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

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

**BULGARIA**

**JOINT OPINION**

**ON AMENDMENTS TO THE ELECTORAL CODE**

**Adopted by the Council of Democratic Elections  
at its 59<sup>th</sup> meeting (Venice, 15 June 2017)**

**and by the Venice Commission  
at its 111<sup>th</sup> Plenary Session (Venice, 16-17 June 2017)**

**on the basis of comments by**

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## I. Introduction

1. By letter of 14 October 2016, Mr Cesar Florin Preda, Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, requested an opinion of the Council of Europe's European Commission for Democracy through Law (Venice Commission) on a series of amendments to the Electoral Code of Bulgaria adopted by the National Assembly of Bulgaria between 2014 and 2016, and which followed the Joint Opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Electoral Code of Bulgaria, adopted on 21-22 March 2014 ([CDL-AD\(2014\)001](#)).

2. By letter of 24 October 2016, the Director of the Venice Commission confirmed the Venice Commission's readiness to review such amendments and proposed that the Venice Commission draft the opinion jointly with the OSCE/ODIHR, given both institutions' regular co-operation in relation to legislation pertaining to elections.

3. A delegation from the OSCE/ODIHR and the Venice Commission visited Bulgaria on 25 May and met with the chairmanship of the National Assembly, representatives of parliamentary parties, the Central Election Commission, the Supreme Administrative Court, the Directorate General of Civil Registration and Administrative Services (GRAO) and mass media, in order to clarify a number of issues in view of preparing the present opinion. The opinion therefore takes into account the clarifications obtained during the expert visit.

4. This joint opinion has been prepared in response to the above-mentioned request. The scope of this joint opinion covers the amendments adopted between 2014 and 2016 and analyses them against relevant international obligations and standards, in particular those of the Council of Europe and OSCE commitments as well as good practice from other OSCE participating States and Council of Europe member states. It also refers to relevant recommendations in previous OSCE/ODIHR and Venice Commission joint opinions and in reports on elections observed in Bulgaria by the OSCE/ODIHR and the Parliamentary Assembly of the Council of Europe (PACE).<sup>1</sup>

5. Amendments to the Electoral Code were passed on three occasions in 2014 (22 April, 27 June and 28 November), on one occasion in 2015 (1 November) and on three occasions in 2016 (26 May, 22 July and 28 October). They are comprehensive and affect around 1/4 of the provisions in the Electoral Code.

6. The joint opinion is based on an English version of the Electoral Code as of 28 October 2016 and as provided by the National Assembly of Bulgaria on 17 November 2016 (CDL-REF(2017)024). Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

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<sup>1</sup> - [Joint opinion on the Electoral Code of Bulgaria](#) (CDL-AD(2011)013);  
- [Joint opinion on the draft Electoral Code of Bulgaria](#) (CDL-AD(2014)001);  
- [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria, Early Parliamentary Elections, 12 May 2013](#);  
- [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria, Early Parliamentary Elections, 5 October 2014](#); see also [OSCE/ODIHR Needs Assessment Mission Report](#), Republic of Bulgaria, Presidential Election 2016;  
- Council of Europe, Parliamentary Assembly (PACE), Observation of the early parliamentary elections in Bulgaria (12 May 2013), Election observation report ([Doc. 13238](#));  
- PACE, Observation of the early parliamentary elections in Bulgaria (5 October 2014), Election observation report ([Doc. 13642](#));  
- PACE, Observation of the presidential election in Bulgaria (6 and 13 November 2016), Election observation report ([Doc. 14237](#));  
- See also PACE Post-monitoring dialogue with Bulgaria, [Information note on a fact-finding visit to Sofia](#) (8-9 June 2016; 20 September 2016, ref. AS/Mon(2016) 28).

7. In view of the above, the OSCE/ODIHR and the Venice Commission note that this joint opinion is without prejudice to any written or oral recommendations or comments on related legislation that the OSCE/ODIHR and the Venice Commission may make in the future.

8. The present joint opinion was adopted by the Council for Democratic Elections at its 59<sup>th</sup> meeting (Venice, 15 June 2017) and by the Venice Commission at its 111<sup>th</sup> plenary session (Venice, 16-17 June 2017).

## II. Executive summary

9. The series of amendments introduced to the Electoral Code during 2014-2016 improved a number of issues and some previous recommendations of the Venice Commission and the OSCE/ODIHR were taken into account.<sup>2</sup> The amendments improved *inter alia* campaign finance provisions and their oversight, voter registration as well as provisions on media coverage of the campaign. Such improved provisions need to be assessed in practice in view of the next electoral cycles.

10. Following the 2014-2016 amendments, there remain, however, unaddressed recommendations from the 2011 and 2014 joint opinions and election observation reports as well as concerns raised following the amendments adopted in 2014-2016, which are described in the present joint opinion.

11. The opinion therefore assesses the related amendments and not the Code extensively. Nevertheless, both the Venice Commission and the OSCE/ODIHR underline the importance of implementing previous unaddressed recommendations, especially those contained in the 2014 joint opinion.<sup>3</sup>

12. To further improve the electoral legal framework and practice in relation to international electoral standards, the Venice Commission and the OSCE/ODIHR make the following key recommendations:

- Ensuring a broad public consultation process, which is necessary to encourage public trust and confidence in electoral legislation and processes;
- Providing for electoral reform well in advance of election, especially with regard to fundamental elements of electoral legislation; this is of crucial importance for the stability of law and of electoral processes as a whole. Therefore, in line with good electoral practice, fundamental changes should not be made within one year before an election;
- Ensuring the establishment of polling stations abroad in conformity with the principle of equal suffrage for all Bulgarian citizens; and
- Providing for an effective system of appeal of all election-related decisions to a competent body and granting an effective mechanism for challenging election results to all electoral contestants as well as individual citizens based on irregularities in voting procedures.

13. The OSCE/ODIHR and the Venice Commission stand ready to assist the authorities and, in particular, the National Assembly of Bulgaria in their efforts to improve the legal framework for elections in relation to international electoral standards.

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<sup>2</sup> Previous electoral opinions: [CDL-AD\(2011\)013](#) and [CDL-AD\(2014\)001](#).

<sup>3</sup> [CDL-AD\(2014\)001](#).

14. Based on the recent amendments assessed, but also on previous Venice Commission and OSCE/ODIHR joint opinions, additional changes are recommended in the Electoral Code, including:

- Improving voter registration and the compilation of voter lists;
- Reducing restrictions of suffrage rights for citizens serving prison terms, regardless of the severity of the crime committed;
- Reviewing the Electoral Code to ensure the right of Bulgarian citizens holding dual citizenship to stand for elections;
- Reconsidering the restrictive conditions for election observers;
- Harmonising various deadlines of the electoral process, including deadlines regulating complaints and appeals procedures; and
- Allowing the use of minority languages in the election campaign and reconsidering any other limitations to the freedom of expression during the electoral process.

### **III. General comments**

15. As a preliminary remark, it should be noted that successful electoral reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders;<sup>4</sup> and 3) political commitment to fully implement the electoral legislation in good faith.

#### **Late amendments**

16. The 2016 amendments to the Electoral Code raise concern over their timing and their effect on the electoral process. The Electoral Code was amended on three occasions in 2016 (26 May, 22 July, and 28 October), less than one year before the presidential election, which took place on 6 and 13 November 2016. All three series of amendments were effective within six months before the election. The last amendments entered into force on 28 October, only ten days before the presidential election.

17. The stability of the electoral law is a prerequisite for implementing the principles underlying Europe's electoral heritage and is vital to the credibility of an electoral process. To this effect, the Venice Commission's Code of Good Practice in Electoral Matters states that "fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election".<sup>5</sup> Stability is particularly important regarding the fundamental elements of the electoral law since these aspects are more likely to influence the outcome of an election.

