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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 DRAFT LAW ON ELECTION OF PEOPLE'S DEPUTIES

OF UKRAINE

Adopted by the Council for Democratic Elections at its 38th meeting (Venice, 13 October 2011)

and by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011)

on the basis of comments by

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I. Introduction

1. On 23 June 2011 the Minister of Justice of Ukraine, Mr Oleksandr Lavrynovych, requested the Venice Commission and OSCE/ODIHR to comment on the text of the draft Law of Ukraine on Election of the People's Deputies of Ukraine (Doc. CDL-REF (2011) 034) hereinafter, the "draft law").

2. The draft law was prepared by the Working Group on reforming and codifying the electoral legal framework with the aim to bring it in line with democratic standards following the presidential decree of 2 November 2010. The Working Group consists of representatives of different state institutions, parliamentarians, civil society representatives, academics and domestic legal and constitutional experts. Invitations to the working group meetings were also made to international experts.

3. This draft opinion is based on an unofficial English translation of the draft law provided by the Ukrainian authorities. The reviewed translation consists of 114 articles and 174 pages. This joint opinion cannot guarantee the accuracy of the translation reviewed, including the numbering of articles, clauses, and sub-clauses. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

4. Earlier joint opinions of the Venice Commission and OSCE/ODIHR[1] as well as numerous election reports from previous OSCE/ODIHR election observation missions in Ukraine[2] provide good background for understanding the development of the election legislation in Ukraine. The draft law incorporates some previous recommendations of OSCE/ODIHR and the Venice Commission, however, some areas in the draft law could be further improved.

5. This opinion should also be read in conjunction with the following documents:

   - Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990);
   - 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)023rev;
   - Previous assessments and joint OSCE/ODIHR and Venice Commission joint opinions noted herein; and
   - Final reports of OSCE/ODIHR election observation missions noted herein.

6. A preliminary draft opinion (CDL (2011) 059prov) was prepared in September 2011 and sent to the Minister of Justice of Ukraine in anticipation of a visit by the rapporteurs and experts to Ukraine. A delegation of the Venice Commission and OSCE/ODIHR travelled to Ukraine between 21 and 23 September 2011 and held meetings with Mr Lavrynovych, a group of experts of the working group in charge of the draft law on parliamentary elections, representatives of political parties, civil society and international organisations and embassies present in Ukraine. A number of elements discussed during the visit have been incorporated into this text. Additional consideration was given to some provisions of the draft law based on the information received from different interlocutors in Ukraine. During the visit the

[1] All OSCE/ODIHR and Venice Commission joint opinions on the Ukrainian legal framework can be found at: http://www.osce.org/odihr/elections/ukraine and http://www.venice.coe.int/countries/ukraine.

[2] All OSCE/ODIHR election observation mission reports can be found at: http://www.osce.org/odihr/elections/ukraine.

authorities were informed that the text of the preliminary draft opinion would be changed on the basis of the discussions held in Kyiv.

7. During the meetings with the Minister of Justice, representatives of the Ministry and the presidential administration, the delegation was informed that a number of recommendations of the preliminary draft opinion would be taken into account by the working group on reforming the electoral legal framework.

8. This opinion does not comment extensively on the legislative processes which resulted in the draft law. However, it is an established principle that legislation regulating fundamental rights such as the right to genuine and free elections should be adopted openly, following public debate, and with broad support in order to ensure confidence and trust in electoral processes. In the process of drafting electoral legislation a broad consensus on the main rules is particularly important since electoral legislation should not favour the interests of one political party. A broad public consultation process encourages public trust and confidence in electoral outcomes.

9. However, during the meetings with the representatives of some political parties and civil society in Kyiv, the delegation of the Venice Commission and OSCE/ODIHR was informed that the initial phase of work on the project lacked transparency and inclusiveness. A number of interlocutors pointed out that the decision on the electoral system, the threshold for gaining mandates and the banning of electoral blocs had been taken unilaterally by the majority without any discussion with the opposition parties or civil society. Representatives of parties and civil society were invited to attend the later meetings of the working group after the intervention of the international community and were able to offer their opinions and suggestions concerning some technical aspects of the draft law. Such an approach seems to seriously undermine the confidence of a large part of the Ukrainian society in the electoral process one year before the parliamentary elections[3].

10. This opinion is provided with the goal of assisting the authorities in Ukraine, political parties, and civil society in their efforts to develop a sound legal framework for democratic elections.

11. This opinion was adopted by the Council for Democratic Elections at its 38th meeting (Venice, 13 October 2011) and by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011).

II. Executive Summary

12. The draft law concerns only the elections for parliament in Ukraine. It, therefore, does not meet the Resolution of the Parliamentary Assembly of the Council of Europe 1755 (Paragraph 7.1.1) of 10 October 2010 and the OSCE/ODIHR and Venice Commission long-standing recommendation that all electoral rules should be codified in a single Election Code to ensure that uniform procedures are applied to all

[3] *See*, paragraph 58 of Council of Europe's Venice Commission, Code of Good Practice in Electoral Matters, (2002), which states that "electoral law must enjoy a certain stability, protecting it against party political manipulation" and paragraph 64 according to which "care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.".

elections.[4] The Venice Commission and OSCE/ODIHR regret that the working group on reforming and codifying the electoral legal framework has not followed its advice to base its work on the Draft Election Code prepared by the working group of the Verkhovna Rada in 2010, which has been positively assessed by the Venice Commission in its opinion adopted in December 2010.[5] Nevertheless, the draft law does represent an attempt to improve on the current Law on the Elections of Parliament and contains positive aspects that should be applied to all elections in Ukraine.

13. Although the draft law incorporates a number of previous recommendations of both OSCE/ODIHR and the Venice Commission, several areas of the draft law could be improved with further revisions and the incorporation of the remaining recommendations of previous reports and opinions.

14. The draft law provides detailed regulation of parliamentary elections in Ukraine and attempts to anticipate most contingencies that could occur during an electoral period. The text of the draft law is at times too detailed and overly complex, which might create difficulties with its understanding and implementation by electoral commissions.

15. Positive changes made in the draft law include:

- Mass media are provided with unrestricted access to all public events relating to the elections, meetings of election commissions and the premises of electoral precincts on election day;
- The chairperson, deputy chairperson and secretary of the District Election Commissions (DECs) must undergo mandatory training by the Central Election Commission (CEC) before taking up the posts;
- Commission members who disagree with a decision have two days to file a written comment which must be attached to the minutes;
- The draft law eliminates the provisions that allowed the nominating parties of an election commission member the unlimited right to remove the member without cause;
- The right of Precinct Election Commissions (PECs) to add voters to the voter list on election day has been removed. Voters can only be added to voter lists based on a court decision;
- The possibility of independent candidates to run;
- The draft law notably does not contain a provision found in previous laws which allows the filing of a complaint either in a higher election commission or the court.

