Strasbourg, 5 September 2013

Opinion No. 734 / 2013

CDL-REF(2013)042
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

EVALUATION OF THE RECOMMENDATIONS EXPRESSED IN THE JOINT OPINION BY THE VENICE COMMISSION AND OSCE / ODIHR OF JUNE 2013 ON THE DRAFT LAW

OF UKRAINE

"ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF UKRAINE AS REGARDS THE IMPROVEMENT OF LEGISLATION ON ELECTIONS"

(This document was prepared by the Ministry of Justice of Ukraine)

This document will not be distributed at the meeting. Please bring this copy.
www.venice.coe.int

EVALUATION OF THE RECOMMENDATIONS EXPRESSED IN THE JOINT OPINION BY THE VENICE COMMISSION AND OSCE / ODIHR ON THE DRAFT LAW OF UKRAINE "ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF UKRAINE AS REGARDS THE IMPROVEMENT OF LEGISLATION ON ELECTIONS"

Unaddressed recommendations		
№	**Recommendation**	**Reason for Ignoring**
15	As the 2011 Joint Opinion of the OSCE/ODIHR and the Venice Commission noted,4 Ukraine has used three different electoral systems in the last 15 years for electing members of the parliament, including (1) electing all members in single-mandate districts, (2) electing all members by a closed list proportional system, and (3) a mixed system electing 225 single-mandate members and 225 members from party lists in a nationwide proportional representation contest. The mixed system of 225 single-mandate districts and 225 proportional representation mandates is retained in the draft electoral law. The OSCE/ODIHR in its final report on the 28 October 2012 parliamentary elections stated that most interlocutors complained about the electoral system, which re-introduced deficiencies that were already noted when it was previously used. As stated in the 2011 Venice Commission and OSCE/ODIHR Joint Opinion “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”.5	As to the mixed electoral system (return to the proportional electoral system) it should be noted that the Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52 Plenary Session (Venice, 18-19 October 2002), does not contain clauses concerning the procedure of the election candidates nomination and the nature of the electoral system. This is an internal affair of the country. At the same time it should be noted that paragraph 22 of the Joint opinion of the Venice Commission and OSCE/ODIHR No. 635/2011 on the draft law "On Elections of People's Deputies of Ukraine», CDL-AD (2011) 037, reads that " 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. ". The now valid Law of Ukraine "On Elections of People's Deputies of Ukraine" was passed in compliance with these provisions. Thus, the Working Group on the electoral legislation improvment (hereinafter - the Working Group), chaired by the Minister of Justice Mr. O. V. Lavrynovych, was established by the Edict of the President of Ukraine from November 2, 2010 No. 1004 “On the Working Group on the electoral legislation improvment” in order to ensure the observance of the constitutional rights of Ukraine’s citizens to freely elect and be elected to the bodies of state power and local self-government, to bring the electoral legislation in compliance with the generally accepted international democratic standards, and to accelerate its unification. The Working Group has been tasked to prepare in conjunction with international experts legislative proposals for a comprehensive and systematic improvement of the regulation of election process in Ukraine. During 2010-2011, the efforts of the Working Group were focused on the preparation of the

16	The legal threshold for the allocation of mandates in the nationwide proportional component of the elections is five per cent. As stated in the 2011 Joint Opinion, this threshold, combined with the ban on the formation of electoral blocs and the choice of a mixed system, "does not facilitate the access of different political forces to parliament."6 In Resolution 1705 (2010) of the Parliamentary Assembly of the Council of Europe, the Council of Europe called upon member states to "consider decreasing legal thresholds that are higher than 3 per cent". *The Venice Commission and the OSCE/ODIHR recommend that consideration be given to decreasing the five percent threshold stipulated in the parliamentary electoral law.*	draft Law of Ukraine "On Elections of the People's Deputies of Ukraine". This draft law was developed with the participation of representatives of all factions at the Verkhovna Rada of Ukraine, the independent people's deputies of Ukraine, international and national NGOs. The aim of the authors was to preserve the best of the provisions of the then valid Law of Ukraine "On Elections of People's Deputies of Ukraine" and to supplement it with the best practices, including the results of work on the problematic issues of the previous campaigns. In the course of preparation by the Working Group of the Law of Ukraine "On Elections of People's Deputies of Ukraine" extensive discussion of its provisions was being held. In addition, the bill addressed the suggestions made by the European Commission "For Democracy through Law" (the Venice Commission), the International Foundation for Electoral Systems (IFES) and the OSCE's Office for Democratic Institutions and Human Rights. On November 17, 2011 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Elections of People's Deputies of Ukraine" (№ 9265-D from November 17, 2011) which had been drafted by the ad hoc committee of the Verkhovna Rada of Ukraine, based on the bill drafted by the Working Group. Concerning the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on elections" it should be noted that on April 11, 2013 it was posted on the "Discussing bills" page of the official website of the Ministry of Justice and on the government website "Civil society and the Government" with the aim to study and consider the public opinion. On May 10, 2013 the promulgation of the Law was completed, but the Ministry of Justice never received any comments or suggestions thereto. Furthermore, it should be noted that one of the main criteria to be followed by states when changing or improving the electoral system and its components is the criterion of appropriateness. The Constitutional Court of Ukraine in its judgment on the elections of people's deputies of Ukraine case of 26 February 1998 confirmed this idea, stating that the Constitution of Ukraine in paragraph 20 of Article 92 refers the problem of determining the electoral system to the competence and authority of the Verkhovna Rada of Ukraine, and therefore it is "a matter of political expediency." This stance is also favored by the European Court of Human Rights by stating that, for the purpose of Article 3 of the Protocol, any electoral system must be assessed in the light of the extent of political development, and therefore some of its details which may be unacceptable in one state can be be justified in another, at least under the condition that the current system provides "free expression of the people in choosing the legislature." Regarding the electoral threshold it should be noted that according to the recommendations of the Venice Commission Ukraine's electoral threshold of 3 to 5% is acceptable (paragraph 86 of Opinion

		on the Law of Ukraine "On Elections of People's Deputies of Ukraine", CDL-AD (2006) 002rev, approved by the Venice Commission at its 66 plenary Session (Venice, 17-18 March 2006). Commenting on the provisions of the now valid Law of Ukraine "On Elections of People's Deputies of Ukraine", International Foundation for Electoral Systems noted that, in particular, cancellation of electoral blocs, raising the electoral threshold "may result in the consolidation of Ukrainian political party syctem which is currently very fragmented. While such consolidation may be desirable as a means of building stronger parties and a more united parliament, the timing to introduce such changes may prove to be problematic, given the current political situation in Ukraine" (September 2011). Indeed, it may be inferred from the campaign experience at the parliamentary elections in Ukraine on October 28, 2012 that a ban on participation of blocs and an increased threshold contributed to the consolidation of voters on the grounds of political preferences and ensured the passage to the Verkhovna Rada of Ukraine of the major political parties capable of independent political activity and of being responsible for the implementation of their program guidelines. Thus, the highest result was less than 2% of the vote among the political parties that did not pass the electoral threshold. However, none of the political parties that won seats in multi-member constituency scored any less than 10% of the vote.
20	The parliamentary electoral 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.9	According to parts two and three of Article 76 of the Constitution of Ukraine, deputy of Ukraine shall be a citizen of Ukraine who on election day reached twenty-one years, is entitled to vote and has been living in Ukraine over the past five years. A citizen who has been convicted of committing an intentional crime, if the record has not been canceled or withdrawn in accordance with the law, cannot be elected to the Verkhovna Rada of Ukraine. Thus, as has been repeatedly noted, consideration of these recommendations requires changes to the Constitution of Ukraine. Constitutional process is not a regular legislative process, because by its legal nature Constitution has supreme legal force and establishes the fundamental principles of the legal system of the state which must act and be used in combination. Being the principle law of the state, the Constitution is more stable in nature compared to the ordinary law. In this regard, amendments to the constitution cannot be chaotic and pointed, and should be subject to a comprehensive understanding involving the public and academics. Nowadays, with the purpose of elaborating proposals for amendments to the Constitution of Ukraine on the basis of summarizing the practices of the Fundamental Law of Ukraine and taking into account the achievements and trends of modern constitutionalism, Constitutional Assembly chaired by the President of Ukraine in 1991 - 1994 years Mr. Kravchuk Leonid Makarovych is functioning as a special subsidiary body under the President of Ukraine. The main tasks of the Constitutional Assembly
21	The Venice Commission and the OSCE/ODIHR are aware that the five-year residency limitation is based on Article 76 of the Constitution of Ukraine. The Ministry of Justice explained that any previous recommendation concerning candidacy requirements cannot be addressed because the change necessitates amendment of the	

	Constitution of Ukraine. However, two issues should be taken into account in this respect: Ukraine is in the process of revising its Constitution and, therefore, such an amendment could be introduced. Secondly, there are international obligations that are binding on Ukraine. Ukraine has ratified the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). The fundamental right of suffrage is contained in Article 25 of the ICCPR and Protocol 1, Article 3 of the ECHR. General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted by the Human Rights Committee on 29 March 2004 (2187th meeting), clearly states: "Although article 2, paragraph 2 [of the ICCPR], allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty." The Constitution of Ukraine allows both the executive and legislative branches of government to submit proposals for amending the Constitution. *The Venice Commission and OSCE/ODIHR recommend the necessary legal changes be made to Ukraine's domestic law to give effect to Ukraine's obligations under Article 25 of the ICCPR10 and Article 3 of Protocol I to the ECHR.*	are the preparation and approval of the concept of amending the Constitution of Ukraine and the submission thereof to the President of Ukraine; preparation, based on the Concept of Amendments to the Constitution of Ukraine, of the bill (bills) amending the Constitution of Ukraine and its preliminary approval. **The Merits of the Comments** The European Court of Human Rights holds that the right to free elections is important but not absolute. Since Article 3 of the Forst Protocol outlines such rights but does not set them in clear formulations, not to mention their definition, there are grounds for internal constraints. Contracting States in their internal procedure stipulate the right to vote and to be elected with certain conditions which, in principle, are not prohibited by Article 3. Such an approach leaves room for certain restrictions on the part of the states, but these restrictions shall be set to achieve the legitimate purpose using proportional means and shall not limit the rights to such an extent that they would violate their very essence and make them ineffective. It is worth mentioning that the constitutional requirement of a 5-year residence term was considered by the European Court of Human Rights in the Melnichenko against Ukraine case. Thus, the Court noted the following: "56. Regarding the residence conditions with regard to the right to be elected as such, the Court has never expressed its opinion on the matter. However, concerning the separate right to vote, the Court decided that it is not an unreasonable or an arbitrary requirement (see . Hilbe v. Lisenshtayn (dec.), № 31981/96, ECHR 1999-VI) .... 57. The Court accepts that regarding the eligibility to being elected to parliament more stringent requirements may be set than to the eligibility to voting ... Accordingly, the Court does not preclude the establishment of a 5-year residence requirement for potential candidates for parliament. However it is debatable that this requirement can be seen as enabling these individuals to obtain sufficient knowledge of the issues related to the powers of the national parliament. ".

