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

**AND**

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

**JOINT OPINION  
ON THE ELECTION CODE  
OF BULGARIA**

**Adopted by the Council for Democratic Elections  
at its 37<sup>th</sup> meeting  
(Venice, 16 June 2011)  
and by the Venice Commission  
at its 87<sup>th</sup> plenary session  
(Venice, 17-18 June 2011)**

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## I. Introduction

1. On 3 December 2010, the President of the Congress of Local and Regional Authorities of the Council of Europe (“the Congress“) requested the Venice Commission to prepare an opinion on the Election Code of Bulgaria (“the Code”).

2. This request followed a monitoring visit to Bulgaria by a delegation of the Congress from 24-26 November 2010. At the time of the request, the Election Code was still a draft. On 19 January 2011 the National Assembly of Bulgaria adopted the Election Code, which entered into force in January 2011.<sup>1</sup> The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) decided to provide a joint legal opinion on the adopted Code.

3. The Election Code of Bulgaria is the first unified electoral legislation in Bulgaria, bringing together previous separate electoral laws. The Election Code supersedes the followings acts:

- Act on the Election of Members of Parliament (2001 and last amended in 2009);
- Act on the Election of President and Vice President of the Republic of Bulgaria (1991 and last amended in 2006);<sup>2</sup>
- Act on the Election of Members of the European Parliament from the Republic of Bulgaria (2007); and
- the Local Elections Act (1995).

4. The adoption of the unified Election Code of Bulgaria was preceded by a debate between the President and the National Assembly regarding certain provisions of the Code. In early January 2011, President Georgi Parvanov vetoed the Code adopted by the National Assembly. The Code was returned to Parliament for reconsideration of a wide range of its provisions. The presidential veto was eventually overridden by a “majority of more than half of all Members of the National Assembly”.<sup>3</sup>

5. Among the reservations voiced by President Parvanov were the following: the 12-months residency requirement in order to participate in local elections; limitations on voting rights of citizens with dual citizenship, preventing certain parts of the population holding dual citizenship, particularly Bulgarians of Turkish ethnicity, from being eligible to stand as candidates; abolition of the direct election of district mayors; increased population threshold for the election of mayors of villages or “settlements”; and reduction of the number of municipal councillors.

6. Following its monitoring visit, the Congress raised the following concerns:

“[...] the draft text introduces major changes regarding local elections which will henceforth take place only in the territory of the country. Active and passive electoral rights in the future will be limited by a residency requirement of 12 months. The mayor will still be elected under the majority system, while the municipal councillors under the proportional system, but the number of municipal councillors will be reduced by 20% according to the new thresholds defined by the different sizes of municipalities. A reduction in the number of political parties being represented at local

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<sup>1</sup> Election Code of the Republic of Bulgaria in force as of 19 January 2011 (CDL-REF(2011)008). [www.venice.coe.int/docs/2011/CDL-REF\(2011\)008-e.pdf](http://www.venice.coe.int/docs/2011/CDL-REF(2011)008-e.pdf).

<sup>2</sup> [www.legislationline.org/documents/action/popup/id/6202](http://www.legislationline.org/documents/action/popup/id/6202).

<sup>3</sup> As required by Article 101(2) of the Constitution.

level is also expected along with further constraints for registration of political parties and coalitions.

Moreover, this draft bill introduces an increased population threshold to elect the mayors of mayoralties, which goes up from 150 to 500 inhabitants. It also limits the number of designated deputy mayors and as a consequence the powers of the mayors to determine their own internal administrative structures as stated in Article 6, paragraph 1 of the European Charter of Local Self-Government.”<sup>4</sup>

7. This joint opinion is based on an English translation of the Code provided by the National Assembly of Bulgaria to the Venice Commission on 11 February 2011. The accuracy of the translation as well as of the numbering of articles, clauses, and sub-clauses cannot be guaranteed, and therefore the interpretation of the latter as reflected in the comments made hereafter may have been affected by inaccuracies in the translation.

8. On 12-13 May, the Venice Commission and OSCE/ODIHR conducted a joint expert visit to Sofia. They had meetings with the Speaker of the National Assembly, the Legal Affairs Committee of the National Assembly, the president and judges of the Constitutional Court, the chairperson and other members of the Central Election Commission, the National Association of Municipalities as well as representatives of the main political parties of the Republic of Bulgaria. The visit took place a few days after the Constitutional Court handed down its decision on a petition filed by opposition political parties.<sup>5</sup> The Court declared unconstitutional several provisions of the Election Code, which have been matters of discussion during the expert visit. The information and views shared with the delegation during and after the visit have been taken into consideration in this opinion.

9. Following the ruling of the Constitutional Court on 4 May 2011, the National Assembly of Bulgaria on 2 June adopted a series of amendments to the Election Code, some of which addressed OSCE/ODIHR and Venice Commission recommendations.

10. The recommendations and comments offered in this opinion are intended to assist the authorities in bringing the Election Code closer in line with OSCE commitments as well as Council of Europe and other international standards. The Venice Commission and OSCE/ODIHR remain committed to providing assistance to further improve the legal framework for elections in Bulgaria. It is important to note that the ultimate test for assessing compliance of the Election Code with international standards lies with its implementation, particularly the level of political will exhibited by state institutions and officials responsible for implementing the legislation.

11. In the course of drafting this opinion, due consideration was given to provisions of the Constitution of the Republic of Bulgaria<sup>6</sup> of relevance to electoral matters. Other legal acts, such as the Political Party Act<sup>7</sup> and the electoral laws repealed by the Code, have also been taken into consideration.<sup>8</sup> However, this joint opinion does not provide an analysis of the laws

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<sup>4</sup> Congress of Local and Regional Authorities of the Council of Europe, Congress Monitoring visit to Bulgaria, Meetings in Sofia, Veliko Tarnovo, Pernik (24-26 November 2010): <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1709041&Site=Congress>.

<sup>5</sup> Constitutional Court of Bulgaria, Decision no. 4/2011, 4 May 2011.

<sup>6</sup> Promulgated, State Gazette No. 56/13.07.1991 (effective 13.07.1991), amended and supplemented, SG No. 85/26.09.2003, SG No. 18/25.02.2005, SG No. 27/31.03.2006, Decision No. 7 of the Constitutional Court of the Republic of Bulgaria of 13.09.2006 - SG No. 78/26.09.2006, SG No. 12/6.02.2007. [www.vks.bg/english/vksen\\_p04\\_01.htm](http://www.vks.bg/english/vksen_p04_01.htm).

<sup>7</sup> Political Party Act of the Republic of Bulgaria, as amended by State Gazette No. 6 2009. <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016314.pdf>, <http://www.legislationline.org/documents/action/popup/id/15811>.

<sup>8</sup> See para. 3 of this joint opinion for details on these laws.

that are cross-referenced in the Code. More specifically, it does not include a review of the Criminal Code, the Political Party Act, the Administrative Violations and Sanctions Act, the Meetings, Rallies and Demonstrations Act, the Territorial Administration of the Republic of Bulgaria Act, the Local Self-Government and Local Administration Act, the Citizens' Direct Participation in Central Government and Local Self-Government Act, the Ministry of Interior Act, the Civil Registration Act, and the Constitutional Court Act.