16. However, a number of issues raised in prior OSCE/ODIHR reports and the Venice Commission and OSCE/ODIHR joint opinions remain unaddressed in the draft law. Consideration should be given to addressing these recommendations in the draft before it is submitted to parliament. These issues include:

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[4] See OSCE/ODIHR Election Observation Mission Final Report on the 2010 presidential election, page 27, at: http://www.osce.org/odihr/elections/ukraine/67844. See also the Joint Venice Commission – OSCE/ODIHR opinion on the Law of Ukraine "On Elections of People's Deputies of Ukraine", December 2005; opinion on legislative provisions concerning early elections in Ukraine, June 2007(Doc. CDL-AD (2005) 002 rev.) at http://www.venice.coe.int/countries/ukraine. As stated in this opinion, the adoption of an Election Code could contribute to the stability of electoral legislation in line with the recommendations of the Code of Good Practice in Electoral Matters.

[5] See doc. CDL-AD (2010) 047**,** Opinion on the draft election code of the Verkhovna Rada of Ukraine - Adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at it 85th Plenary Session (Venice, 17-18 December 2010)

- Limitation on the right to stand for anyone convicted of a deliberate crime, regardless of the severity of the crime committed, which is contrary to OSCE commitments, numerous recommendations of OSCE/ODIHR and the Venice Commission in the electoral field, good practice and other international standards. The Venice Commission and OSCE/ODIHR are aware that such limitation is based on the Article 76 of the Constitution of Ukraine and hope that this problem will be considered when the Constitution is revised;
- Lack of clear criteria and deadlines for defining boundaries of electoral districts;
- Lack of clarity on the possibility of challenging election results;
- Lack of full disclosure, before and after elections, of sources and amounts of financial contributions and the types and amounts of campaign expenditures, as well as independent monitoring of the funding of political parties and electoral campaigns. The draft also lacks effective, proportionate and dissuasive sanctions for violation of campaign funding provisions;
- Deadlines for registration of candidates in the constituencies;
- Removal of the right of parties to form electoral blocs;
- Certain provisions limiting the right to freedom of expression that are contrary to OSCE commitments, recommendations and opinions of OSCE/ODIHR and Venice Commission and other international standards;
- The maximum number of voters allowed per precinct is maintained at 2,500;
- Observers are allowed to "take all necessary measures to stop illegal actions during voting and vote counting at the PEC";
- Two or more international observer groups wishing to co-ordinate their activities must seek prior approval of the CEC;
- PEC members have to sign the ballot before giving it to the voter in order for it to be valid;
  The draft contains provisions allowing the PECs to declare the results invalid based on arbitrary standards of impermissible abuse, which may establish an acceptable level of fraud.

17. The main concern expressed during the visit is the lack of consultation with opposition parties and civil society on the change of the electoral system, the setting of the threshold for gaining mandates and the banning of blocs. Making these fundamental changes in the electoral system without broad public discussions and consultations can compromise the legitimacy of the draft law regardless of how it is implemented (see paragraph 9 above).

18. In the framework of this joint opinion, the Venice Commission and OSCE/ODIHR are pleased to offer recommendations for consideration by the authorities of Ukraine in support of their efforts to improve election-related legislation and bring it more closely in line with OSCE commitments and international standards. However, it must be emphasised that, in addition to further amendments to the legislative framework, full and effective implementation of the law is necessary in order to ensure conduct of elections in line with international standards.

III. Comments on the Text of the Draft Law

19. The draft law establishes a new electoral system for the parliamentary elections in Ukraine. Since independence in 1991, the electoral system for parliamentary representation in Ukraine has changed a number of times:

- Before 1998 all members of the parliament were elected in single-seat constituencies;
- In 1998 a mixed system was introduced with half of the 450 deputies elected by proportional representation and the other half in single-seat constituencies.
- In 2004 a party list proportional representation system using closed lists was introduced. It was applied in the 2006 regular and 2007 early parliamentary elections.

20. After the 2007 early elections the authorities of Ukraine were engaged in a dialogue with different international institutions on possible improvements of the electoral system in Ukraine, including the Parliamentary Assembly of the Council of Europe, the Venice Commission and OSCE/ODIHR. During the discussions on electoral reform, the Venice Commission proposed to introduce a proportional system based on multiple regional constituencies which could avoid the disadvantages of both the single constituency proportional system and the mixed system used in the 1998 and 2002 elections. The Parliamentary Assembly of the Council of Europe in its Resolution 1755 (2010), paragraph 7.1.1. recommended that **"***electoral reform should not only entail the adoption of a new election code, but also of a new electoral system, and reiterates its recommendation that an electoral system be adopted that consists of a proportional system based on open lists and multiple regional constituencies*".

21. The draft law represents a return to the mixed electoral system in use in Ukraine in 1998 and 2002. The draft law provides for a mixed proportional-plurality (majoritarian) electoral system, whereby half of the members of parliament are elected on political party lists in a single nationwide constituency and the other half are elected in single mandate constituencies (first past the post, one round).

22. Such frequent changes of the electoral system do not contribute to the stability of the electoral legal framework and electoral system. The choice of an electoral system is the sovereign right of each state; however it should be decided and agreed upon through broad and open discussions in the parliament with the participation of all political forces. Since the draft law re-introduces the system used in the 1998 and 2002 parliamentary elections, it should take account of the shortcomings of the electoral process identified by the national and international experts and observers during those elections.[6] The change of the system should not be understood in such a way as to undermine the confidence of the voters, political parties and civil society in the electoral process.

A. Basic Principles

23. Article 2(5) lays out the provisions by which participation in the electoral process and equality of rights and opportunities of candidates and parties are ensured. Article 11 articulates the basic principles upon which the election process must be based and is comprehensive. It includes a strong statement that the treatment of parties and candidates by state bodies, local self-government bodies, courts, enterprises, institutions, organisations, companies and other public officials is to be unbiased.

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[6] Unfortunately, the local elections organised in 2010 on the basis of a mixed system seemed to repeat some of the problems observed in 1998 and in 2002.

24. The draft law stipulates in Article 9 (1) that the right to be elected is subject to a five year residency requirement. This residency requirement is excessive and unnecessary. 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 six months. A longer period may be required only to protect national minorities.[7] Therefore, consideration should be given to reducing the length of the residency requirement. The Venice Commission and OSCE/ODIHR are aware that such limitation is based on Article 76 of the Constitution of Ukraine and hope that this problem will be considered when the Constitution is revised.

