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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**  
**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

**JOINT OPINION  
ON THE ELECTORAL CODE  
AS AMENDED ON 9 NOVEMBER 2015**

**Adopted by the Council for Democratic Elections  
at its 56<sup>th</sup> meeting  
(Venice, 13 October 2016)**

**and by the Venice Commission  
at its 108<sup>th</sup> Plenary Session  
(Venice, 14-15 October 2016)**

**on the basis of comments by**

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## I. Introduction

1. On 25 May 2016, Mr Cesar Florin Preda, Chair of the Monitoring Committee of the Parliamentary Assembly, requested the opinion of the Venice Commission on the “amended Electoral Code of November 2015 of “the former Yugoslav Republic of Macedonia”” (CDL-REF(2016)020). In line with standard practice, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) decided to provide a Joint Opinion on the amendments of the Electoral Code.
2. This Joint Opinion is based on an unofficial English translation of the Electoral Code as amended on 9 November 2015 (CDL-REF(2016)020). It should be noted that any legal review based on translated laws may be affected by issues of interpretation resulting from translation.
3. This Joint Opinion is intended to assist the authorities in “the former Yugoslav Republic of Macedonia” in further developing and improving the legal framework for the conduct of democratic elections and meeting international obligations and standards. The extent to which amendments to the Code can have a positive impact will ultimately be determined by the political will of state institutions and officials responsible for implementing and upholding the Code.
4. On 21-22 September 2016, a delegation of the Venice Commission, composed of Mr Pere Vilanova Trias, rapporteur, as well as Mr Pierre Garrone, from the Secretariat of the Venice Commission, and Ms Tamara Otiashvili from the OSCE/ODIHR, travelled to Skopje. The delegation had meetings with the Minister of Justice, State Audit Office, the four major political parties, and public broadcaster as well as with representatives of civil society and the international community. The State Election Commission was not in a position to meet with the delegation. The delegation is grateful to all stakeholders for the meetings and the exchanges of views on the Electoral Code during their visit.
5. The present opinion was adopted by the Council for Democratic Elections at its 56<sup>th</sup> meeting (Venice, 13 October 2016) and by the Venice Commission at its 108<sup>th</sup> plenary session (Venice, 14-15 October 2016).

## II. Reference Documents

6. The 2015 amendments to the Code were reviewed for compliance with OSCE commitments and European and international obligations and standards. This Joint Opinion should be read in conjunction with the following documents:

- Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990).
- Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (3 October 1991).
- Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report. Adopted by the Venice Commission at its 52<sup>nd</sup> session (18-19 October 2002; CDL-AD(2002)023rev2).
- Other international and regional instruments relevant to “the former Yugoslav Republic of Macedonia”, including Article 3 Protocol 1 to the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).
- Joint Opinion on the Electoral Code of “the former Yugoslav Republic of Macedonia”, adopted by the Venice Commission and OSCE/ODIHR (14-15 June 2013; CDL-AD(2013)020).

- Joint Opinion on the revised Electoral Code of “the former Yugoslav Republic of Macedonia”, adopted by Venice Commission and OSCE/ODIHR (14-15 October 2011; CDL-AD(2011)027).
- Joint Opinion on the draft working text amending the Electoral Code of “the former Yugoslav Republic of Macedonia”, CDL-AD(2007)012.
- Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes, adopted by the Venice Commission and OSCE/ODIHR (14 March 2016; CDL-AD(2016)004; GDL-ELE-/285/2016).
- OSCE/ODIHR final report on early parliamentary elections scheduled for 5 June 2016.
- OSCE/ODIHR final report on 13 April 2014 presidential and 27 April 2014 early parliamentary elections.
- OSCE/ODIHR final report on 24 March and 7 April 2013 municipal elections.

### **III. Executive Summary**

7. The Electoral Code of “the former Yugoslav Republic of Macedonia” was amended in November 2015. The amendments were adopted as a result of the Przino Agreement reached among the four major political parties. The Agreement aimed to address several issues as a pre-condition for holding early parliamentary elections, including electoral reform that reflects prior Venice Commission and OSCE/ODIHR recommendations.

