards – especially in areas with a fairly uniform political orientation, or where representatives of other parties are not present – could be motivated to check off additional names on the extract and add ballots to the box.

123'. The recommendation to this effect in the previous Venice Commission-ODIHR Opinion unfortunately did not lead to any modification. Therefore, the following recommendation is offered again – this time not as a proposal for legislative modification but in terms of its potential adoption as a regulation by the SEC:

95. It should be specified that an electoral board may close early only after contacting the municipal election commissions and receiving permission to do so. In making that determination, the municipal election commission should discuss the matter not only with the electoral board president but also the other members of the electoral board and any other authorised persons (party representatives and observers) who may be present.

15. Policing and Security

96. During recent elections the arrangements for policing and security, especially at polling stations, have been steadily improved. The articles on this subject in the Draft Code[96] reflected these improvements, and appear to incorporate sound principles concerning the location and comportment of the police and other security forces around polling stations.

125'. The Code, as enacted, contains a new provision authorising the SEC to prepare a rulebook on the behaviour of police during elections, in cooperation with the Ministry of

[94] *Id., Article 37 (2)*
[95] *Id., Article 101 (3).*
[96] *Id., Articles 102-104.*

Internal Affairs.[97] This is a very welcome provision, which could result in continued improvement in this area.

In one place in the Code, a provision of the Draft Code regarding suspension of voting in case of non-response by the police to a security problem has been deleted.[98] This is curious, in view of the provision that in case of non-response by the police to a request for intervention by the electoral board, "and there was a need for such intervention and that this has influenced the conduct of the voting in the polling station", the SEC would be required to annul the results there.[99]

97. Unfortunately, there continues to be no provision specifically preventing unauthorised persons from entering or remaining in polling stations. The only provision on this subject has to do with requests by the electoral board to the police to remove such persons.[100]

126'. Provisions have been added making clear that police security should be provided during opening of polling stations and the hours of voting – *viz.*, 0600-1900 hours.[101] Unfortunately, the closing time does not take account to the possible extension of voting in the event voters remain in the queue or suspension of the voting occurred.

16. Method of Voting and Ballot Validity

98. The prescribed method of voting (circling the ordinal number next to the list or candidate preferred)[102] would not be changed from existing law. This method can be confusing for illiterate voters, as well as other voters if suitable instructions are not included on the ballot-paper in the language of the voter. While the contestants in an election could conduct their own voter education activities on this point, many voters may not receive this information and some might find it difficult to recognise the numeral and to mark it correctly.

99. Fortunately, a revised provision on ballot validity would be carried over from existing law (the Parliamentary Election Law).[103] This provision is somewhat problematic, since there appear to be contradictions among its three paragraphs. But the intended result is that in addition to those ballots on which the voter preference is properly indicated (by circling the ordinal number), other ballots would also be considered valid provided the intention of the voter is clear. The exception would be if there are marks in two different places, corresponding to different lists or candidates, on the ballot.

100. It is an urgent matter indeed to provide for a procedure which would protect the right to vote and its free exercise as well as its secrecy**.**[104] It is surely not enough to say that

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[97] *Id., Article 31 (2.37).*
[98] *Id., Article 104 (4) (same number in both Draft and final Code).*
[99] *Code, Article 151 (1).*
[100] *Id., Article 103 (7).*
[101] *Id., Article 102.*
[102] *Id., Article 110.*
[103] *Id., Article 115.*
[104] *Id., Article 148-1.*

such a matter is urgent: it should be legislated upon in concomitance with the electoral law or even, preferably within it.

17. Election Day Polls

101. Under the Code, as well as previous law, no one shall be allowed to ask a voter to tell whom he or she has voted.[105] Opinion olling on election day has been regulated under an article similar to that in Article 76 (3) in the Draft Code, which has been deleted. Nonetheless, it is usual in democratic countries to permit exit-polls under appropriate circumstances. The deletion of the article in question does not prevent exit polling, but merely removes any implication that it is favoured. In any event, the secrecy of voting is best protected through sanctions such as those contained in the penal provisions.[106]

18. No Ballot Reconciliation

102. Unfortunately, the article on counting procedure does not require positive ballot reconciliation to occur prior to the commencement of the count at polling stations. In other words, the voted ballots are not first counted and the number compared to the number of voters indicated as having received ballots, according to the voters' list extract.