25. Article 9(4) prohibits anyone who has been convicted of a deliberate crime from being nominated or elected as a member of parliament unless their sentence has been expunged. This would deny passive suffrage rights based on a conviction for any deliberate crime, regardless of the nature or severity of the crime committed. The restriction of suffrage rights of general categories of groups of people without consideration to specific facts unique to the person are not in line with good international practice. The denial of suffrage should occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed.[8] Therefore, OSCE/ODIHR and the Venice Commission recommend that this restriction be narrowly defined to apply only to persons convicted of a serious crime.

26. Article 13 states that parliamentary elections should be prepared and conducted in a public and transparent manner. On a positive note, decisions of election commissions and executive bodies relating to the rights of voters shall be made public through print mass media or through other means. It would enhance transparency if this article clearly required the publishing of all decisions on the website of the CEC.

B. Territorial Organisation of Elections

27. The election law requires in its Article 18 the setting up of one nationwide electoral district which includes the entire territory of Ukraine and any electoral precincts established abroad, and 225 single-mandate electoral districts established by the CEC. The deviation in the number of registered voters in the single-mandate districts cannot exceed 10 per cent from the average number of voters in a single-mandate district.

28. The draft law does not specify any criteria for the CEC to use in defining the boundaries of electoral districts.[9] There is a risk that in case of disregard of the administrative-territorial division of the country while determining the boundaries of electoral districts, the co-operation of DECs with the state bodies that maintain the State Voter Register could be compromised. It is recommended that the law provides

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7 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.

8 *See, e.g.,* Paragraph 24 of the 1990 OSCE Copenhagen Document which provides that "participating States will ensure that the exercise of all the human rights and fundamental freedoms will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law". *See also*, Paragraph 1.1(d.iv) of Council of Europe, Venice Commission, Code of Good Practice in Electoral Matters, Guidelines for Elections, (2002), page 8.

9 The basic principles for setting-up constituency boundaries can be found in the Code of Good Practice in Electoral Matters, I.2.2.

clear criteria for defining the boundaries of electoral districts and that the administrative-territorial division of the country is respected.

29. At the same time, in an attempt to improve transparency, there are several provisions which require that information concerning the creation of electoral districts and precincts be published in national and regional media by the CEC and the DECs. This will ensure that voters will be informed in national and regional media about the creation of the districts and precincts and their location. It is suggested that all of the information also be required to be posted on the CEC website.

30. However, the draft law does not regulate the issue of the deadline for establishing the electoral districts. It stipulates that a separate law, which will be adopted no later than three months after the adoption of the law on elections will regulate this issue. This might be problematic since there is a risk that the boundary delimitation is protracted and different political forces will not have enough time to prepare for the 2012 parliamentary elections.

31. According to Article 19 (3), voting is conducted in electoral precincts which can have between 20 to 2,500 voters. OSCE/ODIHR and the Venice Commission have previously recommended reducing this number to ease the problem of overcrowding.[10] While any reduction in the number of voters per precinct will have financial implications, the authorities should consider if these would be outweighed by the positive impact that reducing the number of voters would have on the practical aspects of implementing universal suffrage as is guaranteed by the draft law.

32. The draft law establishes that there is no specific electoral district abroad (Article 22). Electoral precincts abroad shall be established by the CEC within a determined single-mandate district on the basis of a proposal by the Ministry of Foreign Affairs of Ukraine. Such a significant increase of the number of voters in one of the single-mandate districts might violate the principle of equal representation.

C. Election Commissions

33. The three tiered system of election administration which consists of the CEC, DECs and precinct election commissions (PECs) is maintained in the draft law. The system is hierarchical with the CEC having supervisory authority over the lower level commissions. The draft law contains amendments to the Law on the Central Election Commission.

34. Article 26(3) contains a detailed list of the persons who cannot be members of DECs or PECs. It prohibits people who have committed deliberate crimes from being election commission members. This restriction would appear to be overly broad and not proportionate as in the case of passive suffrage rights. Consideration should be given to changing this section to reflect a connection between the type and severity of the crime committed and the duties related to being a member of an election commission.

35. Article 26 (6) of the draft law provides that “A person may be appointed to be the head, deputy head or secretary of a district election commission only if he/she has completed the training for managerial positions of a district election commission organised by the Central Election Commission”. In addition the secretary must have

[10] See OSCE/ODIHR and Venice Commission Joint Opinion CDL-AD(2009)028, page 10, paragraph 36.

command of the state language to the extent necessary for the management of the records of the DEC. These are positive developments; however this provision raises a number of questions; for instance, how the candidates for the training are selected and when the timetable for such activities is announced.

36. In a positive development the provisions requiring DECs to facilitate campaign meetings for candidates has been removed.

37. The formation of the CEC is regulated by a separate law on the CEC. The draft law maintains the political system of nominations to lower level election commissions. In a positive step the list of parties who can nominate members has been expanded to include all political parties that nominated candidates for the election and not just those represented in the current parliament. However, the law does not foresee any procedure for representation of independent candidates on the level of DECs. If there are insufficient nominations for PECs abroad the Ministry of Foreign Affairs has the right to nominate members.

38. There is no specific requirement for gender equality contained in the articles on formation of the DECs and PECs. Consideration should be given to including one.

39. DECs are established by the CEC and shall consist of no less than 12 and no more than 18 members. PECs are established by the DECs and shall consist of 10-18 members for a small PEC, 14-20 members for a medium PEC and 18-24 members for a large PEC. Consideration should be given to reducing if possible the maximum number of DEC members and the maximum and minimum number of PEC members to promote consensus and orderly meetings. This would improve the work of the DECs and PECs and also address the issue of overcrowding in PECs on election day, especially considering the large number of voters in some PECs and the size limitations of precincts.[11]

40. Each party nominating members to the DECs and PECs has the right to a proportional share of the managerial positions (Articles 27 (9 and 10) and 28 (10 and 11). The share of managerial positions for each party depends on the proportion of commission members selected out of party nominees. The exact procedure for the distribution of the managerial positions among the parties is to be determined by the CEC. In a positive development, the draft law requires that the procedure result in an approximate evenness of territorial distribution of the positions received by each party.

41. When submitting a nomination for a DEC or PEC, a party must also submit information concerning the nominee including confirmation of the command of the state language, education, profession, experience, and confirmation that the nominee has completed the mandatory training of the CEC (Article 26). This would seem to imply that there are certain criteria for being selected as commission members; if this is so then it should be explicitly stated in the law.

42. Higher level election commissions have the authority to convene a meeting of the lower level commission Articles 30 and 31 (7). A meeting can also be convened by a written request of one third of the members of the commission. Article 33 (5) establishes that a quorum is reached when at least half of the members of the election commission are present. According to paragraph 10 a decision is adopted by

[11] See article 82(3), small election precincts shall be no less than 50 square meters, medium PECs 75 square meters and large PECs 90 square meters.