8. The amendments address a number of recommendations raised in previous opinions of the Venice Commission and OSCE/ODIHR, as well as election observation reports of the OSCE/ODIHR, particularly those related to:

- The principle of equal suffrage for out-of-country voting;
- The composition and competences of the State Election Commission (SEC);
- The level playing field in terms of media coverage during the election period;
- Party and campaign finance reporting and auditing;
- Safeguards for the separation of parties and state;
- Deadlines for courts to decide on electoral disputes;
- Procedures to enhance accuracy of voter lists;
- Mechanisms for promoting women's participation as candidates.

9. However, a number of previous Venice Commission and OSCE/ODIHR recommendations, remain unaddressed and some gaps and ambiguities need to be eliminated. The Code would benefit from a complete review in order to harmonise it internally and with other relevant laws. Key recommendations pertaining to parliamentary elections that remain to be addressed include:

- Candidate registration, especially recommendations related to signature collection;
- Dismissal of members of the election administration;
- Restrictive campaign regulations related to the length of the campaign, and to the broad definition of campaign activities;
- Public hearings on complaints and appeals;
- Periodic reallocation of seats or review of district boundaries by an independent body.

10. The amended Electoral Code provides an adequate basis for the conduct of democratic elections. It reflects consensus by the major political parties. However, it is underscored that the

key challenge for the conduct of genuinely democratic elections is the exercise of political will by all stakeholders to fully implement the electoral legislation in good faith.

11. The Venice Commission and OSCE/ODIHR are aware of the reinstatement of the working group tasked to further improve the Electoral Code, chaired by the Minister of Justice with the participation of representatives from state institutions, parliamentary groups, election administration, civil society and the international community, in line with the 20 July 2016 agreement.<sup>1</sup> The Venice Commission and OSCE/ODIHR reiterate the importance of an inclusive process and a constructive dialogue among all political forces and stakeholders in any further amendments to the Electoral Code. It is also imperative that the process is completed well in advance of the next elections.

12. In this respect, it should be underlined that a successful electoral reform is built on at least the following three elements: 1) clear and comprehensive legislation that meets international standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all the stakeholders; 3) political commitment to fully implement the electoral legislation in good faith.

13. Recommendations contained in this opinion should be read in conjunction with previous Venice Commission and OSCE/ODIHR recommendations, including those on municipal and presidential elections that have not been addressed by these amendments. The Venice Commission and OSCE/ODIHR continue to stand ready to assist the authorities in their efforts to create a legal framework for democratic elections in conformity with Council of Europe and OSCE commitments and other international obligations and standards.

## **IV. Analysis and Recommendations**

### **A. Background**

14. Following the multi-party Przino Agreement, a working group was created to draft amendments to the Electoral Code with the participation of the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE), the Social Democratic Union of Macedonia (SDSM), the Democratic Union for Integration (DUI) and the Democratic Party of Albanians (DPA).<sup>2</sup> The group reached consensus on electoral reform and on 9 November 2015 the parliament adopted the Law on Amending and Supplementing the Electoral Code (amendments).<sup>3</sup> The involvement of the four major parties in the process deserves to be praised. In the present case, the amendments were dictated *inter alia* by the necessity to provide more consistency to the electoral process. Such consistency needs not only proper legal rules, but also that all involved parties (political actors, social actors, institutions, public administration, etc.) behave on the basis of an unwritten commitment to the principles of democracy and political participation.

15. The timeframe for adoption of the amendments was short, and the focus was on the issues outlined in the Przino Agreement. Despite consensus among the four major political parties, there were no thorough public consultations and the Electoral Code was not reviewed comprehensively.<sup>4</sup> *It is recommended to pursue broad public consultations and discussions*

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<sup>1</sup> See the [Agreement](#).

<sup>2</sup> The [Przino Agreement](#) and its [Protocol](#) provided for the implementation of a comprehensive set of measures to resolve the political crisis, including electoral and media reforms.

<sup>3</sup> The motion was passed with 104 votes out of 123 (108 members of parliament were present).

<sup>4</sup> The Code was amended less than one year before the scheduled elections. The Venice Commission and OSCE/ODIHR are also aware of further changes made in July 2016. It has therefore to be reminded that it is in principle good practice not to amend fundamental elements of election legislation less than one year before an election (Code of Good Practice in Electoral Matters, II.2.b). However, the follow-up to recommendations is

*with a view to obtaining agreement on and support for future changes to the Electoral Code. These consultations could also find ways to take forward OSCE/ODIHR and Venice Commission recommendations contained in this and previous opinions and reports.*

## **B. The Electoral System**

16. Between 120 and 123 members of parliament are elected under a proportional representation system from closed lists. Of these, 20 members of parliament are elected from candidate lists in each of the 6 in-country constituencies under the *d'Hondt* formula and up to 3 members of parliament are elected from a single out-of-country constituency.