22	Article 9.4 of the parliamentary electoral law 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 provision denies passive suffrage rights based on a conviction for any "deliberate" crime, regardless of the nature or severity of the crime committed. 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.11 *Therefore, the Venice Commission and the OSCE/ODIHR recommend that this restriction be narrowly defined to apply only to a person convicted of specified crimes that are so serious that forfeiture of suffrage rights satisfies the principle of proportionality.*	
64	A candidate's registration may be cancelled by the election commission that registered the candidate for any of the reasons listed in Article 61.4. Eight separate grounds are stated for cancellation of registration, including that the candidate has been found guilty of committing a "deliberate" crime. This issue has already been discussed and is subject to a recommendation of the Venice Commission and the OSCE/ODIHR. *The OSCE/ODIHR and the Venice Commission recommend that this restriction be narrowly defined to apply only to a person convicted of specified crimes that are so serious that forfeiture of suffrage rights satisfies the principle of proportionality.21*	

97	Previous joint opinions of the Venice Commission and the OSCE/ODIHR, as well as the final reports of OSCE/ODIHR, have expressed concerns about the complexity of the system for adjudicating electoral disputes. There has been improvement in the system for resolving electoral disputes over the course of amendments since 2004. *However, as noted by the OSCE/ODIHR final report on the 2012 parliamentary elections, the problem of complexity remains and "a significant number of complaints were rejected on procedural grounds, such as being filed with the wrong body, which testifies to this shortcoming*."32	Recommendation **to abolish dual jurisdiction of the courts and election commissions** may also be taken into account only in case of the amendments to the Constitution of Ukraine. In accordance with the first paragraph and the second paragraph of Article 55 of the Constitution of Ukraine the rights and freedoms of humans and citizens are protected by the court. Everyone has the right to appeal against decisions, act or ommissions of state authorities, local self-government, officers and officials. In accordance with Article 124 of the Constitution of Ukraine courts have jurisdiction over all legal relations arising in the state. Constitutional Court of Ukraine in its judgment of 9 July 2002 No. 15-rp (mediation settlement of disputes case) concluded that the provisions of Article 124 of the Constitution of Ukraine on the extension of jurisdiction of courts to all legal relations arising in the country are to be construed as such that render a person's right (citizen of Ukraine, foreigner, stateless person and legal entity) to apply to the court for resolution of the dispute not susceptible of restrictions by law or other regulations. The right of access to justice and fair trial is a fundamental attribute of the system of protection of rights and freedoms. With this in mind, it is difficult to imagine a court deprived of authority to consider certain category of cases, and citizens – of the possibility to defend their rights in court. Also, it is worth noting that the Venice Commission in the Explanatory Report to the Guidelines on Elections adopted by the Venice Commission at its 52 Plenary Session (Venice, 18-19 October 2002) reported that regarding an effective system of appeal "there are two possible solutions: - Appeals can be a forwarded to the ordinary courts, the special court or the constitutional court; - Appeals can be a forwarded to the election commission. This option has several advantages because the commissions are highly skilled, while the courts have less experience in matters relating to elections. <u>However, as a precautionary measure it is still worthwhile establishing judicial supervision, in one form or another, making the commission of a higher level the first instance for appeal, and the competent court - the second one</u>. "(Paragraph 93).
98	Filings with the "wrong body" are due to the filing options presented to a complainant. First, determining the substantive nature of the complaint is necessary as the nature of the complaint determines where the complaint should be filed. However, as many electoral complaints may have overlapping issues and may involve the conduct of an election commission as well as that of a candidate or political party, alternative forums for filing are presented to the complainant. Secondly, some complaints, such as one involving the inaction of a DEC, can be filed with either a court or the CEC. The OSCE/ODIHR and the Venice Commission have previously expressed concerns that a contributing element of the complexity in the current complaint system is the concurrent jurisdiction and alternative filing possibilities created in Article 108. It has been a long-standing recommendation of the OSCE/ODIHR and the Venice Commission to clarify the concurrent jurisdiction of election commissions and courts over electoral disputes. The draft electoral law retains this concurrent jurisdiction in Article 108. An amendment to Article 108.10 does require a court to inform the CEC of	

	"initiation of the proceedings or reject (sic) to initiate the proceedings in the case". This amendment appears to only require the court to inform the CEC as to whether the court will exercise jurisdiction over the complaint. The amendment does not eliminate the existing concurrent jurisdiction for electoral complaints and jurisdiction stays with the election commission until it affirmatively relinquishes jurisdiction by "returning" the complaint to the complainant under Article 108.11. Concurrent jurisdiction, in theory, is eliminated once the court informs the election commission and the election commission acts upon the information. Practice in the 2012 parliamentary elections, though, shows this process was flawed. *The recommendations for elimination of concurrent CEC/court jurisdiction over DEC related complaints and simplification of the process for resolving electoral disputes remain.33*	
99	Article 108.9 of the draft electoral law does expand the list of persons and organizations that "may be challenged in court according to the procedure specified by the Code of Administrative Proceedings in Ukraine." However, expanding the list of potential defendants that "may be challenged in court" does not reduce the current complexity existing in the complaint and appeals system.	
23	The draft amendments concern only the elections for the 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 the Venice Commission long-standing recommendation that all electoral rules should be codified in a single unified electoral code to ensure that uniform procedures are applied to all elections. The explanations provided by	A continuous OSCE / ODIHR and the Venice Commission recommendation to Ukraine stipulates that all election rules should be codified by the adoption of a unified election code which will ensure the use of uniform procedures to all electoral processes in the country. European experts recommended to secure electoral system principles in an act that has a higher legal standard than an ordinary law in order to ensure the stability of electoral law principles (interpretative statement about the stability of electoral law adopted by the Council for Democratic Elections at its 15th session (Venice, 15 December 2005) and by the Venice Commission at its 65 plenary session (Venice, 16-17 December 2005) CDL-AD (2005) 043). However, this recommendation under national law can be addressed only partially. In Ukraine

	the Ministry of Justice state that the electoral legislation in Ukraine, although not contained in a single unified code, meets the principles of universal, equal, free, secret, and direct suffrage. The Venice Commission and the OSCE/ODIHR agree that achieving these principles is necessary for genuinely democratic elections. Unified electoral codes can facilitate the realisation of these principles by ensuring consistency in legal text and implementation of law. *The previous recommendation for harmonising all laws regulating different types of elections and unifying those in a single electoral code remains applicable to Ukraine.*	there is no hierarchy of laws by the legal force that exists in some foreign countries (France, Italy) and is based on constitutional provisions that these laws have a higher legal force than ordinary ones. Given the identity of the procedure for amendments to the laws and codes of Ukraine, the adoption of the Electoral Code can not be regarded as a guarantee of the stability of electoral law (which, for the most part, is the only argument in favor of the adoption of the Electoral Code), and the analysis of the electoral legislation of other countries shows that there is no single approach to codification of the legislation on elections and referendums. Thus, according to the Code of Good Practice in Electoral Matters, European electoral heritage is based on the following five principles of electoral law: universality, equality, freedom, privacy and directness. It is these principles that the national electoral legislation must meet. However, each country decides for itself the question of the form of its existence. Typically electoral legislation is comprised by separate laws. In some countries there is a single act that regulates all types of elections. Among European countries, single acts exist in: Belgium, Bulgaria, Bosnia and Herzegovina, Spain, Macedonia, Norway, Luxembourg, the Netherlands, Poland, Finland, Sweden and France. Although the inclusion of France into this category of countries is rather arbitrary, since the French Electoral Code is far from the traditional notion of Code and is a compilation of regulations of different legal effect. One reason for the low prevalence of codification in the EU is a common lack of legislation systemacity. So, for example in Malta "some principles of preparation and conduct of all elections are determined in the Electoral Ordinance of 1939, most of the provisions of which was abolished in 1991, and relations associated with the preparation and conduct are settled by the law on the general election of 1991." However, the election rules in the EU are unified and in fact do not depend on the form of their expression, moreover high political culture and long-standing practice of holding democratic elections allows for the part of the electoral process to be left unregulated. Among the post-Soviet states codified acts in this area exist in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova. However, as the practice of the provisions of the Electoral Code has shown, the codification of electoral legislation does not always give the expected results. First of all, attention should be paid to the content of the codes, because if the electoral rules do not comply with generally accepted international standards for elections, giving them the form of a code will not be effective. Thus, in opinion on the Electoral Code of the Republic of Belarus OSCE drew attention to the illusion of pluralistic mechanism for the appointment of commissioners that, despite the procedure established in the code, actually meant complete control by the President of the electoral commissions. The overall conclusion was that the Electoral Code does not provide for democratic elections (Opinion OSCE / ODIHR on the Election Code of the Republic of Belarus, July 25, 2000).

		According to experts, in Azerbaijan merging all laws into one eliminated contradictions and extended transparency of elections, but did not solve the complex political issues such as the formation of election commissions (Eldar Ismailov analysis of the 2003 presidential elections in the Republic of Azerbaijan / / Evaluation of elections in the South Caucasus: Armenia, Azerbaijan, Georgia.- International Institute for democracy and elections assistance). The Venice Commission, the Observation Mission of the OSCE / ODIHR repeatedly stressed the need to reform the electoral legislation of the former Yugoslav Republic of Macedonia. Parliamentary elections in 2006 in Macedonia were conducted according to the newly adopted Election Code. The new Code unified the Law on election of MPs, president, local governments and other related election laws.Nevertheless, according to reports of the Observation Mission, the Code on elections remains uncertain in some respects, for example, in protection of the rights of the candidate in court. In addition, unclear were the powers of the State Election Commission in regulating the composition of election administrative bodies and the nomination of members, training of the elections organizers, rights and duties of observers, the preliminary vote and others.[1] By the presidential and local elections in 2009 the electoral law had been greatly improved, especially in terms of electoral disputes, campaign financing rules. However, not all OSCE / ODIHR recommendations had been implemented. For example, while the rules of campaign financing had been improved, there was still a lack of proper supervision of campaign financing and the gaps neglecting constraints on donations to election campaigns remained. According to the Final Report of the Observation Mission, the Election Code still contains gaps, provisions that are inaccurate, which leaves room for conflicting interpretations and inconsistent application.[2] The example of Macedonia shows how hard and long the work on improving the electoral legislation may be. Because the effectiveness of a norm can be verified only by its practical use, and the feature of electoral processes is their intermittence. Therefore, improvement of electoral legislation depends largely on the outcome of the election campaigns. Ukraine does not yet have sufficient practice in the various parameters of the electoral system, electoral and referendum procedures. Moreover, it is clearly seen in relation to the codification of referendum legislation, since, as it is established in legal science, codification is a way to streamline legislation. Its essence lies not in the design of a new piece of legislation that must offer new or change existing principles of legal regulation