18. It must be added that the Venice Commission does not consider the one-year restriction as preventing a state from bringing its electoral law in accordance with the standards of Europe's electoral heritage or the implementation of recommendations by international organisations.<sup>6</sup> Indeed, some of the late amendments to the Electoral Code address concerns previously raised by the Venice Commission and the OSCE/ODIHR. If new provisions affecting fundamental elements of electoral law are adopted within one year before an election, such amendments should only take effect after the forthcoming election.<sup>7</sup> This recommendation was

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<sup>4</sup> See paragraph 5.8 of the 1990 OSCE Copenhagen Document which requires "legislation, adopted at the end of a public procedure..."

<sup>5</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), item II 2b; see also the OSCE/ODIHR Review of Electoral Legislation and Practice in OSCE Participating States, Warsaw, 15 October 2013, p. 6ff.

<sup>6</sup> Interpretative Declaration on the Stability of the Electoral Law (CDL-AD (2005)043), item II 2.

<sup>7</sup> Code of Good Practice in Electoral Matters, Explanatory Report, par. 66.

also emphasised by the Venice Commission and the OSCE/ODIHR in the 2014 Joint Opinion on the draft Electoral Code of Bulgaria.<sup>8</sup> Previous election observation reports have also commented on late amendments to the Electoral Code. The PACE election observation report on the 2013 parliamentary elections also raised concerns over amendments to the Electoral Code only two months before the election. Similarly, the PACE Election observation report on the 2016 presidential election recalled the recommendation of the Code of Good Practice in Electoral Matters not to amend fundamental elements of an electoral law within one year before an election.<sup>9</sup> The concerns were also raised in the context of the 2016 presidential election that significant changes were adopted close to the election without an inclusive public consultation.<sup>10</sup>

19. Frequent or numerous late amendments to electoral laws may cast doubt on the legitimacy of the democratic process.<sup>11</sup> With the May 2016 revision, roughly 1/4 of the Electoral Code's 498 articles were amended. In addition, several amendments were made to the Electoral Code's supplementary, transitional and final provisions, including its annexes. The amendments of July and October 2016 were less numerous, but nonetheless added to the number of amendments introduced in May 2016. Even if many amendments are considered minor and not all relevant to presidential elections, the number of amendments is high and may complicate election preparations for stakeholders. This relates, among others, to candidates and their supporters, as well as the authorities involved in preparing the election and the role of the media. A large number of amendments close to the election may also confuse voters and undermine the credibility of the legal changes and subsequent electoral process in the eyes of the public.

20. It cannot be said that the necessary broad political consensus for adopting new legislation was reached. Particularly, the short timeframes seemingly made it difficult to involve all relevant stakeholders. During the expert visit, representatives of different political parties criticised the amendments for not having been adopted in a fully inclusive process based on wide consensus. The Venice Commission and the OSCE/ODIHR reiterate their recommendation to proceed to timely reforms, i.e. at least one year before an election. They also reiterate the importance of consensual reforms especially – but not exclusively – when touching upon fundamental elements of an electoral legislation, which implies broad consultations among all relevant electoral stakeholders.

21. Of note, the Bulgarian Ombudsman challenged two of the amendments before the Constitutional Court. Firstly, on 17 October 2016, the Ombudsman complained against the amendment limiting the number of polling stations abroad to 35 per country. On 28 October, another amendment cancelled this limit, but only for European Union (EU) countries. On 14 December, the complaint was withdrawn.<sup>12</sup> Secondly, on 23 February 2017, the Constitutional Court ruled that Article 242.a of the Electoral Code that provides a sanction for persons who have not exercised their right to vote in two successive elections of the same type was unconstitutional. Thus, voting remains compulsory, but there is no sanction for not voting.<sup>13</sup>

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<sup>8</sup> Joint Opinion on the Draft Electoral Code of Bulgaria (CDL-AD(2014)001), par. 13.

<sup>9</sup> PACE, Observation of the early parliamentary elections in Bulgaria (12 May 2013), Election observation report (Doc. 13238), par. 21; PACE, Observation of the presidential election in Bulgaria (6 and 13 November 2016), Election observation report (Doc. 14237), par. 63.

<sup>10</sup> See OSCE/ODIHR Needs Assessment Mission Report, Republic of Bulgaria, Presidential Election 2016, p. 4.

<sup>11</sup> [Europe's Electoral Heritage](#) (CDL(2002)7rev), p. 12-13.

<sup>12</sup> See below for a detailed assessment.

<sup>13</sup> See [Statement of Preliminary finding and Conclusions of the International Election Observation Mission](#), , p. 4. See below for a detailed assessment.

#### IV. Electoral system

22. The 2014 Joint Opinion recommended a number of improvements with regard to the system of electing Members of Parliament. The OSCE/ODIHR and the Venice Commission recommended that “consideration should be given to reviewing the legal provisions regarding the criteria to be considered in the delineation of constituencies and allocation of mandates through a public and inclusive discussion to ensure compliance with the principle of equal suffrage.”<sup>14</sup> The number of multi-member constituencies remains the same in the Electoral Code in force,<sup>15</sup> but the delineation aimed at reducing the deviation among constituencies appears only partly addressed by Annex No. 1 to Article 248 as there is still a minimum of four seats per constituency.<sup>16</sup>

23. Regarding the steps for the distribution of seats, the Venice Commission and the OSCE/ODIHR noted in the 2014 Joint Opinion that the procedure did not address the situation if, following the steps as provided by Annex No. 1, some constituencies would be allocated fewer than four seats. The Venice Commission and the OSCE/ODIHR consequently recommended that this clarification be written into the procedure in Annex No. 1.<sup>17</sup> The new provisions added to the annex seem to address this issue.<sup>18</sup>

24. The OSCE/ODIHR and the Venice Commission also previously recommended changing from a largest remainder method to a divisor method to avoid potential deadlock in the method of seat distribution.<sup>19</sup> This recommendation is not addressed by the amendments.<sup>20</sup> In addition, in a constituency, a political party having received a surplus of seats with the weakest mandate of the party is removed and the seat is given to a party in the same constituency that has more seats after the initial distribution. There is concern that there will not always be such a party in the constituency. The provisions do not provide a solution should this situation occur. Unfortunately, the amendments do not address such a potential deadlock.<sup>21</sup>

25. The 2014 Joint Opinion indicated that “[i]n paragraph 11.1 of Annex No 1, it is stated that a party will only win as many seats as it has candidates. However, there is no rule for redistributing remaining seats if required due to this contingency, which may indicate that such seats remain vacant. If this is the intention, then it should be stated explicitly.”<sup>22</sup> The provisions remain unchanged.<sup>23</sup> This situation applies also to municipal elections.<sup>24</sup> Nevertheless, new provisions stipulate that “the Central Election Commission (CEC) will adopt a decision on any unregulated matters”,<sup>25</sup> which seems to allow the possibility for the CEC to introduce by-regulations to clarify the distribution of any remaining seats, even if such provisions for different types of elections should be preferably stated in the same text.<sup>26</sup>

26. The short notice<sup>27</sup> for holding a second round for a presidential election, within seven days following the first round, remained, despite the recommendation to expand this period.<sup>28</sup> This

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<sup>14</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 19.

<sup>15</sup> Article 249 of the Electoral Code.

<sup>16</sup> Annex No. 1, II, to Article 248 of the Electoral Code, par. 2.4 - 2.7.

<sup>17</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 21.

<sup>18</sup> Annex No. 1, II, to Article 248 of the Electoral Code, par. 2.8 - 2.15.

<sup>19</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 22.

<sup>20</sup> Annex No. 1, IV, to Article 248 of the Electoral Code, par. 4.6.8.

<sup>21</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 22; and Annex No. 1, IV, to Article 248 of the Electoral Code, par. 4.6.8.

