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URGENT OPINION ON DRAFT AMENDMENTS TO SEVERAL PIECES OF ELECTION-RELATED LEGISLATION

SERBIA

This Opinion has benefited from contributions made by Ms. Marla Morry, International Lawyer and Electoral Expert.

Based on an unofficial English translation of the Draft Amendments provided by the Serbian authorities.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Following the release of the ODIHR Final Report on the observation of the 17 December, 2023 parliamentary elections in Serbia. A working group on the implementation of ODIHR electoral recommendations was reconvened by the former Prime Minister. In the context of the working group, a package of amendments to election related legislation was prepared and ODIHR was requested to provide its expert legal opinion on the drafts. The stated reasoning for each amendment was directly linked to the implementation of specific ODIHR recommendations.

The preparation of these amendments did not constitute a comprehensive reform of electoral legislation and therefore ODIHR's recommendation to initiate any further amendments, well in advance of the next elections, through an inclusive consultative process that includes relevant stakeholders, such as civil society organizations, and builds broad political consensus, still stands. Still, the proposed amendments are an overall welcomed step towards addressing certain ODIHR recommendations in the legislation.

Still, some of the proposed amendments could benefit from further consideration prior to adoption. More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance or supplement the proposed amendments:

A. to ensure consistency across electoral legislation, further consideration should be given to harmonizing provisions in the law on the Election of Members of Parliament and the Law on Local Elections;

B. to provide legal certainty, the amendments related to training of local election commission and polling board members should clearly specify the applicability to upcoming elections;

C. to prevent the misuse of special provisions for national minority lists, further consider defining clear, objective, and fair criteria for eligibility to submit a national minority list and for granting of national minority status to lists;

D. to provide greater transparency regarding the misuse of public resources in the campaign, require the prompt publishing by the Agency for the Prevention of Corruption of warnings issued to public officials for related violations;

E. to ensure effective remedy, further consider the time needed for the resolution of appeals of election results by the Constitutional Court;

F. to look comprehensively at the needed election reforms, ODIHR recalls the recommendations of its reports and the 2022 Joint Opinion with the Venice Commission.

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. DRAFT LAW ON AMENDMENTS AND ADDITION TO THE LAW ON THE CONSTITUTIONAL COURTINTRODUCTION

1. On 18 March 2024, the Serbian authorities submitted a request to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to provide an opinion on draft amendments to several pieces of election-related legislation (Draft Amendments). The relevant legislation is as follows: the Law on the Election of Members of Parliament, the Law on Local Elections, the Law on Financing of Political Parties, the Law on Prevention of Corruption, and the Law on the Constitutional Court. According to the Reasonings annexed to each of the draft amendment laws, they were prepared with the aim to implement one or more of the following recommendations from the ODIHR EOM Final

Report on Early Parliamentary Elections in Serbia, 17 December 2023, that is, recommendation Nos. 2, 11, 12, 15, 17 (the first part), 20 and 24.[1]

2. Specifically, the Proposed Law on Amendments to the Law on the Election of Members of Parliament aims to address recommendations No. 2, 11, 12 and 20; the Proposed Law on Amendments to the Law on Local Elections relates to recommendations No. 2, 11, and 20; the Proposed Law on Amendments of the Law on the Financing of Political Activities aims to address recommendation No. 15; the Draft Law on Additions to the Law on Prevention of Corruption relates to the first part of recommendation No. 17; the Draft Law on Amendments and Addition to the Law on the Constitutional Court aims to address recommendation No. 24.

3. ODIHR positively responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of these draft amendments with international human rights standards and OSCE human dimension commitments.

4. Given the short timeline to prepare this legal review, ODIHR decided to prepare an Urgent Opinion on the Draft Amendments, which does not provide a detailed analysis of all the provisions of the Draft Amendments but primarily focuses on the most concerning issues related to the proposed reform.

5. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[2]

II. SCOPE OF THE URGENT OPINION

6. The scope of this Urgent Opinion covers only the Draft Amendments submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the entire legal framework governing elections in Serbia. In this connection, it must be stressed that the pending ODIHR recommendations remain valid.

7. The Urgent Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Amendments. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Urgent Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field.

8. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[3] (hereinafter "CEDAW") and the *2004 OSCE Action*

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1 Several of these recommendations were also put forward in some form or another in the ODIHR/Venice Commission Joint Opinion on Serbia's Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration, 19 December 2022.

2 See, in particular, Oslo Ministerial Declaration 1998, MC.DOC/1/98, stating "*Expression should be given to support for the enhancement of OSCE electoral assistance work and the strengthening of internal procedures to devise remedies against infringements of electoral rules, with the participating States invited to provide the ODIHR in a timely fashion with draft electoral laws and draft amendments to these laws for review so that possible comments can be taken into account in the legislative process*". See also 1999 Istanbul Document (Summit of Heads of State or Government), which states: "… *appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR's election assessments and recommendations*".

3 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Serbia deposited its instrument of ratification of this Convention on 12 March 2001.

Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, a gender and diversity perspective.

9. This Urgent Opinion is based on an unofficial English translation of the Draft Amendments provided by the Serbian authorities, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.

10. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on electoral reform in Serbia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. General Remarks

11. ODIHR stresses the importance of the stability of electoral legislation while ensuring clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations. In this regard, it is noted that the proposed amendments address only a selection of pending ODIHR recommendations and do not constitute a comprehensive review of the electoral legislation as repeatedly recommended by ODIHR. While this type of piecemeal approach to electoral reform runs contrary to the principle of stability of election legislation, the proposed amendments are overall a positive development as they directly address some pending recommendations.[5]

12. ODIHR emphasises the international good practice to refrain from revising fundamental elements of electoral laws less than one year prior to an election.[6] In this respect, it is noted that the proposed amendments will impact the legal basis for local elections, while the Belgrade City Assembly elections are scheduled shortly for 2 June 2024.[7] However, it is recognized that the proposed changes do not change fundamental aspects of the electoral legal framework and otherwise directly address some outstanding recommendations.

13. The Draft Amendments were developed in the context of the Working Group for co-operation with the Organization for Security and Co-operation in Europe and the Office for Democratic Institutions and Human Rights in co-ordination and monitoring of the implementation of recommendations for improvement of electoral process (Working Group). With the stated aim of urgently addressing the recommendations from ODIHR's final report on the December 17th, 2023 parliamentary elections, the Former Prime Minister reconvened the previous working group. The Working Group consisted of representatives of the government, Republic Electoral Commission and relevant ministries and state agencies. Meetings were not open to the public but regular press releases were distributed outlining the activities of the working group.

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4 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

5 See the Council of Europe's Venice Commission's Code of Good Practice in Electoral Matters, at paragraph II.2.b (Guidelines) and paragraphs 63 – 65 (Explanatory Report). See also the Interpretative Declaration on the Stability of the Electoral Law, CDL-AD(2005)043 and (mutatis mutandis) ECtHR, 8 July 2008, Georgian Labour Party v. Georgia, no. 9103/04, § 88.

6 Guideline II. 2.b. of the Code of Good Practice in Electoral Matters states that "[t]he fundamental elements of the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law".

7 The elections were called by the ruling party on 3 March 2024 due to reports of regularities during the December 2023 municipal elections.