The recommendations hereafter are based on international electoral standards and commitments as well as good practices for the conduct of democratic elections. Among the documents relied upon are the following:

- the 1990 OSCE Copenhagen Document;<sup>9</sup>
- OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation;<sup>10</sup>
- Venice Commission documents:
  - i. Code of Good Practice in Electoral Matters;<sup>11</sup>
  - ii. Code of Good Practice in the field of Political Parties;<sup>12</sup>
- the Council of Europe European Charter on Local Self-Government;<sup>13</sup>
- Council of Europe Parliamentary Assembly ("the PACE") documents:
  - i. Post-monitoring dialogue with Bulgaria, Report;<sup>14</sup>
  - ii. Post-monitoring dialogue with Bulgaria, Resolution;<sup>15</sup>
  - iii. Observation of the parliamentary elections in Bulgaria (5 July 2009) – Report;<sup>16</sup>
- OSCE/ODIHR election observation mission reports:
  - i. OSCE/ODIHR Election Assessment Mission Report on the Presidential Election (22 and 29 October 2006);<sup>17</sup>
  - ii. OSCE/ODIHR Limited Election Observation Mission Report on the Parliamentary Elections (5 July 2009).<sup>18</sup>

12. This opinion takes also into consideration standards and principles recognized by the United Nations Human Rights Committee and the European Court of Human Rights. Bulgaria has ratified both the International Covenant on Civil and Political Rights and the Optional

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<sup>9</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Copenhagen, 29 June 1990. [www.osce.org/odihr/elections/14304](http://www.osce.org/odihr/elections/14304).

<sup>10</sup> OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, adopted by the Venice Commission at its 84th session (Venice, 15-16 October 2010, CDL-AD(2010)024).

<sup>11</sup> Venice Commission of the Council of Europe, Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52<sup>nd</sup> session (Venice, 18-19 October 2002, CDL-AD(2002)023rev), [www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf).

<sup>12</sup> Venice Commission of the Council of Europe, Code of Good Practice in the field of Political Parties, adopted by the Venice Commission at its 78<sup>th</sup> session (Venice, 13-14 March 2009, CDL-AD(2009)021). [www.venice.coe.int/docs/2009/CDL-AD\(2009\)021-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.pdf).

<sup>13</sup> Strasbourg, 15 October 1985, ETS 122. Ratified by Bulgaria on 10 May 1995, <http://conventions.coe.int/treaty/en/Treaties/Html/122.htm>.

<sup>14</sup> Post-monitoring dialogue with Bulgaria, Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Rapporteur: Mr Serhiy HOLOVATY, Ukraine, Alliance of Liberals and Democrats for Europe (Doc. 12187, 29 March 2010). <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12187.htm>.

<sup>15</sup> Resolution 1730 (2010). Text adopted by the Assembly on 30 April 2010 (18<sup>th</sup> Sitting). <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1730.htm>.

<sup>16</sup> Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Bulgaria (5 July 2009), Report of the ad hoc Committee of the Bureau of the Assembly. Rapporteur: Mr Tadeusz IWŃSKI, Poland, Socialist Group (Doc. 12008, 16 September 2009). The 2006 Presidential election was not observed by the Parliamentary Assembly of the Council of Europe. <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC12008.pdf>.

<sup>17</sup> Published on 22 July 2007, [www.osce.org/odihr/elections/bulgaria/24138](http://www.osce.org/odihr/elections/bulgaria/24138).

<sup>18</sup> Published on 30 September 2009, [www.osce.org/odihr/elections/38934](http://www.osce.org/odihr/elections/38934).

Protocol to the International Covenant on Civil and Political Rights as well as the European Convention on Human Rights.<sup>19</sup>

13. The present opinion was adopted by the Council for Democratic Elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011).

## II. General Comments

14. The unified Election Code provides the regulatory framework for the conduct of all types of elections. It provides for direct election of members of the National Assembly, the President and Vice-President, the Bulgarian members of the European Parliament as well as municipal councillors and mayors.<sup>20</sup> Codification of the different laws regulating elections is a welcome step. It minimizes the risks of discrepancies and overlaps, facilitates the administration of elections and greatly contributes to a uniform application of the law. This was a recurrent recommendation made by OSCE/ODIHR in its election observation reports since 2006. This reform is regarded as an important step toward the consolidation of the legal framework regulating the conduct of democratic elections.<sup>21</sup> Nevertheless, further improvements are still possible. They do not necessarily involve major changes to the overall legal framework, rather adjustments or additions that may, however, prove decisive in addressing recommendations made by OSCE/ODIHR in connection with the 2009 parliamentary elections. The recommendations offered in this opinion should be given consideration as soon as possible so that they can be applied to the upcoming presidential and local elections. Not all of them may require amendments to the Code; they may be given effect through CEC instructions or other legal means. On the other hand, the Venice Commission and OSCE/ODIHR are fully aware that some of the recommendations made below would require amendments to the Constitution, which cannot be envisaged in the short term. They should however be examined and discussed with a view to a possible constitutional reform in the long term.

15. The Code provides that in parliamentary elections there are 31 multi-member constituencies for 240 seats of the National Assembly. The number of mandates in a multi-member constituency may not be less than four. In elections to the European Parliament, all members are elected from a single constituency. In municipal elections, municipal councillors are elected in a single constituency for the municipality. The electoral system for parliamentary elections is proportional (seats are allocated using the Hare-Niemeyer method) and a national threshold of 4 per cent of valid votes for political parties and coalitions is applied. Parliament is elected for four years. Political parties, coalitions and independent candidates may take part in the elections. They have to be registered with the electoral administration in order to be or to nominate candidates. In parliamentary, presidential and European Parliament elections, political parties have to collect 7,000 signatures in order to be registered with the Central Election Commission (CEC). Coalitions can only consist of political parties which have been registered by the CEC.

## III. Right to Vote and be Elected

16. Article 42(1) of the Constitution grants the right to vote to Bulgarian citizens who are at least 18 years old, are not under a judicial interdiction and are not serving a prison sentence.

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<sup>19</sup> The United Nations Human Rights Committee has adopted a General Comment (General Comment 25) interpreting the principles for democratic elections set forth in Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>20</sup> Article 2(1) of the Code.

<sup>21</sup> See the OSCE/ODIHR Election Assessment Mission Report on the 22 and 29 October 2006 Presidential Election ([www.osce.org/odihr/elections/bulgaria/24138](http://www.osce.org/odihr/elections/bulgaria/24138)).

Article 65(1) of the Constitution grants the right to be elected to the National Assembly to Bulgarian citizens at least 21 years of age, who do not hold citizenship of another country, are not under a judicial interdiction and are not serving a prison sentence. Article 93(2) stipulates that any natural born Bulgarian citizen over 40 years of age, qualified to be elected to the National Assembly and who has resided in the country for the five years preceding the election can run for the presidency. In addition to the limitations spelled out in the Constitution, the Code foresees further limitations to electoral rights.

17. Both the Constitution and the Code restrict the right to vote for persons serving a custodial sentence. From clarifications obtained during the expert visit, it seems that '*custodial sentence*' applies to all persons in prison regardless of the severity of the sentence incurred. Article 45(2) however provides that detainees who are not subject to an "enforceable sentence" shall be placed on the electoral roll. Deprivation of voting rights should only be possible when a person has been convicted of a criminal offence of such a serious nature that forfeiture of suffrage rights may be considered proportionate to the crime committed.<sup>22</sup> Therefore, the OSCE/ODIHR and the Venice Commission recommend that this restriction be narrowly defined to apply only to persons convicted of a serious crime.