1

2

		of certain social relations, but in the systematization of legislation. One attempt to codify the law is the draft Election Code (from 14.04.2009 (from 23.03.2010 - to replace, № 4234-1), submitted to the Verkhovna Rada of Ukraine of VI convocation by the deputies Kliuchkovskiy, Grinevetsky , Podgorny, Sinchenko. This draft was not considered. Concerning the incorporation into the Electoral Code of the provisions of the Criminal Code and the Administrative Procedure Code it should also be noted that the Criminal Code of Ukraine (hereinafter - the CC of Ukraine) is the only codified legislative act which contains a system of interrelated and consistent criminal legal norms. Exclusively the CC of Ukraine determines criminality, its sanctions and other penal consequences which allows for the proper implementation of its objectives to protect the rights and freedoms of human and citizen, property, public order and public safety, environment, the constitutional order of Ukraine from criminal attacks, ensure peace and human security, and prevent crime. The presence of the single codified act ensures proper regulation of a particular body of law – the criminal one, therefore the regulation of the issue of criminal responsibility in legislative acts other than the CC of Ukraine is unacceptable. The same is true for the Code of Administrative Procedure of Ukraine which is the only codified act that defines principles of administrative justice and the administrative procedure for reviewing cases on appeals against decisions, acts or ommissions of the authorities.
37	The Venice Commission and the OSCE/ODIHR have previously recommended increased pluralism in election commission membership in order to enhance the impartiality and independence of the election administration. Although the draft law includes revised provisions in Articles 27.2 and 29.3 for nomination of members to the DECs and PECs, this recommendation is not addressed. Only parties already holding parliamentary mandates are guaranteed positions on the DECs and PECs while non- parliamentary parties can only participate in a lottery for the distribution of the remaining vacant positions. *Thus the Venice Commission and OSCE/ODIHR recommendation for increased pluralism in election administration remains unaddressed.*	In accordance with the provisions of the second and the third paragraph of Article 27 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" (hereinafter - the Law), political party whose deputy faction is registered in the Verkhovna Rada of Ukraine of the current convocation (hereinafter - the political party that has a fraction) and political parties – subjects of the election process are eligible to make nominations to the district election commissions. A district election commission must include (if there is appropriate representation) one representative from each political party having a faction. No more than one representative of each political party whose candidates are registered in the nationwide constituency is included in the district election commission by lot conducted by the Central Election Commission. It should be noted that the existence of mandatory quotas in election commissions just for political parties with factions is due to the need to ensure stable operation of the election commissions (especially considering that the bill proposes to transfer the authority over the election process in districts to the level of the district election commission), because the political parties that have already entered the parliament in the previous elections have sufficient support among the population, the extensive system of local branches, enough human resources. Moreover, in practice, candidates of such parties for inclusion in the electoral commission mostly have previous experience in election commissions.

		However, as revealed in the campaign of parliamentary elections of 28 October 2012 the so-called "technical Party" created the greatest impediments for election commissions. In addition, it should be noted that this mechanism of formation of election commissions was the result of political dialogue that took place in the development and adoption of the law in force at present. The limits proposed by the bill in the subjects of nominations who are included in the district election commissions as a result of a draw among political parties whose candidates are registered in the nationwide constituency are caused by review of the way of DEC formation in connection with the transfer to the level of district election commission of the authority to register candidates in single-member constituencies. A similar limitation in the formation of overseas precinct election commissions (Art. 29 of the Law) is due to the fact that, pursuant to the decision of the Constitutional Court of Ukraine of April 4, 2012 № 7-rp, voters who reside or stay outside of Ukraine on the election day can according to the existing proportional and majority electoral system excercise the right to vote only in the proportional component of the mixed electoral system. Also, in our opinion, the change proposed by the draft law in the draw for inclusion of nominees to the district election commissions on each election commission separately will allow to represent all political parties participating in the elections in the election commissions. The subjects of the electoral process in the respective districts, except for the parties that nominated candidates for the nationwide constituency, are also candidates running in the respective constituency (regardless of the way of ballottement - on the nomination by the party or in the manner of selfnomination). According to the fifth part of Article 28 all mentioned subjects of election process can take part in the draw to include candidates in the precinct election commissions and be represented in them.
56 (реч. 4-7)	…There is no specific definition, however, of dissuasive sanctions for violation of campaign funding provisions. Monetary penalties imposed against violators, either in the form of the loss of public funding or the assessment of fines, are common dissuasive sanctions. *The introduction of public funding, which has been previously recommended, would not only address the recommendation but also create a potential mechanism for enforcing sanctions for campaign finance violations. Irregularities in financial reporting, non-compliance with financial-reporting regulations or improper use of*	The Criminal Code of Ukraine (**Article 159-1. Violation of financing of campaign of a candidate, a political party (bloc)**) establishes liability for violation of financing of campaign of candidates and political parties with possible sanctions in the form: - Fine - Remedial works - Confinement, - Imprisonment. The Code of Ukraine on Administrative Offences (**Article 21215. Violation of the provision of financial (material) support for the campaign**) provides for the liability for violation of the provision of financial (material) support for the campaign in the form of fine.

	public funds should result in the loss of all or part of public funds for the party.	The draft Law supplementes the grounds for warning the party whose candidates are included in the electoral list of the party or the individual candidates, including disregard of the deadlines established in Law of Ukraine "On Elections of People's Deputies of Ukraine" for submission or non-submission to the appropriate election commission by the funds manager of the party's election fund savings account, the manager of the electoral fund current account of an MP candidate in the single-mandate constituency of a financial statement on the receipt and use of campaign funds, as well as inclusion of inaccurate information into this financial statement (*amendments to Article 61 of the Law*). In order to adrress the recommendations with regard to the introduction of public financing further discussion is needed in terms of financial capacity of the State Budget of Ukraine.
59.	The parliamentary electoral law does not allow political parties to form electoral blocs to present candidates in the elections. *Unless there is a legitimate reason for banning the formation of electoral blocs, and due to the threshold of five percent for mandate allocation, consideration should be given to allowing political parties to form electoral blocs to present candidates in the elections, as previously recommended by the Venice Commission and the OSCE/ODIHR.*19	An important and integral condition for stabilization and successful functioning of any society is its ideological structuring. It is achieved through the dissemination of ideology, with which most people identify their political interests. The ideological struggle - a natural social phenomenon. The most effective means of converting personal liberty into the collective one - the participation of citizens in policy. This is just about political parties, each having its own ideological principles, a system of norms and values, the social base which is oriented and designed for specific social groups. At the same time the successive elections in 2006 and the snap elections in 2007 reflected the trend of situational association of political parties in electoral blocs with only one purpose - to overcome the electoral threshold. Thus, the political parties, and no other public establishment, should be the subjects of legal voting.
72.	Article 74.18 of the draft electoral law bans campaigning in foreign mass media that operate on the territory of Ukraine and in mass media registered in Ukraine in which the share of foreign ownership exceeds fifty percent. As presenting a candidate's 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.23 OSCE participating States also commit themselves "to take all necessary steps to ensure the basic conditions for free and independent media and	It should be noted that the issue of the electoral system and its components is, above all, a matter of political expediency. In turn, the voting rights belong to the political rights and are linked to the a voter's citizenship. Ukraine, given the historical development, is consistently moving towards limiting the influence of foreign factors on electoral processes inside of the state, which manifests itself including through restrictions on campaigning. Moreover, allowing foreign media to take part in the election campaign, in our opinion, may threaten the sovereignty of Ukraine. The role of mass media in the electoral process is conditioned by the obligation to provide information for voters which they need to freely form their will. Given that Ukraine has a sufficient number of printed and electronic (audiovisual) mass media and news agencies, that need can be satisfied exclusively by the national media. Thus, the State Register of print media and news agencies contains 42,399 state registration

	unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society."24	records of print media. Of the total number of registered publications about 2/3 are printed out, namely 28,666 (as of June 1, 2013).[3] We also stress that this provision does not prohibit the placement in foreign media of informational materials related to the election process, but without the element of campaigning. Part two of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that the exercise of the right to freedom of expression, since it is connected with duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information, or for maintaining the authority and impartiality of the judiciary.
78.	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.27 Any restriction on these rights must be strictly necessary and proportionate in a democratic society. *It is difficult to reconcile Article 74.1, which prohibits foreign nationals and stateless individuals from expressing opinions during campaign activities, with these principles. It is not clear why such a blanket restriction would be necessary in a democratic society.*	It should be noted that the issue of the electoral system and its components is, above all, a matter of political expediency. In turn, the voting rights belong to the political rights and are linked to the a voter's citizenship. Ukraine, given the historical development, is consistently moving towards limiting the influence of foreign factors on electoral processes inside of the state, which manifests itself including through restrictions on campaigning. The election campaign as any action aimed at encouraging to vote for or against a candidate, is a derivative element of the right to elect and be elected which together constitute a set of electoral rights. The said provision prohibits foreign nationals and stateless persons to be involved in campaigning in the forms established by law, which is, in our view, part of the political rights of citizens to participate in elections and referendums. That is, such activities of people during the election campaign are not "a manifestation of the right to freedom of speech and / or association." This rule does not prohibit foreigners to freely express their views during the campaign, but only if they do not have a campaign character (calls to vote for or against a candidate). As for the ratio of the right to free elections and freedom of expression. The European Court of Human Rights has considered two cases in which interaction of these two rights is established. This is the judgment in the "Mathieu-Mohin and Clerfayt v. Belgium" case of 1987, and in the "Bowman v. the United Kingdom" case of 1998. In the first judgment, the Court held that compliance with the standards of freedom of expression is a component of the right to free elections. After all, freedom of expression is a part the formula of legitimate elections "under conditions which ensure the free expression of the people in the

3

		choice of the legislature." In the "Bowman v. the United Kingdom" case the court upheld its opinion that the two rights are interrelated and reinforce each other. "Free elections and freedom of expression form the basis of any democratic system. Both rights are interrelated and reinforce each other ... However, under certain circumstances, these two rights are in conflict, and then it may be deemed necessary to set some restrictions on freedom of expression before or during elections that would be unacceptable in normal circumstances ... The purpose of such restrictions is defined in Article 3 of Protocol - to provide "free expression of the people in the election of the legislature." The Court held that in balancing these two rights (i.e. the introduction of restrictions on freedom of expression in the name of free and equal elections) states have a wide field of discretion.
90	The PEC may declare the results in its precinct invalid if infringements of the law have occurred that make it impossible to determine the will of the voters. Article 92 provides three grounds for this, which all refer to a minimum percentage of abuse that must occur before the provision becomes effective: in the case of illegal voting (i.e. voting by proxy, voting by those who are not eligible to vote, multiple 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; and if the number of ballot papers in the ballot box exceeds the number of voters who received ballots by 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.29 *The OSCE/ODIHR and the Venice Commission recommend that these provisions be reconsidered. This has been a long standing recommendation of the Venice Commission and OSCE/ODIHR.* *The Venice Commission and the OSCE/ODIHR*	The relevant provisions of the Law are due to the negative practical experience of previous elections in Ukraine, when opponents of the potential winners of the race who are certain of their loss in advance could take certain measures to disrupt the elections at polling stations by rendering the voting at the polling stations invalid. It is because of this that some fuses were introduced, as, for example, to deliberately locate individuals for illegal voting at the polling station in the amount of 10% of the voters who participated in voting at the polling station is rather complicated, but failure to set such limits or criteria and to determine in the law that "cancellation of election results is possible at all levels where a violation could affect the result" may lead to their use with unlawful purpose and to violations of voting rights of all other voters who excercise their rights properly. It is also worth noting that, in our opinion, the way to go which is offered by the Venice Commission, namely the formula that "the very principle of the election shall be declared invalid if the level of fraud or misconduct was such that the will of the voters can not be determined" just allows the election commissions to arbitrarily apply this provision, based on political motives.

