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

**COMPILATION**

**OF VENICE COMMISSION OPINIONS AND REPORTS**

**CONCERNING MEDIA AND ELECTIONS<sup>1</sup>**

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<sup>1</sup> This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 115<sup>th</sup> Plenary Session (June 2018).

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## **I. Introduction**

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning the relationship between media and elections. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to media and elections, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading ([venice@coe.int](mailto:venice@coe.int)).

## **II. International standards on media and elections**

*In the preparation of its opinions and reports/studies on media related issues in elections campaign, the Venice Commission takes into account a number of international standards concerning in particular the freedom of expression and the right to an effective participation in the electoral process as set out, among others, in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).*

“The right to freedom of expression is enshrined in a number of declarations, treaties and regional conventions, primarily in Article 19 of the International Covenant on Civil and Political Rights, which echoes the words of the corresponding Article in the Universal Declaration of Human Rights. States that are signatories of these documents or members of

the organisations that have produced these declarations have a moral duty, and sometimes the legal obligation, to comply with these provisions. These principles constitute the legal basis for the protection of freedom of expression.”

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005).***

#### **A. United Nations and UN specialized agencies**

- International Covenant on Civil and Political Rights (1966) (ICCPR) Articles 19, 20, 25
- The Universal Declaration of Human Rights (1948) Article 19

#### **B. Council of Europe**

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 10,
- Protocol no.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3,
- The European Charter for Regional or Minority Languages, Article 11,
- Recommendations and Resolutions adopted by the Committee of Ministers, in particular, Recommendation CM/Rec(2007)15, 7 November 2007 on Measures Concerning Media Coverage of Election Campaigns; Recommendation CM/Rec(1999)15 on Measures Concerning Media Coverage of Election Campaigns.
- Recommendations and Resolutions adopted by the Parliamentary Assembly, in particular, Resolution 1003(1993) on Ethic of Journalism; Recommendation 834(1978) on threats to freedom of the press and television; Recommendation 1641(2004) on public service broadcasting, Recommendation 1506 (2001) on Freedom of expression in the media in Europe,
- Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (CDL-AD(2002)023rev2).

#### **C. European Union**

- Consolidated version of the Treaty on the Functioning of the European Union, Protocol no. 29 on the System of Public Broadcasting in the Member States, 2012.

#### **D. OSCE**

- Document of Copenhagen. Meeting of the Conference on the Human Dimension of the CSCE, paragraphs 7.7 and 7.8.

### **III. Role of the media**

#### **A. Media and democracy**

18. Properly conducted amendment procedures, allowing time for public and institutional debate, may contribute significantly to the legitimacy and sense of ownership of the constitution and to the development and consolidation of democratic constitutional traditions over time. In contrast, if the rules and procedures on constitutional change are open to

interpretation and controversy, or if they are applied too hastily or without democratic discourse, then this may undermine political stability and, ultimately, the legitimacy of the constitution itself. In this sense, the Commission has repeatedly stressed that a duly, open, informed and timely involvement of all political forces and civil society in the process of reform can strongly contribute to achieving consensus and securing the success of the constitutional revision even if this inevitably takes time and effort. For this to happen, states' positive obligations to ensure unhindered exercise of freedom of peaceful assembly, freedom of expression, as well as a fair, adequate and extensive broadcasting of the Arguments by The media are equally relevant.

78. The Venice Commission wishes to stress that in the case of the election of a new National Constituent Assembly, the need for consensus must be especially emphasized. As the Venice Commission has previously stated, this procedure is one of the most sensitive issues of any constitution. It is also a highly political issue that can only be determined in light of the history of the country and its political and legal culture. For this reason, the adoption of a new and good Constitution should be based on the widest consensus possible within the society and a wide and substantive debate involving the various political forces, non – government organizations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. For this to happen, states' positive obligations to ensure unhindered exercise of freedom of peaceful assembly, freedom of expression, as well as a fair, adequate and extensive broadcasting of the arguments by the media are equally relevant.

**CDL-AD(2017)024 Venezuela - Opinion on the legal issues raised by Decree 2878 of 23 May 2017 of the President of the Republic on calling elections to a national constituent Assembly, endorsed by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017)**

12. The media have an important role to play during an election period. In addition to reporting on the performance of the incumbent government, the media can educate voters on how to exercise their rights, report on campaign developments, provide a platform for the candidates to debate one another and communicate their message to the electorate, and also monitor the vote count and report the results to the public. Candidates have the right of reply to statements or reports in the media, which were inaccurate or offensive, and to be able to exercise that right during the election campaign.

**CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 12).**

29. Ideally, a regulatory framework for elections will ensure the unimpeded flow of full information to voters from all candidates and political parties participating in the elections because an election is about the right of the voters to choose their government after having received fully complete information on all candidate choices. It is not the purpose of the regulatory framework to ensure that parliamentary parties maintain an advantage over non-parliamentary parties or that a political party candidate has an advantage over a non-political party candidate. The overarching rule should be the principle of non-discrimination [..].

**CDL-AD(2009)005 Joint Opinion on the electoral code of the Republic of Albania, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009) (para. 29).**

In a healthy democracy, the media provide citizens with an objective portrayal of public affairs. Radio, television and print media are vehicles for disseminating information about the most important developments in a society. During the election, the media can help voters to make informed decisions about which parties and candidates they will support. By providing access to political contestants to communicate their messages, the media play an essential role as the primary source of information about politics. Generally accepted standards of journalism require that the media provide accurate and objective coverage of election related events.

In modern democracies the media carry out fundamental political, social, economic, and cultural functions. They cover issues of public interest and have a central role in forming public opinion. Some authors have argued that the mass media hold the actual power to circulate ideas among citizens. It is an idea close to the concept of the media as a “market place of ideas”: a variety of media gives citizens access to a diversity of information and ideas, thus enabling them to have personal opinions on issues and participate in public life.

The media are a fundamental element of the democratic system. They provide candidates, politicians and parties with coverage and an arena for public debate. They disseminate a variety of information and opinions. Media are tools of power and influence; in this respect there are two different models within which the role and the power of the media can be observed and analysed, one where the media are controlled by the few and the powerful – a model referred to as hegemony – and one that serves the interests of the citizenry at large – a model devoted to pluralism.

In a democracy, the media are asked to be socially responsible. This implies not only positive expectations (what the media should do) but also a number of responsibilities (what the media should not do) that are necessary to serve better the interests of society: “In short the media in a democracy must foster deliberation and diversity, and ensure accountability.” The main function of the mass media in democratic nations is to cover political facts and events in the most objective, impartial and open way, promoting a variety of views and opinions as well as interpreting news in order to make the public understand the relevance of the information they receive. This is the main principle underlying the idea of advocacy journalism, aimed at promoting the participation of citizens in public life. In this regard, the media promote and protect the rights and expectations of citizens through their watchdog role.

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (Executive summary, para. II).***

9. During elections the media can assist voters in making informed choices of the parties and candidates they wish to support. The media is also a means to provide access for political contestants to communicate with voters. However, there must be equality of opportunity for all parties and contestants. It is generally accepted that journalism must be of a standard, which will ensure the provision of accurate and objective journalism.

17. The media are indeed a fundamental element in a democratic society, in that they disseminate a variety of information and opinions. It has long been recognised that the media are tools of power and influence. In daily life the media undertake social, economic, cultural and political functions. It has been suggested that the media is a “market place of ideas” where a variety of media can provide citizens with a diversity of information.

18. During election periods the media is an essential element of the democratic system, and has many responsibilities including the covering of political facts and events in the most objective, impartial and open way. There is also a responsibility for promoting a variety of views, opinions, in addition to reporting the news.

***CDL-AD(2004)047 Report on media monitoring during election observation missions, adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004) (paras. 9, 17,18).***

## **B. Freedom of expression and media**

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>1</sup>

***CDL-AD(2016)032 "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 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)***

60. The recommendation to delete the provision that prohibits the abuse of freedom of mass media during the conduct of the election campaign has been followed, as this provision does not appear in the final Electoral Code.

***CDL-AD(2016)031 Armenia - Second Joint Opinion on the Electoral Code (as amended on 30 June 2016), endorsed by the Council of Democratic Elections at its 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)***

82. Article 22.2 is a further prohibition on state officials using their power to establish unequal conditions among those standing for election by showing partiality. However, the extension of this prohibition to the mass media may go too far in restricting free expression by the media and should be reconsidered.