<sup>22</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 23.

<sup>23</sup> Annex No. 1, V, to Article 248 of the Electoral Code, former par. 11.1 - 11.7 and current par. 5.1 - 5.7.

<sup>24</sup> Annex 5 of the Electoral Code; par. 28 of the 2014 Joint Opinion.

<sup>25</sup> For parliamentary elections: Annex No. 1, VI, to Article 248 of the Electoral Code, par. 6.1. For municipal elections: par. 6.1 of Annex 5 of the Electoral Code.

<sup>26</sup> I.e. in Annex No. 1 for parliamentary elections and in Annex 5 for municipal elections.

<sup>27</sup> Article 312 and Annex No. 2 to Article 312 of the Electoral Code.

<sup>28</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 26.

recommendation should be fulfilled to leave a reasonable timeframe for the election administration and other electoral stakeholders, notably candidates, to adequately prepare for the second round.

27. Among the amendments, it is noted that thresholds for taking into account preference votes for candidates have changed from 3 to 7 per cent for municipal elections, and from 7 to 5 per cent for elections to the European Parliament.<sup>29</sup>

## **V. Election administration**

28. The amendments to Chapter Five in the Electoral Code seem to be largely positive and in line with the recommendations contained in the 2014 Joint Opinion.

29. The 2014 Joint Opinion's most serious concern about the election administration was the lack of guarantees of pluralism, inclusiveness and balance in the appointment of members of the CEC.<sup>30</sup> This concern appears to be addressed by the amendment to Article 46 (3) of the Electoral Code.

30. According to the amended Article 46 (3), the 18 members of the CEC, including the chairperson, deputy chairperson and secretary shall be nominated by the parties and coalitions represented in the Parliament. Concerning the distribution of seats in the CEC, the amended Article 46 (8) prescribes that "the correlation of the parties and coalitions represented in Parliament shall be retained. The representatives of a single party or coalition may not have a majority in the Commission." In addition, Article 46 (3) also guarantees one seat in the CEC for each of the parties and coalitions that have Members of the European Parliament, but are not represented in the Parliament. The amendments thus establish a system of equal representation of the parties in the Parliament on a proportional basis as well as guaranteed representation for parties represented in the European Parliament, but not in the National Assembly. These procedural safeguards allow for a balanced composition of the CEC in line with the recommendations of the Code of Good Practice in Electoral Matters.<sup>31</sup> Beyond the balanced composition, the Venice Commission and the OSCE/ODIHR emphasize the importance of constructive dialogue and non-partisan conduct among members of the entire election administration, in particular, during the decision-making process. Members of the election administration at all levels – CEC, regional and precinct (section) election commissions – should debate and vote based on objective elements and not through partisan considerations or affiliations.

31. Provisions relating to the CEC deputy chairpersons are somewhat ambiguous. Article 46 and the other articles of Section 1 of Chapter Five of the Electoral Code consistently refer to "Deputy Chairpersons" in plural. Neither Article 46 nor any other provision states how many deputy chairpersons are to be appointed or which person or body is competent to decide the number of deputy chairpersons. During the expert visit, the CEC explained that the number of deputy chairpersons is decided by the National Assembly, which also appoints them.

32. While the Electoral Code leaves open whether the requirement in Article 46 (8) of proportional representation in the CEC applies to or should apply to deputy chairpersons, the CEC clarified that the deputy chairpersons are appointed to reflect representation of the largest parties in the National Assembly.<sup>32</sup> To avoid confusion, the number of deputy chairpersons in the CEC and the proportional representation should both be regulated in the Electoral Code.

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<sup>29</sup> Annex No. 3, par. 5.3; and Annex No. 5, par. 5.2, of the Electoral Code.

<sup>30</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 35.

<sup>31</sup> Code of Good Practice in Electoral Matters, item II 3.1 d and e.

<sup>32</sup> Information provided during the expert visit to Bulgaria.



33. Other amendments also seem to improve the functioning of the election administration. For instance, Article 53 (4) contains a clarification of the possibility to appeal decisions or failures of decisions, which seems to be a positive amendment. Similarly, Article 54 positively provides *inter alia* for live-streaming of meetings, web publication of meeting protocols and of election results protocols.<sup>33</sup>

34. According to the revised Article 55 (1), a Public Council is established alongside the CEC, consisting of representatives of Bulgarian non-governmental organisations that have participated in elections in their capacity of election observers in order to ensure transparent, democratic and fair elections. The Public Council shall assist the operations of the CEC. This amended provision is a positive step for ensuring transparency of the election administration process. However, it is recommended to further clarify the role of the Council in assisting the CEC. Likewise, in line with previous OSCE/ODIHR recommendations, Article 56 provides for the establishment of a training unit within the structures of the CEC, which is a positive development, provided that sufficient financial and human resources are allocated to the CEC.

35. Article 57 (1) par. 48 stipulates that the CEC has to adopt rules for the application of the Electoral Code. This is a positive amendment, which explicitly underlines the sub-legislative role of the CEC while implementing and, if needed, interpreting the Electoral Code as well as concerning regional and section election commissions, which operate through decisions and instructions of the CEC. This explicit competence of the CEC may also contribute to filling certain gaps in the Electoral Code.

36. Articles 65(3) and 80(3) are new provisions providing a restriction in the nomination of a member of a municipal or constituency election commission for persons who have been previously convicted for prosecutable offences and in case of intentional crimes regardless of their rehabilitation. This restriction appears excessive and should therefore be reconsidered. The state has the right, even the obligation, to provide heightened and sometimes restrictive criteria on the recruitment of civil servants. Thus, the state ensures that the public service is composed of reputable, loyal, reliable and law-abiding persons with high moral standards. Nevertheless, these restrictions should be proportionate and take a case-by-case approach and specific circumstances of past offences, such as the severity of the offence and whether an applicant to an election administration could represent a threat in fulfilling the tasks vested in an election commission. Furthermore, to distinguish along such criteria may also be considered discriminatory if the distinction is not objectively justifiable.

37. The European Court of Human Rights has clarified the criteria for restrictions in its case law. The Court held in the case *Sidabras and Džiautas v. Lithuania* that the applicants “were treated differently from other persons in Lithuania who had not worked for the KGB and who as a result had no restrictions imposed on them in their choice of professional activities”. The Court also observed that the applicants were treated in an inappropriate way as “the KGB Act was to regulate the employment prospects of persons on the basis of their loyalty or lack of loyalty to the State”.<sup>34</sup> In its judgment *Thlimmenos v. Greece*, the European Court of Human Rights “considered that the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention was violated not only when States treated differently persons in analogous situations without providing an objective and reasonable justification, but also when States, without an objective and reasonable justification, failed to treat differently persons whose situations were different”.<sup>35</sup> In light of this case law, the restrictions imposed by Articles 65(3) and 80(3) should be carefully justified. The Venice Commission and the

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<sup>33</sup> See the [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013](#), p. 7.

<sup>34</sup> See *Sidabras and Džiautas v. Lithuania*, 27 July 2004, applications nos. 55480/00 and 59330/00.

<sup>35</sup> See *Thlimmenos v. Greece*, 6 April 2000, application no. 34369/97, par. 38.

OSCE/ODIHR are conscious that a change in these restrictions would imply a constitutional amendment.