	recommend that all provisions in the draft electoral law for invalidation of results be revised to establish clear guidelines and procedures for invalidation that are based on objective criteria and not arbitrary percentages.	
92	*The Venice Commission and the OSCE/ODIHR recommend that all provisions in the draft electoral law for invalidation of results be revised to establish clear guidelines and procedures for invalidation that are based on objective criteria and not arbitrary percentages.*	

Addressed Recommendations

№	Recommendation	The Form of Addressing
17	Проект виборчого Закону не містить жодних заходів щодо підвищення рівня участі жінок у виборах. У своєму Фінальному звіті за результатами спостереження за виборами 2012 року, ОБСЄ/БДІПЛ запропонувало розглянути можливість запровадження гендерної вимоги при формуванні списків партії, у якості тимчасової вимоги для підвищення участі жінок у цьому процесі[4]. Ця рекомендація також перекликається зі статтею 4 Конвенції про ліквідацію всіх форм дискримінації проти жінок, ратифікованої Україною, та принципами Ради Європи[5]. *Венеціанська комісія та ОБСЄ/БДІПЛ рекомендує розглянути питання щодо доповнення тексту проекту Закону додатковими положеннями щодо обов'язкових гендерних квот у списках партій для участі у парламентських виборах за пропорційним компонентом виборів*	The draft is supplemented by the norms: 1) amending article 8 of the Law of Ukraine «On Political Parties in Ukraine» by supplementing information that shall be contained in the party's statute with a new position 10 as follows: «**10) the amount of quota that determines the minimum level of representation of women and men in the party's electoral list of candidates for the deputies of Ukraine in the national constituency.»;** 2) clarification of paragraph two of Article 15 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", according to which: «Political parties in the nomination of candidates for people's deputies of Ukraine in the nationwide constituency shall observe representation of women and men in the relevant electoral lists **in compliance with the quotas set out in the statute of the relevant party.»**.

[4] Див. Підсумковий звіт спостережної місії ОБСЄ/БДІПЛ щодо парламентських виборів 28 жовтня 2012 року, стор. 37.

[5] Див., наприклад, Рекомендацію 1988 (2010), щодо «Підвищення представництва жінок в політиці через виборчу систему», яка заохочує країни з пропорційною системою представництва розглянути введення обов'язкової гендерної квоти для партійних списків.

18	*Consideration should also be given to encouraging political parties to promote women's participation in elections through legal provisions for campaign and political party finance.* Allocation of public funds for campaigns based on party support for women candidates is an appropriate mechanism for encouraging political parties to nominate more women candidates in light of the requirement for special measures as stated in Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women.	**Substantiation:** A number of European countries in addressing the issue of gender balance of women and men in the representative bodies of state power base on the so-called system of "gender orientation of political parties", which is a voluntary consolidation by political parties in their statutes of party quotas for women (Sweden, Netherlands, Norway Belgium, Austria, Germany, Iceland, Spain).
19	It was noted in the OSCE/ODIHR final report on the 2012 parliamentary elections that the manner in which single-mandate districts were established negatively impacted the potential representation of some national minorities. The OSCE/ODIHR recommended respecting the rights of national minorities in the establishment of single-mandate districts as well as special mechanisms to promote national minority participation. Article 18.2.3 of the draft electoral law states the boundaries of single-mandate districts "shall be defined with due account of the interests of the members of territorial communities and density of population at respective territory of the national minorities". There is no additional clarifying text for the implementation of this provision. It is not clear whether this provision only prohibits dilution of national minority voting strength through the division of national minority voting populations into separate districts or affirmatively requires the concentration of national minority voting populations in single-mandate districts. *The Venice Commission and the OSCE/ODIHR recommend that additional clarifying text, explaining exactly what is intended by the phrase "shall be defined with due account" and how the text is to be implemented, be included in Article 18 of the draft electoral law.*	The proposed draft wording of part two of Article 18 of the Law is supplemented with the last paragraph which reads: **« Areas which are densely populated by minorities shall not extend beyond one election constituency. In the case where the number of voters belonging to a national minority is larger than necessary for the formation of one election constituency, the constituencies shall be formed in such a way that at least in one of them voters belonging to national minorities make up the majority of the number of voters in the constituency.».** This addition clarifies the content of proposed draft wording of paragraph 3 of Article 18 of the Law and defines the mechanism of its implementation.
26	The criteria established by Article 18 are improvements, addressing previous recommendations. However, as noted earlier in this joint opinion, the text in Article 18.2.3 ("shall be defined with due account of the interests of the members of territorial communities and density of population at respective territory of the national minorities") should be clarified to ensure its proper implementation. It is not clear whether this provision only prohibits dilution of national minority voting strength through the division of national minority voting populations into separate	

	districts or affirmatively requires the concentration of national minority voting populations in single-mandate districts. *The Venice Commission and the OSCE/ODIHR recommend that additional clarifying text, explaining exactly what is intended by the phrase "shall be defined with due account" and how the text is to be implemented, be included in Article 18 of the draft electoral law.*	
28	The CEC is required to make a decision on the change of boundaries and single- mandate districts not later than 175 days prior to the day of voting. As there are already existing single-mandate districts and the CEC only has to adjust boundary lines for existing districts as opposed to creating 225 new districts, *consideration should be given to increasing the number of days in the draft electoral law to give political parties and candidates additional time to become familiar with the demographics of electoral districts prior to elections*.12	The proposed draft wording of paragraph three of Article 18 of the Law is amended, so that «**The decision on the change of boundaries and centers of the single-mandate districts shall be taken not later than three hundred sixty five days prior to the day of voting.**». This increase (from 175 to 360 days) will give the political parties and candidates for people's deputies of Ukraine extra time to study the demography of constituencies.
29	According to Article 19.3 of the parliamentary electoral law, voting is conducted in electoral precincts, which can have between 20 to 2,500 voters. The OSCE/ODIHR and the Venice Commission have previously recommended reducing this number to ease the problem of overcrowding in polling stations.13 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 ensuring universal suffrage.	Paragraphs three and four of Article 19 of the Law are amended, so that maximum number of voters for medium (up to 1200 people) and large (up to 2000 people) polling stations is decreased, and respectively the minimum number of voters for large polling stations is decreased (from 1200 people). The wording proposed by the draft Law: «**Article 19. Polling stations** ... 3. Polling stations shall be formed with the number of twenty to two thousand voters. Polling stations shall be divided into: 1) small - with the number of up to 500 voters; 2) medium - with the number of 500 to **1200** voters; 3) large - with the number of more than **1200** voters. 4. If a certain territory, an institution or a facility has less than twenty voters, a polling station in the territory, the institution or the facility in question may, subject to a decision of the Central Election Commission, be formed with the number of voters lower than the threshold prescribed by the first paragraph of the third part of this article. Foreign polling stations may be formed with a number greater than two thousand voters.».

30	The three-level system of election administration, which consists of the CEC, District Election Commissions (DEC) and Precinct Election Commissions (PEC), is maintained in the parliamentary electoral law. The system is hierarchical with the CEC having supervisory authority over the lower-level commissions. It has been previously recommended that the registration of candidates in the single-mandate districts be conducted by the DEC, provided that the CEC enjoys strong regulatory functions with regard to candidate registration and has the right to overrule unsound decisions of the DECs. This recommendation is partially addressed by the draft laws as the DECs are given authority in the areas of election administration and candidate registration for the registration of candidates in the single-mandate districts. However, the proposed amendments contain no provisions for CEC oversight of candidate registration by the DECs. *In line with previous recommendations, the draft electoral law should be revised to provide the CEC with strong regulatory functions with regard to candidate registration and the right to overrule an unsound decision of the DEC on candidate registration*.	Pursuant to recommendation 3, which is contained in the final report of the OSCE / ODIHR Mission of monitoring elections on 28 October 2012, the draft Law provides for transfer from the CEC to the DEC of the authority over election process organization, including the registration of candidates and their proxies. The grounds for refusal of registration of candidates and cancellation of such registration as provided by Article 60 and paragraph four of article 61 of the law (violation of dual ballottement, termination of citizenship, departure from Ukraine for permanent residence and for asylum, recognition incapable, entry into force of a conviction for committing an intentional crime, failure to comply with citizenship, age, disability, residence in Ukraine) are well-defined and objective, hence precluding a decision on formal, subjective reasons. However, the current law provides sufficient leverage to the CEC against the district election commissions, as superior in relation to the latter. Thus, pursuant to part eight of article 113 of the Law **higher-level election commission on the grounds of an appeal, the decision of the court or of its own motion may quash the decision of the lower-level election commission and decide on the merits or require lower-level election commission to re-examine the issue raised**. In addition, pursuant to paragraph four of article 52 of the Law (set out on the basis of the Constitutional Court of Ukraine of April 5, 2012 № 8 rp) the same person may be included in only one electoral list of candidates nominated by a party or only one of the single-mandate constituencies in order of party nomination a or in order of self-nomination. Since the registration of candidates in single-member districts will be by all the district election commissions at the same time, it will be difficult for the district election commissions to track the candidates' compliance with the requirements of the fourth paragraph of Article 52 of the Law. In this regard, the draft proposes an additional mechanism to prevent cases of the so-called "double ballottement": - **If a district election commission discovers that a person nominated as**
58	According to Article 52 the nomination of candidates begins 90 days prior to election day and ends 79 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. 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. The draft electoral law removes CEC responsibility for registration of single-mandate candidates and places it with the relevant DEC. DEC registration of single-mandate candidates partially adopts a previous recommendation. However, the proposed amendments contain no provisions for CEC oversight of candidate registration by the DECs. *In line with previous recommendations, the draft electoral law should be revised to provide the CEC with strong regulatory functions with regard to candidate registration and the right to overrule an unsound decision of the DEC on candidate registration.*	