18. Bulgarian citizens holding the citizenship of another country cannot stand as candidates in parliamentary, presidential and municipal elections. While the prohibition of dual citizenship for parliamentary and presidential elections is spelled out in the Constitution, the same prohibition for municipal elections in the Election Code is not supported by the Constitution. In its Opinion on the Constitution of Bulgaria,<sup>23</sup> the Venice Commission did not comment on the limitation of the right to be elected for Bulgarian citizens who hold dual citizenship. Asked to examine the matter, the Constitutional Court ruled that the prohibition of dual citizenship for municipal elections was not contrary to the Constitution. While there is now growing consensus that recognition of dual citizenship is not a problem under international law and while there are more countries that have opted to accept it, no international treaty or instrument contains an obligation for States that prohibit dual citizenship to repeal such prohibitions. That said, the consequences attached to such prohibitions have come under closer scrutiny by international bodies as they may entail discrimination on the ground of nationality that may exceed what is permissible under relevant human rights instruments. In this context, while OSCE/ODIHR and Venice Commission are aware of the reservation made by Bulgaria to Article 17.1 of the European Convention on Nationality,<sup>24</sup> they would like to draw attention to the evolving jurisprudence of the European Court of Human Rights on matters of dual citizenship. In its judgement in the case *Tanase v. Moldova*,<sup>25</sup> the European Court of Human Rights has considered that the exclusion of citizens holding dual citizenship from eligibility to vote and to be elected is a disproportionate measure and thus contrary to Article 3 of the First Protocol of the European Convention on Human Rights. The reasoning followed by the Court could *mutatis mutandis* be applied to Bulgaria, and there is indeed a risk that the existing legal framework in Bulgaria

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<sup>22</sup> See European Court of Human Rights, *Hirst (2) v. the United Kingdom*, judgment of 6 October 2005, Application no. 74025/01; *Frodal v. Austria*, judgment of 8 April 2010, Application no. 20201/04, paragraph 25; *Greens and M. T. v. the United Kingdom*, judgment of 23 November 2010, Applications nos. 60041/08 and 60054/08. See also the Code of Good Practice in Electoral Matters, I 1.1 d.

<sup>23</sup> Venice Commission, Opinion on the Constitution of Bulgaria Adopted by the Venice Commission at its 74<sup>th</sup> Plenary Session (Venice, 14-15 March 2008; CDL-AD(2008)009). [www.venice.coe.int/docs/2008/CDL-AD\(2008\)009-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)009-e.pdf).

<sup>24</sup> Council of Europe, European Convention on Nationality, Strasbourg, 6 November 1997, ETS no. 166, <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>, Article 17.1. "Under the terms of this reservation, the Republic of Bulgaria shall not apply in respect of the nationals of the Republic of Bulgaria in possession of another nationality and residing on its territory the rights and duties for which the Constitution and laws require only Bulgarian nationality."

<sup>25</sup> European Court of Human Rights, *Tanase v. Moldova*, 27 April 2010, application no. 7/08.

be considered in contradiction to the European Convention on Human Rights if a case were filed to the Court on similar grounds.

19. With regard to the right of foreigners to vote in local elections, the Code limits this right to residents who are citizens of EU Member States. According to the Code of Good Practice in Electoral Matters, “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence”.<sup>26</sup> It may be worth considering extending the right to vote at municipal elections to foreign citizens other than citizens of EU Member States.<sup>27</sup>

20. The Code stipulates that the right to vote and be elected is also subject to residency requirements.<sup>28</sup> The principle of universal elections implies the right to vote and to stand in elections for all citizens, but these rights are not absolute and may be subject to reasonable restrictions that should, however, not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness. In principle, a length-of-residence requirement may be imposed on nationals for local and regional elections only, and the requisite period of residence should not exceed 6 months. A longer period may be required only to protect national minorities.<sup>29</sup>

21. Before the 2 June amendments, the required length of residence for candidates was 5 years in presidential elections, 2 years in any EU Member State for European Parliament elections and 12 months for municipal elections. In its decision of 4 May 2011, the Constitutional Court ruled that the 12-months residency requirement for municipal elections is in contradiction of the Constitution. Following that ruling, the National Assembly adopted amendments to lower the residency requirement for the right to stand for municipal elections from 12 to 6 months. For the upcoming 2011 municipal elections, the residency requirement for the right to stand will be reduced from 6 to 4 months. These are welcome amendments.

22. In its decision of 4 May 2011, the Constitutional Court ruled that the 12-months residency requirement to vote in municipal elections was in contradiction of the Constitution. Following 2 June amendments, the National Assembly decreased the residency requirement for the right to vote in municipal elections for both citizens from Bulgaria and the European Union from 12 to 6 months. For the 2011 municipal elections, this requirement was reduced from 10 to 4 months. These amendments are welcome.

23. Regarding the right to stand for European Parliament elections, a European Union directive provides that voting rights may be conditioned by length of residence – as is the case in other EU Member States – as far as the conditions applying to citizens of another EU Member State, including those related to the period and proof of residence, are identical to those applying to Bulgarian citizens.<sup>30</sup> This condition is met in the Code, which imposes the same length of residence for citizens of other EU Member States and Bulgarian citizens. Nevertheless, requiring a 2-year residence in Bulgaria or in any other EU Member State from

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<sup>26</sup> Code of Good Practice in Electoral Matters, I 1.1 b. Same reference is included in the Explanatory Report of the Code of Good Practice: “Furthermore, under the European Convention on Nationality persons holding dual nationality must have the same electoral rights as other nationals.”

<sup>27</sup> See the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No.: 144)

<sup>28</sup> Articles 3, 4, 53, 60-64 of the Code. Moreover, in the Supplementary Provisions, the Code defines a Bulgarian citizen who has resided in Bulgaria during the last five years as “any such citizen who had actual residence and permanent abode within the territory of Bulgaria during more than half of the time of each of the five years preceding the date of the election” (Supplementary Provisions, paragraph 1.1).

<sup>29</sup> Code of Good Practice in Electoral Matters, I 1.1 c iii-iv: *iii. a length of residence requirement may be imposed on nationals solely for local or regional elections; iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.*

<sup>30</sup> Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Articles 4 and 13.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0109:EN:HTML>.



citizens of Bulgaria or other EU Member States significantly deviates from the standards applied in other EU Member States. The National Assembly decreased the length of the residency requirement to stand for European Parliament elections from 2 years to 6 months. This amendment is welcome.

24. There are concerns that the provisions of the Code on the compilation of voter lists for local elections may result in impediments to the right to vote for voters in health care facilities<sup>31</sup> as well as voters detained “without an enforceable court sentence”.<sup>32</sup> In such instances, voters are not allowed to vote at the hospitals, health care facilities or detention centres if their habitual residence in the constituency where these facilities are located has been less than 12 months. It is not clear what impact such a condition may have on voting rights as it obviously depends on whether people frequently undergo medical treatment or are placed in a detention centre not located in the constituency where they have their habitual residence. The situation is particularly problematic for voters in detention centres, as they do not themselves decide where they will be placed. It may be advisable to reconsider the 12-month provision and reduce it based on an assessment of the impact of such a measure. On another but related note, it may be worth specifying in Article 45(3) that voter lists at detention centres should be closed 48 hours before election day, as is the case for voter lists at health care facilities.<sup>33</sup>

#### IV. Election Administration

25. The elections are administered by a three-tiered administration composed of:

- a. the Central Election Commission;
- b. constituency or municipal election commissions; and
- c. section election commissions.<sup>34</sup>

26. The 19 members of the CEC are appointed by decree of the President for a term of five years after consultations and “*on a proposal by the parties and coalitions of parties represented in Parliament and by the parties and coalitions of parties which have Members of the European Parliament but are not represented in Parliament*”.<sup>35</sup> It is important that the establishment of the CEC as a permanent body, a long-standing OSCE/ODIHR and Venice Commission recommendation, be confirmed in the Code.