## VI. Voter lists, voter registration and candidate registration

### A. Voter lists

38. The accuracy of voter lists has been a long-standing concern in Bulgaria. Inflated voter lists raise concerns regarding potential fraud, such as ballot box stuffing or multiple voting, and weaken confidence in the entire electoral process. The issue of inaccurate voter lists was addressed in both the 2011 and 2014 joint opinions and in OSCE/ODIHR and PACE election observation reports.<sup>36</sup> PACE underlined in its conclusions following its observation of the presidential election on 6 and 13 November 2016, that “[t]he accuracy of the voters lists remains a concern. Accurate voter lists are central to a credible democratic electoral process.”<sup>37</sup> According to Civil Registration and Administration Services Department of the Ministry of Regional Development and Public Works (GRAO), the number of voters was estimated at approximately 6.9 million.<sup>38</sup>

39. The 2011 Joint Opinion and OSCE/ODIHR and PACE election observation reports raised three major recommendations with the aim to improve the accuracy of voter lists, which were reiterated in the 2014 Joint Opinion. The recommendations were: “(1) increasing the accuracy of voter lists; (2) increasing public trust in the integrity of lists through the GRAO<sup>39</sup> disaggregating voter data by district, municipality, and voters; and (3) improving procedures for correcting lists, particularly on election day with improved procedures for the use of supplementary lists.”<sup>40</sup>

40. The series of amendments to the Electoral Code do not seem to address the concerns and recommendations raised in the previous opinions and election observation reports. Amendments pertaining to voter lists are minor<sup>41</sup> and do not address the key issue of voter list accuracy. Ensuring reliable and accurate voter lists will increase confidence and contribute to the stability and integrity of the electoral process. It will also further effective electoral management and contribute to the prevention of electoral fraud. The OSCE/ODIHR and the Venice Commission therefore recommend that further measures be taken to enhance the accuracy of voter lists. Such changes should be done both by revising accordingly the Electoral Code and by clarifying duties of the CEC and of other state authorities and administrations in charge of providing relevant data to the CEC, including the GRAO.

41. Concerning the elections of municipal councillors and of mayors, a May 2016 revision introduced a new article, Article 405a, which requires municipal mayors and regional governors to check all address registrations in their districts during the last twelve months six months before such elections. This is a welcome step forward, but no such pre-election control of voter

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<sup>36</sup> See [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013](#), p. 8; [OSCE/ODIHR Needs Assessment Mission Report, Republic of Bulgaria, Presidential Election 2016](#), p. 6; PACE, Observation of the presidential election in Bulgaria (23 and 30 October 2011), Election observation report (Doc. 12796), par. 19; PACE, Observation of the early parliamentary elections in Bulgaria (12 May 2013), Election observation report (Doc. 13238), par. 32; PACE, Observation of the parliamentary elections in Bulgaria (5 October 2014), Election observation report (Doc. 13642), par. 31; and PACE, Observation of the presidential election in Bulgaria (6 and 13 November 2016), Election observation report (Doc. 14237), par. 61.

<sup>37</sup> *Ibid.*, par. 61.

<sup>38</sup> The figures include all Bulgarians who have the right to vote and thus also voters abroad.

<sup>39</sup> The Civil Registration and Administration Services Department of the Ministry of Regional Development and Public Works (GRAO) maintains the population register from which voter lists are extracted.

<sup>40</sup> Joint Opinion on the Draft Electoral Code of Bulgaria, par. 42.

<sup>41</sup> See Article 28 (3) and (4) on voters in medical facilities; Article 29 (5) on detention facilities; Article 30 (3) on navigation vessels; Article 37 (1) on mobile voting; and Article 43 on requests for correcting errors on voter lists.

lists seems to apply for parliamentary, presidential or European Parliament elections. It is therefore recommended that this revision apply to all elections.<sup>42</sup>

## B. Voter registration

42. Articles 252 (2) and 264 (4) allow a voter who is not registered on the electoral roll, but who has the right to vote, to be registered as voter if he or she presents a declaration that he or she has not voted and will not vote elsewhere. These provisions require the declaration to be made in a “standard form”, which appears to address a recommendation of the 2014 Joint Opinion, which called for the law to clearly state what kind of documentation is necessary to exercise the right to vote. The 2014 Joint Opinion also made some recommendations concerning voter registration.<sup>43</sup>

43. Articles 39 and 40 allow voters removed from electoral rolls to be re-registered until and on election day. The 2014 Joint Opinion first reiterated a long-standing recommendation to abolish the “removed persons list”, which has been regularly criticised by election observation missions.<sup>44</sup> Although ‘removal’ from the “removed” list may result in addition to the voter list, the maintenance of two separate lists does not appear to provide any additional safeguard against multiple voting or to contribute to the accuracy of voter lists.<sup>45</sup> The 2014 Joint Opinion also recommended introducing reasonable deadlines for changes to voter lists before election day and judicial oversight for registration on election day.<sup>46</sup> Decisions on election day registration should moreover not be taken by the precinct (section) election commission.<sup>47</sup> Despite these reiterated recommendations, Articles 39 and 40 remain unchanged.

44. The Venice Commission and the OSCE/ODIHR therefore reiterate their recommendations both to abolish the “removed persons list” and to introduce reasonable deadlines for changes and judicial involvement for election day registration. The authorities should also effectively clean up voter lists, starting by updating the civil register. This would imply gathering accurate and current information from various administrations and state services in order to remove from the electoral roll *inter alia* deceased persons, persons residing abroad and duplicate entries.<sup>48</sup> In addition, data from tax, pension and other registers could be used to update and enhance electoral rolls.

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<sup>42</sup> The necessary exchange and communication between local and national institutions is an important instrument to improve the accuracy of voter lists. See the 2012 OSCE/ODIHR Handbook for the Observation of Voter Registration, p. 36. To introduce such checks by mayors and regional governors for all elections would likewise be a tool to reduce the number of citizens who remain on voter lists although they *de facto* reside abroad.

<sup>43</sup> Joint Opinion on the Draft Electoral Code of Bulgaria, par. 45-49. For a general reference on the legal framework for voter registration, see OSCE/ODIHR Handbook for the Observation of Voter Registration, 2012, p. 23-30.

<sup>44</sup> Joint Opinion on the draft Electoral Code of Bulgaria, par. 44.

<sup>45</sup> *Ibid.*, par. 43

<sup>46</sup> *Ibid.*, par. 45. See respectively also the recommendation concerning judicial oversight in the OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013, p. 9.

<sup>47</sup> Code of Good Practice in Electoral Matters, I, 1.2, iv.

<sup>48</sup> The problem of persons who remain on electoral lists although they *de facto* reside abroad was raised as a concern by election observation missions. See e.g. [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013](#), p. 8. For further reference on voters on electoral lists *de facto* residing abroad, see CoE/Congress of Local and Regional Authorities, Electoral lists and voters residing *de facto* abroad, 28 January 2015 (CG/MON/2015(27)8) and the [summary report on voters residing \*de facto\* abroad](#) adopted by the Venice Commission, which addresses in particular the situation in Bulgaria.

### C. Candidate registration

45. Article 416(1) requires different scales of signature requirements for nominating and registering independent candidates at the municipal level, based on the number of inhabitants in the respective municipality. For municipalities with up to 10,000 residents, the right to nominate and register an independent candidate as a municipal councillor or mayor requires no less than 100 voters from the considered municipalities. As stated in the 2014 Joint Opinion, the OSCE/ODIHR and the Venice Commission recommend that this requirement be lowered for smaller villages and municipalities.

46. Article 318 (3) stipulates that candidates for parliamentary elections can be registered *inter alia* providing that they have resided in Bulgaria during the last five years. This requirement pre-existed the series of recent amendments, but is relevant for comment. 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.<sup>49</sup> The Venice Commission and OSCE/ODIHR therefore recommend removing this provision.