17. While voters should be distributed equally between constituencies the Code permits deviations of up to five per cent from the average for in-country constituencies. However, the amendments do not provide a clear method for constituency delimitation, including a specific decision-making procedure for the SEC to decide on the boundaries. The preparations for the 2016 early parliamentary elections revealed significant deviations. *The Code should provide for a periodic reallocation of seats or review of constituency boundaries, conducted by an independent body in a timely and transparent manner.*<sup>5</sup> This was one of the major concerns of the political parties met during the delegation's visit to Skopje.

18. The Code significantly changes some aspects of out-of-country voting. The previous system, introduced for the first time in the 2011 early parliamentary elections, resulted in an uneven distribution of voters between the out-of-country constituencies and also presented an imbalance between the number of voters in the in-country and out-of-country constituencies.<sup>6</sup> This system did not ensure the principle of equal suffrage as provided for by the Constitution, the case-law on Article 3 of the First Additional Protocol to the ECHR, paragraph 7.3 of the 1990 OSCE Copenhagen Document, and the Code of Good Practice in Electoral Matters, paragraph I.2. Several recommendations were given in previous Venice Commission and OSCE/ODIHR opinions to address the issue.

19. Although international obligations and standards do not impose any specific model of electoral system,<sup>7</sup> the process of revision of such a fundamental element of electoral legislation, as well as the methods of allocation of the seats, should be scrutinised in order to assess the inclusiveness of the process and the fairness of the system.

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considered as an exception to the principle of the stability of electoral law, which "should not be invoked to maintain a situation contrary to the standards of the European electoral heritage or to prevent the implementation of recommendations by international organisations" (Interpretative Declaration on the Stability of Electoral Law, CDL-AD(2005)043, II.2). At any rate, it remains important to have sufficient time for a thorough, inclusive, and public discussion in order to build consensus around major changes in electoral legislation.

<sup>5</sup> On the repartition of seats between constituencies and redistricting, see Code of Good Practice in Electoral Matters, I.2.2.iv-vii. The explanatory report states (para. 16) that, "in order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation." Point 3.3 of the Existing Commitments for Democratic Elections in OSCE Participating States, ODIHR, Warsaw, October 2003, states that: "When necessary, redrawing of election districts shall occur according to a predictable timetable and through a method prescribed by law and should reflect reliable census or voter registration figures. Redistricting should also be performed well in advance of elections, be based on transparent proposals, and allow for public information and participation."

<sup>6</sup> One member of parliament was elected from each of three out-of-country voting districts, irrespective of the number of registered voters.

<sup>7</sup> OSCE Ministerial Council, Decision No. 7/02, "Election Commitments", Porto, 7 December 2002 states that "democratic elections can be conducted under a variety of electoral systems". See also, paragraph 21 of the 1996 United Nations Human Rights Committee (UNHRC) General Comment No. 25 to the International Covenant on Civil and Political Rights (ICCPR), which states "Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors". The Code of Good Practice in Electoral Matters, II.4 states that "Within the respect of the above-mentioned principles, any electoral system may be chosen".

20. Article 4 aims to address the imbalance in out-of-country constituencies by consolidating the previous three constituencies into one and by setting a minimum threshold for the election of out-of-country members of parliament. In order to be elected, the first candidate must receive the same number of votes as the member of parliament elected with the least number of votes from an in-country constituency in the previous parliamentary elections; for the second candidate to be elected twice as many votes should be cast, and the election of the third requires thrice as many votes. However, if no candidate reaches the required number of votes to obtain a seat, out-of-country voters will not be represented, thus violating the principle of universal suffrage.<sup>8</sup> *It is recommended that an alternative procedure be provided so that the right to vote of all eligible voters abroad, as provided by Electoral Code, is guaranteed in conformity with the principle of equality of the vote.*

21. The Code is also vague on the registration procedures for voters abroad, particularly on who is eligible to register to vote. Unclear guidelines may result in an inconsistent approach and can lead to disfranchisement of eligible voters. *It is recommended that more detailed legal provisions be put in place for the registration of voters abroad.*

### **C. Misuse of Administrative Resources**

22. A new paragraph has been added to Article 8-a of the Code specifically prohibiting the initiation of any procedure for employment or termination of employment of public officials from the day of adoption of the decision announcing the elections until the results are finalised.