103. Failure to reconcile the number of ballots before counting the votes offers opportunities for fraudulent entry of ballots into the count. Lacking a proper reconciliation, electoral boards' members might also be tempted to "force" the number of voters recorded to have received ballots to match the number of ballots resulting from the count. At worst, failure to reconcile the number of ballots issued and voted makes it difficult to detect ballot-box stuffing.

104. Even when required, ballot reconciliation is sometimes skipped by election officials who are tired or eager to find out the results of the voting. But this step is extremely important for the reasons mentioned, and it should be required by law.

133'. There are still not adequate rules for reconciliation of the figures recorded from the count. At all levels there should be a rule for what actions should be taken if the number of ballots found in the ballot box exceeds the number that voted according to the voter lists, and also if the number in the ballot box is significantly lower than the number from the voters' list (say more than 2%). Actions could include a recount, a clear statement in the protocol at polling station level, and a requirement for a review at higher levels. Article 151 calls for annulment of the vote in the polling station if there are more ballots in the box than those voting according to the voters' list so the reconciliation needs to be reliable.

The voting is, however, only to be repeated if the "total number of voters registered at those polling stations … has impact on the result". This may mean that a small discrepancy between number of ballots in the box and the number voted may lead a new

[105] *Id., Article 3 (2).*
[106] *Id., Article 178.*

election even if the discrepancy could not change the result. It would be better to make the re-election dependent on that the fault could have had impact on the result.

If the fault could not change the results other sanctions may be adequate in cases of deliberate or serious mistakes, such as fines and not appointing that particular polling station staff again.

In Article 114 (1) the second bullet point on opening the ballot box should be moved down to after counting the signatures in the voters' list. If the count of voters according to the voters' lists is performed and recorded in the protocol before the ballot box is opened, it is more difficult to be creative in reconciling the figures to make them match, and less tempting to perform any kind of ballot stuffing.

Blank votes are, according to Article 115 (3), deemed to be invalid. In order of being able to analyse election data, many countries would in their protocols record blank votes separate from other invalid votes. This would enable parties to analyse the voter behaviour and the reliability of the process more efficiently.

It is positive and it improves the transparency that copies of the protocols from the polling stations are given to list representatives and are posted immediately at the polling station (Article 118).

The minutes of the MECs count only contains "the total number of voters who have voted" without specifying if that is according to the signatures on the voters' lists of the number of ballots in the ballot boxes. Both these numbers should be recorded here as well as at the highest level of the count (ref also Articles 128 and 131).

The SEC should have an explicit duty to review the final result and to, eventually, publish the full aggregation of the results from polling station level up to municipal, constituency or national level as appropriate.

19. Voter Quorum

105. Voter turnout quorums (minimum numbers of voters casting ballots) are required in several cases, including presidential elections, mayoral elections (only at the first round) and state *referenda.* When the necessary threshold is not reached, an election must be repeated, yet the repeat election(s) may be no more successful. Thus, there is a possibility for a cycle of failed elections (with the exception of the mayoral elections) and, in addition, an incentive for fraudulent practices to inflate the recorded vote.

106. In order to avoid a cycle of failed elections for President, the requirement to repeat the election from the outset if the 50%+1 turnout threshold fails to be met, should be removed from the legislation following amendment of the Constitution in this regard. .

107. There is no requirement in the Code of a voter quorum during a second-round mayoral election.[107] The provisions on mayoral elections nonetheless specify that if a mayoral candidate is not elected in the second round "for any reason" (such reasons have to be specified in an exhaustive manner), the Government of the Republic shall appoint a commissioner to act in the capacity of mayor until new elections are conducted.[108]

20. Election Observers

108. A part of the Code deals with international and domestic observers in elections, and makes clear that domestic and foreign associations operating in the fields of democracy and human rights, international organisations and representatives of foreign countries may conduct observation.[109] Accredited observers are entitled to observe "the whole election process", although the details of their permitted activities and the basis for limitation are not specified.[110]

109. The procedure for conducting observation missions shall be determined by the SEC,[111] which under its general powers is also mandated to adopt a code on monitoring of elections "in accordance with international standards".[112] It is to be hoped that the SEC, once established as a permanently functioning body, will develop further specifics on the rules and procedures applicable to observers so that their fullest possible access to electoral procedures is ensured.