### D. The right to stand for election for persons with dual citizenship

47. Articles 65 and 93 (2) of the Constitution and Articles 244 and 308 of the Electoral Code prohibit persons with dual citizenship to stand for parliamentary and presidential election. The Code of Good Practice in Electoral Matters refers to the European Convention on Nationality, which provides in Article 17 that “Nationals of a State Party in possession of another nationality shall have, in the territory of that State party in which they reside, the same rights and duties as other nationals of that State Party”.<sup>50</sup> The Venice Commission and the OSCE/ODIHR are aware that Bulgaria made a reservation to Article 17 upon the ratification of the Convention.<sup>51</sup> Yet, the evolving jurisprudence of the European Court of Human Rights suggests that the deprivation of the right to be eligible for election for persons with dual citizenship might be contrary to Article 3 Protocol 1 of the European Convention on Human Rights.<sup>52</sup> According to the same case law, general restrictions on electoral rights, such as a blanket restriction for persons with dual citizenship, has to be assessed in the context of a state’s specific historic and political situation and may be more difficult to justify with the passage of time.<sup>53</sup> As it stands, there is a risk that the restriction of electoral rights for persons with dual citizenship will be found in contradiction to Article 3 Protocol 1 if a case were to be filed on these grounds.

48. The Venice Commission and the OSCE/ODIHR recommended in both the 2011 and 2014 joint opinions to amend the Constitution and the Electoral Code to allow persons with dual citizenship stand as candidates for the National Assembly and president and vice president.<sup>54</sup>

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<sup>49</sup> Code of Good Practice in Electoral Matters, I. 1.1 b. On residency requirements and their qualification in particular in case of minority protection and the right to vote, see also the European Court of Human Rights, *Polacco and Garofalo v. Italy*, 15 September 1997, application no. 23450/94. See also [General Comment 25](#) of ICCPR.

<sup>50</sup> Code of Good Practice in Electoral Matters, Explanatory Report, I, 1.1 b.

<sup>51</sup> Reservation contained in the [instrument of ratification deposited on 2 February 2006](#). In accordance with Article 29, paragraph 1, of the Convention, the Republic of Bulgaria reserves the right not to apply the provision of Article 17, paragraph 1, of the Convention. 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. Period covered: 01/06/2006 - ... Articles concerned: 17, 29.

<sup>52</sup> See *Tănase v. Moldova*, 27 April 2010, application no. 7/08, par. 180.

<sup>53</sup> See *Ždanoka v. Latvia*, 16 March 2006, application no. 58278/00, pars. 106 and 135; and *Ādamsons v. Latvia*, 24 June 2008, application no. 3669/03, par. 123. The passage of time was of relevance in the cases at stake since in both cases the applicants were denied candidature due to their communist past which proved always more difficult to justify in light of changing historic and political conditions.

<sup>54</sup> 2011 Joint Opinion on the Electoral Code of Bulgaria, par. 18; 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 30.

The OSCE/ODIHR and PACE also recommended reforming the legislation accordingly.<sup>55</sup> This recommendation has not been followed and remains accurate.

## VII. Campaigning

49. Some Electoral Code's provisions on campaigning may interfere with the freedom of expression. Article 183 (4) prohibits "to use any campaign materials (...) which are contrary to good morals and damaging to the honour and reputation of the candidates" as well as new provisions prohibiting "to use the coat of arms or the flag of the Republic of Bulgaria or of any foreign State, as well as any religious signs or designs, in any campaign materials". In addition, the new Article 182 (5) bans ministers of religion from campaigning. Violations are fined between BGN 2,000 and 5,000 (between EUR 1,020 and 2,550) accorded to the amended Article 480 (2), which are issued by the president of the National Audit Office.<sup>56</sup>

50. During the expert visit, the Venice Commission and the OSCE/ODIHR were informed that the ban of religious signs or designs in campaign materials reflects provisions of other legislation such as the Religious Denomination Act. According to interlocutors, the ban, as well as the ban of clergy from campaigning, also upholds the principle of secularism in the Constitution. Still, any restrictions on campaign material risks interfering with freedom of speech as enshrined in Article 10 of the European Convention of Human Rights. Restrictions must be provided by law, have a legitimate aim and be necessary and proportionate. As underlined in the long-standing case law of the European Court of Human Rights, there is little scope under Article 10 of the European Convention on Human Rights for restrictions on political speech.<sup>57</sup> Campaigning for elections constitutes a core aspect of political speech protected by Article 10 of the Convention.

51. Even though states are generally afforded a wide margin of appreciation in moral issues under the European Convention of Human Rights, this may not apply within the context of an election campaign and during the exercise of rights as enshrined in Article 10 of the Convention. Moral issues may be an important part of the political platform of a party or candidate in an election and opinions on such issues should not be subject to sanctions. Moreover, broadly worded moral standards enforced by government agencies can be abused and the OSCE/ODIHR has previously recommended that such provisions in the context of an election be clarified.<sup>58</sup>

52. In previous opinions, the Venice Commission and the OSCE/ODIHR expressed concerns about restrictions on candidates' freedom of expression to protect the honour and reputation of other candidates.<sup>59</sup> Such limitations on the free expression of speech and political opinions may prevent the development of a free and vigorous campaign. Even though "the protection of the reputation or rights of others" may be a legitimate aim for restrictions on the freedom of expression under Article 10 (2) of the European Convention of Human Rights, the European Court of Human Rights has consistently maintained that the limits of acceptable criticism are

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<sup>55</sup> This concern has been also raised in the OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 5 October 2014, p. 10; and PACE Election Observation Report on the early parliamentary elections (4 October 2014), par. 71.

<sup>56</sup> Article 497 of the Electoral Code.

<sup>57</sup> See i.e. *Kość v. Poland*, 1 June 2017, application no. 34598/12, par. 35, *Bédat v. Switzerland* [GC], 29 March 2016, application no. 56925/08, par. 49, *Sürek v. Turkey* [GC], 8 July 1999, application no. 26682/95, par. 61 and *Castells v. Spain*, 23 April 1992, application no. 1798/85, par. 42.

<sup>58</sup> See the [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 5 October 2014](#), p. 13).

<sup>59</sup> See for instance [Joint opinion on the draft law on changes to the electoral code of the Republic of Moldova](#) (CDL-AD(2016)021), par. 37; [Joint opinion on the electoral code as amended on 9 November 2015](#) (CDL-AD(2016)032), par. 53; [Joint recommendations on the electoral law and the electoral administration in Moldova](#) (CDL-AD(2004)027), par. 80; and [Opinion on the law on election of people's deputies of Ukraine](#) (CDL-AD(2006)002rev), par. 61.

wider with regard to a politician acting in his or her public capacity than in relation to a private individual.<sup>60</sup> Politicians have knowingly laid themselves open to scrutiny and critique by journalists, political opponents and the public, particularly during an election campaign. In such cases, the interest of politicians' reputation and honour has to be balanced against the interests of open discussion of political issues and information, which is vital to any election campaign. In its Explanatory Report, the Code of Good Practice in Electoral Matters underlines that "European standards are violated by an electoral law which prohibits insulting or defamatory references to officials or other candidates in campaign documents, makes it an offence to circulate libellous information on candidates, and makes candidates themselves liable for certain offences committed by their supporters."<sup>61</sup>

53. Viewed in the context of both Article 10 of the European Convention of Human Rights and European standards on electoral law, Articles 182 (5) and 183 (4) in the Electoral Code appear problematic. The Venice Commission and the OSCE/ODIHR therefore recommend that the above-mentioned criteria in Articles 182 (5) and 183 (4) be reconsidered.