23. A new Article 8-b has been added explicitly prohibiting the use of office premises, equipment and vehicles of any state organ for purposes of campaigning. The new Article also forbids any pressure or intimidation of voters or members of their families. In addition, Article 74 has been amended to give exclusive jurisdiction over complaints concerning violations of Articles 8-a and 8-b to the State Commission for Prevention of Corruption.

24. In addition, a new Article 8-c calls for all competing political parties to sign a “Code on Fair and Democratic Elections” in which they agree to unambiguously commit to not exert any pressure over public employees and employees in state financed enterprises. Further, the parties agree that no public employee or citizen will be subject to any threat as regards their employment or social security as a result of their support or lack thereof for any political party or candidate. However, Article 8-c does not provide for any legal consequence if a party fails to sign. Instead of adding a Code on Fair and Democratic Elections to the requirements of the law, it appears preferable to regulate the issue in more detail.

25. Equal opportunity must be guaranteed for all parties and candidates in order to ensure a neutral attitude by state authorities.<sup>9</sup> Paragraph 5.4 of the 1990 OSCE Copenhagen Document commits participating States to ensure “a clear separation between the State and political parties”, thereby protecting against the abuse of state resources by the ruling party or incumbent. Paragraph 3.3.1 of the Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during the Electoral Period also provides that an “effective implementation of legislation requires that any restrictions on the use of administrative resources be implemented in good faith.”<sup>10</sup> The amended Article 8 and the new Articles 8-b and c are welcome provisions as they strengthen the prohibition on the misuse of administrative resources for electoral campaigning, as well as intimidation of voters in line with prior OSCE/ODIHR and Venice Commission recommendations. However, the effectiveness of these

<sup>8</sup> The SEC cancelled the out of country voting before the cancellation of the 5 June 2016 election as it considered that the number of voters registered abroad was not sufficient.

<sup>9</sup> See the Venice Commission Code of Good Practice in Electoral Matters, I.2.3.a.

<sup>10</sup> See the Venice Commission and OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes, CDL-AD(2016)004/GDL-ELE-/285/2016, II.B.3.1.

new provisions will depend on their implementation and the necessary political will to enforce them.<sup>11</sup>

#### **D. Election Administration**

26. Although there is no standard model for the composition of the election administration, the election legislation should guarantee that election commissions are established and operate in an independent manner and that commission members act impartially.<sup>12</sup> Moreover, in practice, a commission and its members should abide by these standards.

27. The amended Code maintains a three-level election administration system which consists of the SEC, Municipal Election Commissions (MEC) and Electoral Boards (EB).

28. The amended Code increases the competences of the SEC and changes its appointment mechanisms. Article 26 increases the number of SEC members to nine (previously seven). In addition to three parliamentary party representatives nominated by the governing parties and the three nominated by the opposition, the commission now includes three independent experts not affiliated with any political party.<sup>13</sup> While the political parties nominees should be law graduates with at least 8 years of work experience in legal affairs, independent experts are required to have higher education, with at least five years of work experience, but with a professional knowledge and practice in elections and electoral processes. The president and the vice-president of the SEC are elected by parliament from the three non-partisan members, instead of being nominated by the political parties as was previously the case. The amendment also creates a special budgetary account within the state budget for SEC operations and specifies that the SEC independently manages its finances. Article 30 of the Code is also amended by adding the requirement of higher education and experience in public sector management for being appointed as SEC secretary general. The change in the SEC composition, combined with special budgetary account, is positive, as it aims to ensure the impartiality and independence of the SEC.<sup>14</sup>

29. The amended Article 27(6) provides for a 2/3 majority for the election of SEC members. Such a majority might be difficult to obtain and a situation might emerge where the members would not be elected early enough before elections. Although there are no international standards in this regard, an alternative appointment mechanism could be envisaged in the law for those occasions when a 2/3 majority cannot be obtained with sufficient time ahead of the elections.