86. Article 20.13 contains a new provision, which prohibits the abuse of freedom of mass media during the conduct of the election campaign. This prohibition is too general and may lead to undue limitations on the freedom of mass media. It is recommended that this provision be deleted.

***CDL-AD(2016)019 Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)***

31. There are two different kinds of requirements regarding the freedom of expression. First, this right must be guaranteed not only for candidates themselves, but also for the mass media in order to respect the voter's freedom to form an opinion. Secondly, freedom of expression must be compatible with the equal opportunity principle. According to the Explanatory report to the Code of good practice, the neutrality requirement applies to the

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<sup>1</sup> Code of Good Practice in Electoral Matters, I.2.3.c.

electoral campaign and coverage by the media, especially the publicly-owned media. The basic idea is that the main political forces should be able to voice their opinions in the main media of the country.

***CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) (para.31).***

17. The media have the freedom to inform the public about an election campaign and to express their opinions. One of the functions of the media, is to cover political issues in the most impartial way. The media should also have the freedom to cover all relevant election-related issues, including the work of the election administration, alternative policies and platforms, the activities of candidates, problems and incidents occurring during the election campaign, Election Day procedures, and the announcement of the election results. In addition, the media have the freedom to take an active role in the process of informing voters by offering them a diverse range of views, which include those of journalists and political analysts. The media should have the freedom to criticize politicians for their platforms or their public record. A number of factors determine to what extent the media succeed in informing the public in a correct, accurate, transparent, and balanced manner. Media managers and owners should accept the principles of journalistic ethics and independence, and they should not exert pressure on their employees to act at variance with these principles.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 17).***

### **C. Independence and impartiality of media**

48. [...] Democratic elections largely depend on the ability and the willingness of the media to work in an impartial and professional manner during election campaigns. The failure of the media to provide impartial information about the election campaign and the candidates is one of the most frequent shortcomings that arise during elections.

49. In any case, objectivity and neutrality during the electoral period can be achieved by other means, respectful of the plurality of the media. A stronger service of public radio and television could be useful, as long as it is independent from political power and able to inform in a neutral and plural form. It would also be recommendable to improve pluralism in the broadcast media, by taking proper measures aimed at increasing the number and variety of the media and to limit broadcasting monopoly.

***CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) (para. 48, 49).***

26. Private broadcasters should also abide by standards of impartiality in their news and current-affairs programmes. The primary role of private broadcasters is not to counterbalance biased coverage in the state media. Given their popularity, however, they may often supplement public media by offering a more diverse range of views.

27. Private print media are generally entitled to a larger degree of partisanship than the publicly financed press and the broadcasting media. Print media often play an even greater



role than the electronic media in acting in the public interest as watchdogs and opinion makers. It is generally accepted that the press may explicitly express a political opinion. Also, the general practice of self-regulation adopted by the print media (through codes of conduct and press councils) can be interpreted as evidence that the press does not need to be bound by rules set by external bodies and that the media can be responsible for their own editorial choices. Therefore, even during an election period, print media have fewer obligations to be balanced towards candidates and political parties; they are subjected to less stringent regulation than electronic media.

28. The argument used to justify this position is that the print media do not benefit from a public and limited commodity such as airwaves. Therefore, their public obligation to impartiality and balance is commensurately less than that of the electronic media.

58. [..]

- The main issue with respect to private broadcasters is related to the balance between their nature as a commercial enterprise and their use of national public airwaves, which creates certain obligations in terms of providing a public service. In some countries, the allocation of a licence carries a certain level of public obligation,
- From a theoretical point of view, the private media as a whole should guarantee pluralism of information, views, ideas, and opinions. Therefore, several independent media, with diversified editorial lines, can serve the purpose of producing a pluralistic system of information and access (external pluralism),
- Whatever degree of editorial freedom private broadcasters enjoy, journalists should adhere to professional standards of coverage, as well as to professional ethics,
- Private print media are not bound to specific election regulations concerning the allocation of space among political forces. However, journalists should adhere to professional standards of coverage, as well as to professional ethics.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 26-28; 58).***

[..]Experts on mass communication have long debated the impact of media on the public. While there are different opinions and explanations, there is common agreement that independent media are essential in genuine democracies. On the other hand, in repressive regimes, dependent and controlled media can become a powerful tool to manipulate public opinion. As such, evaluating the role of the media in an election becomes an important part of the overall assessment of the entire election process. If the media are able to protect the autonomy and independence of their editorial policies, they will be able to offer the electorate a greater diversity of views.[..]

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (Executive summary).***

#### **IV. Equality of opportunity and media**

##### **A. Media access for political parties and candidates**

36. As far as indirect public support of political parties and electoral contestants is concerned, the Venice Commission and the OSCE/ODIHR note that the EC includes specific provisions on access to the media. Article 64<sup>1</sup> of the EC requires public broadcasters to “allocate free airtime to electoral candidates in a fair and non-discriminatory manner, based on objective and transparent criteria”. Further details on media coverage in elections are regulated in Article 64<sup>1</sup> of the EC. In this respect, it is noted that the 2017 draft amendments to the EC included changes to that Article, according to which national and public broadcasters would no longer have been required to provide free airtime and to organize debates for candidates in majoritarian elections. However, those amendments were not adopted, in line with the recommendation made in the 2017 Joint Opinion, which is to be welcomed.

***CDL-AD(2017)027 Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns, Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017)***

33. Question “Do laws provide for an unimpeded and non-discriminatory media access for all political parties and candidates?” assumes that media access should be non-discriminatory. It is important to have a separate look into public media and private media, while the latter might be also owned by political parties. The Checklist should be clarified in this regard and brought in accordance with European standards in this regard, possibly by adding some further questions or restricting the question only to state or publicly owned media.

34. The matter of media access is complex. It may go too far to suggest that access to every media must be based on the principle of equality. The distinction between state-owned/public media and private media should be taken into account and the start position might be equitable access rather than strict equality. The question “Do laws provide for an unimpeded and non-discriminatory media access for all political parties and candidates?” should include the notion of strict or proportional equality. The concept of ‘non-discrimination’ appears in a very uncertain way in the first question on page 9. It might be recommendable that media-related questions are separated from others and consistent language is used.

42. Within the same list of questions, the question related to media could only be assessed based on reliable media monitoring processes, which implies that the respective countries have appropriate institutions able to monitor media access and equality

***CDL-AD(2017)006 Joint opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe***

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>2</sup>

***CDL-AD(2016)032 "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 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)***

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<sup>2</sup> Code of Good Practice in Electoral Matters, I.2.3.c.

148. Mass media access is one of the main resources sought by parties in the campaign period. In order to ensure equal opportunity, legislation regarding access of parties and candidates to the public media should be non-discriminatory and provide for equal treatment.

149. The principle of equal treatment before the law with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space. Legislation should set out requirements for equal treatment, ensuring there are no discrepancies between parties through the allotment of prime viewing times to particular parties and late-night or off-peak slots to other parties.

150. While the fulfillment of party registration requirements may be taken into account as a prerequisite for being granted free media access, such a system of allocation cannot be used as a discriminatory way against non-registered (where allowed) or independent candidates. However, it is recognized that specific rules regarding the methods of allocation may intrinsically benefit parties which have undergone a process of registration.

**CDL-AD(2010)024 Guidelines on political party regulation, by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010) (paras. 148-150).**

Candidates and parties have the right to communicate their platforms and their views. Politicians should have access to the media to inform the electorate about their policies and opinions on matters of public interest. The media also provide an arena in which candidates can debate. How exactly this right of access will be realised will vary depending on the number of contestants; the provisions related to public and private media; the kind of elections; the cultural and political traditions of a country; and the kind of media. Candidates can be covered in a variety of formats and can have access to the media in a number of ways; what really matters is that they should have the opportunity to inform the voters about their policies and that there is no discrimination against them.

While the political parties and candidates enjoy the right of access to the media, they should not abuse it. Politicians should be aware that their right of access to the media should not limit or be detrimental to the freedom of expression of journalists. Therefore, in accessing the media, the political parties or candidates should be responsible and should not misuse their position to gain greater or more favourable coverage. One of the basic principles underlying the freedom of expression of journalists is a real editorial independence from pressures on the part of governmental or private interest groups or state agencies. Above all, media owners or managers linked to political parties should not abuse their positions to put pressure on journalists to favour a particular political party or candidate.

**CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (para. 2.3.2).**

a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;[.].

b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated

according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

18. *Equality of opportunity* should be ensured between parties and candidates and should prompt the state to be impartial towards them and to apply the same law uniformly to all. In particular, the *neutrality* requirement applies to the *electoral campaign and coverage by the media*, especially the publicly owned media, [...]. This means that there are two possible interpretations of equality: either “strict” equality or “proportional” equality. “Strict” equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for electioneering purposes (for example bill posting, postal services and similar, public demonstrations, public meeting rooms). “Proportional” equality implies that the treatment of political parties is in proportion to the number of votes. Equality of opportunity (strict and/or proportional) applies in particular to radio and television airtime, public funds and other forms of backing. Certain forms of backing may on the one hand be submitted to strict equality and on the other hand to proportional equality.

19. The basic idea is that the main political forces should be able to voice their opinions in the main organs of the country’s media and that all the political forces should be allowed to hold meetings, including on public thoroughfares, distribute literature and exercise their right to post bills. All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions. Quick rights of appeal must be available in order to remedy the situation before the elections. But the fact is that media failure to provide impartial information about the election campaign and candidates is one of the most frequent shortcomings arising during elections. The most important thing is to draw up a list of the media organisations in each country and to make sure that the candidates or parties are accorded sufficiently balanced amounts of airtime or advertising space, including on state radio and television stations.

20. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

**CDL-AD(2002)023rev2, Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (paras. I.2.3.a,b; 18-20).**

- a. State authorities must observe their duty of neutrality. In particular, this concerns:
- i. media;[...].

**CDL-AD(2002)023rev2, Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (para. I.1.3.1.a.i).**

## **B. Free airtime and paid political advertising**

37. That said, the Venice Commission and OSCE/ODIHR delegation was concerned to hear allegations that the above-mentioned principles of fair and non-discriminatory allocation of free airtime were not respected as to their spirit, e.g. opposition candidates were not given airtime during prime time. As the Venice Commission and the OSCE/ODIHR have stressed on previous occasions, including in the 2017 Joint Opinion and the observation report on the 2016 presidential election, free and equal or equitable access to media by all contestants is a cornerstone of democratic elections. According to the Guidelines, “the principle of equal treatment before the law with regard to the media refers not only to the time given to parties

and candidates but also to the timing and location of such space.” In order to ensure a level playing field for electoral contestants, it is recommended that access to public media during electoral campaigns be regulated more specifically in Articles 64<sup>1</sup> of the EC, including by defining more precisely the principle of equal access to broadcasting, guaranteeing free airtime for all electoral contestants during prime time (for electoral advertising, election debates and broadcasting campaign meetings) and ensuring strict supervision.

***CDL-AD(2017)027 Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns, Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017)***

57. Most previous recommendations on campaign financing and its control are addressed in the new Code. Article 178 provides for financial resources for media advertisement packages by state authorities to political parties and coalitions, but not to individual candidates. To guarantee the level playing field of all competitors during election campaigns, the OSCE/ODIHR and the Venice Commission recommend providing similar financial resources to individual candidates as well.

***CDL-AD(2017)016 Bulgaria - Joint opinion on amendments to the electoral code, adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111st Plenary Session (Venice, 16-17 June 2017)***

68. The draft foresees amendments in Article 64<sup>1</sup> of the Electoral Code, according to which national and public broadcasters will no longer be required to provide free airtime and to organise debates for candidates in majoritarian elections. It leaves majoritarian candidates without any means to access to such airtime or debates. Parliamentary elections are of wide national interest and have important consequences on state governance. Free and equal or equitable access to media by all contestants is a cornerstone of democratic elections. Debates in regional media do not sufficiently allow all viewpoints of political parties (whose representatives might be the candidates in small constituencies) to be discussed in the same way as in the case of debates in national media and free access to advertising. It is recommended to review the envisaged amendments to Article 64<sup>1</sup>.

***CDL-AD(2017)012 Republic of Moldova - Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament), adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)***

### **C. Campaign financing and media**

24. The draft law does not address political party and campaign financing in detail. Relevant provisions of the Electoral Code thus mostly remain unchanged. While a package of amendments to political party and campaign finance regulations was adopted in April 2015, addressing some previous OSCE/ODIHR, Venice Commission and Council of Europe’s Group of States Against Corruption (GRECO) recommendations, further reforms are necessary. According to the OSCE/ODIHR final report on the 2015 local elections, transparency, oversight and enforcement mechanisms continue to require improvement, in particular with regard to disclosure, comprehensive reporting and enforcement.<sup>3</sup> In addition, for the 2014 parliamentary elections, the PACE delegation expressed its concerns due to the high level of campaign expenditure, the use of funds from abroad and, particularly, the “opaque sources of funding of some media outlets whose holding companies are allegedly

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<sup>3</sup> OSCE/ODIHR Limited Election Observation Mission Final Report on the 2015 local elections.

registered offshore; the lack of transparency concerning media ownership; the control of the media by various businessmen and oligarchs and their close relationship with political parties.”<sup>4</sup> The Venice Commission and the OSCE/ODIHR recommend using the opportunity of the current legislative revision process to address the outstanding concerns expressed in previous opinions and election observation reports with regard to political party and campaign finance.<sup>5</sup>

***CDL-AD(2016)021 Republic of Moldova - Joint Opinion on the draft law on changes to the electoral code, adopted by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)***

74. Campaign finance regulations in the draft code are substantially similar to those of the current code. The OSCE/ODIHR and the Venice Commission have previously recommended that consideration be given to expanding the legal definition of campaign expenditures so that all costs related to a contestant’s campaign would be included.<sup>6</sup> This recommendation remains unaddressed. Articles 27.1 and 27.12 make it clear that the draft code’s regulations on campaign funds relate only to specific campaign expenses: campaign through mass media, rent of premises, and printed campaign materials. It is recommended that campaign finance regulations cover all campaign-related activities, including organisational expenditures, such as services of marketing agencies, campaign offices, transportation and communication expenses.

***CDL-AD(2016)019 Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)***

60. The OSCE/ODIHR recommended adopting regulations to require that paid content in political advertising be clearly labelled and legislation to prohibit hidden advertising be introduced. Although the draft Code contains no prohibition on hidden advertising, Article 179 states: “When broadcasting, publishing and distributing paid forms of coverage of an election campaign, the providers of media services shall separate them through visual, sound or spatial means and shall indicate in an appropriate manner that the material is paid for.

***CDL-AD(2014)001 Joint Opinion on the draft election code of Bulgaria, adopted by the Council for democratic elections at its 47<sup>th</sup> meeting (Venice 20 March 2014) and the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice 21-22 March 2014) (para. 60).***

41. [...] Thus, the Constitution combines the strict equality and the proportional equality mentioned in paragraph 18 of the Explanatory report of the Code of Good Practice on Electoral Matters Article 41.A of the Mexican Constitution strictly prohibits buying propaganda on the radio and television. Furthermore, paragraph g) of the said Article states that political parties cannot buy airtime on television or radio by themselves or through a third person. No private individual or legal entity can buy airtime on television or radio to influence political preference or to promote or attack a certain candidate or party.

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<sup>4</sup> PACE report on the 2014 parliamentary elections, par. 48-49.

<sup>5</sup> In particular, see the Joint Opinion on draft legislation of the Republic of Moldova pertaining to financing political parties and election campaigns (**CDL-AD(2013)002**).

<sup>6</sup> CDL-AD(2011)032, paragraph 53; Recommendation 13, OSCE/ODIHR Election Observation Mission Final Report (2012).

42. This prohibition, that mainly affects the media freedom of commerce, meets the requirements set out by international human rights standards. In fact, the ban is based on the law; it is in the general interest and respects the proportionality principle. The goal of the prohibition is a legitimate one, since it aims to ensure equality without putting at risk the freedom of expression. It should be highlighted that Mexican legislation does not explicitly impose neutrality and objectivity to radio and television. Perhaps both requirements can be deduced from other legal and constitutional prohibitions, such as the ban from buying propaganda and the definition of electoral campaign, both analysed before, or the limits on electoral funding. However, the main instrument to guarantee that media does not interfere in the campaign, breaking equality in favour or against certain candidates, is the Federal Electoral Institute (IFE).

**CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) (paras. 41,42).**

73. For the purposes of transparency and disclosure, each political advertisement that is published in the printed press or aired on the broadcasting media should include a notification of which political party, bloc or candidate has paid for it. This is an important measure that gives important information to voters and also facilitates external monitoring of campaign expenditures.

**CDL-AD(2013)002 Joint Opinion on draft legislation of the Republic of Moldova pertaining to financing political activities and elections campaigns, adopted by the Council for Democratic Elections at its 44th meeting (Venice, 7 March 2013) and by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013) (para. 73).**

147. The allocation of free airtime is integral to ensuring all parties, including small parties, are able to present their programs to the electorate at large. While the allocation of free airtime on state-owned media is not legally mandated through international law, it is strongly recommended that such a provision be included in relevant legislation as a critical means of ensuring an informed electorate. When made available, free airtime must be allocated to all parties on a reasonable basis and consistent with the principle of equal treatment before the law.

**CDL-AD(2010)024 Guidelines on political party regulation, by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), (para. 147).**

47. The Code stipulates that the requirements of equitable treatment apply only to “qualified” election subjects. “Unqualified” election subjects must demonstrate public support through opinion poll results in order to enjoy free airtime/space. This potentially limits the ability for new political parties to compete on an equal basis.

48. The standard of equality of campaign conditions for all electoral contestants includes the right to have access to the same commercial rate for electoral ads offered to political parties and candidates and that the times and locations of the advertising be similar.

**CDL-AD(2010)013 Joint Opinion on the election code of Georgia as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) (para. 48).**

60. It is a common practice in many countries for the public-service broadcast media to offer free airtime for political candidates or parties to communicate their messages to the electorate. It is considered to be a direct form of communication between politicians and voters, without any intermediary role by the media. One of the main advantages of giving free airtime is to allow smaller parties or minor candidates to have an opportunity to deliver their electoral messages, as they otherwise do not get significant coverage by the media.

- "Parties and candidates should be provided with direct access to the public media free of charge. No registered contesting parties or candidates should be excluded from receiving free airtime. The amount of time allotted has to be enough to allow candidates to effectively communicate and illustrate their platforms to the public,
- The allocation of time can be on an equal basis or on a proportional basis according to the specific context in which the elections are taking place. When the number of contesting parties is limited, strict equality may be applicable;
- When the number of contesting parties and candidates is high, a proportional formula may be adopted. The criteria for defining proportions can be based on a number of yardsticks: votes obtained by parties in the same kind of past elections, the number of seats in parliament, a threshold based on the number of candidacies filed in a minimum of constituencies,
- Direct access should be broadcast/published when it is likely to reach the widest possible audience. Direct access also has to be made available on a non-discriminatory basis. Therefore, it is not acceptable to broadcast the messages of some candidates only late at night or early in the morning while other candidates are provided slots during prime time,
- The process for the allocation of free airtime needs to be fair and transparent. The order of appearance should guarantee nondiscrimination against any of the parties,
- An independent body that is able to effectively and promptly remedy any violations should monitor compliance with provisions regulating the allocation of free airtime,
- Private electronic media are not usually obliged to allot free airtime to election contestants. However, when they decide to offer airtime or they are obliged by law to do so, they should comply with the same principles as those regulating the public broadcaster."

61. Paid political advertising provides another opportunity for all political parties or candidates to disseminate their messages through the media. While voters undoubtedly need as much information about contestants as possible to make an informed choice, paid advertising may give an unfair advantage to those parties or candidates who can afford to purchase more airtime or space. Although paid political advertising is widely accepted in print media, many states do not allow it in the broadcast media.

If paid advertising is permitted, it should comply with some basic rules:

- It should be guaranteed on an equal basis to all contestants by offering consistent and equivalent rates;
- Rates should be equitable for the requested time period within the media schedule;
- Media should identify in a clear way paid airtime or party sponsored slots in order to allow voters to be aware of the nature of the programme.

Limits may be imposed on the quantity of paid advertising parties are entitled to purchase, as may limits on the amount of airtime media are allowed to broadcast daily. Another way to regulate paid political advertising is to impose limits on campaign expenditures of political parties and candidates. In some cases, the state, to consolidate the principle of equal opportunity, may allow paid advertising and decide to partially finance it.



The issue of paid advertising is not so problematic for print media. Nevertheless, the press should follow the principle of equal opportunity: paid advertising must be guaranteed on an equal basis to all contestants by offering consistent and equivalent rates. Print media should identify material that has been paid for in a clear manner. Limits may be imposed on the quantity of paid advertising parties are entitled to purchase, as may limits on the number of paid pages the media can publish daily.”

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 60,61).***

32. Where a state permits political advertising in the media during elections, it must ensure that all contending parties have the possibility of buying advertising on and according to equal conditions and rates of payment.<sup>16</sup> *The Venice Commission and the OSCE/ODIHR recommend that Article 80(3) be amended to provide that all political parties and candidates have the possibility of buying political advertising according to equal conditions and rates of payment.*

***CDL-AD(2009)005 Joint Opinion on the electoral Code of the Republic of Albania, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009) (para. 32).***

62. The standard of equality of campaign conditions for all electoral contestants includes the right to have access to the same commercial rate for electoral ads offered to all political parties and candidates, and that the times and locations of the advertising be on similar terms. This guarantee does not appear in the Georgian Election Code or media-related laws. Furthermore, during the 2008 presidential and parliamentary elections, the commercial rates for electoral ads were increased so astronomically (approximately ten times the rates for non-electoral ads) that the less economically well off parties and candidates apparently did not have any opportunity to use paid political advertising. These huge increases in advertising prices for electoral spots in effect created unequal campaign conditions for the contestants.

***CDL-AD(2009)001 Joint Opinion on the election code of Georgia as revised up to July 2008, adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) (para. 62).***

62. Paid political advertising is another opportunity for the political parties and candidates to disseminate their message through the media. In states where political parties and candidates are permitted to buy advertising space for electoral purposes, there is a requirement for some regulatory frameworks to be in place. Paid advertising may give an unfair advantage to those parties or candidates who can afford to purchase more airtime or space. If paid advertising is permitted it should comply with some basic rules:

- It should guarantee to all contestants consistent and equal rates,
- Media should identify in a clear way paid airtime or sponsored slots, in order to allow voters to be aware of the political nature of the programme,
- Limits to the quantity of paid airtime parties are permitted to purchase may be imposed.”

63. The issue of paid advertising in the print media is not so problematic. However, the press should follow the principle of equal opportunity. Paid advertising by political parties and

candidates must be offered at consistent and equivalent rates. Limits to the amount of paid advertising parties are entitled to purchase may be imposed.

***CDL-AD(2004)047 Report on media monitoring during election observation missions, adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004) (paras. 62-63)***

c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

***CDL-AD(2002)023rev2, Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (paras. I.2.3.c)***

## **V. Regulation of media during elections**

### **A. Regulation of media coverage**

55. It is welcome that, as previously recommended, the recent amendments clarify that provisions for media coverage will apply to the single-member constituencies in the same manner as they do to the nationwide constituency.

***CDL-AD(2018)008 Republic of Moldova - Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) adopted by the Council for Democratic Elections at its 61st meeting, Venice, 15 March 2018 and the Venice Commission Plenary at its 114th meeting, Venice, 16-17 March 2018***

9. The series of amendments introduced to the Electoral Code during 2014-2016 improved a number of issues and some previous recommendations of the Venice Commission and the OSCE/ODIHR were taken into account. The amendments improved inter alia campaign finance provisions and their oversight, voter registration as well as provisions on media coverage of the campaign. Such improved provisions need to be assessed in practice in view of the next electoral cycles.

55. On a positive note, new provisions in Article 187 give more guarantees on balanced media coverage, print as well as electronic.<sup>65</sup> In addition; Article 198 stipulates limitations of rates for campaign advertising in amended paragraphs 4 to 7. Positively, Article 199a is a new provision, which allocates free airtime to the CEC allowing it to conduct voter awareness campaigns. These positive developments will have to be assessed during future electoral cycles with regard to their practical implementation and effects.