54. According to Article 181 (2), "[t]he election campaign shall be conducted in the Bulgarian language". Recognising the importance of official language, this provision may deprive some people belonging to minorities of the opportunity to effectively participate in public affairs through electoral processes. Such restrictions to freedom of expression pursuant to Article 10 of the European Convention on Human Rights and other international standards<sup>62</sup> are disproportionate and should be reconsidered. The OSCE/ODIHR and the Venice Commission therefore reiterate their recommendation in the 2011 and 2014 joint opinions to review this provision to allow national minorities to campaign in their minority languages. As stated in the 2011 Joint Opinion, "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".<sup>63</sup> The OSCE/ODIHR and PACE also raised this concern in election observation reports for the May 2013 and October 2014 early parliamentary elections and recommended respective changes.<sup>64</sup>

55. On a positive note, new provisions in Article 187 give more guarantees on balanced media coverage, print as well as electronic.<sup>65</sup> In addition, Article 198 stipulates limitations of rates for campaign advertising in amended paragraphs 4 to 7. Positively, Article 199a is a new provision, which allocates free airtime to the CEC allowing it to conduct voter awareness campaigns.<sup>66</sup>

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<sup>60</sup> See, for example, *Instytut Ekonomichnykh Reform, Tov v. Ukraine*, 2 June 2016, Application no. 61561/08, par. 45, *Ukrainian Media Group v. Ukraine*, 29 March 2005, Application no. 72713/01, par. 40-10 and 67, *Scharsach and News Verlagsgesellschaft mbH v. Austria*, 13 November 2003, Application no. 39194/98, par. 30, *Lopes Gomes da Silva v. Portugal*, 28 September 2000, application no. 37698/97, par. 30, *Oberschlick v. Austria*, 23 May 1991, application no. 11662/85, par. 59 and *Lingens v. Austria*, 8 July 1986, Application no. 9815/82, par. 42.

<sup>61</sup> Code of Good Practice in Electoral Matters, Explanatory Report, par. 61.

<sup>62</sup> Paragraph 32.5 of the 1999 OSCE Istanbul Document states that "persons belonging to national minorities have the right (...) to disseminate, have access to and exchange information in their mother tongue." The 1996 UN Human Rights Committee's General Comment 25 states that "information and materials about voting should be available in minority languages".

<sup>63</sup> 2011 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 65 and 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 78. Paragraph 31 of the 1990 Copenhagen Document states that "the participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms".

<sup>64</sup> [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013](#), p. 17; [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 5 October 2014](#), p. 19; PACE, Observation of the early parliamentary elections (4 October 2014), Election observation report, par. 71.

<sup>65</sup> This also seems to address a recommendation contained in the PACE Election observation report on the early parliamentary elections of 4 October 2014, par. 73.

<sup>66</sup> *Ibid.*, par. 74.

These positive developments will have to be assessed during future electoral cycles with regard to their practical implementation and effects.

56. Some campaign-related timelines are difficult for stakeholders to meet and remain to be addressed. For example, candidates have to be registered at the latest 32 days before election day (Article 181(2)). However, the provisions on the media prescribe that the Bulgarian National Television and the Bulgarian National Radio have to reach an agreement with the parties and the candidates on the format of the debates at the latest 31 days before election day (Article 189(4)); the allocation of slots for participation in the debates is foreseen no later than 31 days before election day (Article 196(3)). As noted in the 2014 Joint Opinion, this means that it is almost impossible for candidates registered close to the deadline to be included in the discussion on the format of debates.<sup>67</sup>

### **VIII. Party and campaign financing**

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

58. The recommendation from the 2014 Joint Opinion on strengthening the authority of the National Audit Office to check the accuracy of campaign finance reports<sup>68</sup> seems addressed in Article 172. The amended provision stipulates the obligation for contestants to report on their expenditures during an election campaign.<sup>69</sup> This would add more transparency in reporting on electoral expenditures, provided that the Bulgarian National Audit Office has the appropriate resources to monitor party and campaign accounts. However, according to information received during the expert visit, the National Audit Office seemingly needs additional resources to fulfil its duties effectively.

### **IX. Universal suffrage**

#### **A. The right to vote for prisoners**

59. None of the amendments to the Electoral Code since 2014 address the long-standing concern over prisoners' right to vote.<sup>70</sup> Article 42 (1) of the Constitution deprives "those placed under judicial interdiction or serving a prison sentence" of the right to vote, regardless of the nature and severity of the crime committed. The Constitution's categorical exclusion of prisoners' voting rights is repeated in Articles 243, 307, 350 and 396 of the Electoral Code for parliamentary, presidential, European Parliament and municipal elections, respectively. The Venice Commission and the OSCE/ODIHR recommended in both the 2011 and 2014 joint opinions to amend the Constitution and the Electoral Code to allow for individual assessment of the proportionality between the restriction on voting rights and the severity of the offence.<sup>71</sup> The European Court of Human Rights has repeatedly held that a blanket disenfranchisement of prisoners, irrespective of the nature and severity of their offences and their individual

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<sup>67</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 80.

<sup>68</sup> Joint Opinion on the Draft Electoral Code of Bulgaria, par. 56.

<sup>69</sup> Article 172 (1), (2) and (6) of the Electoral Code. For further reference on reporting and disclosure requirements see OSCE/ODIHR Handbook for the Observation of Campaign Finance, 2015, p. 39ff.

<sup>70</sup> This concern has been also reiterated in the PACE Election observation report on the early parliamentary elections, 4 October 2014, paragraphs 30 and 71.

<sup>71</sup> See also [OSCE/ODIHR Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 12 May 2013](#), p. 4; [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections](#), 5 October 2014, p. 9.

circumstances, is not compatible with Article 3 of Protocol 1 to the European Convention of Human Rights.<sup>72</sup>

60. The recommendation to reconsider the blanket ban on prisoners' voting rights is particularly acute following the recent judgement of the European Court of Human Rights in *Kulinski and Sabev v. Bulgaria* of 21 July 2016.<sup>73</sup> Here, the Court found that the blanket deprivation of prisoners' voting rights in the Constitution and the Electoral Code was not proportionate and thus amounted to a violation of Article 3 of Protocol 1 to the Convention.

61. The new Article 29 (5) allowing voters detained within 48 hours of election day to vote is a positive step forward. However, this new provision is only a minor exception from the general deprivation of prisoners' voting rights.

62. The Venice Commission and the OSCE/ODIHR therefore reiterate their recommendation to revise the legal framework concerning prisoners' voting rights. The Electoral Code should be amended so that restrictions in prisoners' voting rights are only imposed after an individual judicial decision determining the proportionality of such a measure and/or by defining in the Electoral Code the circumstances in which such a measure should be applied.<sup>74</sup> Regardless of the method chosen, restrictions in prisoners' voting rights should be proportionate to the circumstances of the particular case and the seriousness of the offense. The Venice Commission and the OSCE/ODIHR are aware that such a revision would require a constitutional amendment.

## **B. Compulsory voting**

63. The May 2016 amendments to the Electoral Code made voting compulsory.<sup>75</sup> Compulsory voting is not common among member states of the Council of Europe.<sup>76</sup> The consequences of not exercising the right and obligation to vote were regulated in the new Article 242a. If the right to vote was not exercised in two successive elections of the same type (parliamentary, presidential, European Parliament and municipal), the voter was automatically removed from the electoral roll for the next election. The Bulgarian Constitutional Court ruled on 23 February 2017 that Article 242a was unconstitutional. This will leave compulsory voting declarative without further applicable sanctions.

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<sup>72</sup> See judgements *Hirst (2) v. the United Kingdom*, 6 October 2005, application no. 74025/01; *Frodl v. Austria*, 8 April 2010, application no. 20201/04, par. 25; *Greens and M. T. v. the United Kingdom*, 23 November 2010, applications nos. 60041/08 and 60054/08; *Scoppola v. Italy (No. 3)* [GC], 22 May 2012, application no. 126/05 and *Anchugov and Gladkov v. Russia*, 4 July 2013, application nos. 11157/04 and 15162/05.

<sup>73</sup> See *Kulinski and Sabev v. Bulgaria*, 21 July 2015, application no. 63849/09.

<sup>74</sup> *Ibid.*, par. 37.

<sup>75</sup> Article 3 (1) of the Electoral Code.