30. Article 28(1) provides the ending of the term of office in the SEC if the member reaches the retirement age. Such an age restriction could be reconsidered.<sup>15</sup>

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<sup>11</sup> The OSCE/ODIHR Final Report on early parliamentary election scheduled for 5 June notes that "Although some measures to prevent pressure on citizens were taken by the authorities, such as political statements and establishing hot-lines, a climate of intimidation was frequently alleged by many OSCE/ODIHR EOM interlocutors, and several of them attributed this to a fear of retribution existing in state companies and institutions".

<sup>12</sup> See paragraph 20 of the UN Human Rights Committee General Comment 25 to Article 25 of the ICCPR. See also, Existing Commitments for Democratic Elections in OSCE Participating States, par. 4; Venice Commission Code of Good Practice in Electoral Matters, II.3.1.

<sup>13</sup> The independent members were appointed by the parliament on 16 December 2015 in an open application process for a five-year term; they could not be political party members in the two years prior to their appointment.

<sup>14</sup> See the Venice Commission Code of Good Practice in Electoral Matters, II.3.1.b; paragraph 68 of the Explanatory Report states that "only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results".

<sup>15</sup> See the United Nations Principles for Older Persons, adopted by the General Assembly Resolution 46/91, 16 December 1991.

31. Article 31(2)(28) establishes an electronic system for case and complaint management for the election administration. This, combined with an earlier amendment which foresees the formation of a legal department within the SEC to advise on complaints and appeals, would improve the timely and effective adjudication of election-related complaints. However, to guarantee the administrative capacity of the SEC, *it is recommended that professionals in the legal department be recruited on a permanent non-partisan basis.*<sup>16</sup>

32. For greater transparency, Article 31(3) has been added to the Code to specify that SEC sessions be public. The 2015 amendments also introduced new rules for SEC decision-making processes. Absentee voting is no longer possible and all decisions should be adopted by a majority vote of the total number of members (Article 31(2)(34-b – 34-c). These amendments are positive and address prior OSCE/ODIHR and Venice Commission recommendations. The new Article 31(2)(34-d) also provides that in case a draft decision refers to the interests of a non-majority community, any member of the non-majority community has the right to request that the SEC decide with consensus. While measures to ensure protection of minorities are laudable, no definition of the interests of a non-majority community is given, which could lead to stalemates or complicated legal disputes.

33. A new Article 38-a has been added which provides that EB members for out-of-country voting be recruited from among citizens that are available in the particular country, either upon recommendation from political parties, or, failing that, on a case-by-case basis. This addresses a previous recommendation of the Venice Commission and OSCE/ODIHR.<sup>17</sup>

34. The amendments do not contain detailed provisions on the dismissal of members of the election administration. Previously, it was recommended to detail the reasons for such dismissals as well as to ensure that these rules are not abused by the SEC.<sup>18</sup> In order to enhance the ability of election commission members to perform their duties independently, impartially, and professionally, *the Venice Commission and OSCE/ODIHR recommend that the Code protect election commission members from arbitrary removal by setting out clear and justifiable grounds for such removals.*

35. The Code still requires a request from the majority of members to hold a meeting. The Venice Commission and OSCE/ODIHR have previously expressed the view that a request from one third of members would be sufficient.

## **E. Voter Lists, Right to Vote and to Be Elected**

36. The relevant sections of the Code dealing with the voter lists have been significantly amended to introduce a procedure for maintaining, updating and deleting data from the voters' list. New Articles (31(28-b) and 41(1)) were added giving the SEC the sole responsibility for maintaining and updating the lists based on data extracted from birth registries, as well as registries of residence and citizenship maintained by various state agencies. In addition, the SEC has been given the authority to inspect the records concerned and to request additional information from the relevant institutions.

37. In addition, a new Article 31(28-g and 28-h) calls for the SEC to adopt a "Rulebook on the Methodology for Maintaining and Updating the Voter List" and a "Rulebook for Methodology on Full Access, Interventions and Deletion of Data on the voter lists" detailing the procedure for conducting field verifications for the purpose of updating the voter lists. Article 31(28-e)

<sup>16</sup> In December 2015 the SEC resources were strengthened by recruiting additional personnel in the legal department. However, these are all temporary positions until 31 December 2016.

<sup>17</sup> See Joint Opinion on the draft working text amending the Electoral Code of "the former Yugoslav Republic of Macedonia", CDL-AD(2007)012, para. 14; CDL-AD(2013)020, para. 18.