		an MP candidate in one of single-mandate election district based on his or her written statement on consent to be nominated from a party or in a nomination of oneself order is simultaneously included in the electoral list of the party based upon his or her written consent to be nominated as a MP candidate or nominated as a MP candidate in other single-mandate election district based on his or her written consent to be nominated as a MP candidate from a party in a nomination of oneself order take decision about refusal in registration or cancellation of registration of such person as MP candidate in respective single-mandate election districts. (fifth paragraph of Article 59 of the draft Law); **- The Central Election Commission issue a decision cancelling MP candidate's in single-mandate district registration in case of finding a breach of the requirements of the Part 4 of the Article 52 of this Law.** (sixth paragraph of Article 61 of the draft Law).
34	Article 30.3 of the draft electoral law should also enhance transparency as it requires Acts of the CEC, which have legal character, to be published prior to the election process. However, this provision requires publication only "where possible". It is not clear what circumstances would make publication "not possible", except for the date and time of the decision. *It is recommended that the phrase "where possible" be clarified so that the provision is effective and cannot be arbitrarily applied by the CEC.*	Para. three of Article 30 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" proposed in the draft reads as follows : **" Acts of the Central Election Commission having legal character, provided for by this Law, should be, where possible, adopted and published under the established procedure prior to the election process. ".** In this regard, the Law is being amended to remove all of the clearly defined time frames of decision-making by the Central Election Commission, namely: for the Central Election Commission's establishment of the financial statements forms to be submitted by the election fund managers (~~80 days before the election,~~ para. eight of article 49); for the establishment by the Central Election Commission in cooperation with the National Bank and the central executive body for public policy in the area of postal services, of the order of selective control over the receipt, accounting and use of election funds (~~83 days before election day~~, para. 9 of Article 50); for the establishment by the Central Election Commission of the order to provide airtime and print space at the expense of the State Budget of Ukraine allocated to campaigning to parties ehose candidates are registered in the nationwide constituency, candidates for deputies (~~80 days before the election~~, the fourth para. of the article 71);

		for approval by the Central Election Commission of the form a of stamp "Withdrew" (~~26 days before the election~~, para eight of article 81); for the the establishment by the Central Election Commission of the forms of protocols on votes counting at a polling station in the nationwide election district within the single-mandate constituencies and the votes counting at a polling station in single-mandate constituency (~~22 days before election day~~, para first of Article 91). The Law offeres to keep strict terms only in case of approval by the Central Election Commission of the form, color and text of ballots (not later than fifty-three days before election day, para 2, Article 80) and the form of the electoral list (not later than one hundred twenty days before the election, fourth para of article 53). In drafting all other CEC acts of legal nature for which specific legal time limit is not set, the rule on the need for their adoption and publication in the prescribed manner before the start of the election process shall apply.
38	The Venice Commission and the OSCE/ODIHR have previously recommended reducing the maximum and minimum numbers of PEC members to promote consensus and orderly meetings. This would improve the work of the 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 polling stations.14 *This recommendation remains unaddressed*.	Amendments to Article 28 of the Law are made according to which the maximum number of members of precinct election commissions is reduced for small, medium and large stations and the minimum number of members of precinct election commissions is reduced for medium and large stations. Revision proposed by the idraft: **“Article 28. The order of establishment of the precinct election commission for the regular or the special election precinct** ... 2. The precinct election commission shall be composed of: 1) for small precints **-** 10 – **14** people; 2) for medium precincts – **12-16** people; 3) for major precincts – **14-18** people.”

41	Article 35 of the draft electoral law specifies that election commissions maintain written documents. Minutes, decisions, resolutions, reports, and protocols are some of the types of written documents identified in the Article. It requires that some of these documents, but not all – such as minutes, be made publicly available through various means of publication. However, all documents prepared by election commissions, including minutes, should be made available to the public. *The OSCE/ODIHR and the Venice Commission recommend that all election administration documents, including minutes, decisions, resolutions, reports, and protocols be made available for public inspection at the relevant election commission headquarters and published on the CEC website.* The recommendation for complete transparency in the written documentation of election commissions is addressed partially. Article 35.5 of the parliamentary electoral law 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 draft is supplemented with the following amendments to the Law of Ukraine "On Elections of People's Deputies of Ukraine": 1) in Article 35 (**Documenting Activities of District and Precinct Election Commissions**): - The second part is supplemented with the fourth sentence as follows: "**The minutes of the election commission meeting shall be posted at the stand of the commission's official materials for public review and sent to the Central Election Commission for publication on its official website.**" - the second sentence of the fifth part is amended, according to which «The resolution adopted by the district **or the precinct** election commission, **not later than the morning of the day following the day of its adoption**, shall be forwarded to the Central Electoral Commission for publication on its official website.»; - eighth part is supplemented with the second paragraph as follows: «**Reports and protocols of the election commission shall be sent to the Central Election Commission for publication on its official website and posted at the stand for the election commission's official materials for public review.».** 2) paragraph 20 of Article 31 (**Powers of District Election Commissions**) is

42		revised as follows **«20) generalize and submit to the Central Election Commission, within time-limits established by it, information on the applications and complaints lodged with the district election commission, that concern the process of election of MPs as well as on the results of their review»;** 3) part two of article 32 (Powers of the precinct election commission) is supplemented with a new paragraph 12 which reads as follows: **«12) summarize information about the claims and complaints submitted to the election commission relating to the deputies election process and the outcome of the consideration theirof, hang out this information on the stand for the commission's official materials for public review, and submit it to the Central Election Commission within the deadline set by it for posting on its official website»;** 4) part **twelfth of the amended Article 82 is supplemented with a rule on immediate** posting **at the election commission premises for public review** of the act on discrepancy (mismatch) between ballots counted in the national constituency and (or) single-mandate constituency and the corresponding amount indicated in the extract from the minutes of the district election commission on transfer of ballots. In addition, the current Law of Ukraine "On Elections of People's Deputies of Ukraine" already has rules which provide for posting of a number of election commission documents in the commission premises for public inspection: - Resolution adopted by the district or precinct election commission (part five of Article 35); - Protocol on the acceptance of ballots by district election commission (second paragraph of Article 82); - Protocol on the ballots transfer to district election commissions (part five of Article 82); - precinct election commission protocols on votes count at a polling station in the nationwide constituency within the single-mandate constituency and in the single-mandate constituency, and if available- the respective copies of each protocol marked "Corrected" (part ninth of article 91); - district election commission protocols on the recount of votes at a polling station in the nationwide constituency within the single-mandate constituency and in the single-mandate constituency (part seventeenth of article 94); - district election commission protocol on voting results in the

		nationwide constituency within the single-mandate constituency, and if amendments to this protocol were made - the protocol which contains inaccuracies (errors or omissions in the figures), and the protocol marked "Corrected" (part eighth of article 95); - district election commission protocol on voting results in single-mandate constituency, and if amendments to this protocol were made - the protocol which contains inaccuracies (errors or omissions in the figures), and the protocol marked "Corrected" (part eighth of article 96).

44	The preliminary voter lists are compiled by the State Voter Register maintenance bodies pursuant to the Law on the State Voter Register. Articles 39-44 of the parliamentary electoral law regulate the updating of the compiled preliminary voter lists, which is done in accordance with procedures approved by the CEC. A copy of the voter list is transferred to the PEC to be posted for public inspection by voters. Under Article 40.3 of the parliamentary electoral law, a voter can request a change to his/her own data or to any other voter's data. Although the Law on the State Voter Register provides for notification to a voter of changes in personal data after the changes are made, there is no requirement in either the draft electoral law or the Law on the State Voter Register for a voter to be notified if his or her voter's data is challenged by another voter. It would be a better practice to notify a voter of an application to change the voter's personal data prior to the change being made. *The OSCE/ODIHR and the Venice Commission recommend that the electoral law be amended to require that a voter be notified and have the opportunity to respond to challenge a request for a change in the voter's personal data.*	Changes to part six of Article 40 (**Procedure for Familiarizing Voters with the Preliminary Voter Lists in Regular Election Precincts and for Correction of Inaccuracies in Voter Lists**) of the Law are made, according to which: «6. Following the application consideration the precinct election commission shall decide on the delivery of such application to the State Register of Voters authority. The decision of the election commission together with the voter's application and the enclosed documents (copies) shall be immediately forwarded to the appropriate State Register of Voters authority and shall be issued to the applicant no later than the day following the date of acceptance, **and shall be also sent to the person whom this decision concerns (if this person is not the person who has applied).** » This proposal is in line with the need to enable a voter who is no the one who applied to appeal against the election commission decision to correct the provisional list of voters if that concerns them. .
52	Article 50 of the parliamentary electoral law requires the bank to return to the party any unused funds based on a request from the party after the elections. On the other hand, any unused funds in the account of a single-mandate district candidate shall be transferred to the state budget. There appears to be no logical reason for the unequal treatment of a political party's unused campaign funds and those of a single-mandate district candidate. *The Venice Commission and the OSCE/ODIHR have previously recommended that this discriminatory practice be ended.*	**Part thirteen of article 50 (**Formation and Use of Electoral Funds**)** is revides, namely: **«13. The banking institution shall transfer unused election funds of an MP candidate in a single-mandate constituency to the respective candidate:** **in full - if the amount of the unused funds of an MP candidate in a single-mandate constituency that is less than the amount of funds deposited by him to the election fund;** **in the amount of the funds deposited by him to the election fund - if the amount of unused funds of an MP candidate in a single-mandate constituency exceeds the amount of the funds deposited by him to the election fund. The banking institution shall transfer the funds remaining after the transfer to the MP candidate in a single-mandate constituency to the State Budget of Ukraine within three days after the official announcement of the election results in the single-member constituency.».** This version eliminates discriminatory practices in relation to parliamentary candidates in single-mandate constituencies and at the same time preventing the illegal enrichment of such candidates.

53	Стаття 48.9 закону про вибори народних депутатів забороняє будь-які платежі з виборчого фонду після 18:00 години в день, що передує дню голосування. Цей термін може виявитися занадто жорским, оскільки кандидати і політичні партії повинні мати час для оплати рахунків, які можуть надійти після встановленого терміну. Було б більш доцільним заборонити будь-які нові витрати або рахунки, пов'язані з виборчою кампанією, після встановленого терміну.	**Parts nine and twelve of article 48 (**Electoral Funds of Parties and MP Candidates in Single-Mandate Election Districts**) of the Law are amended**, specifying: «9. Spending from the current electoral fund accounts **after 18 hours of the last day before the voting day shall be effected only if the accounts for goods, works and services were issued by that time.** **Spending from the current electoral fund accounts shall be terminated at 18 o'clock on the Wednesday following the voting day.** 10. In case of a repeat voting in a single-mandate constiruency, use of election funds of MP candidates included on the ballot for the repeat voting shall be resumed on the date of decision on the repeat voting. 11. Arrest of moneys on the election fund accounts shall not be allowed. 12. Closing accounts, suspending operations on the election fund accounts earlier than the period prescribed by **the second paragraph of the nineth part** of this article shall be prohibited.».
55	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 electoral law does not establish any liability for failure to submit reports and only requires the CEC or the relevant DEC to report violations to "relevant law-enforcement bodies, which shall hold an inquiry and react in accordance with the law." The additional amendments sent to the Venice Commission and the OSCE/ODIHR on 15 May 2013 propose several other changes in this respect; Article 50.7 establishes that the manager of the electoral fund must refuse contributions that are not in conformity with the law. The CEC and the DECs will exercise a 'selective control' over the receipt, accounting and use of resources of parties or candidates in single-mandate constituencies according to Article 50.9, under the procedure established by the CEC jointly with the National Bank of Ukraine and the central executive power. Finally, Article 61 introduces the failure to submit financial reports or the entry of invalid data as possible reasons	**The wording proposed by the draft Law of parts seven and nine of article 50 (**Formation and Use of Electoral Funds) is revised, namely: «7. The manager of the respective electoral fund account shall reject a donation from a natural person who under this Law has no right to make a voluntary donation, **or if the amount of the voluntary donation (or their overall sum) exceeds the one envisaged under part two of Article 50 of this Law**, within three days following the day when the manager becomes aware thereof. Based on the manager's application rejecting the donation for such a reason, the banking institution in which the respective account of the electoral fund has been opened shall transfer such voluntary donation to the State Budget of Ukraine. **The manager of the respective account of the election fund shall be obliged to waive the resources received to the election fund after fixing the size of the fund of the party MP candidates from which are registered in the nationwide election district, or of the MP candidate in the single-mandate election district provided for in Part one Article 48 of this Law, within three days from the date of his/her becoming aware of that. Based on the application from the manger on the refuse of resources on this reason the banking institution in which relevant account of the**