In a new article containing definitions which was added to the Code prior to its enactment, there is a technical defect pertaining to international observers. The definition of "observers" refers to "representatives of domestic or foreign registered associations of citizens …".[113] On its face this would include foreign non-governmental organisations (NGO), but not international or intergovernmental organizations, which in fact are the main sponsors of international observers.

21. Parliamentary Election Districts

110. The Code repeals the Law on Election Districts,[114] which adopted the election districts that were used in the most recent (2002) parliamentary elections. In its place, the Code has a chapter on this subject,[115] which includes a complete specification of the six election districts by municipality (or part thereof) and polling station numbers.[116] In a different part, the Code also incorporates a standard for the delineation of election

[107] *Code, Article 134.*
[108] *Id., Article 135.*
[109] *Id., Chap. XI (Articles 162-163).*
[110] *Id., Article 163 (1).*
[111] *Id., Article 162 (2).*
[112] *Id., Article 28 (2.15).*
[113] *Id., Article 2 (15).*
[114] *Id., Article 192.*
[115] *Id., Chap. XII (Articles 174-177).*
[116] *Id., Article 175.*

districts – namely, that the number of voters in each may not vary more than 3% above or below the average number of registered voters in the districts.[117]

111. There would appear to be a problem in incorporating the delineation of parliamentary election districts as an article in the Draft Code. In future parliamentary elections, depending on actions of a legislative (*e.g.,* redistricting) or administrative (*e.g.,* realignment of polling stations), the delineation of districts by polling station numbers could change. In addition, the relative numbers of registered voters in each district could change as the voters' list continues to be improved.

112. In any of these cases, there would be a possibility that the new delineation of districts would come into conflict with the basic provision concerning the permissible deviation in the number of registered voters in each district. So there could be an irreconcilable conflict between different articles of the Code.

113. It would have been preferable, therefore, to address the establishment of parliamentary election districts in some other way. Either the districts could be defined in a separate law, as previously, or the delineation of districts by polling station could be attached to the Code as a separate annex, or schedule. In this way, it would be clear that the delineation is subordinate to the general statutory principles regarding the formation of parliamentary districts.

114. Another issue might be mentioned in connection with the delineation of parliamentary election districts. Perhaps as a result of the re-division of territorial jurisdiction to municipalities under the Law on Local Self-Government, a number of municipalities would now be divided between two parliamentary districts. This may complicate the work of the municipal election commissions during parliamentary elections, since some municipal election commissions would be required to distribute different ballot-papers to different polling stations, and receive returns from different district elections.[118]

144'. Mention should be made of the provision under which parliamentary by-elections would be called in the event of a vacancy in Parliament that could not be filled by another candidate remaining on the relevant list.[119] This procedure – to which no time limit is assigned – is plainly unrealistic, since a by-election for even a single seat would have to be held in an entire election district.

22. Second round elections, early elections

115. The campaign procedure is not clearly defined for second-round elections (*i.e.,* of the President of the republic or mayor). Normally, the election campaign is described as commencing 20 days prior to election day and shall end 24 hours prior to the elections

[117] *Id., Article 4 (2).*
[118] *With respect to the language of ballot-papers and other electoral materials, however, that should be uniform within each municipality; see previous discussion on language issues.*
[119] *Id., Article 154.*

day.[120] Since this could not be applied to second-round elections, it would have been desirable to have a provision which determined the campaign period for second round elections. As a modification to this effect was not included in the Code as enacted, perhaps this issue could be addressed by a subsequent parliamentary action, or through regulation by the SEC.

145'. Early elections for mayor shall not be announced if there are less than six months until regular elections.[121] This could be undesirable, since mayors have important duties. A better alternative might have been be to elect a new mayor without delay, but with a longer tenure.

23. Electoral Coalitions

134. The definition of, and rules concerning, coalitions of list submitters are rather vague. The definition of "coalition" says that it is "an association based on a statement of two or more registered political parties …".[122] The statement must be signed by authorised representatives of the parties, and need contain only the name of the coalition and its logo or the municipality or district in which it is operative.[123]

134'. A coalition can be formed for parliamentary, council or mayoral elections.[124] This can apparently be done on a partial basis, so that the coalition would only be effective in certain municipalities or parliamentary election districts.[125] There are no special rules regarding the deadline for submission of candidate lists by coalitions, so these are presumed to be identical to those for other types of list submitters.

