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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING ELECTORAL CAMPAIGNS¹

¹ This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 119th Plenary Session (June 2019).

I. Introduction

This document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning election campaigns and campaign finance. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field. The scope of this document does not include the issues of political parties¹ and media and elections² which are covered by existing compilations.

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

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

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

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

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study. References should be made to the opinion or report/study and not to the compilation.

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

¹ See CDL-PI(2016)003, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)003-e).

² See CDL-PI(2018)006, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)006-e).

II. Election Campaign

1. General Recommendations

12. The observation of the 24 June 2018 elections led PACE and ODIHR to provide for a number of recommendations concerning the legal framework relating to campaigning and campaign finance. For example, ODIHR recommended to ensure a clear separation between state and party to prevent candidates from using the advantage of their office for electoral purposes; to ensure effective sanctioning of the abuse of administrative resources; to bring the legal framework in line with legal obligations on freedom of expression and media freedom; to ensure conditions for an equitable campaign environment; to introduce an expenditure ceiling; to enhance the effectiveness of the oversight of electoral campaign finance; to allow explicitly for international and citizen observation. These recommendations are still valid.

[CDL-AD\(2018\)031](#) - Turkey - Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonisation laws"

66. Regulations on the conduct of the election campaign are included in Chapter 9 of the draft Election Code. It establishes that the campaign period starts on the day of a candidate's registration and lasts until the day before election-day. Forms and methods of permitted campaign activities are narrowly described in a list to be found in Article 45; however, positively, it is stipulated that other, non-prohibited methods of campaigning may also be used. Prohibited forms of campaigning include the distribution of free or provided on privileged terms goods or services, as well as cash disbursements.

[CDL-AD\(2018\)027](#) - Uzbekistan - Joint opinion on the draft election code

115. It should be provided that 20 days should be the minimum number of days for a campaign, unless the constitutional deadlines for an early election make that impossible. It should also be made clearer the significance of the campaign period for the purpose of applying various provisions of the law.

[CDL-AD\(2006\)022](#) - Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia"

2. Fundamental Rights

71. In addition, a one-month advance authorization requirement for holding public assemblies, as included in a separate legislative act, unduly restricts the right to assembly.

[CDL-AD\(2018\)027](#) - Uzbekistan - Joint opinion on the draft election code

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

[CDL-AD\(2011\)013](#) - Joint opinion on the election code of Bulgaria

27. Article 69(2) provides that a candidate proposed by a group of voters cannot be “directly or indirectly supported by any other subject or candidate running in the elections”. A similar provision is found in Article 70(2). Candidates should not be prohibited from expressing views concerning other candidates or from answering questions from voters as to which candidates or political parties are best suited to be colleagues in the Assembly. An expression of such views would be “directly or indirectly supporting” another candidate or electoral subject. In their current form, these articles are too broad and could be applied to restrict legitimate campaign expression designed to enable voters to make informed choices. **The Venice Commission and the OSCE/ODIHR recommend** that Articles 69(2) and 70(2) be reviewed to ensure that they cannot be interpreted or applied to restrict the freedoms of expression and association, which are especially important in election campaigns.

[CDL-AD\(2009\)005](#) - Joint Opinion on the Electoral Code of the Republic of Albania

3. Equality of opportunity

67. The provision allowing candidates to start campaigning upon their registration by the respective commission results in a staggered beginning of the campaign. **ODIHR and the Venice Commission recommend that the campaign begin on the same day for all contestants in order to ensure equality of campaign opportunities.** This would lead to more predictability for the contestants, too, as the campaigning requires longer preparations.

68. A number of articles in the draft Election Code contain welcome guarantees of equality of campaign conditions for contestants, including an obligation for election commissions to ensure such equality. Candidates and political parties are granted [...] equality of conditions and the possibility to produce and distribute campaign materials unhindered, and equality of opportunities and conditions for the organization of meetings with voters.

69. Past ODIHR reports indicate that the above guarantees of equality did not contribute to the freedom and diversity of observed campaigns. Instead, rigorously and restrictively applied equality provisions yielded campaigns that were characterized by an ostensible homogeneity of campaign formats, messages and materials, as well as seemingly orchestrated and routinized events, devoid of competitiveness. An absence of mechanisms to ensure a clear separation between the State and party resulted in the blurring of this distinction, in contravention of OSCE commitments.

70. In this respect, the Joint ODIHR and Venice Commission Guidelines for preventing and responding to the misuse of administrative resources during electoral processes state that “[t]he legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favor or disfavor any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.