	for issuing a warning to candidates. *There is no further specification whether these actions could lead to cancellation of registration.*	**electoral fund, shall return these resources to the respective party which made such transfer, or to the natural person at the account of these resources and in case of impossibility to do such return – shall transfer them to the State Budget of Ukraine.** **…** **9. ~~Selective~~ Control of the receipt, accounting, and use of the funds of the electoral funds shall be exercised directly by the Central Election Commission. District election commissions shall control the formation and use of election funds of candidates in the respective single-mandate constituencies.** **~~Selective~~ Control over the receipt, accounting and use of resources of electoral funds shall also be carried out by banking institutions in which accounts of the electoral fund are opened. Banking institution in which an account of the electoral fund is opened shall provide respective election commission with information on receipt and use of resources of the electoral fund.** **~~Selective~~ Control over the receipt, accounting and use of resources of electoral funds shall be carried out under the procedure established by the Central Election Commission jointly with the National bank of Ukraine and central executive power body ensuring the formation of the state policy in the sphere of provision of postal services.».** The Central Election Commission has been obliged to **immedietely** publish on its official website of financial statements on the receipt and use of the election funds from including interim ones (paragraphs one, two, four, six of part six of Article 49 of the draft Law). Moreover, the wording of part seven of article 49 proposed by the draft Law has been revised as follows: **«7. Analysis of the financial statements shall be carried out by the election commission to which they were submitted.** **The Central Election Commission, no later than five days before the election, shall publish on its official web site analysis of the financial statements envisaged under paragraph one of part six of this article, and not later than the thirtieth day after the vote - analysis of the financial statements envisaged under paragraph two of part six of this article.**

		The Central Election Commission, no later than five days before the election, shall publish on its official web site analysis of the financial statements envisaged under paragraph one of part six of this article, and not later than the thirtieth day after the vote - analysis of the financial statements envisaged under paragraph two of part six of this article. **District election commissions, no later than five days before the election, shall post on the stand for the respective commission's official materials for public review and submit to the Central Election Commission for immediate publication on its official web site analysis of the financial statements submitted to the respective commission envisaged under paragraph three of part six of this article, and not later than the twentieth day after the election day - analysis of the financial statements envisaged under paragraph five of part six of this article.** **In case if in the analysis of the financial statements a violation of the present Law is deteced, the Central Election Commission or the respective district election commissions shall report to the appropriate law-enforcement authorities for review and response according to legislation.».** Also made clear what period shall be covered on the interim financial statements for the receipt and use of campaign funds of the party, the candidate in single-mandate constituency (proposed draft wording of the second paragraph of the fifth, first and third paragraphs of the sixth part of Article 49).

57	The OSCE/ODIHR final report on the 2012 parliamentary elections noted shortcomings in Ukraine's campaign and political party finance regulations previously identified by the Council of Europe's Group of States against Corruption (GRECO).18 The OSCE/ODIHR final report also notes that Ukraine's party finance regulations fall short of the standards and recommendations of the Guidelines for Political Party Registration put forward jointly by the Venice Commission and the OSCE/ODIHR. As a result, the OSCE/ODIHR final report recommended: (1) more detailed content for campaign finance disclosures; (2) greater frequency in filing of reports; (3) more equitable conditions for campaign finance; (4) more detailed regulations for sanctions and accountability; (5) clear procedures for enforcement and designation of a single body responsible for enforcement of violations; (6) the introduction of a reasonable campaign limit on spending; and (7) consideration of the introduction of public funding for political parties with a threshold level of support. The provision of Article 48.1 of the draft electoral law setting limits on campaign expenditures and new amendments on submission of provisional reports before election day and their publication on the CEC website, as well as on the possibility of issuing warnings for not respecting campaign funding rules are positive amendments. *However, the need remains to address numerous recommendations aimed at improving the regulation of campaign finance.*	**Addressed partially.** Thus, the draft proposes to include amendments to the Law of Ukraine "On Elections of People's Deputies of Ukraine" on: - Limiting the size of election fund of the party whose candidates are registered in nationwide constituency and the size of the election fund of a candidate for deputy in single-mandate constituency; - Improvement of the regulatory provisions on voluntary contributions to election funds and prohibiting the use of own equity of parties for campaigning, including on the initiative of the voters; - Improving control mechanism of the flow, accounting and use of election funds, which will be developed with the participation of the Central Election Commission, district election commissions and offices of the banks administering the election fund account; - The introduction of an interim statement on the receipt and use of election funds and requiring mandatory disclosure of interim financial statements on the official website of the Central Election Commission; - supplementing of grounds for warning the party whose candidates are included in the party electoral list or the individual candidates, including violation of deadlines imposed by the Law of Ukraine "On Elections of People's Deputies of Ukraine" for submission or non submission to the appropriate election commission by funds manager of the party's election fund savings account, the manager of the election fund current account of a candidate for deputy in the single-mandate constituency of a financial statement on the receipt and use of campaign funds and for inclusion of inaccurate information into this financial statement; - establishing requirements for campaigning in the media at the expense of election funds of political parties, candidates in single-mandate constituencies only after proper payment for print space or air time from the relevant election fund accounts; - the introduction of a comprehensive (not random) control by CEC and DECs of the election fund managers' financial statements; - Setting deadlines for the CEC publication on its official website of analysis of the financial statements on the receipt and use of election funds of political parties (including interim ones), and setting deadlines for DECs to post on the stand for the commission's official materials for public review and to submit to the CEC for publication on its official web site of analysis of submitted to the appropriate commission financial statements on receipt and use of election funds of candidates for

		deputies in single-mandate constituencies. At present, the Ministry of Justice further studies recommendations of European and international organizations and agencies, in particular, Evaluation Report on Ukraine "Transparency of party funding", GRECO on October 21, 2011, and Guidelines for the regulation of political parties, adopted jointly by OSCE / ODIHR and the Venice Commission on October 16 2012, as well as international experience in the legal regulation of political parties and election campaigns, in particular with the aim to *study the issue of public funding of political parties*.
62.	The requirement for a financial deposit could lead to lower participation by smaller political parties and 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 financial deposit to ensure broader participation of parties and individuals in elections as candidates.*	**Parts one and two of Article 56 (Financial Deposits) are revised as follows:** «1. Each party submitting an electoral list of MP candidates in the nationwide election district shall, before submitting documents to the Central Election Commission for the registration of the MP candidates, transfer to the special account of the Central Election Commission a financial deposit in the amount of **one thousand** minimum wages. 2. Each party that is nominating an MP candidate in a single-mandate election district, and each MP candidate self-nominating in a single-mandate election district, shall, before submitting registration documents **to the district election commission**, transfer to the special account **of the district election commission** a financial deposit in the amount of **ten** minimum wage.».
65	Although the draft electoral law states positive general principles for media access and for providing information to voters, such as in Article 63.1, it fails to state specific and detailed procedures for assuring balanced coverage.	Article 63 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" establishes the basic principles of information of election, particularly that voters shall be provided access to diverse, objective and unbiased information needed to make an informed and free choice (first paragraph) .
66	Article 63.1 of the parliamentary electoral law states, as a general principle, 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 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. Article 13.4 of the parliamentary electoral law also states, as a general principle, that all reporting on the elections by mass media, both private and public, must be done in an unbiased manner. It also states a general guarantee of unrestricted access for the mass media to all public	These principles are implemented in a number of articles of the Law and amendments proposed thereto, namely: - Mass media, information agency which disseminate information about the event, related to the elections cannot suppose ignoring publicly important information, related to that event if it was acquainted with such information while disseminating it. Mass media, information agency are obliged to report on election information according to facts and not allowing misrepresentation of information. Mass media and news agencies should seek to obtain information about events related to the election from two or more sources, preferring primary sources. (amendments to article 66); - TV and radio organizations are forbidden to distinguish between subjects

	events relating to the elections, meetings of election commissions and premises of election precincts on election day.	of election process or to give them privileges in the election-related material (amendments to article 66); - The cost of participation in the program is the same for all participants in the election process (amendments to article 66); - The amount of broadcasting time provided to the participants in order to participate in discussions or to answer a question is to be determined by uniform rules (amendments to article 66) тощо.
67.	Despite the requirements of Articles 13.4 and 63.1 of the law, the OSCE/ODIHR noted numerous problems related to media coverage during the 2012 parliamentary elections. In its final report on the 2012 parliamentary elections, the OSCE/ODIHR recommended to require more balanced coverage in media regulations, political pluralism in media coverage, and not giving candidates with government positions privileged media treatment over other candidates.22 The OSCE/ODIHR also recommended greater clarity in identifying the body responsible and the applicable procedures for enforcement of sanctions for media violations as well as that media monitoring results compiled by independent NGOs be used for adjudicating complaints of media violations.	In addition, through amendments to the Code of Ukraine on Administrative Offences, the Code of Administrative Procedure of Ukraine, Laws of Ukraine "On Elections of People's Deputies of Ukraine", "On the information agencies" the draft proposes to regulate on the level of electronic (audiovisual) and print media the issues of activities of news agencies during the election process (including the establishment of administrative responsibility for violation of the election law, and identifying of news agencies as entities whose decisions, acts or omissions may be referred to the administrative court within the electoral process).
68.	Article 66.6 of the draft electoral law adopts the recommendation of the OSCE/ODIHR for use of media monitoring results compiled by NGOs in adjudicating complaints of media violations. This provision specifically states “the National Council for Television and Radio Broadcasting of Ukraine may use monitoring materials provided by civic organizations registered according to law-established procedure, statutes of which envisage activities on monitoring and observation of election process.”	The draft law proposed a clear mechanism for monitoring compliance by the media and news agencies with the Law regarding participation in information provision for elections and campaigning. Along with the National Council of Ukraine on Television and Radio Broadcasting such control is vested in the Central Election Commission, district election commissions and the State Committee for Television and Radio Broadcasting of Ukraine. In is envisaged that in the exercise of such control can be used monitoring materials provided by non-governmental organizations whose statutory activities include those related to the electoral process and the supervision thereof, if they are registered in the manner prescribed by law.
69.	Article 66 also has new language which (1) requires mass media to “report on election information according to facts and not allowing misrepresentation of information”; (2) prohibits mass media “to distinguish between subjects of election process or to give them privileges”; (3) limits the share of broadcasting time of parliamentary parties and their candidates to “not more than 30 per cent from the average amount of broadcasting time”; (4) requires equal broadcast time for participants in paid TV and radio election debates and discussions. These provisions partly address the OSCE/ODIHR recommendations. It is clear from Article 66.6 of the draft electoral law that “National Council on Television and Radio	The proposed control mechanism includes both administrative liability and establishing cooperation between the control authorities on judicial review of decisions, acts or omissions of the media and news agencies that violate the requirements of the law on elections in order to restore voting rights. The draft law also proposes to establish the possibility of expressing to the mass media or news agency of a warning in the event if a court, when considering an election dispute, establishes a single violation of the Law (along with temporary one (before the election) license suspension, termination of the news agency business or temporary ban on printed version issuance in case of repeated or single gross violation). The Ministry of Justice also took into account the opinion of the Venice