"an open vote by a majority of the members present at the commission's meeting". A combination of these two provisions can lead to abuses, since there is a possibility that decisions can be taken by a minority of commission members.

43. Article 33(6) and (7) contain positive requirements that all commission members be notified of the time, place and agenda of meetings at least one day before and in any case they must receive the necessary documents before the meeting begins.

44. Members who disagree with the decision of the commission have the right to file a written comment within two days of the meeting. The comment must be attached to the minutes. This is a positive step as it makes the records of meetings complete and will facilitate the review of commission decisions on appeal. Decisions of election commissions can be cancelled by higher level commissions or a court. Higher level commissions are specifically given the right to replace the lower level commission decision with their own.

45. Article 34 gives the party representatives the right to be present at meetings of the CEC with an advisory vote. It also lists those individuals who may be present at CEC meetings without permission, which include candidates and their proxies, official observers, both domestic and international and mass media. The article also makes it clear that the same individuals have the right to be present without invitation at meetings of the DECs and PECs including for counting and tabulation.

46. It is laudable that Article 35 specifies that minutes of all commission meetings be kept in writing. However, there is no mention of public access to the meeting minutes. Commission minutes should be available to all participants of the electoral process upon request.

47. Article 35 also specifies the information that needs to be included in all decisions of election commissions. This should ensure that complainants are supplied with the information necessary to appeal a decision of a commission and promote consistency.

48. In another positive step to improve transparency, Article 35(5) mandates that any decision of a commission be publicly available on the information stand of the commission no later than the morning after the day it was adopted. The information stand of a commission must be placed in the commission premises in an area that is freely accessible to the public. It is recommended to include a requirement that all decisions also be posted on the CEC website.

49. Article 36 makes it clear that commission members are required to adhere to the constitution and laws when conducting their duties. They have the right to be on leave from their job to engage in commission business and cannot be dismissed or transferred to a lower position by their employer for performing their duties. Article 36(7) contains a comprehensive and clear list of the rights of an election commission member. This includes the right to access to all information and documents of the commission and the right to fully participate in the meetings and decisions of the commission. Commission members are prohibited from campaigning for or against any candidate. They also cannot publicly assess the activities of a political party that is participating in the election.

50. It is of note that the draft law does not contain a provision which allows the nominating party of an election commission member the unlimited right to remove a member without cause. This will address the problem of election commission

members being pressured or threatened with removal should they not vote on issues in compliance with instructions given by the nominating party. Commission members must act impartially without regard to political motivations once appointed. This change satisfies prior OSCE/ODIHR and Venice Commission recommendations. [12]

51. Article 37(10) allows for the dismissal of the chairperson, deputy chairperson and secretary of a DEC or PEC if they fail to perform their duties and two thirds of the respective commission members file a request for dismissal with the commission that established the DEC or PEC. It is recommended to set clear criteria based on which the management of election commissions can be dismissed in order to avoid the abuse of this provision.

D. Voter Lists

52. The preliminary voter lists are compiled by the State Voter Register maintenance bodies pursuant to the Law on the State Voter Register and are compiled in accordance with procedures approved by the CEC. Voter lists are printed in two copies, one is kept at the DEC and the other is transferred to the PEC to be posted for public inspection by voters. A voter can request a change to his/her own data or to any other voter's data. If a voter's data is challenged by another voter he/she must be notified and given the opportunity to challenge the request.

53. The CEC is responsible for the register's content and maintenance. The State Voter Register department of the CEC manages the software, technical support and security of the information on the register, while 755 register maintenance bodies throughout the country enter the data.[13]

54. Absentee voting certificates are not envisaged, however, there is a relatively simple procedure for voters to seek a temporary change in their voting address without changing their residence if they are not able to vote in their regular precinct. This also applies to voters who will be temporarily abroad on election day. All voters can file a request to make this temporary change up to five days before election day. The application is made to the relevant DEC or PEC and submitted by them to the State Voter Register maintenance body no later than five days before election day.

55. Members of DECs shall be included in the voter list for the closest precinct to the location of the DEC. PEC members shall be included in the voter list of the PEC for which they are members.

56. Complying with a prior Venice Commission and OSCE/ODIHR recommendation, the authority of PECs to make changes, other than correcting technical errors, to the voter lists on election day has been removed. Any change or adjustment to the voter lists on election day that affects the right of a voter to vote must be made on the basis of a court judgment or by notification from the State Voter Register maintenance body. PECs may only correct inaccuracies related to misspelled names, errors in the date of birth, number of the building or apartment provided that it is obvious that the person on the list is the same one who has come to vote.

57. The draft law contains safeguards against multiple voting and other fraud related to the voter list that will improve the accuracy of the voter list if implemented in a

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12 See also Code of Good Practice in Electoral Matters (CDL-AD (2002) 023 rev.,II.3.1.f.

13 See OSCE/ODIHR Final Report on the 2010 Presidential Election in Ukraine, page 10.

comprehensive and consistent manner. This includes requiring relevant state agencies and institutions to provide updated data to the State Voter Register maintenance bodies to verify the preliminary voter lists and the requirement that the register maintenance bodies act as the central collector of information on all changes to the voter lists.

E. Financing of Elections

58. All campaign expenses must be paid from the official electoral fund account of the party or independent candidate. The account must be opened no later than the tenth day following the registration as a candidate. Each electoral fund must have a designated manager who is responsible for overseeing the compliance with the law in the expenditure of funds.

59. The electoral funds of the candidates and parties are made up of the party's own resources and voluntary donations of natural persons. The electoral fund of a single mandate candidate is made up of his or her own resources and voluntary donations. Since the draft is silent on the issue of in-kind donations it is assumed that they are not allowed. If this is the intention, it would limit political involvement through campaign support for people who cannot make financial donations to election funds. However, in-kind contributions should not be prohibited simply because they are not traceable through the election fund. It is recommended to allow for the contribution of in-kind services to a political campaign, however subject to strict reporting requirements.

60. The draft law does not provide for spending limits that party or single mandate candidate can utilise for the campaign. As noted by the United Nations Human Rights Committee in General Comment No. 25, "*Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party*." The lack of any campaign spending limits would tend to favour wealthy candidates and parties and could discourage underfunded parties and candidates from participating in the election. Consideration should be given to specifying a reasonable spending limit.

61. Voluntary donations from natural persons to a party cannot exceed 400 minimum wages (about 36,000 EUR) and to a single mandate candidate 20 minimum wages (about 1,800 EUR).[14] Donations from foreign citizens, anonymous donors and non-natural persons are prohibited.