72. The draft Election Code remains worded only generally and does not directly address the above concerns. Conditions for genuinely free and competitive campaigning, on the basis of equal opportunities, are only then created, when both the law and its application in practice safeguard these principles.

73. Clarification could be introduced with regard to the role of political parties and election commissions in the organization of contestant meetings with voters. While Article 48 states that

meetings with voters are held by the contestants themselves, Article 20 requires DEC's to support the organization of such meetings and Article 48 provides that DEC's and PEC's will inform voters about the place and time of meetings based on the information provided by the contestants. **The Venice Commission and ODIHR recommend clarify that election commissions only have a facilitating role should such facilitation be requested to ensure unimpeded campaigning.**

CDL-AD(2018)027 - Uzbekistan - Joint opinion on the draft election code

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

19. The basic idea is [...] that all the political forces should be allowed to hold meetings, including on public thoroughfares, distribute literature and exercise their right to post bills. All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions. Quick rights of appeal must be available in order to remedy the situation before the elections. [...]

CDL-AD(2002)023rev2-cor - Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

8. In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.

9. The State should participate in campaign expenses through funding equal to a certain percentage of the above ceilings or proportional to the number of votes obtained. This contribution may however be refused to parties who do not reach a certain threshold of votes.

CDL-INF(2001)008 - Guidelines and Report on the Financing of political parties

III. Campaign Finance

This part of the compilation only covers extracts from opinions or reports/studies which are related to the financing of electoral campaigns. For the financing of political parties please see the respective compilation³.

1. Reporting, auditing and control of campaign financing

“15. The Venice Commission and the OSCE/ODIHR make the following key recommendations:

[...]

C. Significantly enhance the supervision and enforcement of the rules on party and campaign financing. The Central Electoral Commission (CEC), or other assigned body, should be given sufficient resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, initiate investigations of possible irregularities, and to make use of enhanced powers for coordination with law enforcement and other relevant bodies; and

[...]

74. It is therefore recommended that the supervision and enforcement of the rules on party and campaign financing be significantly enhanced. The CEC, or other assigned body, should be given sufficient resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, to initiate investigations of possible irregularities, and to make use of enhanced powers for coordination with law enforcement and other relevant bodies.”

[CDL-AD\(2017\)027](#) - Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns

35. The OSCE/ODIHR has pointed out in the past that political parties are required to report to the Agency only 30 days after the announcement of election results and are not obliged to provide information on campaign expenditures during the election process. This reduces the transparency of party funding to voters in the run-up to the elections and runs counter to electoral good practice. It is therefore recommended to require political parties to report on campaign financing in a transparent manner during the election campaign.

[CDL-AD\(2014\)034](#) - Joint Opinion on Draft Amendments to the Law on the financing of political activities of Serbia

56. Contestants do not have an obligation to report on the expenditures of an election campaign during the campaign period as only reports on donations and income of the campaign finances have to be submitted before the elections. The draft Code does not regulate mechanisms for the National Audit Office (NAO) to check the accuracy of the reports. The OSCE/ODIHR election observation mission report on the 2013 parliamentary elections states: “It should be ensured that all political parties and nomination committees submit information to the public register

³ CDL-PI(2016)003, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)003-e).

maintained by the NAO as required by the law on an ongoing basis. The NAO could have the authority to request this information if failure to submit it is suspected and to sanction the respective party for failure to comply with the law. The authority of the NAO could be strengthened and additional resources granted thereby enabling it to crosscheck and verify the authenticity of reported expenditures of electoral contestants against actual expenditures.

60. ... "The OSCE/ODIHR recommended adopting regulations to require that paid content in political advertising be clearly labelled and legislation to prohibit hidden advertising be introduced ..."

CDL-AD(2014)001 - Joint Opinion on the draft Election Code of Bulgaria

44. Article 91 of the Code regulates the auditing of campaign accounts by the CEC. There is a concern with Article 91(3), which allows the CEC to verify data in the campaign finance reports. The concern is that the CEC, established by the parliamentary parties, can start contacting the contributors to non-parliamentary parties even if there is no factual basis that would suggest an enquiry is justified. Such a provision is often abused. The regulatory body contacts a contributor and the contributor, due to the political considerations, denies making the contribution. The political party and its officials then face criminal sanctions. **The Venice Commission and the OSCE/ODIHR recommend** that Article 91(3) is amended to provide objective and non-discriminatory criteria that are required to be satisfied before the CEC can contact contributors of private funds."