<sup>18</sup> CDL-AD(2011)027, para. 41; CDL-AD(2013)020, para. 23.



additionally mandates the SEC to publicly encourage citizens to check their data every six months and if necessary request changes, as well as to update the voter lists each month based on such requests. These amendments are positive and in accordance with international standards. In order to increase the citizens' awareness, as well as confidence in the accuracy of voter registration *it is recommended that the SEC conducts an effective public information campaign*, as provided by the law.

38. A new Article 42 has been added specifying that the SEC shall record, add or delete data in the voter lists based on the methodology outlined in the above mentioned rulebooks. Article 43(4) mandates the Ministry of Internal Affairs (MoIA) to submit to the SEC a quarterly report on newly issued biometric identification documents including the grounds for issuing such documents, systematised by name, surname and municipality.

39. Article 45 has been amended to add the requirement that printed excerpts of the voter lists include a photo of each voter.

40. Collectively, these new provisions largely address prior recommendations from OSCE/ODIHR election observation reports. In particular the Code has been revised to provide a clear division of responsibilities between the MoIA and the SEC on challenges to voter lists. It also reviews the procedures for compiling and maintaining voter lists. The introduction of clear, co-ordinated and transparent procedures for all the institutions involved in updating the voter lists will help to enhance accuracy and to increase public confidence.

41. A new Article 31(28-c) states that the SEC provides access to the voter lists in line with the Law on Protection of Personal Data of Citizens. However, the issue of clarifying for what purposes the data in the voter lists can be used has not been addressed. Article 55(1) states that personal data contained in the voter lists cannot be used for any purpose other than "exercising the citizen's right to vote". However, Article 55(2) requires the SEC to supply all of the data from the voter lists to any registered political party or independent candidate, upon request. The legal framework should clearly state the permitted use of information obtained from the voter lists and whether the information can be used for the campaign activities of political parties and candidates. As previously recommended, more guidance should be provided to electoral contestants by providing a concrete definition for the term "exercising the citizen's right to vote."<sup>19</sup>

42. Amended Articles 50 and 51 now provide that requests from out-of-country voters to make changes in the voter list should be sent by email to the SEC only and not to foreign diplomatic representations, as previously provided. This avoids a possible dual jurisdiction over such requests. Furthermore, the Code now specifically indicates that once a decision is taken, the SEC shall inform the applicant by email immediately, thus providing the required time for the applicant to lodge a potential appeal within the established timeframes.

## **F. Candidate Registration**

43. In line with a previous Venice Commission and OSCE/ODIHR recommendation,<sup>20</sup> Article 63(3) has been amended to allow a voter to give a supporting signature for more than one candidate. However, contrary to a prior OSCE/ODIHR recommendation, signatures must still be collected in front of a regional SEC representative. As this opens the possibility for voter intimidation, *it is recommended that alternative methods for signature collection should be considered in order to reduce the potential for intimidation.*

<sup>19</sup> See Joint Opinion CDL-AD(2011)027, para. 20.g.

<sup>20</sup> CDL-AD(2011)027, para. 15.

44. As a measure to encourage the participation of women, the Electoral Code now requires every candidate list to have at least 40 per cent of candidates reserved for the less-represented gender – for members of parliament and for members of municipal councils and the City of Skopje – with at least one in each consecutive third and tenth places on the list (candidates are elected in the order of the list). These are effective mechanisms for promoting women's participation in political and public life, in line with OSCE commitments and international standards.<sup>21</sup>

45. A number of previous Venice Commission and OSCE/ODIHR recommendations regarding suffrage rights in parliamentary elections have not been addressed, for example:<sup>22</sup>

- Article 7(2) guarantees the right to be elected to citizens “with active legal capacity.” The Venice Commission and OSCE/ODIHR previously recommended that “this provision should mention that a court decision has to attest a lack of capacity, depriving a citizen of his/her political rights, as long as this is not settled in another text”.
- Article 64(2) provides “that candidates for members of parliament have to declare belonging to an ethnic community.” This should not be compulsory.<sup>23</sup>
- Article 67(2) should clarify the deadline on elimination of irregularities upon notification by the election commission.

46. The Electoral Code is silent concerning the withdrawal of candidates and lists of candidates after they have been confirmed by the electoral administration. The issue could benefit from further regulation, in order to ensure legal clarity.