27. Article 23(7) indicates that upon “appointment of the complement of the Central Election Commission, the proportion of the parties and coalitions of parties represented in Parliament shall be retained”. While the first sentence of the same article stipulates that the 19 CEC members nominated by parties and coalitions represented in parliament must include the chairperson and the deputy chairpersons nominated by each party or coalition of parties represented in parliament, it is not clear whether the calculation made for determining the share of each party or coalition of parties include the chairperson and the deputy chairpersons. It is recommended that this provision be clarified so that the calculation made for determining the share of each party and coalition of parties includes the chairperson and the deputy chairperson.

28. The Code should ensure a balance of political parties in the appointment of chairpersons and secretaries at all levels of election commission.<sup>36</sup> Furthermore, it is essential that

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<sup>31</sup> Article 42(2) of the Code.

<sup>32</sup> Article 45(2) of the Code.

<sup>33</sup> Article 42(3) of the Code.

<sup>34</sup> Articles 14-15 of the Code.

<sup>35</sup> Article 23(1) of the Code.

<sup>36</sup> OSCE/ODIHR Limited Election Observation Mission Report on the Parliamentary Elections (5 July 2009) Section on Recommendations, page 23.

opposition parties be included in these leadership positions at all levels of the election administration. An allocation of leadership positions among political parties with no consideration given to whether they belong to the ruling coalition may not be sufficient to dismiss perceptions of possible bias.

29. According to the Code of Good Practice in Electoral Matters, the CEC should include “at least one member of the judiciary” or a law officer.<sup>37</sup> During the expert visit, it was confirmed to the Venice Commission and OSCE/ODIHR that three members of the recently appointed CEC are former members of the judiciary. This is a welcome step. As the legal capacity of lower election commissions would also need to be strengthened, it is recommended that Article 16(4) of the Code which recommends that members of the CEC as well as of constituency and municipal election commissions “be qualified lawyers” be implemented in practice.

30. According to Article 20(2), decisions in election commissions are made by a two-thirds majority. As a matter of good practice, it is recommended that electoral commissions take decisions by a qualified majority or by consensus.<sup>38</sup> With members of electoral commissions being appointed by political parties, there is a risk of polarization, if not politicization of discussions in election commission with a possibility that key decisions may be blocked. It is recommended that the two-thirds majority rule be reassessed in light of the experience gained in the next elections.

31. The Code provides that the credentials of members of all electoral bodies may be terminated at the request of the nominating party or coalition of parties.<sup>39</sup> The Code of Good Practice in Electoral Matters underlines that the bodies appointing members of election commissions should not be free to dismiss them at will, as this casts doubt on their independence.<sup>40</sup> The discretion given to political parties to request that members nominated by them be recalled is compounded by the fact that they may be recalled at any time, since the Code does not provide any time-limit for the termination of the mandate.<sup>41</sup> A system where members of election commissions can be dismissed upon request and at any time by the political parties who appoint them is likely to be perceived as not fulfilling the requirement of independence and neutrality. The Constitutional Court held these provisions unconstitutional on the ground that they would seriously undermine the independence of the election administration. Thus these provisions are repealed, which is welcome.

## **V. Political Party Registration**

### **A. Signatures and deposits**

32. For political parties and independent candidates to have access to the ballot, the Code requires the payment of a monetary deposit and the collection of supporting signatures. These requirements are different depending on the type of election and on whether they apply to political parties or independent candidates. The requirements are summarized in the tables below:

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<sup>37</sup> Code of Good Practice in Electoral Matters, II 3.1 d i.

<sup>38</sup> Code of Good Practice in Electoral Matters, II 3.1 h.

<sup>39</sup> Articles 25(1)6; 26(1)6; 29(1)3; 30(10); 34(3) and 37(12).

<sup>40</sup> Code of Good Practice in Electoral Matters, II 3.1 f.

<sup>41</sup> Furthermore, the CEC decision to recall a member can be appealed before the Supreme Administrative Court. It is not clear what the Court would be asked to consider in cases where the ground for dismissal is a request by the nominating party. The Code does not require that the request in question be motivated. Therefore, the Court's assessment may be limited to acknowledging the request and confirming the dismissal.

Deposits required (in BGN)

	Parties and party coalitions	Independent candidate nomination committees
Type of election		
- National representatives - President, Vice President - European Parliament	10 000 <sup>42</sup>	10 000

Signatures required

	Parties and parties coalitions	Independent candidate nomination committees
Type of election		
- National representatives	7 000	Not less than 3 per cent but no more than 5 000 voters (from within the relevant constituency)
- President, Vice President - European Parliament	7 000	7 000
- Municipal elections	7 000	No less than 1 per cent for municipal councillors No less than 2 per cent for mayors (from within the relevant constituency) One-fifth of the voters for elections of "mayorality majors" but no more than 500 voters

33. In the last parliamentary elections, applications required 15,000 and 20,000 supporting signatures and a 50,000 BGN and 100,000 BGN deposit for parties and coalitions respectively. The Code now requires a 10,000 BGN deposit from political parties and coalitions of parties for presidential, parliamentary and European Parliament elections and 7,000 signatures in support of their applications.<sup>43</sup> Under the previous legislation, independent candidates were required to pay a deposit of 15,000 BGN and support their applications with at least 10,000 signatures of voters with a permanent address in the particular constituency. Under the Code, they are required to collect as many signatures as political parties and coalitions of parties for parliamentary, presidential and European Parliament elections and to pay a smaller deposit than political parties and coalitions of parties (see the table above) for parliamentary and municipal elections, but the same amount for presidential elections. The changes made in the Code are positive. They strike the right balance between the legitimate goal of discouraging frivolous candidacies and the obligation not to prevent legitimate political parties and independent candidates from obtaining ballot access.

34. A concern remains however with regard to the fact that while political parties and coalitions of parties may compete in parliamentary elections based on applications supported by 7,000 signatures of voters residing anywhere in the country, independent candidates in parliamentary elections must collect signatures of 3 per cent of voters residing in the respective constituencies only but no more than 5,000 signatures.<sup>44</sup> This may need to be reconsidered as it constitutes a comparatively high barrier for independent candidacies.

<sup>42</sup> 10,000 BGN equals about 5,100 EUR. As of 25 May 2011, 1 EUR equals to 1.95 BGN.

<sup>43</sup> Articles 78 and 79(1) of the Code.

<sup>44</sup> Code of Good Practice in Electoral Matters, I 1.3 ii.: "The law should not require collection of the signatures of more than 1% of voters in the constituency concerned".