	Broadcasting of Ukraine oversees and ensures compliance with the requirements of this Law as regards the participation of the media and news agencies in providing information and conducting election campaigning." *This is a positive amendment that addresses the OSCE/ODIHR recommendation to identify the body responsible for enforcing media rules.*participants in paid TV and radio election debates and discussions. These provisions partly address the OSCE/ODIHR recommendations. It is clear from Article 66.6 of the draft electoral law that "National Council on Television and Radio Broadcasting of Ukraine oversees and ensures compliance with the requirements of this Law as regards the participation of the media and news agencies in providing information and conducting election campaigning." *This is a positive amendment that addresses the OSCE/ODIHR recommendation to identify the body responsible for enforcing media rules.*	Commission on the Law of Ukraine "On national referendum», CDL (2013) 029. As stated in paragraphs 47 and 48 of this opinion it is not always easy to guarantee compliance with requirements concerning the media about the "equal and unbiased attitude" during the referendum and "objectively and balanced coverage of the positions for and against the issue." This is a difficult task, since it deals with different forms of media. All media should try to be objective to the facts .... At the same time, the private media can have their own position, and therefore contribute to the spread of their own thoughts, giving them a broader and more complete coverage, being totally biased in doing so. It is not only constitutionally questionable, but also politically and socially impossible to require that all media, regardless of their ideological beliefs, treat the sides of the referendum "equally and impartially" and to ensure "the objective and balanced coverage positions for and against the question submitted to a referendum": balanced coverage of positions should be guaranteed by the competition of many media, rather than by the requirements of any of them. In consideration of the recommendations of the Final Report of the OSCE / ODIHR Monitoring Mission to the elections of deputies of Ukraine on 28 October 2012 on the regulation of the media it should be underlined that work in this area is not limited to the draft. Thus, the State Committee for Television and Radio developed and submitted to the Government a draft Law of Ukraine "On the reform of public and municipal print media." The purpose of this bill is to limit the impact of state and local governments on the activities of printed media by reforming the print media and editorials founded by public authorities, other public bodies and local authorities. However, note that at present epy Parliament of Ukraine considers three bills aimed at reforming the state and municipal print media, including: - "On Reforming the print media" (registration number 2600 as of 21.03.2013), introduced by MPs of Ukraine Tomenko, Raupovy, Miroshnichenko, Kurpil, Bagraev; - "On Amending Certain Laws of Ukraine to reform the state and community print media" (Reg. № 2600-1 from 09.04.2013), introduced by MPs of Ukraine Kniazhytskyi; - "On the reform of state and municipal media" (№ 2093 from 05.21.2013), introduced by MPs of Ukraine Kurpil, Heraschenko. State Committee for Television and Radio Broadcasting provides support for these bills.

		In order to ensure proper implementation of the recommendations of the Parliamentary Assembly of the Council of Europe on ensuring transparency of ownership of the media (paragraph 12.4 of PACE Resolution 1466 (2005), paragraph 13 of the PACE Resolution 1755 (2010) Ministry of Justice drafted the Law of Ukraine "On Amending Certain Laws of Ukraine on transparency of ownership towards media" that was submitted by the Cabinet of Ministers of Ukraine on April 4, 2013 to the Verkhovna Rada of Ukraine (registration number 2731). Jun. 21, 2013 the draft was adopted by the Verkhovna Rada of Ukraine in the first reading. Mechanism to achieve the abovementioned goal is to introduce appropriate amendments to the Law of Ukraine "On Print Media (Press) in Ukraine", "On the information agencies", "The National Council of Ukraine on Television and Radio," "On Television and Radio". The above draft offers, in particular, the following: - To define the concept of "related parties" in the information field; - To provide for the submission by the founder (co-founder) who intend to obtain the print mass media registration certificate of information about the founder (co-founders) of the print medium and about the related parties; - to envisage violations by the founder (co-founder) of the requirements of Article 10 of the Law of Ukraine "On Print Media (Press) in Ukraine" regarding safeguards against monopolization of print media among the grounds for refusal to register the print media; - to envisage filing by entities (businesses) that intend to get (re-issue) broadcasting license of information about the broadcasting business founder (co-founders), the owner (owners) and the related parties, and information about the distribution of shares of statutory capital; for equity society – a list of shareholders owning shares in excess of 5 percent; - Submission by the licensee to the National Council of Ukraine on Television and Radio Broadcasting of an application within 10 days for the renewal of the broadcasting license or annexes thereto due to the change of legal form, the the licensee conditions or its founders (owners).
71.	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 72.9 of the parliamentary electoral law. This provision impacts on the freedom of expression of the broadcasters	**Part nine of Article 72 (Procedure for Using Electronic (Audiovisual) Mass Media)** of the Law has been amended as follows: «9. It shall be prohibited in any form to comment on or evaluate the content of the election campaign program, the party's and the candidates' actions for **10** minutes before and after the television and radio broadcasting of the party's campaign television

	and appears overly restrictive. *The Venice Commission and the OSCE/ODIHR recommend to carefully reconsider this provision*.	and radio programs on the channel in question.».
73.	Article 67.4 of the parliamentary electoral law provides a blackout period during which opinion polls cannot be published by the media during the 10 days before elections. *Consideration should be given to further reducing the blackout period so that voters can continue to receive information closer to election day*.25	**Part three of Article 67 (Features of dissemination of the results of the opinion polls related to elections)** of the Law has been amended as follows: «3. Disclosure or disssemination by other means of the opinion polls results related to the elections, including the parties-participants of the election process and the MP candidates, in the last **seven** days before the election day is prohibited.».
75.	In its final report on the 2012 parliamentary elections, the OSCE/ODIHR recommended stronger institutional mechanisms for dealing with the abuse of state resources in elections and holding accountable those responsible. The final report also calls on political parties to be more responsible and to take their own initiatives to prevent these abuses. Other than Article 74.11 of the draft electoral law, which requires the publication of warnings issued by the National Council for Television and Radio Broadcasting regarding media law violations, and Article 74.4, which prohibits state authorities from being involved in election campaigns, the draft electoral law contains no strengthened institutional mechanisms to deal with the prevalent problem of the abuse of state resources. *The Venice Commission and the OSCE/ODIHR recommend the draft electoral law be revised to address this recommendation*.	According to Article 11 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" the electoral process is carried out, in particular, on the basis of impartiality of public authorities, authorities of the Autonomous Republic of Crimea, local governments, courts, businesses, institutions and organizations, their leaders and other officials to parties - participants in the election process, MP candidates. Part three of Article 74 of this law prohibits placement of campaign materials and political advertisements on buildings and premises of public authorities, the authorities of the Autonomous Republic of Crimea and local governments, enterprises, institutions and organizations of state and municipal property. The draft Law proposes to supplement article 74 of the Law with a new part four according to which campaign events, distribution of election campaign materials, demonstration of propaganda films or videos, distribution of election leaflets, posters and other printed promotional materials or publications that contain campaign materials, public calls to vote for or not to vote for the party - parties and candidates , candidates in single-member district or public evaluation of these parties or candidates during events organized by the state authorities, authorities of the Autonomous Republic of Crimea, local government, state or municipal enterprises, institutions and organizations shall be prohibited Moreover, according to article 61 of the Law **a party, an MP candidates from which are included to election party list or a single MP candidate** are to be warned if a court determines in the course the consideration of an election-related dispute pursuant to the procedure prescribed by law, that an MP candidate holding a position (or more than one position) in a state executive body or local self-government body, state or municipal enterprise, institution, establishment or organization, in military formations established according to the laws of Ukraine, has used for the purpose of his or her election campaigning his or her subordinates, office transport, communication, equipment, premises, or other objects and resources at his or her place of work (abuse

		of office) We would like to emphasize that the **Criminal Code of Ukraine** stipulates that interference by an official with the use of official position in the performance by the election commission of its lawful authority committed by illicit demands or instructions in order to influence the decisions of election commission is punishable by a fine (of five hundred to thousand untaxed minimum incomes) or imprisonment (for a term of two to five years), with deprivation of the right to occupy certain positions or engage in certain activities (for a period of two to three years) (Article 157). **Code of Ukraine on Administrative Offences** stipulates that campaigning by a person whose participation in election campaigning is illegal is punishable by a fine on citizens (*from thirty to fifty untaxed minimum incomes*) and officials (*from fifty to eighty-free untaxed minimum incomes*) (article 212-10). It should also be noted that the Ministry of Internal Affairs of Ukraine analyzed violations of law during the parliamentary elections to the Verkhovna Rada of Ukraine in 2012. Bodies of internal affairs registered and verified all notifications on possible violations of the electoral law and the appropriate response measures were taken. The vast majority of information on events received by the police did not contain elements of crimes or offenses and usually were associated with dissatisfaction of some candidates for people's deputies of Ukraine or their representatives with actions of their political opponents.
77.	Article 69.8 of the parliamentary electoral law requires local self-government and local executive bodies to allocate places for posting of campaign material. Although it may be assumed the general principle of equal treatment of candidates applies here, it would be better if the article stated that places must be allocated on an equal basis.	Part four of article 69 (Information posters and campaign materials) has been amended as follows: «8. Local executive authorities, local self-government authorities, not later than one hundred days before the election, shall allocate space in public places for placement of campaign materials **in compliance with the principle of equal opportunities**.».
79.	Article 69 of the draft electoral law requires, when requested by a political party or single-mandate district candidate, that the CEC or DEC permit the posting of information posters and campaign materials in the regional language or minority language of the party or candidate. This amendment partially addresses a previous recommendation that official electoral information should be available in minority languages in areas where they are widely spoken. The amendment partially addresses this recommendation because the provision is only applicable when a request is made by a political party or candidate. However, this issue may be	Changes to **part four of Article 12 (Language of documents on elections and referenda) of the Law of Ukraine "On the Principles of State Language Policy"** are made, according to which: "4. Informational posters of candidates for President of Ukraine, candidates for people's deputies of Ukraine, the deputies of Verkhovna Rada of the Autonomous Republic of Crimea, parliamentary and local self-government officials from political parties shall be printed in the national language and **regional language (s).**" Moreover, the proposed draft wording of parts one and two of **article 69 (Information**