CDL-AD(2009)005 - Joint Opinion on the Electoral Code of the Republic of Albania

81. The absence of regulatory authority for the SEC is particularly noticeable in the area of the election campaign, broadly viewed. A recommendation in the previous Opinion that consideration should be given in connection with the enactment of the Code to enabling the SEC to adopt, implement and enforce regulations in this area was not followed.

82. The absence of direct regulatory authority for the SEC means that significant aspects of the election campaign are controlled by other bodies. For example, alleged campaign violations are considered by the primary courts; [...] campaign finance reports are monitored by the State Audit Office and Parliament (but subsequently published by the SEC).

83. The distribution of regulatory authority with respect to various aspects of the campaign may have hindered the development of clear and specific rules and enforcement mechanisms. For example, various deficiencies have been noted by observers in the following areas: equal access to the media [...] excessive or unreported financial and in-kind contributions to campaigners; and strict evidentiary standards concerning alleged campaign violations.

110. It would be convenient for checking purposes, were the submitters of candidatures to funnel all their receipts and expenses through a giro account. But it would be naïve to imagine that other ways could not be found to support financially a candidate's campaign. Rather than relying on a pro forma disclosure mechanism, one should apply common sense to track excess expenditures, through monitoring of the evidence of money spent for television spots, posters, postal campaigns, costly brochures, and payments to agents.

CDL-AD(2006)022 - Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia".

2. Rules for Transparency

77. Past ODIHR reports raised a number of concerns with regard to the overall campaign finance regulations. The lack of a requirement for pre-election reporting by contestants, for parties to publish the income and expenditures, and for the CEC and the Chamber of Accounts to publish their conclusions undermines transparency. As stated in the Venice Commission and ODIHR Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes, “the legal framework should provide for transparency and accountability of the use of public money and public goods by political parties and candidates during electoral processes.” **The Venice Commission and ODIHR thus recommend reviewing the overall campaign finance regulations in order to provide in the draft Election Code for transparency and accountability of the use of public money and administrative resources. Both institutions recommend in particular that legal requirements for periodic, timely and transparent reporting on campaign income and expenditure, including prior to election-day, be introduced. They also recommend that legal provisions also include effective, proportionate and dissuasive sanctions for non-compliance.**

[CDL-AD\(2018\)027](#) - *Uzbekistan - Joint opinion on the draft election code*

A.5.1. The legal framework should provide for transparency and accountability of the use of public money and public goods by political parties and candidates during electoral processes.

A.5.2. A clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made.

B.1.1. The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.

B.1.2. If public buildings and facilities are permitted for campaign purposes, the legal framework should provide for equal opportunity and a clear procedure for equitably allocating such resources to parties and candidates.

B.1.3. The ordinary work of government must continue during an election period. However, in order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed.

B.1.4. The legal framework should stipulate that there should be no non-essential appointments to public bodies during the electoral campaign.

B.1.5. There should be a regulation put in place by a competent authority – electoral management body, branch of the civil service or special committee – identifying what activities are considered to be campaign activities and therefore forbidden to civil servants when acting in their official capacity. The competent authority should have an advisory role in relation to queries during the election period as to whether something falls under the prohibition on campaign activities by the civil service.

[...]

B.1.7. In addition to national legislation, charters of ethics or codes of conduct could be appropriate instruments to prevent the misuse of administrative resources during electoral processes.

CDL-AD(2016)004 - Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes.

107. Regulating the funding of political parties and electoral campaigns is a further important factor in the regularity of the electoral process.

108. First of all, funding must be transparent; such transparency is essential whatever the level of political and economic development of the country concerned.

109. Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election may be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances. The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

110. In unitary states, any expenses incurred by local authorities in connection with the running of a national election, the payment of election commission members, the printing of ballot papers, etc, should normally be borne by the central state.

CDL-AD(2002)023rev2-cor - Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

8. In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned. *Also under II.3*

9. The State should participate in campaign expenses through funding equal to a certain percentage of the above ceilings or proportional to the number of votes obtained. This contribution may however be refused to parties who do not reach a certain threshold of votes.

10. Private contributions can be made for campaign expenses, but the total amount of such contributions should not exceed the stated ceiling. Contributions from foreign States or enterprises must be prohibited. This prohibition should not prevent financial contributions from nationals living abroad. Other limitations may also be envisaged. Such may consist notably of a prohibition of contributions from enterprises of an industrial or commercial nature or religious organisations.

11. Electoral campaign accounts will be submitted to the organ charged with supervising election procedures, for example, an election committee, within a reasonable time limit after the elections.