## B. Registration

35. Article 26(1)12 stipulates that “[the] Central Election Commission shall: [...] refuse registration of a party where establishing that the said party has not held the meetings of the supreme body thereof as provided for in the statute more than two successive times but not less frequently than once in five years, and has not submitted the complement of the new leadership to the court for recording...”. As a rule, bodies in charge of organizing and conducting the electoral process should not be granted powers over party activities that exceed what may be necessary to ensure the integrity of the process. It is not clear why the CEC would need to interfere with matters that may be reasonably perceived as internal party matters and should only come to the attention of State authorities or other entities such as the CEC in exceptional circumstances. Furthermore, while States may require political parties to meet certain obligations to be placed on a ballot in elections, the system for ballot access should not add requirements directly not connected to the elections to those requirements political parties already had to fulfil in order to get registered. Most importantly, the system for ballot access should not discriminate against new parties. Therefore, it is recommended that this provision be repealed or amended so that it does not discriminate against new parties.

36. The refusal of registration of political parties or coalitions of parties may be appealed to the Supreme Administrative Court.<sup>45</sup> In case the Court overrules the non-registration decision of the CEC, the political party or the coalition has to be registered, but not later than 50 days (for presidential, parliamentary and European Parliament elections) or 65 (for municipal elections) before election day. There seems to be a contradiction between Article 26(8), which specifies that CEC decisions cannot be appealed and Articles 83(3) and 90(3), which indicate that a CEC decision on party registration may be appealed to the Supreme Administrative Court. Also, these rules seem to imply that a party or a coalition of parties may be denied registration if the Court does not respect the time-limits laid down in the Code. If the court decision was made within 50 or 65 days (depending on the type of elections) before election day, registration would no longer be possible, and the party or coalition in question would be *de facto* denied registration. This situation may not occur very often; however, there ought to be safeguards for applicants that registration cannot be denied on grounds that have no connection with the failure of applicants to meet the criteria set out in the law. In this spirit, it would be important that deadlines for notifying denials of registration to the parties concerned be specified in Articles 83(5) and 84(7) and 90(5).

## VI. Political Party and Campaign Financing

37. The Code provides detailed provisions on election campaign financing.<sup>46</sup> Among the measures laid down in Section VI of Chapter VIII are the imposition of expenditure limits upon political parties and independent candidates (that differ depending on the type of elections), an obligation to keep records of all direct and in-kind contributions given to political parties as well as strict reporting requirements, with an indication of time-limits for submission of financial reports and sanctions for non-compliance with this requirement. These measures provide a sound basis for a transparent election campaign financing system. Enforcement mechanisms may, however, need to be strengthened. As noted by the Council of Europe’s Committee of Ministers, political parties should be subject to “effective, proportionate and dissuasive sanctions.”<sup>47</sup> It does appear that the sanctions provided in Article 289 may not be proportionate to breaches of the requirements regarding financing of

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<sup>45</sup> Articles 83(3) and 90(3) of the Code.

<sup>46</sup> Section VI of Chapter VIII of the Code.

<sup>47</sup> Recommendation REC(2003)4 of the Committee of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns, article 16.

the election campaign and therefore not dissuasive enough.<sup>48</sup> That said, the Venice Commission and OSCE/ODIHR are not in a position to further comment on these provisions as they would need to be read and analyzed in conjunction with those of the Political Party Act. It remains to be seen how these arrangements will be enforced in practice. Their efficiency to a large extent depends on the scope of verification and investigation powers assigned to the National Audit body.

38. The Final and Transitional Provisions of the Code contain amendments to the Political Party Act concerning the rules on donations for the purpose of election campaigning. This law has not been assessed by the Venice Commission and OSCE/ODIHR. Nevertheless, both institutions express concerns regarding these amendments since they seem to restrict conditions of donations.<sup>49</sup> This should be carefully considered. This new provision will have to be assessed in light of the upcoming elections.

## VII. Voter Lists and Voters' Registration

39. The voter lists are compiled by municipal administrations.<sup>50</sup> Additionally, it is stipulated that "[the] voter lists [...] shall be printed out on the basis of the National Population Register by the Directorate General of Civil Registration and Administrative Services at the Ministry of Regional Development and Public Works".<sup>51</sup> During the expert visit, OSCE/ODIHR and Venice Commission experts were informed that a national census has been completed two months ago. According to this census, Bulgaria has 7,380,000 citizens out of which the voting-age population accounts for approximately 6,800,000. These numbers have been communicated verbally to OSCE/ODIHR and Venice Commission experts at a meeting with the CEC, but would need to be checked for their accuracy. If they were confirmed, there would be grounds for concern. The OSCE/ODIHR Limited Election Observation Mission Report for the 2009 Parliamentary Elections refers to 6,884,271 registered voters to be compared with an estimated population of 7.6 million.<sup>52</sup> On voter lists issues, a census can be no more than indicative, revealing a trend rather than providing an accurate picture. Having said that, the unrealistic ratio between the number of inhabitants and the voting-age population shown by this census points to a need to ensure that the process through which voter lists are established be consolidated.

40. There will be a supplementary voter list in the polling stations where voters who are not in the voter lists may be entered if they are allowed to vote. Articles 47 and 197(6) seem to allow any voter with a permanent address in the precinct to be added to the list during election day. Other articles, however, are more restrictive, allowing only election staff, students with certain documents, persons with disabilities needing special assistance, citizen of another EU country wishing to vote in the European Parliament elections or local elections and who have sent in a form before the elections. A very extensive use of supplementary lists may raise questions of possibilities for multiple voting and should only be used for good reasons. It should, therefore, be made clear in Article 47 that the supplementary lists are restricted to those groups which are defined in subsequent articles and is not open to anyone who is not on the voter lists. If that is not done, the set of documentation needed to be registered on election day must be clearly defined.

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<sup>48</sup> See OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation (CDL-AD(2010)024, October 2010).

<sup>49</sup> Paragraph 20 of the Transitional and Final Provisions of the Code, referring to change of Article 24 of the Political Parties Act.

<sup>50</sup> Article 40(1) of the Code.

<sup>51</sup> Article 52(4) of the Code.

<sup>52</sup> OSCE/ODIHR Limited Election Observation Mission Report on Parliamentary Elections (5 July 2009), Section on Election Administration, page 9.

## VIII. Campaign

41. Article 134(2) stipulates that campaign material shall contain a warning against vote buying covering at least ten percent of the 'face space' of the material. This requirement can only be effective if the term 'campaign material' is clearly defined in the Code. It probably means leaflets and posters, and not other types of publications or internet pages. This would need to be clarified in the Code.

## IX. Media

42. OSCE/ODIHR recommended that "the Election Law could be amended to provide for the requirement for the Council for Electronic Media (CEM), in co-operation with the CEC, to monitor the implementation of media-related provisions of the Election and Broadcasting Laws and to take prompt and effective action against violations, including identification of any inequitable and preferential news coverage of candidates and parties."<sup>53</sup> This recommendation is still valid.

43. The OSCE/ODIHR Limited Election Observation Mission for the 2009 parliamentary elections expressed concern in its final report that there was no provision for free airtime, and contestants had to pay for almost all campaign programmes on public broadcasters, including debates. Although the prices adopted by the public broadcaster were equal for all, some political parties complained that the prices were rather high, especially when they had to pay for all election-related coverage. It may be worth reviewing the policy of requiring candidates to pay for almost all campaign-related appearances as this may limit the public's access to information and candidates' ability to convey their messages.

## X. Voting Process

44. Following recommendations from the OSCE/ODIHR election observation mission for the 2006 presidential election,<sup>54</sup> envelopes have been introduced to enhance the secrecy of the vote.<sup>55</sup> This is a welcome step.