14. ODIHR reiterates the need for comprehensive review of the electoral legislation well in advance of the next elections, within an inclusive process, ensuring extensive public consultations with all relevant stakeholders, in order to address pending recommendations and bring the legal framework further in line with international commitments and standards. ODIHR has stated before that "[i]f the process of changing the electoral rules is not sufficiently inclusive and transparent, that is if all relevant stakeholders are not involved in the proper way, new electoral rules risk being seen as intended more at favouring incumbents than at improving the electoral system".[8] In this regard, while developed through the Working Group, it is noted that the current draft amendments were not developed within a genuinely inclusive consultation process contrary to the principles recalled above and OSCE commitments.[9] **As such, ODIHR reiterates its recommendation that to effectively address recommendations outlined in ODIHR election observation reports, necessary legislative amendments should be initiated well in advance of the next elections through an inclusive consultative process built upon a broad political consensus. If reconstituted, the inter-agency Working Group on Co-ordination and Follow-up of the Implementation of Recommendations for the Improvement of the Electoral Process should act in full transparency, with the inclusion of relevant stakeholders, such as civil society organizations.**

2. PROVISION OF MANDATORY TRAINING OF ELECTION OFFICIALS

15. ODIHR Recommendation No. 2 proposes that "to ensure consistent implementation of procedures on election day and enhance the professional capacity of the election administration, standardized mandatory training could be considered for all Local Electoral Commissions and Polling Board members and prospective members, including the extended composition of these bodies." This recommendation had been previously put forward in earlier ODIHR reports, and stems from ODIHR's finding that participation in the training organized and conducted by the Republic Electoral Commission for the permanent and extended members and deputy members of the Local Election Commissions and Polling Boards is not mandatory (nor is it offered for prospective members) and that sparse attendance and uneven quality of training, at times, led to inconsistent application of election day procedures.[10]

16. The above-noted recommendation is addressed by Articles 1-8 of the *Proposed Law on Amendments to the Law on the Election of Members of Parliament.* To address this recommendation, the draft amendments propose changes to Articles 24, 29-30, 35, and 37-39 of the Law on the Election of Members of Parliament and to include a new article 24a.

17. The proposed change to Article 24 and the new Article 24a oblige the Republic Electoral Commission to organize and conduct training "for work in local electoral commissions and polling boards" for parliamentary and local elections and to conduct such training "periodically between two electoral cycles, as well as after the announcement of

[8] ODIHR-Venice Commission, Türkiye - Joint Opinion on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, CDL-AD(2022)016, § 21.

[9] ODIHR-Venice Commission, Joint Opinion on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, CDL-AD(2022)016, § 22.

[10] Under current Articles 29, 35, 37, and 38 of the Law on the Election of Members of Parliament, the proposers of permanent members and deputy members of local election commissions and polling boards need only "if possible, give priority to a person who has completed training for work in the local election commission/polling board and has experience in conducting elections". In addition, Articles 30 and 39 which regulate the proposal of extended members and deputy members of the election commissions and boards does not require the prioritization of persons who have completed the training or have experience in conducting elections.

elections".[11] These draft amendments thereby extend the training to include prospective members.[12] Further, Articles 29-30, 35, and 37-39 of the draft law oblige all proposers of permanent and extended members and deputy members (including secretaries and deputy secretaries) of election commissions and polling boards to propose a person who has completed training for work in the commissions and boards which is conducted by the Republic Electoral Commission. Essentially, the appointment of each member and deputy member is conditional on the proposed person having completed such training. **As such, the draft amendments largely address the aim of recommendation #2 in the law, while the implementation of these changes must be assessed in practice. However, to further address the aim of the recommendation and issues assessed by the ODIHR election observation mission, Article 41 of the existing legislation should be amended to explicitly state that the mandatory training applies for replacement members as well.**

18. Implementation of the proposed amendments will require sufficient resources. In this regard, ODIHR reiterates its recommendation No. 9 that the Republic Electoral Commission be granted sufficient administrative and technical capacity, including its own permanent secretariat. Providing for this in law may be considered as part of the proposed amendments.

19. It is further noted that the *Proposed Law on Amendments to the Law on Local Elections* essentially harmonizes the provisions of the Law on Local Elections with the proposed amendments to the parliamentary election law regarding mandatory training by the Republic Electoral Commission as a condition to appoint members and deputy members of election commissions and polling boards. In this regard, Articles 1-5 of the proposed law introduce changes to Articles 15, 22, 25, 28, and 30 of the local election law. These proposed changes extend such mandatory training as a condition to be appointed as a mid- or lower-level election official in local elections.