12. The transparency of electoral expenses should be achieved through the publication of campaign accounts.

CDL-INF(2001)008 - Guidelines and Report on the Financing of political parties

3. Expenditure limits

39. Article 38(3) of the EC lays down restrictions on direct or indirect financing or material support of electoral campaigns/electoral contestants (including political parties) which are similar to those applicable to general party funding under Article 26 of the LPP. That said, instead of campaign ceilings it foresees limits on electoral campaign expenditure. Such a measure is in line with international standards and may contribute to ensuring equality between candidates and pluralism in elections. While the 2013 Joint Opinion had commented positively on that approach, it had expressed concerns about the rule that those limits were set by the CEC. **It recommended, in line with paragraph 196 of the Guidelines, that the basis for the CEC calculation of those limits should be indicated in the law itself, either as an absolute or as a relative sum, and that such basis should be maintained at a reasonable level.** [...]

40. A particular feature of the electoral campaign funding rules, as revised in 2015, is the requirement for electoral contestants to open an electoral fund (i.e. a special bank account) through which all financial transactions must be conducted; see Article 38(2) of the EC. The 2013 Joint Opinion had welcomed this approach, which facilitates transparency and oversight over campaign expenditures, but it had also noted that the existence of such a fund “does not guarantee that no transactions will by-pass the fund and that the expenditure ceilings will not be violated. For this reason, as an additional measure, **a more comprehensive approach to include details of the campaign period, campaign definition and campaign expenditure ceiling could be used, stipulating by law that all transactions apart from regular party operations (office, salaries of the permanent staff) are campaign expenditures and be administered through the fund.**” [...]

[CDL-AD\(2017\)027](#) - Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns

23. According to common rules against corruption in the funding of political parties and electoral campaigns, states should consider adopting measures to prevent excessive funding of political parties, including the establishment of limits on expenditure in electoral campaigns.

[CDL-AD\(2014\)035](#) - Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta

36. Current ... Law stipulates that, whereas private donations are subject to contribution limits, contributions given by a candidate to his or her own campaign fund or his or her party are not limited. This provision is not changed by the draft amendments. While a candidate's own contributions are often perceived to be of lesser concern in relation to possible corruption and undue influence, unlimited funding of one's own campaign carries the risk that a few wealthy individuals are able to spend unlimited amounts in campaigning for public office. This may not always properly represent societal interests and could jeopardize the creation of a level playing field for political participation. A reasonable limitation could e.g., consist in setting a limit to the amount of contributions which can come from a single source, setting spending limits or stating in the draft amendments that the funding provided by the candidate cannot be more than a certain proportion of the overall private contributions ...

37. The OSCE/ODIHR has called on the Serbian authorities in the past to consider establishing by law reasonable and justifiable limits to campaign expenditures. This would ensure that the free choice of voters is not undermined or the democratic process distorted by disproportionate expenditure on behalf of any party or candidate. It would thus enhance the level playing field among contestants during the campaign, in line with good electoral practice ...

CDL-AD(2014)034 - Joint Opinion on Draft Amendments to the Law on the financing of political activities of Serbia

93. Article 65(13) of the draft law prohibits a person from donating his or her services in support of a candidate's campaign, as "financial (material) support" can only be given "through election funds". The Venice Commission and OSCE/ODIHR have previously expressed concern that this provision prohibits persons who do not have financial resources from contributing their time or labour in support of a candidate. Regulation of in-kind contributions is possible through strict reporting requirements. However, in-kind contributions should not be prohibited simply because they are not traceable through the election fund. The OSCE/ODIHR and the Venice Commission previously recommended that the law be amended to allow for the contribution of in-kind services to a political campaign, subject to strict reporting requirements and the same contribution limits that apply to monetary donations. (...)

CDL-AD(2014)019 - Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz

37. The Code provides detailed provisions on election campaign financing. Among the measures laid down in Section VI of Chapter VIII are the imposition of expenditure limits upon political parties and independent candidates (that differ depending on the type of elections), an obligation to keep records of all direct and in-kind contributions given to political parties as well as strict reporting requirements, with an indication of time-limits for submission of financial reports and sanctions for non-compliance with this requirement. These measures provide a sound basis for a transparent election campaign financing system. Enforcement mechanisms may, however, need to be strengthened. As noted by the Council of Europe's Committee of Ministers, political parties should be subject to "effective, proportionate and dissuasive sanctions." It does appear that the sanctions provided in Article 289 may not be proportionate to breaches of the requirements regarding financing of the election campaign and therefore not dissuasive enough. That said, the Venice Commission and OSCE/ODIHR are not in a position to further comment on these provisions as they would need to be read and analyzed in conjunction with those of the Political Party Act. It remains to be seen how these arrangements will be enforced in practice. Their efficiency to a large extent depends on the scope of verification and investigation powers assigned to the National Audit body.