45. After the ballot paper and envelope have been collected by the voter and until it has been dropped in the ballot box, they should not be touched by anyone else than the voter. According to the Code, the ballot for presidential and municipal elections should be stamped before the voter enters into the booth and a second time before the voter casts the ballot into the box. During the expert visit, OSCE/ODIHR and Venice Commission experts raised this issue. The explanation provided in support of this measure was that it was aimed at ensuring that the ballot paper and envelope had not been brought from outside the polling station, which was viewed as an additional safeguard against vote buying. It is not clear though how stamping the ballot paper twice (before and after voting) could serve that purpose. This procedure may risk infringing the principle of secrecy of the vote.<sup>56</sup> It is therefore recommended that it be reconsidered or adjusted so that the principle of secrecy of the vote is upheld.

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<sup>53</sup> OSCE/ODIHR Limited Election Observation Mission Report on the Parliamentary Elections (5 July 2009), Section on Recommendations, page 24.

<sup>54</sup> OSCE/ODIHR Election Assessment Mission Report on the Presidential Election (22 and 29 October 2006), Section on Election Management and Administration, page 10..

<sup>55</sup> Articles 165 and 169 of the Code.

<sup>56</sup> According to Paragraph 7.4 of Copenhagen Document OSCE participating States should "ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public". See also Code of Good Practice in Electoral Matters, I 3.2.2, § 34.

46. The Code introduces new provisions according to which voters would have to place an X-mark in the box of the candidate they voted for. During the expert visit, several interlocutors of the OSCE/ODIHR and Venice Commission experts, particularly among political parties, voiced concern about the risk that voters may get confused with the new rule and that many ballots may thus be declared invalid. To minimize this risk, it is recommended that measures are taken by the CEC to effectively inform voters about the new rules, i.e. by conducting a voter education campaign targeting voters and poll workers.

47. The Code provides voting by means of mobile ballot boxes.<sup>57</sup> Article 176 refers to “voters with permanent disabilities which prevent them from exercising their franchise in the polling site” but does not clarify whether there may be other grounds for voters to request the use of mobile ballot boxes. As the law does not exhaustively specify the categories of voters who may request mobile voting, there is a risk that this procedure may be abused. In line with good electoral practice, it is recommended that Article 176 indicates explicitly that mobile voting is for the exclusive use of voters with permanent disabilities.<sup>58</sup>

48. There were concerns raised by the PACE Ad Hoc Committee in 2009 as well as by OSCE/ODIHR Limited Election Observation Mission for the 2009 presidential election about instances of vote buying and intimidation.<sup>59</sup> In addition to Article 180 of the Code, which prohibits the display of the voters’ choice, a new provision in the Code bans “[the] use of mobile telephones, still cameras or other image reproducing equipment for the purpose of recording the voting choice...”.<sup>60</sup> This constitutes an improvement. However, the enforcement of these measures requires a consistent approach to sanctioning violations of this provision. It is not clear how Article 294 of the Code, which provides for a fine of 1,000 BGN for violation of the above-mentioned provisions, relates to Article 167 of the Criminal Code, which provides for sentences of up to 6 years imprisonment, fines of up to 20,000 BGN and possible deprivation of the right to hold certain state and public positions. Furthermore, while the specific measures foreseen in the Code are welcome,<sup>61</sup> it is also advisable to organize training for poll workers and a public awareness campaign for voters.

## **XI. Internet Voting**

49. Paragraph 11 of the transitional provisions of the draft Election Code provides for testing of voting via the Internet for five polling stations within and five sections outside Bulgaria during the upcoming presidential elections. While remote voting via the Internet and other forms of electronic voting are generally considered compatible with the standards of the Council of Europe, this compatibility largely depends on whether adequate technical security has been provided and social conditions in the country have been taken into account.<sup>62</sup> As electronic voting via the Internet is an alternative voting channel to paper-based voting, its legal basis has to be drafted in an equally detailed and accountable manner.<sup>63</sup> The Code

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<sup>57</sup> Article 205 of the Code.

<sup>58</sup> Code of Good Practice in Electoral Matters, I 3.2.2.1, §§ 39 & 40.

<sup>59</sup> See OSCE/ODIHR Limited Election Observation Mission Report on the Parliamentary Elections (5 July 2009), Section on Legal Framework and Electoral System, page 6 and Section on Complaints and Appeals, page 17 and Observation of the parliamentary elections in Bulgaria (5 July 2009), Report of the Ad Hoc Committee of the Bureau of the Assembly, paragraph 42.

<sup>60</sup> Article 181 (1) of the Code.

<sup>61</sup> See for instance Article 134 (2), which stipulates that campaign materials should contain a statement that vote-buying is a criminal offence.

<sup>62</sup> See the Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe, adopted by the Venice Commission at its 58<sup>th</sup> Plenary Session (Venice, 12-13 March 2004); CDL-AD(2004)012), in particular paragraph 56.

<sup>63</sup> For guidance on regulating electronic voting see Council of Europe Committee of Ministers’ Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting, Strasbourg, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=778189>, as well as the recently published Guidelines of the Committee of Ministers of the Council of Europe on certification of e-voting systems

does not sufficiently describe the voting process, the setup, the testing, and the opening and closing of electronic voting via the Internet nor does it provide for data destruction or how observation of these procedures will be enabled. Including five polling stations outside Bulgaria adds considerable complexity to the project, as they include voters with voting rights from more than one constituency. This is not only organisationally challenging, but also challenges the secrecy of the vote in cases where only few votes are received for a specific constituency. The Constitutional Court declared that the provisions on Internet voting contradict the Constitution, thus provisions of paragraph 11 of the transitional provisions of the Code do not apply. Following the Constitutional Court decision, on the 2 June, the National Assembly also repealed paragraph 14 (2) of the transitional provisions that required the CEC to adopt a procedure for the experimental electronic voting via the Internet for the 2011 presidential election. These are welcome changes.

## **XII. Counting Process**

50. The Code provides a list of reasons to validate or invalidate ballot papers. Conditions for the validity of ballot papers are quite restrictive.<sup>64</sup> Good practice suggests that if the voter's choice is clear despite violating the exact voting procedure (no blue ink for instance) or if there are no signs or symbols identifying the voter, the vote should be taken into account as a valid vote.<sup>65</sup>

51. Articles 216(5), 223(2) and 227(2) state that the number of voters who have voted shall equal the number of envelopes and ballots found in the box. This requirement should rather be part of an explicit reconciliation process so that commission members do not think that such numbers are simply entered into the tally sheets. The reconciliation should be done after filling in all figures. If they do not tally, the commission may be required to recount ballots, and if it still does not tally, to enter the discrepancies into the protocol with a comment.

52. The transitional and final provisions of the Code stipulate that a counting commission will be set up in 2011 for the next elections on an experimental basis.<sup>66</sup> If the intention is to prevent manipulations and enhance the integrity of the process, it is certainly laudable. However, establishing a separate commission to perform the counting could prove problematic in practice. Several constraints must be taken into consideration. First, the count must take place immediately after the vote has been completed in order to ensure transparency of the process and to minimize the risk of manipulations, as it is recommended by the Code of Good Practice in Electoral Matters.<sup>67</sup> Second, there are obvious safety risks for the electoral material if it has to be transported elsewhere to process the count. Considering that transportation is foreseen to take place under the responsibility of the Ministry of Interior, it may affect public trust in the process. If this measure is to be implemented, it is recommended that it be complemented with specific arrangements addressing the above-mentioned concerns.