	additionally addressed by Article 69.5, which incorporates by reference the Law of Ukraine "On the Principles of State Language Policy" to include requirements of the referenced law for campaign materials.	**posters and campaign materials)** of the Law of Ukraine "On Elections of People's Deputies of Ukraine" has been specified as follows: «1. The Central Election Commission at the expense of funds from the State Budget of Ukraine allocated for the support and conducting the MP elections, not later than thirty five days prior to the election day ensure the production of information posters of parties, MP candidates from which were registered in the national district. These posters should include election programs of the parties (not more than seven thousand eight hundred symbols), submitted by them during the registration of candidates, electoral party list indicating name, surname, patronymic, year of birth, position (occupation), place of work and residence, party membership of MP candidates included to it, as well as photographs of the first five candidates. The shape, size and layout of the information posters are set by the Central Election Commission. The Central Election Commission should agree with the party representative in the Central Election Commission the text and printing of informational poster. **Information posters shall be made according to the Law of Ukraine "On the Principles of State Language Policy".** 2. The district election commission at the expense of the State Budget of Ukraine that are provided for the support and conducting the MP elections shall ensure the production no later than thirty five days prior to the election day agreed with the MP candidates registered in a single districts, informational posters at the rate of two thousands of copies for each MP candidate. Posters should include a biography of the candidate, his / her election program (up to three thousand nine hundred symbols), submitted during the registration, and photo**. Information posters shall be made according to the Law of Ukraine "On the Principles of State Language Policy".».**
84.	Official observers from political parties, candidates or NGOs have broad and comprehensive rights, which are detailed in Article 77.9. One troubling provision allows official observers to "take necessary measures within the limits of legislation to stop illegal actions during the voting and vote counting at the election precinct". This right is very broad and could potentially be abused by some electoral subjects. It would be better to provide 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.	**Part nine of article 78 (Official Observers from Political Parties, MP Candidates and Non-Governmental Organizations)** of the Law to specify the wording of paragraph 5 and include paragraph 7 as follows: «9. An official observer from a party, MP candidate, or non-governmental organization, shall be entitled to: 1) be present at the election precincts during voting, observe actions of the election commission members, including during issuing ballot papers to voters and vote counting without physically getting in the way of the election commission members;

		2) to make photographs, film, audio and video recordings, without infringement of the voting secrecy; 3) to be present during distribution of the ballots to the election commission members, including for arrangement of voting at the place of the voters' stay, and during the conduct of such voting 4) to be present, pursuant to the requirements of this Law, at the meetings of district and precinct election commissions, subject to the provisions established by part three of Article 34 of this Law, including during the vote counting at polling stations and the vote results determination; 5) to apply to the respective election commission, the **respective state bodies**, or the court in order to eliminate violations of this law which have been identified; 6) to prepare a protocol of the violation of this Act which shall be signed by him/her and at least two voters who certify the fact of the violation, indicating their name, surname, patronymic, place of residence and home address, and submit it to the appropriate election commission or to court; ~~7) to take the necessary steps within the legislation to stop illegal actions during the voting and the vote counting at the polling station~~ 8) to receive copies of the protocols on distribution of ballots, on vote counting and vote result determination, and other documents in cases provided for by this Law; 9) exercise other rights of official observers stipulated by this Law.».

88	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 excerpt from the voter lists as well as a small specified number of spare ballots to allow for the possibility of spoiled ballots*.	The third sentence of part eleven of article 86 is amended as follows: «The control sheet shall contain the number of the ballot box, time of exit (hour and minute) of commissioners for voting at home, the amount of ballots they received separately for nationwide and single-mandate constituencies **(which in any case shall not exceed more than 5 percent of voters included in the excerpt from the voter list to vote at home, but not less than 1 ballot),** surnames of the precinct election commission members who received the ballots.»
91	Article 94.17 of the draft electoral law allows the DEC, after a recount of the ballots, to declare the results in a PEC invalid. In the case of the DEC's declaration of invalidity after a recount, the DEC tabulates the results regardless of the number of polling station results that have been excluded due to invalidity. In the 2012 parliamentary elections abuse of this provision was observed, which led to numerous recounts by DECs and subsequent declarations of invalidity.30 It was also observed that ballots in some of these instances appeared to have been tampered with in the DEC premises and the invalidation of PEC results by the DEC changed losing candidates into winning candidates. Article 94.17 of the draft electoral law becomes more problematic when applied with Article 94.16, which allows the DEC to declare PEC results invalid in case of non-admission of observers or authorised representatives of candidates and parties. *Articles 94.16 and 94.17 should be carefully considered due to the past experience of abuse that allowed DECs to adopt decisions that resulted in changes of the election results.*	Parts sixteen and seventeen of article 94 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" have been amended as follows: **«16**. A district election commission shall be entitled to adopt a decision declaring the voting at an election precinct to be invalid only in case it fixed violation of this Law, which may cause inability to authentically determine the results of vote, **in the following circumstances**: 1) the grounds envisaged in Part 1 of Article 91 of this Law are revealed during re-counting the votes at the respective election precinct; **2) if a court judgment, decision of the district election commission or Central Election Commission establishes that any of the following have occurred:** **- intentional obstruction of the work of the members of the election commission on the day prior to the day of voting, on the day of voting or during the vote counting;** **- deliberate unlawful removal from the premise for voting, or from the premise used for vote counting, of the persons specified in Part 3 of Article 34 of this Law,** **- illegal non-admission of the aforementioned persons into the premise for voting or the premise where the vote counting is performed**. **17**. If a district election commission declares the voting at an election precinct to be invalid **on the grounds envisaged under paragraph 1 of part 16 of this Article** during the vote re-counting, all the ballot papers used for voting at the respective election precinct shall be deemed invalid and not subject to tabulation. In that case, the protocols of the district election commission on re-counting votes at the election

		precinct in the nationwide election district within the single-mandate election district, and in the single-mandate election district shall be drawn up in accordance with the procedure prescribed by Parts 13 and 14 of this Article, and shall contain only the data envisaged in Clauses 1 – 7, 11 of Part 2 and/or 3 of Article 91 of this Law. On the places for other data a dash shall be written in.».
93	Article 961 of the draft electoral law creates a separate provision for establishing the results in election precincts abroad. The procedures for preparing the protocol and the contents are similar, but not identical, to existing Article 96 for in-country single-mandate districts. However, point 8 of Article 961 of the draft electoral law states that it is "forbidden to declare the elections invalid in the abroad election precincts". This provision, as written, suggests that results from election precincts abroad, even if proven to be the result of fraud, must be accepted and considered in tabulations. This provision is inconsistent with previous recommendations of the Venice Commission and the OSCE/ODIHR that mechanisms be in place for invalidation where irregularities may have affected the outcome. *The Venice Commission and the OSCE/ODIHR recommend that Article 961 be revised to be consistent with other provisions for invalidation in the draft electoral law*.	Parts three and five of **article 92 (Declarations by Precinct Election Commissions on the Invalidity of Voting at the Election Precinct) of the law have been amended as follows:** «3. If a precinct election commission takes a decision declaring voting in the election precinct to be invalid, then all ballot papers from the ballot boxes at such election precinct shall be deemed invalid and not subject to counting. In such case, instead of the data envisaged in Clauses 8-13 of Part 2 or **in Clauses 8-13 of Part 3 of Article 91 or in Clauses 7-10 of Part 2 of Article 96[1]** of this Law a dash shall be written in. The protocol on vote counting at the election precinct in the nationwide election district within the single-mandate election district and in the single-mandate election district shall be completed by the precinct election commission in accordance with the procedure prescribed by Article 91 of this Law. … 5. Decision of the precinct election commission to declare the vote at the polling station void and act (acts) underlying this decision shall be annexed to the protocols of vote count at the polling station in the nationwide election constituency within a single-mandate constituency and in the single-mandate constituency, and shall be packed and transported to the district election commission **or the Central Election Commission (for overseas constituency)** following the procedure prescribed by this Law.»
96	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. The Venice Commission and the OSCE/ODIHR have previously recommended that the law should 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	**The proposed draft wording of part nine of article 94 of the Law has been revised as follows:** **«9. At the start of the receipt by the district election commission of documents of the precinct election commission, the district election commission shall in turn, in the order of recording the information on the precinct election commissions' protocols on the vote counting at polling stations in the nationwide election constituency within the single-mandate constituencies and (or) protocols on vote counting at polling stations in single-mandate constituencies, based on the relevant**

	promote compliance with paragraph 7.4 of the OSCE Copenhagen Document. Although Article 94.9 of the draft electoral law requires the publication of preliminary results on the CEC website, the recommendation concerning the publication of detailed preliminary results, including all data from the PEC protocols, has not been adopted. *The OSCE/ODIHR and the Venice Commission reiterate the recommendation that all data from all PEC and DEC protocols, both preliminary and final, be published on the CEC website in a timely fashion to inform voters and enhance transparency*.	**precinct election commissions protocols (including those labeled "Corrected") and notifications on the content of such precinct election commissions protocols transmitted via communications technology from special polling stations established on vessels that are at sea under the State Flag of Ukraine on the voting day, on the polar station of Ukraine, and in the case of a recount of votes - the district election commission protocol on the recount of votes at the polling station, through automated information&analitycal system, submit to the central Election Commission operative information on the count of votes (with indication of all information, contained in appropriate protocols of district election commission). Central Election Commission immediately makes these information public through publishing it on its official web-site.»** Binding of the preliminary results publication to the receipt of precinct election commissions protocols by district election commission and the vote results establishment by the latter, and not to vote counting by the precinct election commission, is due to the very fact of vote results establishment having legal consequences. However, the proposed draft regulation provides for the publication of all information for each polling station.
100	The complaints and appeals system should be transparent, with the publication of complaints, responses, and decisions. Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected as well as serving as a potential deterrence to future misconduct. This principle is partially implemented with Article 31.2.20 of the draft electoral law, which requires each DEC to submit to the CEC "information on the applications and complaints lodged" and "results of their review". Transparency in the determination of rights in legal proceedings is an established principle and consistent with Article 129 of the Constitution of Ukraine which counsels for "openness" and preservation of evidence in the determination of rights. *The Venice Commission and the OSCE/ODIHR recommend that complaints, responses, and decisions of all election commissions be published on the CEC website to enhance transparency in the resolution of electoral disputes.*	**Part two of article 32 (Powers of the precinct election commission)** has been supplemented with new paragraph 12 which reads as follows: **«12) summarize information about the claims and complaints submitted to the election commission relating to the deputies election process and the outcome of the consideration theirof, hang out this information on the stand for the commission's official materials for public review, and submit it to the Central Election Commission within the deadline set by it for posting on its official website».** In addition, the proposed draft wording of part ten of article 113 is amended as follows: "Not later than fifteen days after the election the Central Election Commission shall publish on its website the summary of claims and complaints submitted to the Central Election Commission relating to members of the electoral process and the results of their examination, as well as relevant information provided by district and **precinct** election commissions. "