62. Article 50(10) calls on the banking institution to return to the party any unused funds based on a request from the party. On the other hand, any unused funds in the account of a single mandate candidate shall be transferred to the state budget. There appears to be no logical reason for the different treatment of party's unused funds and those of a single mandate candidate and consideration should be given to ending this discriminatory practice.

63. Article 48(9) prohibits any payments from the current accounts of candidates after 15:00 hours on the day prior to election day. This may prove to be too restrictive as candidates must have time to pay invoices and other bills that may arrive after the deadline. It would seem more appropriate to prohibit any new expenses or invoices for campaign activity that occur after the deadline.

[14] A minimum wage is approximately 1,000 UAH, which is about 90 EUR.

64. The manager of the fund must submit a financial report on a form approved by the CEC no later than on the 15th day after election day. This report must be posted on the CEC website. As previously recommended by OSCE/ODIHR and the Venice Commission the law should require full disclosure, before and after elections, of sources and amounts of financial contributions and the types and amounts of campaign expenditures. This would provide timely and relevant campaign finance information to the public and would increase transparency of the process.

65. Oversight over the adherence by electoral subjects to legal requirements on reporting on the receipt and use of electoral funds is exercised by the CEC. However, there is no indication as to what action the CEC is obligated to take in relation to the reports and no deadline is envisaged for reviewing them. The draft does not establish any liability for failure to submit reports. As stated by the Council of Europe Committee of Ministers in their Recommendation 2003(4)**:** *"States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication."* The law should provide for independent monitoring of the funding of political parties and electoral campaigns. It should also provide for effective, proportionate and dissuasive sanctions for violation of campaign funding provisions.

66. Two positive provisions (Article 47, paragraphs 2 and 4) require that remuneration for election commission members not to be lower than the average salary they receive at their principal place of business and that remuneration members receive cannot constitute a reason to cancel or reduce unemployment or other social benefits including pension payments.

F. Nomination and Registration of Candidates

67. According to Article 52 the nomination of candidates begins 90 days prior to election day and ends 78 days prior to election day. Parties have the right to nominate a list of candidates in the nationwide election district. Candidates in the single-mandate districts can be nominated by parties or they can be self-nominated. A person included in the list of candidates of a party cannot be nominated in a single-mandate district and may be included in only one party list or be nominated for one single-mandate district. Candidates who are not members of any party may nonetheless be nominated by a party and appear on the list of that party. Candidate lists for the nationwide district are registered with the CEC. Candidates for single-mandate districts are registered with the relevant DEC.

68. National party lists are registered by the CEC and candidates in single mandate constituencies by the DECs. The nomination of candidates ends 78 days prior to election day, however, article 27 of the law provides that DECs are established no later than 60 days prior to election thus creating an inconsistency which should be rectified

69. In a positive step, Article 53 (3) of the draft law no longer dictates the procedure for the formation and approval of the party list. Rather it is conducted by the party according to the procedure prescribed by the party's charter.

70. The draft law does not allow for formation of electoral blocs. Unless there is a legitimate reason for banning the formation of blocs, political parties should be free to choose whether they want to associate with other parties in coalition or run

separately. The restriction has implications for the right of free association of the parties. It is also one of the issues that was not open to discussion during the working group process.

71. Complying with previous OSCE/ODIHR and Venice Commission recommendations, the draft law introduces the concept of independent candidates in the single-mandate districts (Article 55). However, the deadlines for the registration of such candidates are too short and could represent a serious impediment for them to provide all necessary documents to the corresponding DEC. Article 59 provides that registration documents shall be submitted by a candidate no later than 51 days prior to the election day. The DECs has 4 days to consider the documents and take a decision on registration. In case of refusal to register, the applicant would be left with one day in which to file an appeal not taking into account the possible extension of deadlines during week-ends.

72. Article 63(2) states that information contained in documents filed with the CEC on registration of candidates shall be open and available to the public but does not specify in which manner they are made public. Consideration should be given to mandating that the documents are published on the website of the CEC.

73. If a party or single-mandate candidate files documents that contain technical errors the party or candidate can resubmit the corrected documents up to 69 days prior to election day under Article 60(3). The list of registered candidates in the nationwide and single-mandate districts must be published by the CEC in two newspapers.

74. A deposit equivalent to 2,000 minimum wages (about 180,000 EUR) is required from parties who nominate a list and a deposit equivalent to 12 minimum wages (about 1,100 EUR) is required for single-mandate candidates. Only parties who win the right to participate in the distribution of mandates and those single-mandate candidates who win a seat are entitled to a return of the deposit. All other deposits are transferred to the state budget.

75. This financial requirement could lead to lower participation by smaller parties and individual self-nominated candidates who do not have the personal or party resources to risk losing the deposit. Unless there is a legitimate election-related reason for this requirement, consideration should be given to lowering the amount of the deposit to ensure that all parties and individuals who wish to participate in the election as candidates are able to do so.

76. Pursuant to Article 57 all candidates must submit a property and income statement to the state tax body. The statements are made public on the official website of the CEC after the candidate is registered.

77. Article 60 lists the reasons for the CEC and DECs to refuse registration of candidates. The decision on refusal must contain a complete list of the grounds for refusal and must be delivered to the party representative or other person who submitted the documents. This should remove any uncertainty as to the reasons for the refusal of registration and if implemented fairly provide the courts with a uniform standard for review of any refusal.

78. There is a specific list of reasons why a candidate or party can be warned by the CEC or DEC in Article 61(2). Warnings that are issued are published respectively in nationwide, regional or local printed mass media. A requirement that all warnings are also published on the website of the CEC should be considered.

79. A candidate's registration may be cancelled by the election commission that registered them for any of the reasons listed in Article 61(4). If implemented fairly the provisions should prevent deregistration of a candidate or party for arbitrary reasons.

G. Media and Information Support of Elections

80. Article 63(1) declares that voters shall be given the possibility to access diverse, objective and unbiased information that is necessary to make a deliberate, informed and free choice. The draft law requires that when distributing information on the election, all election commissions, mass media, governmental institutions and bodies and civic associations, do so in an unbiased, unprejudiced, balanced, reliable, complete and accurate manner. The CEC must approve a procedure and list of activities for providing information to voters on their rights and responsibilities and the ways to exercise and protect these rights no later than on the tenth day following the start of the election process.

81. Article 13 states that all reporting on the elections by mass media, both private and public, must be done in an unbiased manner. It also guarantees unrestricted access for the mass media to all public events relating to the elections, meetings of election commissions and premises of election precincts on election day.