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

CDL-AD(2011)013 - Joint opinion on the election code of Bulgaria

43. Articles 89 and 90 regulate the use of private funds for electoral campaigns. Parliamentary parties already have campaign funds due to the largess of the Assembly under Article 86 and 87 of the Code. As noted above, non-parliamentary parties are excluded from receiving public funds and must rely solely on private donations. As a result, parliamentary parties are not impacted by Articles 89 and 90 as much as non-parliamentary parties are impacted by these articles. Article 90(3) limits campaign expenditures by tying the expenditure limit to ten times the largest amount of public funds given to a parliamentary party. The problem with this formula is that parliamentary parties can establish an unreasonable expenditure limit by reducing the amount of public funds parliamentary parties take from the state budget. Article 90(4) provides a similar limit for candidates nominated by groups of voters, which is fifty percent (50%) of the largest amount of public funds given to a parliamentary party. **The Venice Commission and the OSCE/ODIHR**

recommend that these articles be reviewed to ensure that they will not have a negative impact on non-parliamentary parties or independent candidates.

[CDL-AD\(2009\)005](#) - *Joint Opinion on the Electoral Code of the Republic of Albania*

See also:

[CDL-AD\(2018\)031](#) - *Turkey - Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonisation laws" (para. 12) (chapter II.1 above)*

[CDL-AD\(2002\)023rev2-cor](#) - *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (para. 109) (chapter III.2 above)*

[CDL-INF\(2001\)008](#) - *Guidelines and Report on the Financing of political parties (para. 8-10) (chapter II.3 above)*

4. Reimbursement of Expenses

41. Article 86(1) stipulates that the Assembly shall determine the amount of public funds to be provided to a select group of electoral contestants – political parties in the Assembly. Article 87(2) states that fifty percent (50%) of the public campaign funds is “to be distributed among political parties registered as electoral subjects and having seats in the Assembly” “on the basis of the number of mandates won in the elections for the Assembly”. The remaining fifty percent (50%) of public campaign funds “is to be distributed among political parties registered as electoral subjects and which have obtained not less than 2 seats in the Assembly in the preceding elections for the Assembly, in proportion with the votes obtained by them nationwide”. This text means that only parliamentary parties are allocated public funds for the elections. It is questionable whether the parliamentary parties in the Assembly should give all of the public funds for the electoral campaign to themselves. **The Venice Commission and the OSCE/ODIHR recommend** that these provisions be amended to provide some public funding mechanism for non-parliamentary parties.

42. Moreover, the second allocation is given to award the winners by forcing the losers – those who did not obtain any seat but had at least two seats in the previous Assembly - to pay back their initial allocation to the CEC [Article 87(2)b and 87(3)], which re-allocates these funds among the winners [Article 87(5)]. This raises an issue of concern since, ideally, it is hoped that there are sufficient campaign funds for all electoral contestants so that voters are fully informed. It is unavoidable that some electoral subjects, who met the legal requirements to be placed on the ballot, will not be successful in the elections and will fail to secure a mandate. These electoral subjects should not now be punished. The system of public funding for campaigns fulfils the public policy objective of providing information to voters about all electoral contestants, even those that ultimately fail to win a mandate. **The Venice Commission and the OSCE/ODIHR recommend** that Articles 86 and 87 be accordingly amended so that the campaign funds of losers are not withheld and distributed among the victors.

[CDL-AD\(2009\)005](#) - *Joint Opinion on the Electoral Code of the Republic of Albania*

111. Election campaigns are a one-time effort, but after a particular campaign, the remaining funds are usually carried forward for the next party campaign, or utilised for the continuing political activities in preparation for future campaigns. It should not be seen as improper to maintain a campaign chest between elections. The provision on this subject should be reconsidered in future.

112. Moreover, it could be unwise to retain the system of reimbursing expenses based on the votes cast in favour of a particular list. Candidates who are already well-known will have their advantages further increased if they are reimbursed in proportion to the number of votes they receive. Also, the vagaries of electoral support are well known and individual candidates should not be expected to gauge correctly their ultimate electoral strength. A reasonable deposit is often employed to deter frivolous candidacies, so that, for example, the deposit would be forfeited only if the candidate does not obtain a minimum number of votes (say one twentieth of the quota in proportional representation, or a similar minimum under other systems). There is no need to heap advantages on lists that are already well known and who would receive the full rate of reimbursement.

[CDL-AD\(2006\)022](#) - *Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia"*