24. Stamping of Ballots

135. The Code contains an unusual provision under which indicates that the ballots issued to voters will be stamped only just prior to insertion in the ballot box.[126] It is recognised that this procedure could perhaps improve vote security. On the other hand, voters would undoubtedly be reluctant to present their voted ballots for stamping lest it could reveal their choice. Normal international practice is for ballot-papers to be stamped prior to issuance to voters, not afterward.

25. Electoral Offences

136. Extensive new penal provisions are contained in the Code,[127] some of which contain substantial financial sanctions. In the past, such provisions were seldom applied, and it remains to be seen whether the SEC or other electoral authorities will refer appropriate

[120] *Id., Article 74 (1).*
[121] *Id., Article 158 (2).*
[122] *Id., Article 2 (12).*
[123] *Id., Article 60 (3).*
[124] *Id., Article 60 (1).*
[125] *Id., Article 60 (3).*
[126] *Id., Article 110 (1).*
[127] *Id., Part XIII (Articles 178-191).*

cases for prosecution; and whether the prosecutors and courts will proceed effectively in this respect.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

116. The Electoral Code, consistent with recommendations by international observers including OSCE/ODIHR election observation missions, would provide a better integrated and unitary legislative framework for the administration of most elections.[128]

117. The Code makes numerous improvements in the provisions included in the previous main election laws, including the Laws on the Election of Members of Parliament, on the Election of the President, and on Local Elections. In addition, other election-related laws, such as those on Voters' Lists, Polling Stations and Election Districts (for parliamentary elections) have been incorporated in revised form into the Code.

118. Perhaps most importantly, the Code clarifies that the State Election Commission (SEC) and other election commissions (the Municipal Election Commissions) have the responsibility to supervise the work of subordinate electoral bodies. It is hoped that this will prompt the commissions to take a more proactive approach to addressing irregularities.

148'. While the commissions are empowered to remove subordinate election officials, they would not have direct ability to take further action of a disciplinary nature (except to prevent such persons from being involved in future electoral work). However, other measures are called for, including initiation of a misdemeanour procedure by SEC or disciplinary action under the Law on Civil Servants.

148''. In addition, it is not clear that the SEC would use its supervisory authority to fashion constructive remedies to problems. With this authority in place, however, the SEC should no longer continue to approach such matters primarily through the resolution of complaints seeking the annulment of results and repetition of voting.

148'''. The Code as enacted contains numerous provisions which are markedly improved over the previous Draft. These provisions, many of which respond to comments made previously on the Draft Code, are most welcome.

148''''. The Code will also transform the nature of electoral administration by switching from a model based on participation by judges and political party nominees to a "neutral, professional" basis. The SEC would be reconstituted by professionals appointed by the Parliament through a process involving both the governing and opposition parties. Other electoral bodies would be composed of various categories of civil servants and other government workers.

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[128] *Referenda would continue to be addressed through separate legislation.*

148’’’’’. It is to be hoped that the new model of electoral administration will result in greater professionalism and accountability by electoral officials at all levels.

119. Some of the other main issues with respect to the Code include the use of minority languages in the electoral system, regulation of the campaign period.and improvement of voter lists. In addition to these areas, numerous other issues have been identified in the analysis above and/or addressed in the recommendations below.

149’. On the issue of the language of electoral processes, major improvements have been made in determining which proceedings and materials would be subject to the use of a second official language or other minority language. These improvements, continuing the implementation of the Ohrid Framework Agreement, largely base issues of language use on whether at least 20% of the population in a municipality speaks a second language.. While considerable details have been worked out, however, some linguistic issues still remain to be resolved.

B. RECOMMENDATIONS FOR IMPLEMENTATION

120. The following recommendations for implementation follow from the main issues identified in the commentary, as well as some other major issues. (Recommendations concerning additional issues were included in the discussion of some of those issues.)

1. Composition, Structure and Operations of Election Bodies

- New appointments to election bodies under the Code should if possible be phased in (or “staggered”) so that an orderly rotation of membership will occur then and in the future. Members of election bodies should not be removed prior to the end of their terms, except for demonstrated cause established through appropriate proceedings.