<sup>76</sup> Among the member states of the Council of Europe, voting is compulsory in Bulgaria, Belgium, Cyprus, Greece, Liechtenstein, Luxembourg and Turkey. The sanctions and enforcement for non-compliance vary.



## **X. Voting procedures<sup>77</sup>**

64. Article 209 (2) of the amended Electoral Code states that “When a ballot is detached, an identical number must remain on the ballot and on the counterfoil, which shall be compared by the election commission after the ballot is completed and before it is deposited in the ballot box.” The ballot has to be given to a member of the polling station election commission for such a check.<sup>78</sup> As already indicated in the 2014 Joint Opinion, this procedure as well as double stamping of the ballot can effectively deter fraud, but might also compromise the secrecy of the vote.<sup>79</sup>

65. According to the Electoral Code, voters are denied the right to vote in case the ballot is declared invalid before it is placed in the ballot box.<sup>80</sup> As stated in the 2014 Joint Opinion,<sup>81</sup> it has to be noted that the voter may be given a false ballot before voting by a member of the polling station election commission. A more appropriate sanction should be considered in this situation. The Venice Commission and the OSCE/ODIHR therefore recommend amending accordingly the relevant provisions in the Electoral Code.

## **XI. Voting abroad**

66. The Venice Commission and the OSCE/ODIHR note that some of the late amendments to the Electoral Code affect the voting rights of Bulgarian citizens residing abroad. These amendments were relevant for the presidential election held on 6 and 13 November 2016. More precisely, in May, July and October 2016, amendments were made to Section III of Chapter Two of the Electoral Code concerning polling stations abroad. Of particular importance is the late amendment of Article 14 (5), adopted on 28 October 2016, limiting the total number of out-of-country polling stations located outside of the EU to 35 per non-EU country. The 2016 PACE election observation report on the presidential election states that limiting the number of polling stations abroad was controversial. On 17 October 2016, the proposed amendment was challenged by the Ombudsman before the Constitutional Court, arguing that a limit on the number of polling stations abroad infringed on the right to vote.<sup>82</sup>

67. When considering the significance of limiting the number of polling stations in non-EU countries, the distribution and number of Bulgarian citizens abroad is important. According to information provided by the Bulgarian authorities,<sup>83</sup> the largest numbers of citizens residing abroad are found in two countries outside of the EU. Around 300,000 Bulgarian citizens reside in Turkey and the same in the United States. According to the same information, the highest number of voters residing in Turkey who have participated in a Bulgarian election is some 72,000, with an average of 35,000-40,000 voters per election. No information was provided on the number of voters in the United States. Based on this information, the limitation of the

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<sup>77</sup> Article 145 (33) of the Act on Supplementary Provisions (26.05.2016) provides machine voting in the 2019 European Parliamentary elections in case the previous experimental remote voting is conducted successfully. It remains unclear whether the decision on future remote voting shall be made by the CEC or parliament itself. In the former case it should be stipulated clearly, as the use of such mechanism is a core issue of election procedure which has to be provided clearly in law, based on the Code of Good Practice in Electoral Matters, (item II.2.a). In principle, the idea to undertake experimental remote voting is in line with OSCE/ODIHR recommendations to have pilots before deciding on the increased and binding usage of new voting technologies. (See [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria, Early Parliamentary Elections, 5 October 2014](#), p. 8; OSCE/ODIHR Needs Assessment Mission Report, Republic of Bulgaria, Presidential Election 2016, p. 6).

<sup>78</sup> Articles 265 (3) 4, 265 (4) and 328 (3) 3 of the Electoral Code.

<sup>79</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 67.

<sup>80</sup> Articles 265 (5), 328 (5) and 427 (6) of the Electoral Code.

<sup>81</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 68.

<sup>82</sup> PACE, observation of the presidential election in Bulgaria (6 and 13 November 2016), Election observation report ([Doc. 14237](#)), par. 18.

<sup>83</sup> Information provided on 12 January 2017 by the State Agency for Bulgarians living abroad via the National Assembly.

number of polling stations in non-EU countries appears to be in practice a significant amendment to the Electoral Code, which may have a discriminatory effect, as citizens should be able to vote under the same conditions of rights and access, according to international good practice and jurisprudence.<sup>84</sup>

68. The trend in recent decades has been for more European states to allow voting from abroad in national elections.<sup>85</sup> While there is no European standard regulating the right for citizens residing abroad to vote in national elections,<sup>86</sup> changes to such existing provisions should nonetheless be subject to the same stability requirements as other provisions on the right to vote. In its case law, the European Court of Human Rights has awarded states a wide margin of appreciation under Article 3 Protocol 1 and has accepted restrictions in voting rights for citizens residing abroad, in particular with residence requirements. It appears from this case law that the test under Article 3 Protocol 1 concerning voting abroad is whether or not there has been an arbitrary or unreasonable restriction on the right to vote.<sup>87</sup> PACE has also adopted the view that member states should not place “unnecessary obstacles in the path of the effective exercise of the voting rights of foreign nationals residing on their territories”.<sup>88</sup> In other words, while the state is free to decide whether or not to allow voting from abroad, if voting from abroad is allowed, restrictions should be justified. Allowing citizens residing abroad to vote entails organisational challenges, which may justify certain restrictions in the exercise of the right to vote.<sup>89</sup> Limiting the number of polling stations or restricting voting to embassies or consulates may be necessary due to the extra cost and resources required for organising elections abroad.

69. The amended Article 11 prescribes that as a rule, polling stations shall not be established outside the compounds of diplomatic missions and consular posts of the Republic of Bulgaria. Exceptions are given in Article 14. This provision distinguishes between EU Member States and non-EU countries. According to Article 14 (2), Bulgarian citizens residing in EU Member States have a right on application to have a polling station established provided there are at least 60 voters supporting the application. In non-EU countries, according to Article 14 (3), such applications are subject to the discretion of the heads of diplomatic missions and consular posts. This distinction between EU and non-EU states does not seem justified and should be removed.

70. Amendments to Article 13 (2), (3) and (4) allow for citizen organisations to propose the location of polling stations abroad (previously limited to “nucleated settlements”<sup>90</sup>). This is a positive improvement. Amendments to Articles 16 and 17 further specify the conditions for the registration of voters residing abroad. The deadline of 14 days prior to election day for the CEC to determine the location of polling stations abroad appears too close to election day for

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<sup>84</sup> See section I.1.1 of the 2002 Venice Commission [Code of Good Practice](#) and the [Court of Justice of the European Union M.G. Eman and O.B. Sevinger v Mayor and Councilors of The Hague](#), 2006. See also [Zdanoka v. Latvia](#), paragraph 135 and [Adamsons v. Latvia](#), paragraph 123.

<sup>85</sup> See for an appraisal of relevant practice CoE/Congress of Local and Regional Authorities, Electoral lists and voters residing de facto abroad, 28 January 2015 (CG/MON/2015(27)8), p. 15.

<sup>86</sup> There is no obligation under Article 3 Protocol 1 of the European Convention of Human Rights for states to allow this; see in this respect *Sitaropoulos and Giakomopoulos v. Greece* [G.C.], 15 March 2012, application no. 42202/07, par. 75. The same follows from the Code of Good Practice in Electoral Matters, item I 1.1 c. See also the Venice Commission’s [Report on out-of-country voting](#) (CDL-AD(2011)022), III. A.

<sup>87</sup> See European Court of Human Rights judgements, *Hilbe v. Liechtenstein* (dec.), 7 September 1999, application no. 31981/96; *Doyle v. United Kingdom* (dec.), 6 February 2007, application no. 30157/06; *Sitaropoulos and Giakomopoulos v. Greece* [G.C.], 15 March 2012, application no. 42202/07, par. 69; *Shindler v. the United Kingdom*, 7 May 2013, application no. 19840/09 par. 105, 116.