82. Article 66(2) requires that mass media should attempt to obtain information it intends to publish related to the election from two or more sources with preference given to original sources. This is an unusual provision to place on mass media especially since it applies only to information relating to elections. The issue of mass media sources of information would be better regulated in the broadcasting law and should be applicable at all times not just during elections. This type of requirement can also result in self-censorship by mass media for fear of violating the law. It can also have a negative impact on freedom of expression. It is recommended to reconsider and repeal this provision.

83. The media provisions in Articles 70-72 are detailed and seem designed to achieve equality of opportunity for all candidates in relation to access to the media during the electoral campaign. Article 70(1) makes the principle of equal opportunity applicable to campaigning through the mass media and regulates both public and private media.

84. Mass media must set and publish their rates for political advertising 90 days before election day. This information must be made public and sent to the CEC and DECs. No changes are allowed for the duration of the campaign. Media outlets cannot offer or grant discounts to candidates and parties. A mass media organisation that provides space for campaigning to one candidate or party cannot refuse to offer space to all other candidates and parties on the same terms. Coverage of the election process in news and current affairs programs must be objective, unbiased and balanced.

85. Article 70 provides that candidates have the right to use state-owned and municipal mass-media for campaign advertising. Article 71 calls for airtime for election campaigning to be provided by state-owned and municipal television and radio stations between 19:00 and 22:00. The provisions in the current law concerning the specific amount of time allocated to candidates on state and municipal broadcast media are not reflected in the draft law. These details should be provided in the law to avoid any confusion over how much time each candidate is allotted.

86. All political advertising must be purchased according to a contract concluded by the custodian of the campaign funds and the media outlet. The fee for the spots must be transferred to the account of the broadcaster before the spot is aired. Fifteen per cent

of the space in the spot must be used to mark the advertising as political with full information about the purchaser.

87. Broadcasters are prohibited from commenting on or assessing the content of election campaigning, the activities of the party or candidate in any form within 20 minutes before and after the broadcasting of a campaign spot under Article 71(4). This section impacts on the freedom of expression of the broadcasters and appears overly restrictive. OSCE/ODIHR and the Venice Commission recommend to carefully reconsider this provision.

88. Article 73(18) bans campaigning in foreign mass media that function on the territory of Ukraine and in mass media registered in Ukraine in which the share of foreign ownership is over 50 per cent. This implies that candidates would be prohibited from issuing campaign statements or advertising aimed at Ukrainian voters residing abroad, thus limiting the ability of candidates to reach voters residing abroad. As presenting a candidates' platform to voters is an inextricable part of the right to be elected, this provision should be reconsidered. The restriction also appears to violate citizens' right to receive and impart information regardless of borders as set out in paragraph 26.1 of the OSCE Moscow Document.[15] OSCE participating States also commit themselves "to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society."[16]

89. Article 67 of the draft law lowers the blackout period during which opinion polls cannot be published by the media from 15 days to 10 days. This is a positive improvement that complies with a previous recommendation of the Venice Commission and OSCE/ODIHR. However, consideration should be given to further reducing the blackout period.[17]

H. Election Campaign

90. Article 68(12) calls on local self-government and local executive bodies to allocate places for posting of campaign material. Although one can assume that the general principle of equal treatment of candidates applies here it would be better if the article stated that the allocation of places must be done on an equal basis. It could be useful to specify the amount of space that each party and candidate is entitled to in order to avoid disputes.

91. Article 73(12) creates a right of reply for parties and candidates when they feel that information published by broadcasters was "untrustworthy". Although a right to reply can be a positive tool to allow candidates or parties to react to critical remarks they consider unjustified, this provision needs to be clarified. There is no clear definition of what is meant by "untrustworthy" thus the broadcaster and the courts would not know

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15 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 10 September 1991: the participating States "consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards".

16 Paragraph 26 of the OSCE 1999 Istanbul Document.

17 See e.g. the Council of Europe Recommendation on Measure concerning Media Coverage during Election Campaigns 1999, para. 3.2 and Recommendation of the Committee of Ministers of the Council of Europe on media coverage of election campaigns 2007.

what standard they should use in evaluating a request to reply. Failure to clarify this provision could result in abuse of this right by candidates or parties.

92. Election campaign activities are almost invariably a manifestation of an individual's right to freedom of expression and/or association. Ukraine is obliged under the European Convention for the Protection of Human Rights and Fundamental Freedoms to ensure those rights to everyone within its jurisdiction.[18] Any restriction on these rights must be strictly necessary and proportionate in a democratic society. It may be difficult to reconcile with these principles a rule in the draft law which appears to prohibit foreign nationals and stateless individuals from expressing opinions during campaign activities. It is not clear how such a blanket restriction is strictly necessary in a democratic society.

I. Guarantees of Activities of Political Parties, Candidates and Official Observers

93. A political party that has registered candidates in the nationwide election district is entitled to have a representative in the CEC who has the right of deliberative vote. It is also entitled to have no more than five authorised representatives in the nationwide district and two in each single-mandate district. Authorised representatives in single-mandate districts have the right to deliberative vote in the respective DECs. A representative of a party and an authorised person have the right to be released from their work or service duties without pay and with the agreement of the employer or organisation.

94. In a positive note, party representatives are granted broad rights under Article 74(13) as are authorised representatives under Article 74(14). Articulating these rights clearly and comprehensively should lead to the promotion of transparency and increase confidence in the electoral process.

95. The rights of party representatives include the right to be present at all CEC meetings, to receive the agenda and materials prior to the date of the meeting, to participate in discussions and access all documents and minutes. They can also familiarise themselves with all communications between the DECs and the CEC on the result of voting and are entitled to obtain copies of election commission protocols. Authorised representatives represent the interest of the parties and candidates in relation to other electoral subjects. They can participate in meetings of DECs and PECs, be present at the PEC during voting and vote counting.

96. Article 76 defines official observers as those from parties, single-mandate candidates, non-governmental organisations (NGOs), foreign states and international organisations. In a positive step, the requirement that an NGO be registered for a specific period of time before being allowed to deploy observers has been removed from the draft law.

97. NGOs must first apply to the CEC for permission to deploy official observers under Article 77(2) no later than sixty days prior to election day. The only permissible reason for denying such an application is that the NGO was not properly registered or that the charter does not stipulate that it is engaged in election-related matters including monitoring.

98. Official observers from parties, candidates or NGOs have broad and comprehensive rights which are detailed in Article 77(9). One troubling provision would allow official

[18] Articles 1, 10, and 11 of the convention.

observers to “take all necessary measures to stop illegal actions during voting and vote counting at the PEC.” This right is too broad and could potentially be abused by some electoral subjects. It would be better to indicate that official observers should immediately notify the PEC, DEC, CEC or other relevant authorities if they observe actions they believe to be illegal rather than take action themselves.