56. Some campaign-related timelines are difficult for stakeholders to meet and remain to be addressed. For example, candidates have to be registered at the latest 32 days before election day (Article 181(2)). However, the provisions on the media prescribe that the Bulgarian National Television and the Bulgarian National Radio have to reach an agreement with the parties and the candidates on the format of the debates at the latest 31 days before election day (Article 189(4)); the allocation of slots for participation in the debates is foreseen no later than 31 days before election day (Article 196(3)). As noted in the 2014 Joint Opinion, this means that it is almost impossible for candidates registered close to the deadline to be included in the discussion on the format of debates.

***CDL-AD(2017)016 Bulgaria - Joint opinion on amendments to the electoral code, adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)***

52. In line with previous recommendations, the legal framework for media coverage of elections is substantially amended.<sup>7</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>8</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>9</sup>

***CDL-AD(2016)032 "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 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)***

13. However, significant concerns exist in the draft code, including with regard to insufficient measures to enhance confidence in the accuracy of voter lists, a lack of clarity as to how the introduction of new technologies may be implemented, and the restrictions on citizen election observers. The draft code also does not address a number of prior recommendations related to the effectiveness of complaints and appeals procedures, the transparency and accountability of campaign finance, safeguards against potential abuse of state resources, and clarity of the role and oversight of media during elections.

85. The rules on election campaign through the mass media remain essentially the same in the draft code. The OSCE/ODIHR and the Venice Commission have been informed that such rules are contained in the Law on Radio and Television. This joint opinion only assesses the draft code and it is recommended to ensure that legislation addresses prior OSCE/ODIHR and Venice Commission recommendations.<sup>10</sup>

90. In a new provision, Article 65.7 limits the number of citizen observers to one per local organisation per polling station. Article 65.8 provides that the PEC may limit the total number of citizen observers and media representatives at a polling station where their number (but

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<sup>7</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>8</sup> The Venice Commission and OSCE/ODIHR were informed on the lack of consultations with the public broadcaster on the media-related provisions.

<sup>9</sup> Code of Good Practice in Electoral Matters, I.2.3.c.

<sup>10</sup> Including: those aimed at ensuring that any campaign material prepared by or on behalf of electoral contestants is clearly marked as such when it is broadcast; further defining the mandate of the National Commission on Television and Radio (NCTR) with regard to media-related complaints and enforcement mechanisms; providing general guidelines for the media regarding coverage of campaigns, based on the existing requirements of impartiality and balance; and ensuring full transparency of media ownership. See Recommendations 17 and 18, OSCE/ODIHR Election Observation Mission Final Report (2012); Recommendation 17, OSCE/ODIHR Election Observation Mission Final Report (2013), Recommendations 11 and 12, OSCE/ODIHR Referendum Expert Team Final Report (2016).

no less than 15) may hinder the smooth voting process. The OSCE/ODIHR has previously recommended that overcrowding be addressed by identifying more appropriate polling location. It is recommended that any measures to address overcrowding in polling stations must be proportionate and safeguard transparency of the electoral process.

92. Article 31 does not provide for a possibility of new observers to be accredited to observe the second round of parliamentary elections. The deadlines for applications for accreditation of observers and media representatives (15 days before election day) and for the CEC to issue certificates to observers and media representatives (within 12 days after request) are overly generous, especially for a potential second round. *It is recommended that the deadlines mentioned be reasonably shortened and possibility for additional accreditation for the second round be envisaged.*

***CDL-AD(2016)019 Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)***

49. Council of Europe's Committee of Ministers Recommendations state that "Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates. It is recommended by the Venice Commission and OSCE/ODIHR that these articles be amended to require that public media provide comprehensive information on all aspects of the election process through a variety of programs, outside the current free-of-charge slots, in order to create a forum for discussion for all contestants. It is also recommended that these articles be amended to require that public media should be obliged to treat all contestants on equitable terms, not only in special election programs, but also during all other programs, including its news broadcasts. It is further recommended that private broadcasters be encouraged to produce informative programmes, and discussion programmes with parties and candidates.

***CDL-AD(2010)013 Joint Opinion on the election code of Georgia as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) (para. 49).***

52. A persistent problem during an election campaign is how far the media should be regulated in their coverage of candidates and parties. Media coverage of elections involves diverse and complex issues that can be handled both by regulation or self-regulation, or even left unregulated.

53. One issue that needs to be addressed is whether external regulation or self-regulation is required. Journalists do not usually favour any kind of external restrictions or impositions limiting their editorial freedom. On the other hand, the autonomy of the media system may not be sufficiently established as to be able to safeguard journalists and editors from the pressures and influence of the political authorities. In such cases, external regulation may guarantee the rights of voters and candidates to receive and impart information.

54. Being part of the government means more attention from the media because of their need to cover the activities of the government, which may include official events, meetings, and the implementation of policies. Events can be genuine and relevant (such as national celebrations or anniversaries), genuine but marginal (such as the opening of public buildings), and pseudo-events (occasions created or managed by the government with the

aim of getting better or wider media coverage). The government is also the main policy maker, and coverage is necessary to keep the public informed.

55. Members of the executive should act in the interest of the whole nation, but, on the other hand, they regularly represent a political party. This dual identity becomes particularly problematic during an election campaign in relation to two rights: The right of equal opportunity to access for candidates, a right that has to be balanced with the freedom and obligation of the media to cover government activities; The right to equal treatment for candidates. News related to the incumbent government may sometimes be framed in a positive light because of the kind of events covered (for example, official meetings, international summits, etc.).

**CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 52 - 55).**

35. [...] when it comes to news coverage of non-parliamentary parties, Article 81(4) allows the application of “professional criteria for news”, but only if such professional criteria do not result in airtime “greater than the time applied for parliamentary parties.” This is of concern since citizens should have a right to receive news and information. Article 81(4) also is of concern since a state should not itself determine media content or exercise political authority or influence to determine media content. Newsworthiness should be determined by professional standards and not based on the degree of political authority or influence a particular political party holds.

**CDL-AD(2009)005 Joint Opinion on the electoral code of the Republic of Albania, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009) (para. 35).**

## **B. Limitations on free speech**

87. Article 53(2) prohibits “abuse of mass media freedom” by giving a number of examples, which includes “use of photo and video materials with the images of politicians and statesmen of other countries and other forms of abuse of mass media freedom”. Article 53(5) also retains the current right to reply or refute defamatory material “on demand” by the offended candidate or political party. These limitations on political opinions prevent a robust and vigorous campaign, which is critical to election campaigning in a democracy. In the context of a political campaign, in which candidates make a conscious decision to enter the public sphere to compete for public office, a law for the protection of the reputation or rights of others cannot be applied to limit, diminish, or suppress a person’s right to free political expression and speech.

**CDL-AD(2014)019 Joint Opinion on the draft electoral law of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014) (para. 87).**

35. [...] The prohibition of electoral campaigning should be expressly defined and needs to be precise enough. In any case, it must be pointed out that an electoral campaign is an organised sequence of activities characterised by repetition and general diffusion. Therefore, the restriction of campaigning does not limit the citizens’ freedom of expression or opinion during the electoral period. During this period, individuals and groups can express their political preferences since the mere expression of ideas is not campaigning.

**CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) (para. 35).**

27. Paragraph 5 of draft Article 27 mandates that “the information disseminated by the media, should be accurate, not violate the rights and lawful interests of candidates and political parties. Dissemination of false information and discrediting the honour and dignity of the candidates is prohibited.” This provision is of concern for several reasons. Firstly, elements of this provision referring to “false information” or “discrediting the honour and dignity of the candidates” could be open to subjective interpretations. Secondly, application of these provisions risks to unreasonably restrict freedom of expression, which is of particular concern since constitutional safeguards of the right to freedom of expression are formulated in very general terms and allow possible restrictions by law.<sup>6</sup> Such broad restrictions of the freedom of expression may impede a robust and vigorous campaign that is critical to an electoral process and, thus, are not in line with international standards.”