20. It is further noted that a proposed change to Article 25 of the Law on Local Elections, that sets out the competencies of local election commissions, introduces an obligation to "cooperate with the Republic Electoral Commission in organizing and conducting training for work in the polling boards." However, a similar provision has not been proposed for Article 32 of the parliamentary election law which also sets out the competencies of local election commissions. **For consistency, it is recommended to amend Article 32 of the parliamentary election law to include such provision.**

21. It is also noted that Article 9 of the *Proposed Law on Amendments to the Law on Local Elections* (essentially, a transitional provision) obliges members of election commissions to undergo the mandatory training within six months from the date that the relevant provisions come into force, which according to draft Article 10 is six months after the date of publication of the Law in the Official Gazette. Essentially, all standing members of the election commissions are to undergo the mandatory training within one year which, according to the annexed 'Reasoning', is to ensure that the commissions are trained to implement both parliamentary and local elections "in the upcoming period". **In this respect, it is recommended that the amendments should further clarify the applicability of the requirements for the upcoming 2 June Belgrade City Assembly Election as well as other local elections that may be held in the interim period.** Although the draft amendments to the parliamentary election law propose that the provisions on the mandatory training are to take effect six months after the entry into

[11] The draft provision provides that the organization and conduct of the training are to be regulated by the instructions of the Republic Electoral Commission.

[12] Current Article 24 obliges the Republic Electoral Commission to organize and conduct training for members and deputy members of local election commissions and polling boards, i.e. only for those who have been appointed to the posts, not for prospective members.

force of the law (Article 14), a provision similar to draft Article 9 as noted above has not been proposed for inclusion in the parliamentary election law. **For consistency, it is recommended to include a similar transitional provision in the parliamentary election law.**

3. Repeal of Restrictions on Signing Candidate Lists

22. ODIHR Recommendation No. 11 proposes that "to further promote pluralism in the electoral process and freedom of association, consideration could be given to removing the restriction against signing in support of more than one list." As is noted in ODIHR's Final Report on the 2023 parliamentary elections, this recommendation had been previously put forward in earlier reports. It stems from ODIHR's finding that the legal provision that a voter may sign in support of only one candidate list may limit political pluralism and freedom of association and is contrary to international good practice as set out in Principle 1 on Freedom of Association and Principle 4 on Political Pluralism of the 2020 ODIHR and Venice Commission Joint Guidelines on Political Party Regulation.[13]

23. The above-noted recommendation is addressed by Article 9 of the *Proposed Law on Amendments to the Law on the Election of Members of Parliament.* To address this recommendation, the draft amendments propose changes to Article 72 of the parliamentary election law and Article 43 of the local election law to explicitly provide that a voter may support more than one electoral list. **As the recommendation is to remove the restriction in the law the draft amendments fully address this recommendation.**

4. Extending Right to Rectification of Deficiencies in Nomination Documents

24. ODIHR Recommendation No. 12 proposes that "the law could be reconsidered to permit contestants to rectify any identified deficiencies in their nomination documents following the publication of the respective decision of the Republic Electoral Commission." This recommendation stems from ODIHR's finding that the right of contestants to rectify deficiencies in their nomination documents within 48 hours of the publication of the respective decision of the Republic Electoral Commission as provided for in current Article 78 of the parliamentary election law, does not apply in a number of specified circumstances as set out in current Article 77, which effects a final rejection of the nomination documents. Such circumstances include, for example, if a proposed candidate has been determined not to have a right to vote or to already have been registered as a candidate on another list.[14] The Draft Amendments address the above-noted recommendation through Article 10 of the Proposed Law on Amendments to the Law on Election of Members of Parliament which repeals Article 77 and amends Article 78 to allow rectification of any types of deficiencies in nomination documents.

[13] ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, second edition, 14 December 2020 paragraphs 35-39 and 46-47.