## **G. Campaign Finance**

47. The Code provides an improved framework on campaign financing. The amendments shorten the timeframe for making a decision on alleged violations from seven to five days and compel the State Commission for Preventing Corruption (SCPC) to decide on complaints in a public session. These are positive amendments as they clarify the jurisdiction of the SCPC and increase transparency and accountability in the process. However, contrary to recommendations made in the 2011 OSCE/ODIHR Election Observation Mission Final Report, no deadlines have been introduced for auditing interim campaign finance reports. The disclosure of audited interim reports before election day would increase transparency and inform voters of the financing of campaigns prior to casting their vote.<sup>24</sup> During the Delegation's visit to Skopje, the SAO noted that it would be technically challenging to audit these reports before election day.

48. Article 74-a has been added giving exclusive jurisdiction over campaign finance complaints to the State Audit Office (SAO). However, there is no equivalent provision mandating that decisions of the SAO be made in a public session. For a greater transparency, *it is recommended that the SAO could also hold open sessions for such cases.*

49. The amendments lower donation limits both for natural and legal persons: individuals may donate up to EUR 3,000 while legal entities may donate up to EUR 30,000. The campaign

<sup>21</sup> See OSCE Ministerial Council, Decision No. 7/09 in Women's Participation in Political and Public Life, para. 2; CDL-AD(2009)029, Report on the Impact of Electoral Systems on the Representation of Women in Politics, paras 84ff; Council of Europe, Parliamentary Report of 22 December 2009 on Increasing women's representation in politics through the electoral system. Further, Article 4 of the Convention on the Elimination of all Forms of Discrimination Against Women emphasises that “adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination”.

<sup>22</sup> CDL-AD(2013)020, para. 16, referring itself to the previous opinion (CDL-AD(2011)027).

<sup>23</sup> Code of Good Practice in Electoral matters, I.2.4.c.

<sup>24</sup> See Paragraph 200 of the 2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulations, which provide that “in an effort to support transparency, it is good practice for such financial reports to be made available on the Internet in a timely manner”.

expenditure ceiling for each electoral contestant has also decreased to approximately EUR 1.8 per registered voter. This appears to be in line with the UN Human Rights Committee in General Comment No. 25, which provides that “reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”<sup>25</sup> However, *it is recommended to consider further limitations on donations by those legal entities which provide goods or services for any public administration in order to avoid possible corruption.*<sup>26</sup>

50. In line with previous recommendations, Article 84-b has been amended. It now provides for more itemised campaign finance reports filed by candidates so that it can be determined exactly how campaign funds are being spent. In addition, new provisions have been introduced to increase the transparency of campaign finance reports by adding a requirement that donations from third parties are reported, as well as publishing all campaign finance reports on the website of the submitter.

51. In another positive development the SAO has been given the right to request additional information from the electoral contestants so that a thorough review can be conducted.

## **H. Media and Campaign Rules**

52. In line with previous recommendations, the legal framework for media coverage of elections is substantially amended.<sup>27</sup> The amended Articles 75, 75-b, 75-f and 76-a now provide detailed requirements for equitable access to newscasts and paid political advertisements; prohibit broadcasters and their owners from donating funds to contestants; shorten deadlines for media-related complaint and misdemeanour procedures and increase fines for violations; prohibit the coverage of state officials that favour a given political party; allow non-parliamentary parties to receive free airtime on the public broadcaster's parliamentary channel; and compels the public broadcaster to host regular election debates. The amendments also include requirements for campaign coverage by Internet portals.<sup>28</sup>

53. Despite these positive amendments, the Code could further clarify the requirements for balanced reporting during the pre-campaign period as in the current system it results in excessive coverage of the campaigns of the main political parties. At any rate, balance has to be ensured between freedom of expression and equality of opportunity, especially for privately owned media; equality may be either strict or proportional.<sup>29</sup>

54. Following the Przino Agreement, consultations between the four largest political parties and civil society organisations continued with the aim to further reform the media framework. However, the parties failed to reach a consensus on this topic, while amendments coming from civil society organisations were dismissed by parliament on 4 April 2016.<sup>30</sup>

55. In addition, a new Article 78-a has been introduced to regulate political advertising on billboards and advertising panels. It limits the number of billboards and advertising panels that can be used for political advertising to 50 per cent of the total number on the territory of a particular municipality. Further, it introduces a quota system whereby 40 per cent of the total in

<sup>25</sup> See also Joint Guidelines on Political Party Regulation (CDL-AD(2010)024), paragraph 175.