**CDL-AD(2012)025 Joint Opinion on the draft amendments and addenda to the law “on elections to the Oliy Majlis of the Republic of Uzbekistan” and “on elections to the regional, district and city councils (Kengesh) of people’s deputies of Uzbekistan”, adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012) (para. 27).**

52. Article 67.9 prohibits one from “Spreading deliberately inaccurate or slanderous information about a party that is the election process subject or a parliamentary candidate.” This limitation on free expression of speech and political opinions prevents a robust and vigorous campaign, which is critical in a democracy. While the intent of Article 67.9 is understandable, it is extremely difficult if not impossible to determine the deliberate nature of inaccurate information, possibly resulting in spurious application. Additionally, outside the context of a political campaign, a government may limit freedom of expression in order to protect the reputation or rights of others. Furthermore, Article 67.25 implies that the media outlet, in addition to the speaker of the remarks, is responsible for such statements. This provision would effectively undermine the Media’s right to free expression and their role as an information disseminator.

**CDL-AD(2009)028 Joint Opinion on the draft law no. 3366 about elections to the parliament of Ukraine, by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 52).**

Media should not be considered liable for publishing unlawful statements pronounced by politicians if they are not endorsing such statements. International conventions and treaties explicitly classify advocacy for hatred, discrimination, and slander as unlawful statements and as such they prohibit them. However the responsibility should be ascribed only to the individual making the statement without holding liable the media publishing it. “Holding media outlets liable for speech, even speech that violates international standards, requires editors to pre-screen all broadcasts and, owing to the vagueness of standards, to act as censors. During election periods when it is crucial that political parties be able to publicize their platforms, (...), the various competing rights may be better balanced by holding liable only the political party or individual responsible for the broadcast.” In addition, considering media liable could lead them to forms of prior censorship or self-censorship that are explicitly disfavoured by international law.

Any restrictions of the right to freedom of expression shall be prescribed in accordance with international standards. Any limitations to freedom of expression shall be respectful of four main principles:

- 1. Legality: any restriction to the freedom of expression must be defined by law,
- 2. Legitimacy: legitimate purposes include securing respect for the rights and freedom of others, preventing disorder or crime, protecting national security and public order, as well as public health or morals,
- 3. Necessity: imposed limitations shall be necessary in a democratic society,
- 4. Proportionality: any provisions implying restrictions of the right to freedom of expression shall be proportionate to the aim that such restrictions pursue.

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October) (paras. 1.1, 1.2).***

61. The fact is that many countries have legal limitations on *free speech*, which, if restrictively interpreted, may just be acceptable – but may generate abuses in countries with no liberal, democratic tradition. In theory, they are intended to prevent “abuses” of free speech by ensuring, for example, that candidates and public authorities are not vilified, and even protecting the constitutional system. In practice, however, they may lead to the censoring of any statements which are critical of government or call for constitutional change, although this is the very essence of democratic debate. For example, European standards are violated by an electoral law which prohibits insulting or defamatory references to officials or other candidates in campaign documents, makes it an offence to circulate libelous information on candidates, and makes candidates themselves liable for certain offences committed by their supporters. The insistence that materials intended for use in election campaigns must be submitted to electoral commissions, indicating the organisation which ordered and produced them, the number of copies and the date of publication, constitutes an unacceptable form of censorship, particularly if electoral commissions are required to take action against illegal or inaccurate publications. This is even more true if the rules prohibiting improper use of the media during electoral campaigns are rather vague.

***CDL-AD(2002)023rev2 Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (para. 61).***

### **C. Silence period**

44. The prohibition against beginning the campaign until after a candidate has been officially registered remains. As noted in paragraph 45 of the 2007 Joint Opinion, this prohibition represents an unnecessary restriction to the right of free speech and should not be used to limit normal political discussion and activity. The only restriction that would be justified is on the use of free airtime/space in media and of public places for posters or campaign events, as well as on campaign-related spending.

***CDL-AD(2010)014 Joint Opinion on the draft working text amending the election code of Moldova, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) (para. 44).***

64. The silence period, or so-called day of reflection, is a short period of time (usually a day) preceding the elections to allow voters to absorb and digest all the information received

during the electoral campaign and to make a choice without pressure. The dissemination of any partisan electoral messages during this short period is prohibited.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 64).***

## **VI. Media ownership and pluralism**

6. There are two central elements which determine the quality of media during elections:

- Media independence – in particular their freedom from political or corporate interference,
- Internal media diversity in content, views and formats.

***CDL-AD(2004)047 Report on media monitoring during election observation missions, adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004) (para. 6).***

### **A. Publicly owned media**

37. That said, the Venice Commission and OSCE/ODIHR delegation was concerned to hear allegations that the above-mentioned principles of fair and non-discriminatory allocation of free airtime were not respected as to their spirit, e.g. opposition candidates were not given airtime during prime time. As the Venice Commission and the OSCE/ODIHR have stressed on previous occasions, including in the 2017 Joint Opinion and the observation report on the 2016 presidential election, free and equal or equitable access to media by all contestants is a cornerstone of democratic elections. According to the Guidelines, “the principle of equal treatment before the law with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space.” In order to ensure a level playing field for electoral contestants, it is recommended that access to public media during electoral campaigns be regulated more specifically in Articles 64/64<sup>1</sup> of the EC, including by defining more precisely the principle of equal access to broadcasting, guaranteeing free airtime for all electoral contestants during prime time (for electoral advertising, election debates and broadcasting campaign meetings) and ensuring strict supervision.

***CDL-AD(2017)027 Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns, Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017)***

49. In any case, objectivity and neutrality during the electoral period can be achieved by other means, respectful of the plurality of the media. A stronger service of public radio and television could be useful, as long as it is independent from political power and able to inform in a neutral and plural form. It would also be recommendable to improve pluralism in the broadcast media, by taking proper measures aimed at increasing the number and variety of the media and to limit broadcasting monopoly.

***CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) (para. 49).***



58. The public/state media have an obligation to produce fair, objective, and balanced coverage of current events and election-related news. This obligation may be imposed either by self-regulation or by law:

- The right to report is a fundamental aspect of journalistic newsmaking. The main discussion related to news is about whether news coverage in the public media should be strictly regulated, regulated only in relation to election coverage, or not regulated at all. In countries where freedom of expression has a stable tradition, political actors usually trust the system, and where there is a well-established practice of self-regulation, no other external provision is required. In countries where there is a lack of confidence among political parties, journalists, and institutions, stricter regulation may be necessary in order to protect public media from undue interference.
- Many approaches can be used to ensure a diversity of voices: opinions of the government or the majority party should be counterbalanced by the opinion of the opposition; coverage of public events or statements made by the ruling parties on issues of public interest should be counterbalanced by coverage of the opposition parties' views, and vice versa. Comments – either reported by the presenter or made by external experts – should be clearly distinguished from facts, and they should reflect a variety of views.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 58).***

192. When talking about elections, it is also important to bear in mind that contemporary societies are mainly “information” societies: elections are fought in a very particular context, so that access to mass media (press, radio, television and, increasingly, the Internet) is possibly the best instrument for parties to transmit their message to electors. Therefore, that is possibly the main resource that parties may seek and, at the same time, the least expensive of the aids that state authorities may offer, through granting access to publicly-owned media. The Code of good practice in electoral matters requires that equality of opportunity be guaranteed for parties and candidates alike, implying a neutral attitude by the state authorities, especially with regard to the election campaign and the coverage by the media, in particular by the publicly-owned media.

***CDL-AD(2009)021 Code of good practice in the field of political parties, adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) and Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009) (para. 192).***

The underlying idea of public service broadcasting is that the private sector alone cannot ensure pluralism in the broadcast sphere. The strength of this idea and of its consequent implementation varies according to different regional contexts. The European model of a strong public service broadcasting system contrasts with the experience of the United States, where public service broadcasters are far less significant than the private ones, and with the model that existed in the Soviet Union, where the aims of the state broadcaster coincided with those of the Communist Party. Public broadcasters tend to be held to higher standards of responsibility with respect to principles of universality, diversity, independence, and distinctiveness from other kind of broadcasters and accountability. The stricter regulation imposed on these broadcasters is justified by the need to protect them from undue interference or control of the government, thus enabling journalists to freely operate

according to their obligation to the public. However, in many countries public or state broadcasting channels remain under tight government control.

While all media are expected to offer responsible and fair coverage, it is particularly incumbent upon state/publicly owned media to observe more rigorous standards since they belong to all citizens. The citizens pay fees and the public media has the legal and moral obligation to serve the interest of the general public, not partisan or private interests. Using state/publicly owned media to promote a certain political party or candidate is therefore an illegitimate manipulation of the public using the public's own resources. The state media are more vulnerable to such pressure from the authorities especially in those countries where they have not yet been transformed into truly independent public service broadcasters. State-controlled broadcasters are often paralysed by frequent interference by political powers.