[14] Current Article 77 provides: "The Republic Electoral Commission shall reject, by its decision, to proclaim the electoral list if a person nominated as an MP candidate does not have the right to vote, or is listed as an MP candidate on a previously proclaimed electoral list, or is a leader of a previously proclaimed electoral list, if it is incompliant with the legal rules on gender representation on the electoral list, and if the name of the submitter of the electoral list and the name of the electoral list are not determined in accordance with the law."

5. Further Defining Legal Criteria for National Minority Status of Lists

25. ODIHR Recommendation No. 20 proposes that "*to prevent the misuse of special provisions for national minority lists, consideration should be given to further refining the legal criteria for determining national minority status and the procedures for registering these lists.*" This reiterated recommendation stems from ODIHR's finding that many of its interlocutors noted that some political entities consistently aim to misuse national minority-related preferential provisions applicable to parliamentary elections to access related benefits, such as allocation of campaign funds, exemption from the three percent threshold, reduced number of support signatures and enhanced representation. ODIHR's Final Report on the 2023 elections further noted that the Republic Electoral Commission, which has the authority to grant minority status to candidate lists, retains broad discretionary powers to interpret and implement the applicable provisions and found that it did not apply the applicable criteria consistently to all contestants when considering their national minority status.[15]

26. To address the above-noted recommendation, Articles 12 and 13 of the *Proposed Law on Amendments to the Law on the Election of Members of Parliament* amend Articles 137 and 138 of the respective law. In particular, the draft law expands the legal grounds under which the Republic Electoral Commission must reject a proposal to determine that a certain electoral list has the status of a national minority list. In addition to the two existing grounds for rejection of national minority status of a list, that is (1) if any of the list's candidates are known to belong to a political party that does not represent a national minority or (2) if there are other clear indications of an attempt to circumvent the law, the amendments include (3) if the name of the electoral list does not contain the name of the political party of a national minority that submits the electoral list or does not contain the name of the national minority and (4) if any of the list's candidates are socially or politically active or have been active on issues unrelated to national minorities and the protection and improvement of their rights.[16]

27. The third ground noted above constitutes an objective, clear and reasonable criteria that may minimize the risk of abuse. However, the fourth ground noted above appears to be unnecessarily restrictive taking into account that a person who genuinely and actively represents (or seeks to represent) national minority interests may also be active (or have been active) on issues unrelated to the rights of national minorities. There does not appear to be a reasonable rationale to not allow for minority list candidates who are (or have been) involved in issues that are not directly related to minority rights as long as they have also actively represented or seeks to represent the rights of the national minority. Indeed, this restriction may run counter to the freedoms of association and expression. Moreover, to determine whether an issue is unrelated or not to minority rights risks arbitrary decision-making due to its highly subjective nature.

28. In addition, the two existing grounds in the legislation noted above for rejecting the granting of national minority status to a list are not sufficiently objective and clear and have revision of these grounds has not been proposed. With respect to the first ground, it

[15] Articles 137 – 140 of the parliamentary election law regulate the registration of national minority lists. A national minority list may only be nominated by a political party representing a national minority or a coalition exclusively composed of political parties of national minorities. The Republic Electoral Commission is responsible for determining whether a list genuinely represents a national minority and if the list's primary objective is to represent minority interests and protect minority rights. The Commission retains significant discretion in denying national minority status to a list, particularly if any of its candidates are known to belong to a political party that does not represent a national minority or if there are other clear indications of an attempt to circumvent the law.

[16] The draft amendments provide the submitter of an electoral list that is proposed to have the status of a national minority list with the opportunity to submit biographies and evidence of membership of candidates in associations that promote the rights of national minorities or their participation in activities organized by the national council of the national minority.

should be noted that individuals self-identifying as members of a national minority may be members of a mainstream political party and may change their political affiliation to become members of a national minority political party. In this regard, the first ground does not make clear whether the restriction applies only to candidates who are currently members of a non-minority political party or if it also applies to those who have ever been a member of such a party. In addition, the determination of which parties are or are not non-minority parties risks arbitrary implementation, which is further discussed below. In addition, with regard to the second ground noted above, the electoral commission is granted broad discretionary power to decide which circumstances indicate the intention to circumvent the law, which does not prevent arbitrary, inconsistent and selective implementation, potentially leading to the arbitrary denial of political parties and candidates who genuinely represent minority interests to nominate and run on minority lists or vice versa.