<sup>26</sup> See Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, Article 5 (b).

<sup>27</sup> See Joint Opinion, CDL-AD(2011)027, para. 61/ See also OSCE/ODIHR Final Report on the 13 April 2014 presidential and 27 April 2014 early parliamentary elections.

<sup>28</sup> The Venice Commission and OSCE/ODIHR were informed on the lack of consultations with the public broadcaster on the media-related provisions.

<sup>29</sup> Code of Good Practice in Electoral Matters, I.2.3.c.

<sup>30</sup> See the OSCE/ODIHR Final Report on early parliamentary election scheduled for 5 June.

a given municipality is allocated to the ruling parties and 40 per cent to the opposition parties, 10 per cent to parliamentary parties that have no parliamentary group and 10 per cent to non-parliamentary parties. The location of allocated panels and billboards is determined by a drawing of lots.

56. Limitations of the number of advertising panels and billboards in Article 78-a(2) might lead to an overly restrictive situation if the number of panels and billboards is very small. In such a situation, not all the contestants might have enough panels and billboards to campaign efficiently. It has to be kept in mind that all restrictions on campaigning have to be proportionate, as they restrict the freedom of speech, which is a pre-condition for democratic elections.<sup>31</sup> In addition, as previously noted the Electoral Code continues to be restrictive on campaign regulations related to the length of the campaign and to the definition of campaign activities.<sup>32</sup>

### **I. Complaints and Appeals, Sanctions**

57. The 2015 amendments revised certain aspects of the complaint and appeals procedures by introducing shorter deadlines for electoral dispute resolution and additional transparency measures for more effective legal redress. In line with a previous recommendation, a new Article 149-a has been added to expand the right of voters to file complaints to the SEC if their individual voting right has been violated at any stage of the electoral process rather than just on election day. Article 150 has also been amended to outline the procedure to be followed by the Administrative Court when deciding cases under articles 149, 149-a and 150.

58. Although the amendments include provisions to increase transparency by requiring public hearings when administrative bodies hear election complaints, there is no corresponding requirement for the Administrative Court to hold public hearings on election-related cases. The Code only provides that its decisions should be published on the website within 24 hours and specify how each judge voted in the case. The lack of guaranteed public hearings by the Administrative Court is contrary to OSCE commitments and other international standards and reduces public confidence in the process.<sup>33</sup> *The Venice Commission and OSCE/ODIHR therefore recommend reviewing the Code to ensure that hearings on election-related cases be held in public unless the court specifically finds that there is an exception in the law to hold a particular hearing in private.*<sup>34</sup>

59. Some doubts remain on the effectiveness of the complaints and appeals process for out-of-country voters.<sup>35</sup> Article 149(2) still provides for submission of complaints via express mail while Article 67(9) provides for e-mail; these provisions should be harmonised, even if they do not concern the same type of violations. This could also lead to consideration as to whether to introduce the possibility for complaints and appeals by in-country voters to be done by post or e-mail.

60. A previous recommendation to amend Article 151(1)<sup>36</sup> in order to remove the possibility to annul the results in case of minor irregularities remains to be addressed.

61. Amendments have been made to the Penal and Misdemeanor section (16) of the Electoral Code to correspond with the substantive amendments through either the introduction of new

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<sup>31</sup> Code of Good Practice in Electoral Matters, II.1.

<sup>32</sup> See CDL-AD(2011)027, paras 44ff.

<sup>33</sup> See in particular The Rule of Law Checklist, CDL-AD(2016)007, II.E.2.c.vii; Paragraph 12 of the 1990 OSCE Copenhagen Document, Article 14 of the International Covenant on Civil and Political Rights and Article 10 of the Universal Declaration of Human Rights.

<sup>34</sup> See Constitution article 102.

<sup>35</sup> Cf. CDL-AD(2011)027, paras 34-35.

<sup>36</sup> CDL-AD(2013)020, paragraph 40.

penal provisions or the increase of fines for existing penal provisions. In line with a prior OSCE/ODIHR recommendation, the law now prescribes a sanction for the non-submission of campaign finance reports.<sup>37</sup>

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<sup>37</sup> OSCE/ODIHR Final Report on the 13 April 2014 presidential and 27 April 2014 early parliamentary elections.