53. The OSCE/ODIHR Limited Election Observation Mission Report on the 2009 parliamentary elections recommended that the legislation should be amended to

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(2011), and Guidelines of the Committee of Ministers of the Council of Europe on transparency of e-enabled elections (2011) [www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial\\_Nov\\_meeting/Guidelines\\_transparency\\_EN.pdf](http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial_Nov_meeting/Guidelines_transparency_EN.pdf).

<sup>64</sup> Article 198(3)2 and (4), Article 216(4)2 and 3, Article 221(4)5 and 6 and Article 225(4)5 and 6 of the Code.

<sup>65</sup> Code of Good Practice in Electoral Matters, I 3.1.

<sup>66</sup> Transitional and Final Provisions of the Code, §§ 12 and 12(8).

<sup>67</sup> Code of Good Practice in Electoral Matters, I 3.2.2.4, § 45.



foresee recounting of votes.<sup>68</sup> The same concern was raised by the PACE Ad Hoc Committee, in particular with the introduction of a majoritarian component shortly before the 2009 parliamentary elections.<sup>69</sup> This recommendation was not addressed.

### **XIII. Complaints and Appeals Procedures**

54. There is a dual system of complaints and appeals: decisions and actions of election commissions may be challenged in the higher election commissions, whereas all other complaints are adjudicated by courts.

#### **A. Complaints against Election Commissions' Decisions and Actions**

55. The lack of possibility for judicial review for a number of decisions of the election management bodies appears problematic. The 1990 OSCE Copenhagen Document underlines that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity." The Code of Good Practice in Electoral Matters underlines that the judicial supervision should at least apply to decisions on "right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding."<sup>70</sup> It is therefore recommended that a final appeal to a court be made available more broadly.

56. In connection with the 2009 parliamentary elections, concerns were expressed by both OSCE/ODIHR and the PACE Ad Hoc Committee with regard to the lack of written procedural rules concerning the review of complaints and appeals lodged with the CEC.<sup>71</sup> The criteria upon which the CEC based its decision of what constituted a complaint were unclear, as was the appropriate form of its decisions. It is recommended that the Code explicitly require that the CEC adopts procedural rules for its decisions in writing as well as for those applying to lower election commissions. All election commissions should be required to issue written decisions and duly argue all their decisions. The format of decisions should also be standardized. This should apply to all decisions, whether or not they can currently be appealed to the Supreme Administrative Court.

#### **B. Contesting Election Results**

57. According to Articles 264(1), 265(1) and 267(1) of the Code, election results may be challenged either before the Constitutional Court (for national or European elections) or the relevant administrative court (for municipal elections). With regard to national and European elections, Article 150(1) of the Constitution confers the right to initiate proceedings before the

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<sup>68</sup> OSCE/ODIHR Limited Election Observation Mission Report on Parliamentary elections (5 July 2009), Section on Recommendations, page 22. .

<sup>69</sup> Observation of the parliamentary elections in Bulgaria (5 July 2009), Report of the ad hoc Committee of the Bureau of the Assembly, § 16.

<sup>70</sup> See 1990 OSCE Copenhagen Document, para. 5.10 and comment 32, para 18 of International Covenant on Civil and Political Rights: "whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the meaning of this sentence." Furthermore, Paragraph 18 of the 1991 OSCE Moscow Document provides that "to the same end, there will be effective means of redress against administrative regulations for individuals affected thereby." See also Code of Good Practice in Electoral Matters, II 3.3 a and para. 92-93. Moreover, "it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second."

<sup>71</sup> See OSCE/ODIHR Limited Election Observation Mission Final Report on Parliamentary elections (5 July 2009), Section on Complaints and Appeals, pages 16-17 and Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Bulgaria (5 July 2009), Report of the ad hoc Committee of the Bureau of the Assembly. Rapporteur: Mr Tadeusz IWINSKI, Poland, Socialist Group (Doc. 12008, 16 September 2009).

Constitutional Court upon a few institutions.<sup>72</sup> In order to challenge election results, a political party, a coalition or a candidate must approach one of these institutions within 7 days of the CEC's decision validating the results; they then have 15 days to file a petition with the Constitutional Court. This means that there is no effective judicial procedure for challenging election results. In June 2009, the European Court of Human Rights concluded that similar provisions laid down in the then applicable Parliamentary Election Law did not provide for effective remedy due to the limited category of persons and bodies which may refer a case to the Constitutional Court.<sup>73</sup> The above-mentioned articles should be amended accordingly so that the Code provides effective remedies for challenging election results.

58. Furthermore, the Code does not allow election results to be disputed by voters but only by political parties, coalitions and candidates (through the institutions listed under Article 150(1) of the Constitution). These restrictions are not in accordance with good electoral practice. All candidates and voters registered in the constituency concerned must be entitled to contest the election results.<sup>74</sup> The right to vote is as important in a democratic state as the right to be elected. Allowing a wide range of persons to appeal decisions concerning elections protects the legality of the elections. As it is possible to consider similar appeals together, the workload of courts after elections should not be affected. The Venice Commission explained in its Report on the Cancellation of Election Results that "[...] [in] case the elections are carried out unlawfully the individual constitutional right to vote or to be elected is violated. Such right should be protected by individual complaint, though it might not always lead to the cancellation of election results. The cancellation of election results is not necessary if the violations of electoral law are at small scale and do not influence the electoral results [...]."<sup>75</sup>

### C. Time-limits

59. In many cases, the Code provides for very short time-limits for appeals. This is the case especially for disputes concerning registration of parties and coalitions and their candidates where the appeal shall be brought before the competent court no later than 24 hours after the CEC decision has been issued.<sup>76</sup> It is important to avoid lengthy disputes on such sensitive matters; however, parties concerned should have access to effective remedy. Within the extremely short timeframe stipulated in the Code it might prove difficult for the appellants to bring forward all the relevant arguments in support of their case. The Code of Good Practice in Electoral Matters calls for a time-limit from three to five days.<sup>77</sup> The same comment also applies to the timeframe for deciding on the case, which is also 24 hours and may not be sufficient to allow for the case to be considered thoroughly.<sup>78</sup>

60. According to Article 93(6) of the Constitution, the Constitutional Court shall rule upon any challenge of the legality of a presidential election no later than one month after the election. Article 264 does not provide any time-limit for the decision-making in the Constitutional Court

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<sup>72</sup> One-fifth of the parliament, the President, the Council of Ministers, the Supreme Court of Appeals, the Supreme Administrative Court and the General Prosecutor.

<sup>73</sup> European Court of Human Rights, First Section, *Petkov and others v. Bulgaria*, 11 June 2009.

<sup>74</sup> Code of Good Practice in Electoral Matters, II 3.3 f, Explanatory Report, paragraph 99, 3rd sentence: "A reasonable quorum may, however, be imposed for appeals by voters on the results of elections", that is to say that appeals will be admissible only if made by a minimum number of voters. See also OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections, <http://www.osce.org/odihr/elections/13960>.

<sup>75</sup> Report on the Cancellation of Election Results (CDL-AD(2009)054), IV B 2, § 49.

<sup>76</sup> Articles 26(8), 83(3) and (5), 107(8), 110(3), 112(6), 113(5), 115(3), 117(4), 119(8), 120(3), 122(9) and 125(7) of the Code.