- Consideration should be given to requiring that election commissions, particularly the SEC, be required not only to operate in a public manner which is accessible to list submitters and accredited observers, but be subject to an “open meeting” requirement, under which all business would be conducted in public meetings accessible not only to list submitters and observers, but also the public (as represented through press).

2. Supervisory Authority of Electoral Commissions

- Electoral commissions, particularly the SEC, should be granted the power to impose administrative sanctions against subordinate election officials who are demonstrated to have been involved in electoral irregularities or illegalities. Such sanctions could include, in addition to disqualification from future service on

electoral bodies, termination and return of salaries and expenses, and fines and other administrative penalties.

3. Language Issues

- The provisions of the Code on the language of electoral bodies, ballot-papers, forms and other materials should be expanded to include all the issues that have arisen in this connection during past elections:

- An adequate amount of voter information and education materials should be made available in all languages used by constitutionally-recognised minorities.

- Accelerated measures should be taken by the relevant authorities to ensure that minority voters, especially those minorities which exceed the 20% figure as a proportion of the entire population, are able to have their voter registration recorded also in their own language.

4. Voters' List

- The requirement that the SEC members all personally sign each and every voters' list extract provided to polling stations should be eliminated. Some other means for the SEC to certify the extracts should be devised.

- The ability of voters in other special facilities (such as health care centres) to vote there specially, rather than by requesting mobile voting, should be restored. If mobile voting for ill and disabled persons residing in facilities is retained, then requests for such service should be facilitated and not discouraged. The security concerns associated with early voting by such persons, such as the need to open ballot packages prior to election day, should be addressed.

5. SEC Regulatory Authority

- Consideration should be given to granting the SEC regulatory authority over the entire electoral process, including areas related to the election campaign which are currently subject to regulation by other bodies, including Parliament, the broadcasting authority, the basic courts, and the State Audit Office. These areas include: media rules, broadcasting regulations, campaign violations, and campaign finance reporting.

- Consideration should be given in connection with the commencement of permanent election administration functions for the SEC to undertake a study of its potentially regulatory role and, if appropriate, propose an expansion of its authority to include developing regulations dealing with the entire electoral process, including campaign-related matters. This would put the SEC in a position to regulate aspects of the electoral process that other State bodies have not fully addressed.

6. Complaints and Appeals

- The SEC should fashion more flexible remedies in response to complaints against electoral administration than those which are specified in the main article on this subject (related to annulment of results and conduct of repeat voting).

7. Permanent Electoral Administration

- In order for the permanent electoral administration of the SEC to be effective, the SEC should receive sufficient funds on an annual basis from the State Budget; and the SEC should be enabled to recruit and retain a professional staff that is well-qualified in electoral matters and has a career path that fosters institutional loyalty and an autonomous and professional service.

- The role of the SEC in permanent electoral administration would also be greatly enhanced by granting the SEC broader regulatory authority over all aspects of the electoral process including those outside the electoral administration proper.

8. Operation of Polling Stations

- An unambiguous provision should be added to the Code specifying which persons are authorised to enter or remain in polling stations, and requiring the exclusion of all other persons.

- If electoral boards are allowed to close early, then they should be permitted to do so only after receiving approval from the relevant municipal election commission. In granting approval, the municipal election commission should consult with all members of the electoral board as well as any other authorised persons present at the polling station.

9. Ballot Reconciliation

- The provisions on the counting of votes should be expanded through regulation to include an explicit requirement that electoral boards, prior to proceeding to count the votes, should count the number of ballots in the ballot box and compare that number with the number of voters who were recorded to have received ballots.

10. Voter Quorums

- Effort should be made to remove from legislation, including the Constitution, the requirement to repeat an election from the outset if a voter turnout quorum was not achieved. Such an effort is justified in order to avoid possibilities for cycles of failed elections, and prevent related fraudulent practices. If it is considered that a turnout threshold will enhance the credibility of an election process, the requirement should be kept only for the first round of a candidate election.

11. Parliamentary Election Districts

- The delineation of the six parliamentary election districts is inappropriate for incorporation into the Electoral Code as a regular article. The delineation of districts could instead be included in the Code as an annex or schedule, or enacted through separate legislation. When the districts are realigned, the new districts should be adopted in this manner.