99. Official observers from foreign states and international organisations are accredited by the CEC by filing a request through the Ministry of Foreign Affairs no later than seven days prior to election day (Article 78). The details of the procedure for accreditation of international observers are to be established by the CEC. When developing regulations on accreditation, the CEC should be sure to include detailed and comprehensive reasons for rejecting accreditation as has been done for NGO observers. The rights of official observers from foreign states and international organisations are outlined in Article 78(6), they are comprehensive and detailed. The observers may be accompanied by an interpreter according to Article 78(3).

100. There is a requirement in Article 78(6)(6) that if two or more observer groups from foreign states or international organisations wish to co-ordinate their activities they must seek approval from the CEC. It is hard to determine what the purpose of this provision is other than to affect the association rights of observers. Unless a legitimate reason can be articulated for this requirement consideration should be given to eliminating it.

101. Article 78(6)(4) allows official observers to take photographs and make audio and video recordings of proceedings without violating the secrecy of the ballot. More detailed rules allowing only limited use of cameras for ensuring the transparency of the process would be appropriate.

J. Voting, Counting and Establishment of Results

102. The procedure for delivery of ballot papers outlined in Article 81 contains sufficient security measures to assure the integrity of the ballots before election day. Transparency is guaranteed throughout the process of delivery and transfer of the ballot papers through the creation of a clear chain of custody with the use of ballot acceptance and delivery documents. All of these documents are required to be made public.

103. However, provisions on the printing of the ballot papers that exist in the current law on the election of people’s deputies of Ukraine (2005, Article 79) do not appear in the draft. Unless a specific legal provision exists in a different piece of legislation,consideration should be given to incorporating these provisions from the existing law into the draft

104. Voting takes place from 08:00 to 20:00 hours without interruption, according to Article 84 (1). The PEC is responsible for organising the voting in such a way that order is maintained and secrecy of the vote is guaranteed. If an incident occurs which violates Ukrainian legislation the chairperson or deputy chairperson of the PEC can invite the police inside to resolve the situation. Once the situation is resolved the police must leave the premises. Police are prohibited to enter or to be in the premises except for voting.

105. Article 84(3) maintains the present requirement that the member of the PEC who hands the ballot paper to the voter must sign the ballot paper in order for it to be

valid. Previous joint opinions have recommended that this requirement be deleted unless a legitimate reason related to the security or secrecy of the ballot can be articulated for its retention. In previous elections ballot papers were invalidated because of the failure of the PEC member to sign, even though the intent of the voter was clear. This punishes the voter for an error, either accidental or intentional, by the PEC member, which does not appear to affect the validity of the ballot being cast. OSCE/ODIHR and the Venice Commission reiterate their previous recommendation that consideration should be given to reconsider this requirement.

106. There are provisions that allow voters who are blind and/or physically unable to vote to invite a third person into the booth to help them exercise their right to vote. The list of people who cannot help another voter is comprehensive and logical.

107. The end of voting is announced by the head of the PEC at 20:00 hours and only those voters who are in the premises at that time are allowed to vote. This restriction should be amended to allow all voters who are in line at 20:00 hours, whether or not they are inside the premises, to vote. This can be accomplished by having a member of the PEC stand at the end of the line at 20:00 hours and inform voters who arrive after that time that they will not be allowed to vote.

108. In a positive step the PEC must transmit preliminary information on the number of voters included on the voter list, the number of voters who received ballots and the number of homebound voters to the DEC immediately after voting ends. This increases the transparency of the voting process and reduces the possibility that the results at the PEC can be manipulated.

109. Homebound voting is allowed under Article 85 for those voters who are "incapable of moving independently because of age, physical disability or state of health." An application for homebound voting must be filed with the PEC no later than at 20:00 hours on the Friday before election day. The excerpted voter list for homebound voting must be posted at the PEC for public inspection on the day before voting.

110. There is no requirement that the application for homebound voting be accompanied by documentation certifying that the voter is actually unable to vote at the precinct premises. This has been an issue in past elections and it would be preferable to specify in the law what documentation is needed. This would eliminate any confusion as to what type of documentation is needed to qualify for homebound voting. It would also lessen the possibility that this provision will be abused by electoral subjects.

111. While Article 85.11 requires each PEC to prepare a security document showing the number of ballot papers taken by the PEC members responsible for homebound voting and the names of these members, there is no guideline on the number of ballots to be taken. This guidance should be provided. Ideally, this number should include all voters registered on the relevant "voter register extract" as well as a small specified number of spare ballots to allow for the possibility of spoilt ballots.

112. The system of homebound voting, which has been constructed with the necessary security measures, helps to uphold Ukraine's commitment to the *UN Convention on the Rights of Persons with Disabilities.*[19]

113. At the final meeting of the PEC, which commences after the end of voting, any complaints that were filed during voting are taken up prior to the counting of votes.

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19 The Convention was signed by Ukraine on 24 September 2008, see Article 29.A.i.

114. The procedures outlined in Articles 87, 88 and 89 for processing the voter lists, handling unused ballot papers and opening ballot boxes and counting ballots respectively, are extensive and would appear to cover all contingencies. However, some of the provisions are complex and may be difficult for election commission members and the general public to understand.

115. Article 90 details the information that must be included on the PEC protocols, the actual form of which is to be approved by the CEC. There are 14 separate items of information required to be entered in the PEC protocol and 17 items on the DEC protocol. It will be necessary to ensure that adequate training is provided to DEC and PEC members so that they fully understand the technicalities of completing the protocols.

116. PEC may declare the results invalid in their precinct if infringements of the law have occurred that make it impossible to determine the will of the voters on three separate grounds (Article 91). All three grounds contain a minimum percentage of abuse that must occur before the provision becomes effective: in the case of illegal voting the level of abuse must exceed 10 per cent of the number of votes; in the case of destruction or damage to a ballot box that makes it impossible to determine the content of the ballots the number of such ballots must exceed 20 per cent of those who received ballots; in the case where the number of ballot papers in the ballot box exceeds the number of voters who received ballots the abuse must exceed 10 per cent. Such arbitrary standards of impermissible abuse are hard to justify. They establish an acceptable level of fraud which is not compatible with the conduct of proper elections. As a matter of principle election results should be invalidated if the level of fraud or misconduct was such that the will of the voters cannot be determined.[20] OSCE/ODIHR and the Venice Commission recommend that these provisions be reconsidered and invalidation of elections should be possible at all levels where irregularities may have affected the outcome.