29. It is also noted that the current law's limited scope for nomination of a national minority list to "a political party of a national minority or a coalition exclusively composed of political parties of national minorities" is contrary to the national law, the OSCE commitments and international obligations, as it denies such right to groups of citizens who seek to represent national minorities.[17] Moreover, the discretion provided to the election commission(s) to decide if a political party is "of a national minority" undermines legal clarity and makes the provision difficult to implement, since the attribution is impossible to define. As the discretion to grant national minority status to a list starts with determining whether the submitter political party is "of a national minority", this broad formulation does not afford the necessary protection against arbitrary determination of eligibility to stand in an election, contrary to standards developed in the European Court of Human Rights case-law.[18] This aspect of the broad discretionary powers under the current election law(s) is not addressed by the draft amendments. **In light of the above, recommendation No. 20 is considered substantially unaddressed. It is recommended to give further consideration to define clear, objective, and fair criteria for eligibility to submit a national minority list and for granting of national minority status to lists.**

30. It is also noted that the *Proposed Law on Amendments to the Law on Local Elections* includes the same amendments referenced above but with respect to the determination of national minority status for electoral lists in local elections. In this regard, Articles 7 and 8 of the proposed law introduce changes to Articles 75 and 76 of the local election law which extend the legal grounds under which the local election commissions must reject a proposal to determine that a certain electoral list has the status of a national minority list in local elections. As the existing and proposed provisions to the local election law on the issue of granting lists the status of national minority list are the same as those for the parliamentary election law, the above analysis of the relevant provisions is applicable.

[17] Paragraph 7.5 of the 1990 OSCE Copenhagen Document states that "the participating States will respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination." Paragraph 30 states that "Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law." See also Article 25 of the UN International Covenant on Civil and Political Rights.

[18] In its judgment in the case Melnychenko v. Ukraine (**17707/02**), the European Court of Human Rights stated that "the right to stand as a candidate for election, guaranteed by Article 3 of Protocol No. 1 to the Convention […] would only be illusory if the person concerned could at any time be arbitrarily deprived of it. Consequently […], the principle of effectiveness of rights requires that the procedure which makes it possible to determine eligibility be accompanied by sufficient guarantees to avoid arbitrariness". See also case of Etxeberria and Others v. Spain; Cegolea c. Roumanie; and Mathieu-Mohin and Clerfayt.

6. WAIVING OF DEPOSIT FOR RECEIPT OF PUBLIC CAMPAIGN FUNDS

31. ODIHR Recommendation No. 15 proposes that "*to promote equal campaign opportunities, consideration could be given to waiving the deposit requirement for the political parties and citizen groups not represented in the parliament and local assemblies as a precondition of the first instalment of public funds for campaigning.*" This recommendation stems from ODIHR's finding that the deposit required for electoral contestants to receive the first of two instalments of public funds for election campaigns - allocated equally among all registered lists - can pose a financial barrier for new parties.[19] To address this recommendation, the *Proposed Law on Amendments of the Law on Financing of Political Parties* proposes to amend Articles 21, 25 and 26 of the respective law to the effect that political parties and citizens' groups that are not represented in the parliament or local assemblies do not have an obligation to submit the deposit in order to receive the first instalment of the public campaign funds. **As such, the amendments provide the necessary legal changes to address recommendation No. 15.**