Publicly funded broadcasters should provide a complete and impartial picture of the entire political spectrum in their coverage of an election, given that they are obliged to serve the public and offer a diverse, pluralistic and wide range of views.

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (para. 2.4.1).***

## **B. Private media**

151. Private media cannot always be regulated as strictly as publicly owned media. However, private media outlets may play a fundamental role in the public process of elections. Some OSCE states impose a regulation that if airtime is offered on private media, then it must be offered to all parties at the same monetary rate.

***CDL-AD(2010)024 Guidelines on political party regulation, by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010) (para. 151).***

24. Although private broadcasters are commercial enterprises, they are generally asked to comply with certain obligations (particularly during an election campaign). The license they are provided with, which is assigned on a periodic basis by a public authority, may include certain requirements in relation to news, information, and current-affairs programmes and voter education.

25. In any case, the relevance of private broadcasters as sources of information in an election campaign depends partly on the importance – in terms of penetration, coverage, and audience – of public broadcasters. For instance, where the public/state media are alone in covering the entire national territory while private broadcasters cover only limited geographical areas, the importance of the latter is limited. In contrast, in states with a weak tradition of public broadcasting, private broadcasters are likely to be the main source of election information for voters.

26. Private broadcasters should also abide by standards of impartiality in their news and current-affairs programmes. The primary role of private broadcasters is not to counterbalance biased coverage in the state media. Given their popularity, however, they may often supplement public media by offering a more diverse range of views.

27. Private print media are generally entitled to a larger degree of partisanship than the publicly financed press and the broadcasting media. Print media often play an even greater role than the electronic media in acting in the public interest as watchdogs and opinion makers. It is generally accepted that the press may explicitly express a political opinion. Also, the general practice of self-regulation adopted by the print media (through codes of conduct and press councils) can be interpreted as evidence that the press does not need to be bound by rules set by external bodies and that the media can be responsible for their own editorial choices. Therefore, even during an election period, print media have fewer obligations to be balanced towards candidates and political parties; they are subjected to less stringent regulation than electronic media.

28. The argument used to justify this position is that the print media do not benefit from a public and limited commodity such as airwaves. Therefore, their public obligation to impartiality and balance is commensurately less than that of the electronic media:

58. [..]

- The main issue with respect to private broadcasters is related to the balance between their nature as a commercial enterprise and their use of national public airwaves, which creates certain obligations in terms of providing a public service. In some countries, the allocation of a licence carries a certain level of public obligation,
- From a theoretical point of view, the private media as a whole should guarantee pluralism of information, views, ideas, and opinions. Therefore, several independent media, with diversified editorial lines, can serve the purpose of producing a pluralistic system of information and access (external pluralism),
- Whatever degree of editorial freedom private broadcasters enjoy, journalists should adhere to professional standards of coverage, as well as to professional ethics,
- Private print media are not bound to specific election regulations concerning the allocation of space among political forces. However, journalists should adhere to professional standards of coverage, as well as to professional ethics.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 24-28; 58).***

51. *The Venice Commission and the OSCE/ODIHR further recommend that the draft law makes a clearer distinction between private and state-owned mass media, generally referred within the law simply as “mass media”. Rules which may be effective in relation to state-owned mass media may be rather less effective when applied to mass media in private ownership. However, it is commendable that the draft law extends the principle of equal access from state owned media outlets to include private media, as long as such laws are narrowly constructed as to not impinge on freedom of expression.*

***CDL-AD(2009)028 Joint Opinion on the draft law no. 3366 about elections to the parliament of Ukraine, by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 51).***

114. As for the private media, one issue should be singled out here: While it is commonly agreed that parties and candidates should have direct access to state-owned media, there is, for example, some debate whether also private media can be obliged to include political advertisements of all electoral contestants. The Code of Good Practice in Electoral Matters emphasises that, in conformity with freedom of expression, legal provision should be made

to ensure that there is a minimum access to privately owned audiovisual media with regard to the election campaign and to advertising for all participants in elections.

***CDL-AD(2006)018 Report on electoral law and electoral administration in Europe, adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67th Plenary Session (Venice, 9-10 June 2006) (para. 114).***

Although broadcasters owned by private interests are commercial enterprises, they are generally asked to comply with certain obligations (particularly during the election campaign). The license they are provided with, assigned on a periodic basis by a public authority, may include certain requirements in relation to news, information and current affairs programmes and voter education.

In any case, the relevance of private broadcasters as sources of information in the election campaign will partly depend on the importance – in terms of penetration, coverage and audience – of the public broadcasters. For instance, where the public/state media are alone in covering the entire national territory while private broadcasters cover only limited geographical areas, the importance of the latter will be limited. In contrast, in states with a weak tradition of public broadcasting, private broadcasters are likely to be the main source of election information for voters.

Owners sometimes have strategic and political interests, often expressed openly and publicly. These might have an effect on the fairness of their electoral coverage. Also, in some cases politicians and members of the government own television and radio companies or are employed in these media.

Private broadcasters should also abide by standards of impartiality in their news and current affairs programmes. The primary role of the private broadcasters is not to counter-balance biased coverage in the state media. However, given their popularity, they may often supplement public media by offering a more diverse range of views. All private broadcasters, irrespective of their audience share, coverage area or whether they operate thematic or pay-channels, should offer fair and accurate coverage of elections.”

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (para. 2.4.1).***

c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

***CDL-AD(2002)023rev2 Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (para. I.2.3.c).***

## **VII. Media monitoring during electoral campaigns**

96. Previous opinions of the OSCE/ODIHR and the Venice Commission have noted the need for improvement in legal provisions regulating media in elections. Previous recommendations, including those made in OSCE election observation mission reports, have focused on the need for the law: [...] (3) (to) state clear guidance to the oversight

bodies responsible for implementation of the law, including consideration of establishing a single independent regulatory body responsible for ensuring compliance with power to conduct systematic media monitoring [...].

***CDL-AD(2014)019 Joint Opinion on the draft electoral law of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014) (para. 96).***

61. The OSCE/ODIHR recommended that the Council on Electronic Media could be tasked with supervising overall compliance with regulations concerning paid and editorial content based on media monitoring, and with power to provide a remedy during the campaign in a timely manner. An amendment in Article 22 of the Radio and Television Act suggests greater cooperation with the CEC in monitoring media coverage of election activities. However, it cannot be determined from this one amendment whether the recommendation concerning the powers of the Council on Electronic Media has been addressed.

***CDL-AD(2014)001 Joint Opinion on the draft election code of Bulgaria, adopted by the Council for Democratic Elections at its 47<sup>th</sup> meeting (Venice 20 March 2014) and the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice 21-22 March 2014) (para. 61).***

78. Whenever possible, the entire campaign period should be monitored in order to observe the implementation of the rules regulating access and coverage of candidates and parties throughout the whole electoral process.

79. Decisions must be made as to which TV channels and radio stations will be monitored, which newspapers, and which period of time for the electronic media (just prime time, 24 hours, etc.). While these decisions will be affected by resource limitations, the sample should provide reliable information on the general trends of media coverage.

80. The media analyst should study the media environment before choosing the outlets that will be monitored. This will include looking at:

- The number and variety of media outlets operating in the country,
- Ownership (public/state or private) of media outlets,
- Geographical range (national or local level) of media outlets,
- Audience/readership ratings of media outlets,
- Hours of broadcasting or frequency of publication of media outlets,
- Kind of media, targeted audiences, and their estimated impact on the public and the political elite,
- Number of media specifically targeting ethnic/linguistic minorities living in the country.