117. The CEC establishes the results of the election in the nationwide and single-mandate districts no later than on the tenth day following election day. The content of the CEC protocols must immediately be published on the CEC website. It is recommended to include a specific requirement that all PEC and DEC protocols are also published on the CEC website. This would substantially enhance transparency and public confidence in the election process. It would also promote compliance with paragraph 7.4 of the OSCE Copenhagen Document.[21]

118. Article 97(3) establishes a five per cent threshold for parties to participate in the distribution of mandates in the nationwide district. This is an increase compared with the three per cent threshold in the current law. The reason for such an increase is not clear. The threshold is calculated against the number of voters who participated in elections. The Venice Commission and OSCE/ODIHR recommend that the threshold for the allocation of the parliamentary seats is calculated based on the number of valid votes cast in line with international practice.

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[20] Code of Good Practices in Electoral Matters, CDL-AD(2002)023-rev.), II.3.3.e recommends that "the appeal body must have authority to annul elections where irregularities may have affected the outcome".

[21] Participating States will ensure that ballots "are counted and reported honestly with the official results made public."

K. Complaints and Appeals

119. The draft law notably does not contain a provision found in previous laws which allows the filing of a complaint either in a higher election commission or the court. This satisfies a long-standing OSCE/ODIHR and Venice Commission recommendation to eliminate this provision.

120. There is value in avoiding protracted challenges and litigation in election-related disputes and therefore time limits are necessary. However, time limits should not be so restrictive so as to prevent achieving a just resolution. Article 108 requires that a complaint be filed within two days of the action, inaction or adoption of the decision. The time limit is even shorter with regard to events that occur on the day before and on election day. Where the complainant, through no fault of its own, is unable to file a complaint within the time limit the deadline can lead to injustice. Consideration should be given to including an exception to the time limit in those situations where the complainant could not have learnt of the violation through the exercise of due diligence and where the interest of justice requires it.

121. Decisions of election commissions on complaints must be just, lawful and substantiated according to Article 112. Section 10 of this article requires that a copy of the decision be handed over or sent to the complainant, the respondent, any other interested persons and the election commission concerned no later than the day after the decision is adopted. In order to further enhance transparency and the trust of the public in the complaint procedures, consideration should be given to requiring that all decisions of the CEC and DECs be published on the website of the CEC.

122. According to the draft law election results can be challenged in a higher level election commission through the procedure for regular complaints (Article 107). Complaints against the results in a PEC should be filed with the respective DEC within two days of the adoption of the results by the PEC. The DEC must consider the complaint within two days of its filing. The decision of the DEC can be appealed to the CEC within two days and the CEC must consider the appeal within two days of its filing. The decisions of the CEC are appealable to the administrative court according to the procedure specified in the Code of Administrative Proceedings of Ukraine.

123. Under Article 172(3) of the Code of Administrative Proceedings decisions, actions or omissions of the CEC regarding the establishment of the results are contested in the High Administrative Court. All other decisions, actions or omissions of the CEC are challenged in the relevant district administrative court. Complaints concerning the results can be filed with the administrative court within five days of the adoption of the decision, action or omission being complained about. Decisions of the High Administrative Court are effective from the moment of their announcement and are not subject to further appeal. The Venice Commission and OSCE/ODIHR hope that the procedures for complaints and appeals foreseen in the draft law and in the Code of Administrative Proceedings will contribute to the timely resolution of electoral disputes.

IV. Conclusion

124. The draft law provides detailed regulation of parliamentary elections. It incorporates a number of recommendations previously made by different domestic and international organisations, including the Venice Commission and OSCE/ODIHR.

125. The electoral system chosen in the draft law is not the one discussed by the Venice Commission representatives during their meetings with the Ukrainian authorities and not the one recommended by the Resolution 1755 (2010) of the Parliamentary Assembly of the Council of Europe. Moreover, the choice of the mixed system, the threshold for gaining mandates and the banning of electoral blocs was made by the majority unilaterally and without consultations with the representatives of the other political parties and civil society. These different changes do not facilitate the access of different political forces to parliament. The Venice Commission and OSCE/ODIHR would like to remind that trust in the fairness of the electoral rules is essential for conducting democratic elections.

126. In addition some previous recommendations contained in OSCE/ODIHR reports and in Venice Commission and OSCE/ODIHR joint opinions remain unaddressed in the draft law, such as, lack of clear criteria and deadlines for defining boundaries of electoral districts; lack of clarity on the possibility of challenging election results and lack of full disclosure, before and after elections, of sources and amounts of financial contributions and the types and amounts of campaign expenditures.[22]

127. The draft law includes a number of improvements. Notably, it provides for unrestricted access of mass media to all public events relating to the elections, establishes mandatory training for chairpersons, deputy chairpersons and secretaries of DECs, eliminates the unlimited right to remove members of election commissions and provides the possibility for independent candidates to stand.

128. However, at times the draft law is overly complex and could be improved by stating provisions more clearly so that they are clearly understandable to all stakeholders in an electoral process. The complexity of the draft law reinforces the need for codification of all election legislation into a single unified law.

129. During the discussions between the delegation of the Venice Commission and OSCE/ODIHR and the representatives of the Ministry of Justice and the presidential administration it was stated that the Ukrainian representatives would propose to the working group in charge of the preparation of the draft law to include a number of recommendations contained in the preliminary draft opinion into the final draft to be submitted to the parliament.

130. OSCE/ODIHR and the Venice Commission are pleased that the President of Ukraine in his address on the occasion of the 20th anniversary of independence of Ukraine stated that he will personally monitor how the proposals and recommendations of the two organisations are taken into account during the work on the draft law and hopes that the drafters will use the recommendations of the current opinion in their work on electoral legislation before the final draft law is submitted to the parliament.

131. OSCE/ODIHR and the Venice Commission welcome the decision of the President of Ukraine not to introduce the draft law himself but rather to send it to the Rada so that different political factions can discuss and finalise the draft law. This step could ensure a discussion open to all political forces. Moreover, this process should also involve the civil society and thus help build the trust of the Ukrainian society in the electoral process.

[22] The full list is provided in the Executive Summary of this opinion.

132. The Commission and OSCE/ODIHR take note that at present there are three draft laws on parliamentary elections submitted to the Rada. An open and constructive discussion in the parliament should facilitate the preparation of a single draft project that would be the result of a compromise between the majority and the opposition.

133. The Commission and OSCE/ODIHR hope that the work on a single election Code of Ukraine will continue in line with the recommendations of the Parliamentary Assembly, the Venice Commission and OSCE/ODIHR. The fact that the President of Ukraine made reference to the importance of the work on a single Election Code on a number of occasions is a welcome development. The Venice Commission and OSCE/ODIHR trust that this future Code will take into account their recommendations.

134. OSCE/ODIHR and the Venice Commission stand ready to assist the authorities of Ukraine in their efforts to create a legal framework for democratic elections in conformity with OSCE commitments, Council of Europe and other international standards for democratic elections.