7. PROMPT PUBLICATION OF DECISIONS ON CAMPAIGN FINANCE VIOLATIONS

32. The first part of ODIHR recommendation No. 17 proposes that "*the law should be amended to require the Agency for the Prevention of Corruption to promptly make public its decisions on violation of the Law on the Prevention of Corruption during election campaigns, along with any related appeals…*". This recommendation stems from ODIHR's findings that under the legislation (1) warnings issued by the Agency for the Prevention of Corruption to public officials who are found to have used public resources in the campaign in violation of Article 50 the Law on the Prevention of Corruption are not required to be published and that (2) decisions imposing other sanctions for such violations are not required to be published on a timely basis. With regard to the latter decisions, those are to be published only after the conclusion of the administrative appeal process, which remains lengthy.[20] As noted in ODIHR's Final Report, in the 2023 parliamentary elections, the Agency for the Prevention of Corruption did not publish any of its campaign-related decisions before election day.

33. To address the above-noted recommendation, the *Draft Law on Additions to the Law on Prevention of Corruption* amends Article 85 of the respective law to oblige the Agency for the Prevention of Corruption to publish on its website the disposition and summary reasoning of the first-instance and final decisions regarding violations of Article 50 of that Law committed during the election campaign, as well as any appeal against the first-instance decision, within 24 hours of rendering the decision or receiving the appeal. In addition, the draft amendments to Article 85 extend the existing requirement to publish in the Official Gazette the final decisions on violations of Article 50 to include final decisions that issue warnings to public officials**. However, the latter proposed provision does not oblige the Agency for the Prevention of Corruption to promptly publish on its website its first instance decisions that issue warnings to public**

[19] The deposit is equal to the amount of the first instalment, which is 40 per cent of the total budgetary allocation for election campaigns. Paragraph 232 of the ODIHR and Venice Commission's Guidelines on Political Party Regulation advises that systems of public funding should "aim to ensure that all parties, including opposition parties, small parties and new parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to ensure the proper functioning of democratic institutions."

[20] During election campaigns, a decision must be issued within five days of the initiation of an *ex officio* or complaint-based investigation of a campaign-related violation of the Law on Prevention of Corruption. These decisions may be appealed within 15 days to the Agency Board, which has up to 60 days to issue a final decision.

officials for violations under Article 50. To more fully address the concerns that were the basis for recommendation No.17, it is recommended to include such a requirement.

8. Shortening Deadline for Constitutional Court Decisions; Extension of Period for Repeat Elections

34. ODIHR Recommendation No. 24 proposes that "*the law should provide a reasonably short deadline for the Constitutional court to handle electoral petitions and allow for a longer period to hold a repeat election.*" This first part of this recommendation stems from ODIHR's finding that the lack of a specified deadline for the Constitutional Court to resolve post-election electoral disputes potentially affects the timeliness of this remedy. In this respect, the Constitutional Court, upon petition, determines whether irregularities significantly influenced the election results and may annul the electoral process partially or entirely. The second part of this recommendation is based on ODIHR's finding that if the Court annuls an electoral process, the law requires it to be repeated within ten days, which is practically challenging. To address the above-noted recommendation, the *Draft Law on Amendments and Additions to the Law on the Constitutional Court* amends Articles 76 and 77 of the respective law as follows: (1) prescribes a fixed 8-day deadline for the competent electoral authority to submit to the Court a response to an electoral dispute and the necessary electoral acts or documentation; (2) obliges the Court to decide on post-election disputes within 30 days from the day of delivery of the request to the Court; (3) repeals the 10-day period within which repeat elections are to be held starting from the date the Court annuls the whole or part of the electoral process and replaces it with a maximum 30-day period.