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

<sup>78</sup> OSCE/ODIHR Limited Election Observation Mission Report on Parliamentary Elections (5 July 2009), Section on Complaints and Appeals, pages 16-17.

for other elections. For local elections, the time-limits for deciding on the appeals are long.<sup>79</sup> The procedure may take 24 days in first instance courts and 14 days in the Supreme Administrative Court. Time-limits for contesting the election results are longer than recommended in the Code of Good Practice in Electoral Matters which provides that “time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)”<sup>80</sup> since appeals may be lodged in seven days.<sup>81</sup> According to Article 267(11), the proceedings before competent courts on appeals concerning local elections shall be concluded in three months. It is recommended to reconsider the time-limits for the appeals on the decisions made by electoral bodies to ensure an effective system of appeal. In case the time-limits for the decision-making are too long, the legitimacy of the elections may be questioned and it is difficult for the elected bodies to fulfil their duties.

#### **XIV. Specific Issues Concerning the Local Self-Government Bodies**

61. The Code appears to affect features of the local self-government system by introducing changes that may have to be reflected in the Local Self-Government and Local Administration Act. This opinion does not include a review of the latter Act, and limits itself to examine the provisions relevant to these matters that are set forth in the Electoral Code. All of the matters discussed below have been subject to a petition before the Constitutional Court. The Constitutional Court decision released on 4 May 2011 has been taken into consideration in the comments and recommendations made below.

##### **A. Municipal councillors**

62. One of the elements of the reform is the amendment to Article 19 of the above-mentioned Act, which reduces the number of councillors in self-government bodies. In its recent decision, the Constitutional Court ruled that there is a constitutional standard of representation involved in this matter, and therefore held this amendment unconstitutional.

##### **B. The direct election of mayors of “local settlements”**

63. Before the adoption of the Code, mayors of “small settlements” with more than 150 inhabitants were directly elected, while those with less than 150 inhabitants were elected by municipal councils at the level of the municipality (which may contain many such settlements). Under the newly adopted Code, this threshold has been raised to 350 inhabitants, which seems to imply that more than one thousand such mayors would no longer be directly elected. In its recent decision,<sup>82</sup> the Constitutional Court has seen no contradiction with the Constitution with regard to these changes considering that the legislators have a broad margin of discretion on such matters. There are no international standards imposing the direct election of mayors.

##### **C. Election of “district mayors”**

64. “District mayors” were first introduced in 1995. These are mayors of “districts” with the three biggest cities of Bulgaria accounting for one million citizens. According to the Code,<sup>83</sup> “district mayors” are no longer directly elected, but elected indirectly by municipal councils. The Constitutional Court, in its recent decision,<sup>84</sup> did not find this rule in contradiction with the Constitution. However, it expressed concern that this new rule could be seen as a step

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<sup>79</sup> As in Article 267(3), (5) and (7) of the Code.

<sup>80</sup> Code of Good Practice in Electoral Matters, II 3.3 g.

<sup>81</sup> Articles 264(1), 265(1), 267(1) and (8) of the Code.

<sup>82</sup> Constitutional Court of Bulgaria, Decision no. 4/2011, 4 May 2011, item 1.

<sup>83</sup> Final and Transitional Provisions of the Code, Article 37b.

<sup>84</sup> Constitutional Court of Bulgaria, Decision no. 4/2011, 4 May 2011, item 8.

backward in the process of decentralization susceptible to weaken the democratic legitimacy of local authorities. As already mentioned, there are no international standards imposing the direct election of mayors.

## **XV. Other issues**

65. OSCE/ODIHR previously recommended that persons belonging to minorities should be allowed to use their mother tongue in the electoral campaign in order to promote their effective participation in public affairs.<sup>85</sup> This recommendation has not been taken into consideration in the Code as evidenced by Article 133(2), which requires that “the election campaign shall be conducted in the Bulgarian language.” It is essential that persons belonging to minorities be provided voter information and other official election materials in their languages. This would enhance the understanding of the electoral process for all communities.

66. Regarding domestic and international election observers, the OSCE/ODIHR Limited Election Observation Mission for the 2009 parliamentary elections recommended that the full scope of rights and responsibilities of observers be defined in the law.<sup>86</sup> To bring the election legislation closer in line with paragraph 8 of the 1990 OSCE Copenhagen Document which provides for the presence of observers, this recommendation should be reflected in the Code at least through a requirement that the matter be specifically addressed by the CEC.<sup>87</sup>

## **XVI. Concluding remarks**

67. The Election Code of Bulgaria provides a sound legal basis for the conduct of democratic elections. The harmonization of the rules and procedures governing the conduct of elections and their consolidation in one single Code is a decisive step towards ensuring the consistency of these rules and procedures and facilitating their uniform application. Most importantly, this is beneficial to Bulgarian citizens, voters and potential candidates alike.

68. The Code is comprehensive, covering in details rules and procedures regulating all stages of the electoral process for all types of elections. It is important that crucial aspects of the process be subject to detailed regulations, however it would have been more appropriate that some aspects be regulated through by-laws or CEC instructions given the need to retain a margin of flexibility, particularly on practical matters. This may for instance be the case with regard to provisions regulating the format of ballot papers. Furthermore, the structure of the Code could be improved to avoid unnecessary repetitions and make it easier for those in charge of its application to identify which rules or procedures apply to one particular election without having to look in too many different parts of the text. This may require that some of these rules and procedures be simplified or streamlined.

69. On the substantive aspects, the high quality of the Code must be underscored. There is, however, still room for further improvements in areas where public trust is much needed as the sensitivities may be high. This is the case specifically with regard to the remedies available for challenging decisions and actions of election commissions and the results of elections. The Constitutional Court decision resulted in welcome changes on several key

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<sup>85</sup> OSCE/ODIHR Limited Election Observation Mission Report on Parliamentary Elections (5 July 2009), Section on Participation of Minorities, page 19.

<sup>86</sup> OSCE/ODIHR Limited Election Observation Mission Report on Parliamentary Elections (5 July 2009), Section on Domestic Observers, pages 20.

<sup>87</sup> See also, Venice Commission, Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009; CDL-AD(2009)059). [www.venice.coe.int/docs/2009/CDL-AD\(2009\)059-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)059-e.pdf).

issues: the discretionary dismissal by political parties of members of election commissions appointed by them, the residency requirements to vote and to stand in elections, and internet voting. These provisions have been declared unconstitutional and thus were either repealed or amended by the National Assembly.

70. Successful electoral reform requires adequate time for all those involved and interested to participate in the reform. Considering the proximity of the next presidential and local elections scheduled for autumn 2011, it is recommended that the comments and recommendations offered by OSCE/ODIHR and the Venice Commission that do not require constitutional amendments be given due consideration ahead of the next elections with a view to improving the Code. This calls for broad consultations with key political stakeholders, including opposition parties, should any significant change to the current legal framework be considered. The Venice Commission and the OSCE/ODIHR stand ready to provide their support in this process. In the longer term, constitutional amendments would be required to clarify the voting rights of persons serving prison sentences and of citizens with dual citizenship.

71. To ensure the integrity of the election process and increase public confidence and considering the high level of involvement of political parties in the electoral management (i.e. the composition of the election administration), it is essential that the Election Code of Bulgaria be implemented in good faith and with a high level of political maturity.