81. This information will allow the media analyst to make a choice regarding:

- The number of monitored media: This is the first decision the media analyst needs to make. He/she should decide in advance how many channels and newspapers will be observed. In order to have comparable data, once the sample has been set, it is important to stick to it and not to modify it during the course of the observation period; The time band of observation of the electronic media: The basic period to be monitored for TV and radio stations is during prime time (18:00-24:00), when audiences are normally largest. The selection of the time slots to be monitored may vary from country to country according to the specific programme schedules and the rules regulating the campaign in the media. Whatever time band is chosen, however, the observation should not be limited to news programmes but should include other

programmes broadcast in that time band. Debates, information programmes, free airtime, and entertainment shows may have a role in shaping the opinions of the electorate about candidates and parties. Therefore, it is important to monitor how the time is allocated among contestants even in these kinds of programmes,

- The type of media outlets that will be monitored: Criteria for choosing media outlets should take into account their ownership. Publicly owned media have stronger obligations than private ones, as they are financed with public funds and therefore they should not be partisan in their coverage. Observing state or public media is therefore a priority. The media analyst should also include in the sample the main private electronic media, which should be chosen on the basis of their geographical range, audience, and potential impact on voters. With regard to print media, all the most important national dailies should be monitored, chosen on the basis of their geographical range, readership, and potential impact on voters. In those localities where ethnic or cultural diversity is reflected in different targeted media, it is advisable to monitor minor media outlets that have a considerable penetration and impact on minority groups. This might also be the case for some newspapers that target political or social elites and have small print runs but that are influential in the broader media community.”

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 78-81).***

118. The establishment of a neutral supervisory body to monitor and regulate the media and to deal with complaints about media behaviour during the campaign can be an important step in implementing the law and promoting free, equal, and fair access to broadcasting. Such a body might be a media monitoring unit within the election administration or a parliamentary commission, a multi-party board, a commission of selected persons or a self regulatory-body of the media. Electoral experts from the OSCE/ODIHR and the Venice Commission demanded the establishment of such an independent mass media supervision body on different occasions, not always successfully, as the Ukrainian case shows (CDL-AD(2006)002, para. 61).

120. In several cases, electoral observers recommended defining sufficient and detailed provisions regarding the penalties for broadcasters in the case of misconduct. It is important that in such a case graduated penalties would be available for minor violations of electoral rules by the media. It does not seem to be appropriate, for example, to suspend temporarily broadcasting activities due to minor violations, as it seems to be possible in some countries.

***CDL-AD(2006)018 Report on electoral law and electoral administration in Europe, adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67th Plenary Session (Venice, 9-10 June 2006) (paras. 118,120).***

Media monitoring is an effective tool to measure how the state and political contestants treat the media and how the media treat contestants. Valid and credible media monitoring projects provide the general public with benchmarks to judge the fairness of the whole election process. Media monitoring is also an important tool to highlight cases of interference in the editorial freedom of the media or attempts to undermine their independence.

Media monitoring has been incorporated into the election observation methodology of the OSCE/ODIHR, as well as that of other international organisations. Non-governmental

organisations, both national and international, also conduct media monitoring for a variety of purposes. In most countries, whether well-established or newly emerging democracies, media monitoring projects are carried out in order to provide evidence on the conduct of the media during both election and non-election periods.

***CDL-AD(2005)032 Guidelines on media analysis during observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005) (Executive summary).***

10. Media Monitoring is an effective tool to measure how the political parties are treated by the media, and how the media are treated by the politicians. Credible media monitoring projects provide citizens with information on the reporting of the whole election process.

182. To make media monitoring more effective there is a need to eliminate the chaos and uncertainty attached to the assumption that where the law is unclear self-regulation takes over. Evidently the OSCE/ODIHR media monitoring is not a treatment of retrospective legislation and it is hence *recommended* that the analytical framework of the media monitoring method is simplified due to the chaotic legal environment where many of the democratic standards do not have clear legal treaty basis. It has been suggested here to distinguish the different types of regulations clearly into three categories: legal regulation, market regulation and self-regulation. With such a distinction at the outset the reliability of the information produced by the media monitoring will increase and may gain instrumental value for regulatory bodies that are seriously concerned about the problem.

***CDL-AD(2004)047 Report on media monitoring during election observation missions, adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004) (paras. 10; 182).***

## **VIII. Internet and new media**

29. As a result of the emergence of new media and communication technologies, a new phase for political communication has radically changed relations among candidates and voters.

30. The new media offer political parties and candidates opportunities to diversify their campaigns for different target audiences in a very simple and effective way. A *net-cast* model, opposed to the traditional *broadcast* model, facilitates the dissemination of specific messages to certain segments of the population. There is similar potential in the use of text messages to mobile telephones, a technique that political campaigners in some countries are beginning to exploit.

31. The Internet has undoubtedly widened the possibilities of informing a larger section of the population by creating more opportunities for ordinary voters to generate political news and opinions. On the technical side, election authorities are already using the Internet to publicize information about the electoral process, including voters lists, complaints received, vote tabulation, and the announcement of results.

32. Although the potential is enormous, social inequalities still limit the impact of new technologies. The digital divide – unequal access to new technologies because of cultural and economic factors – is still an undeniable obstacle to regular use of the Internet. The

same applies to a lesser degree to the use of mobile telephones in political communications. These are more widely available in poorer countries and in poorer sections of the population, often because of the limited availability of landlines (which is itself one of the factors limiting Internet access).

33. A potentially controversial issue related to the role and obligations of the Internet in the electoral process deals with what regulations should be imposed on websites, particularly with regard to silence periods and opinion polls. The matter is part of a wider debate about the degree of freedom the Internet should enjoy and the extent to which regulations can realistically be applied to this medium. In general, any control over the freedom of Internet users and publishers has been widely frowned upon. The World Wide Web is a pluralistic and unlimited media environment accessible to everyone. It remains largely unregulated, and many argue that it is neither possible nor desirable to regulate it.

34. The potential strength of the Internet has been evidenced by the frequent attempts by certain regimes to control access to the World Wide Web through a variety of mechanisms, such as direct state ownership of Internet providers, control of their archives, or efforts to obstruct access to “politically subversive” websites. Also, the content providers of many websites may be subject to the same pressures as journalists in the traditional media.

***CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (paras. 29-34).***



## **IX. Reference documents**

CDL-AD(2018)008 Republic of Moldova - Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) adopted by the Council for Democratic Elections at its 61st meeting, Venice, 15 March 2018 and the Venice Commission Plenary at its 114th meeting, Venice, 16-17 March 2018

CDL-AD(2017)027 Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns, Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017)

CDL-AD(2017)016 Bulgaria - Joint opinion on amendments to the electoral code, adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)

CDL-AD(2017)012 Republic of Moldova - Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament), adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)

CDL-AD(2017)006 Joint opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe

CDL-AD(2016)032 "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 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).

CDL-AD(2016)031 Armenia - Second Joint Opinion on the Electoral Code (as amended on 30 June 2016), endorsed by the Council of Democratic Elections at its 56th meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)

CDL-AD(2016)021 Republic of Moldova - Joint Opinion on the draft law on changes to the electoral code, adopted by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)

CDL-AD(2016)019 Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)

CDL-AD(2014)019 Joint Opinion on the draft electoral law of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014)

CDL-AD(2014)001 Joint Opinion on the draft election code of Bulgaria, adopted by the Council for Democratic Elections at its 47th meeting (Venice 20 March 2014) and the Venice Commission at its 98th Plenary Session (Venice 21-22 March 2014)

CDL-AD(2013)021 Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)

CDL-AD(2013)020 Joint Opinion on the Electoral Code of “the former Yugoslav Republic of Macedonia”, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)

CDL-AD(2013)002 Joint Opinion on draft legislation of the Republic of Moldova pertaining to financing political activities and elections campaigns, adopted by the Council for Democratic Elections at its 44th meeting (Venice, 7 March 2013) and by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)

CDL-AD(2012)025 Joint Opinion on the draft amendments and addenda to the law “on elections to the Oliy Majlis of the Republic of Uzbekistan” and “On elections to the regional, district and city councils (Kengesh) of people’s deputies of Uzbekistan”, adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012)

CDL-AD(2010)013 Joint Opinion on the Election Code of Georgia as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD(2010)024 Guidelines on political party regulation, by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)

CDL-AD(2010)014 Joint Opinion on the draft working text amending the election code of Moldova, adopted by the Council for Democratic Elections at its 33<sup>rd</sup> meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD(2010)013 Joint Opinion on the election code of Georgia as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD(2009)031 Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD(2009)028 Joint Opinion on the draft law no. 3366 about elections to the parliament of Ukraine, by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

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CDL-AD(2009)005 Joint Opinion on the electoral code of the Republic of Albania, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD(2009)001 Joint Opinion on the election code of Georgia as revised up to July 2008, adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)

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CDL-AD(2005)032 Guidelines on media analysis during election observation missions, 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, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005)

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