<sup>88</sup> See Article 7 of PACE [Resolution 1459 \(2005\) on abolition of restrictions on the right to vote](#); see also PACE [Recommendation no. 1714 \(2005\) on abolition of restrictions on the right to vote](#); PACE Resolution 1591 (2007) on distance voting, par. 1, 8; PACE Resolution 1696 (2009) ‘Engaging European diasporas’, par. 9.1.2.; PACE, Recommendation 1890 (2009) ‘Engaging European diasporas’. See furthermore Venice Commission, Report on out-of-country Voting, CDL-AD(2011)022).

<sup>89</sup> See the Venice Commission’s [Report on out-of-country voting](#) (CDL-AD(2011)022), par. 75.

<sup>90</sup> Reference is made to “nucleated settlements” in particular in Article 9 of the Electoral Code.

electoral stakeholders to be informed accordingly and should be brought forward, especially since duties of election commissions are varied and they require training. The members of section election commissions have to be appointed in advance to be trained and understand all details of the electoral process. The Venice Commission and the OSCE/ODIHR therefore recommend that procedures for establishing polling stations abroad start earlier in the electoral calendar.

71. The Venice Commission and the OSCE/ODIHR therefore recommend that decisions on determining locations for polling stations abroad should be based on clear and consistent criteria. Such decisions should be taken in broad consultation with relevant stakeholders well in advance of an election. Both institutions also recommend to avoid amendments to the Electoral Code so close to the election and, if needed, to include in the text, in transitional provisions for instance, provisions concerning the enforcement of amended provisions, especially when touching upon fundamental elements of an electoral process.

72. Moreover, amending key provisions for voting abroad only 10 days before the election, with potentially significant implications for voters in Bulgarian communities abroad, amidst political controversy and a challenge before the Constitutional Court, may impact public confidence in the electoral process.

73. In addition, Article 16 (2) of the Electoral Code states that the requests to set up polling stations abroad have to be submitted in the Bulgarian language. This requirement seems too restrictive. The Venice Commission and the OSCE/ODIHR therefore recommend to reassess Article 16 (2) and to consider the submission of such applications in the languages of the ethnic groups represented in Bulgaria.

## **XII. Observation**

74. Article 112 of the Electoral Code provides stricter requirements for observer organisations. Domestic organisations observing the elections can only be associations registered for the public benefit and with objects in the field of protecting citizens' political rights. These requirements appear to be clear and proportionate. Nonetheless, it has to be assessed in the future how these requirements are implemented in practice and whether they might become an obstacle for enhancing the electoral process through the presence of observers, in line with paragraph 8 of the 1990 OSCE Copenhagen Document and other standards of democratic elections.<sup>91</sup>

75. Based on Article 112 (1) par. 2, only a limited number of international organisations are allowed to have representatives as observers. It is recommended to reconsider the limitations on observer organisations, including for international organisations, as they might be too restrictive and challenge paragraph 8 of the 1990 OSCE Copenhagen Document and other international standards.

## **XIII. Complaints and appeals procedures, sanctions**

76. Due to the 2014 amendments, improvements have been made concerning the right to submit complaints or appeals on the electoral process. Access to courts seems to be provided in a clearer manner: the Electoral Code provides clear and reasonable time-limits for submitting

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<sup>91</sup> See the Code of Good Practice in Electoral Matters, in particular II. 3.2, and the Venice Commission Guidelines on an internationally recognised status of election observers, in particular III. 1.4 ([CDL-AD\(2009\)059](#)). See also respectively the [OSCE/ODIHR Needs Assessment Mission Report, Presidential Election 2016](#), p. 9: "Civil society representatives ...expressed concern about a lack of legal definition of the term 'political rights' and [the] significant burden related to [the] new requirement to provide additional nomination documents."

complaints before an election and for decision-making on such complaints.<sup>92</sup> Also, according to the new Article 120 (1) 9, the possibility to “lodge complaints and alerts about irregularities affecting the election process” is now extended to election agents, which is a positive development.

77. Despite improvements, several key recommendations expressed in the 2014 Joint Opinion remain relevant and outstanding:

- Providing for an effective system of appeal of all election-related decisions to a competent body;
- Harmonising the various deadlines of the electoral process, including deadlines regulating complaints and appeals procedures;<sup>93</sup>
- Granting an effective mechanism for challenging election results to all electoral contestants as well as individual citizens based on irregularities in voting procedures.

78. The Electoral Code requires the Constitutional Court to adopt a decision on an appeal within two months of its receipt. The deadline for submitting an appeal on the decision on the election results to the Constitutional Court is 15 days.<sup>94</sup> The Code of Good Practice in Electoral Matters,<sup>95</sup> in view of the expediency required during the electoral process, generally envisages shorter timelines (3-5 days). It is therefore recommended to shorten the current time-limits as the lawfulness of election results corresponds to a substantial public interest.

79. Regarding the voters' right to challenge election results, previous recommendations remain unaddressed.<sup>96</sup> The 2014 Joint Opinion states that “[t]he 2011 joint opinion also expressed concern as to the limited number of stakeholders who are able to challenge the election results. Candidates and voters registered in the constituency concerned should be entitled to contest the election results. As underlined in paragraph 57 of the 2011 Joint Opinion, “[i]n 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. The above-mentioned articles should be amended accordingly so that the Code provides effective remedies for challenging election results.” Although the Code grants candidates the right to challenge election results,<sup>97</sup> voters do not have the right to challenge election results. The comment is still valid with regard to the Electoral Code in force. PACE and the OSCE/ODIHR also reiterated the recommendation to give voters the right to challenge election results in their election observation reports that followed the early parliamentary elections held on 4 October 2014.<sup>98</sup>

80. As a result of the recent amendments, a range of sanctions were added or revised in Part Three of the Electoral Code.<sup>99</sup> For instance, the new Article 477a provides sanctions if a candidate is in breach of declaring their electoral funds. In addition, there is also a new

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<sup>92</sup> E.g., Article 57 (1) 26, 26a, 27 and 27a: these amended or new provisions clarify the treatment of complaints by the CEC. Also the deadline for complaints concerning decisions on the establishment of polling stations in Article 8(4) was positively reduced from 7 to 3 days. (See the criticism concerning the 7 days in the Joint Opinion on the Draft Electoral Code 2014, par. 73). For best/good practices on timelines in the field of election dispute settlement see generally OSCE/ODIHR, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, 2000, p. 11ff.

<sup>93</sup> See also the mismatch noted by the Supreme Administrative Court concerning the deadlines indicated in the Electoral Code and the Civil Procedure Code. (OSCE/ODIHR Needs Assessment Mission Report, Presidential Election 2016, p. 9).

<sup>94</sup> Article 305 (1) of the Electoral Code.

<sup>95</sup> Code of Good Practice in Electoral Matters, II. 3.3. g.

<sup>96</sup> 2014 Joint Opinion on the Draft Electoral Code of Bulgaria, par. 72.

<sup>97</sup> Articles 305, 348, 394 and 459 of the Electoral Code.

<sup>98</sup> PACE, *Observation of the parliamentary elections in Bulgaria (5 October 2014)*, Election observation report (Doc. 13642), par. 71. See also [OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Bulgaria. Early Parliamentary Elections, 5 October 2014](#).

<sup>99</sup> Articles 474 (1), 477a, 480 (2), 484 (1), 495 and 496 (2) §1 of the Electoral Code.

provision that provides for fines to members of election commissions who violate rules established in the Electoral Code.<sup>100</sup> These amendments are welcome.

81. The new Article 18 (5) relates to the creation of inter-ministerial joint centres aimed to deal with criminal offences in the context of electoral processes. The provision is unclear. The role of such centres should be clarified, especially vis-à-vis other stakeholders in charge of dealing with electoral disputes.

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<sup>100</sup> Article 495 (2) of the Electoral Code.