35. With regard to the proposed 30-day deadline for the Constitutional Court to decide on post-election disputes, the Venice Commission's Code of Good Practice in Electoral Matters advises that "*decisions on the results of elections must also not take too long, especially where the political climate is tense [which] means…that…the appeal body must make its ruling as quickly as possible*."[21] Further the Code states that, "Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)".[22] At the same time, the level of the respective court can be taken into consideration in deciding on an appropriate adjudication deadline, with a slightly longer deadline for a Supreme Court or Constitutional Court being justified.[23] **While the introduction of a deadline for adjudication of post-election disputes by the Constitutional Court is welcomed and partially addresses the first part of recommendation No. 24, further consideration should be given to if 30 days is necessary for the effective resolution of disputes.** With respect to the proposed 30-day period within which repeat elections are to be held in cases where the whole or part of an electoral process has been annulled, if all related deadlines are aligned this period appears to afford sufficient time to organize repeat elections. **As such, the proposed maximum 30-day deadline for the holding of repeat elections addresses the legal changes recommended in the second part of recommendation 24.** It should be noted, however, that from a practical point of view, a shorter period such as two or three weeks may be

[21] Explanatory Report, Para. 95.

[22] See the Council of Europe's Venice Commission's Code of Good Practice in Electoral Matters, at paragraph II.3.3.d (Guidelines) and paragraphs 95 (Explanatory Report).

[23] See the Council of Europe's Venice Commission's Code of Good Practice in Electoral Matters, at paragraph II.3.3.d (Guidelines) and paragraphs 95 (Explanatory Report).

manageable especially if repeat elections are to be held in a relatively limited area and this seems to be provided for with the 30-day deadline being set as a maximum deadline.

36. It is noted that current Article 58 of the Law on Local Elections provides that repeat voting is to be conducted within ten days following the day of passing the decision on conducting a repeat voting. However, the draft amendments to the local election law do not include a similar extension of the ten days to thirty days as is provided for in the draft revisions to the parliamentary election law. **It is recommended that consideration be given to similarly extending the period for repeat voting in local elections**.

9. UNADDRESSED RECOMMENDATIONS ON LEGISLATIVE AMENDMENTS

37. ODIHR welcomes that the proposed amendments are a significant step towards addressing the above-noted recommendations from the most recent ODIHR EOM Final Report and recognizes that some earlier ODIHR recommendations have been addressed by legislative amendments enacted over the years. It would, however, like to take this opportunity to highlight that some recommendations put forward in its Final Reports and/or Joint Opinions with the Venice Commission related to shortcomings in the Serbian election legislation, remain unaddressed. These call for legislative amendments on a broad range of issues. As a reminder, the overarching recommendation #1 from ODIHR's EOM Final Report on the 2023 elections states (in part) as follows: "*To effectively address recommendations outlined in this and prior ODIHR election observation reports, necessary legislative amendments should be initiated well in advance of the next elections through an inclusive consultative process building upon a broad political consensus*."

38. With regard to ODIHR's EOM Final Report on the 2023 elections, unaddressed recommendations that call for changes to legislation relate to the accuracy of voter lists (recommendation #4), separation of official functions and campaign activities (recommendation #5), voting rights for persons with disabilities (recommendation #10), third-party financing of campaigns (recommendation #16), and annulment of voting results by election commissions (recommendation #25). In addition, unaddressed or partially addressed recommendations from previous ODIHR EOM Final Reports and/or ODIHR/Venice Commission Joint Opinions that relate to the Serbian election legislation concern issues such as the composition of the electoral administration, voter and candidate eligibility, voter registration, guarantees for equitable campaign conditions, the framework on campaign finance, media monitoring regulation, effective election dispute resolution, and provisions on determining election results and holding repeat voting.

39. Key recommendations put forward in the December 2022 ODIHR/Venice Commission Joint Opinion on Serbia's election legislation that remain wholly or mainly unaddressed include, amongst others:

- On the composition of the electoral administration: "*Strengthening the professional background and expertise of its members, the balance between the parties supporting the government and the opposition and considering the possible inclusion of independent members who are not directly appointed by the parties or who require broad consensus for their nomination; reviewing justification and function of the extended composition*."
- On the regulation of media monitoring: "*Ensuring efficient monitoring of the media by clarifying the scope of action and competences of the different monitoring bodies; offering clear and objective criteria for decisions on the selection of media outlets for media monitoring; determining the monitoring methodology in a*

transparent process; extending monitoring to information on state officials; ensuring transparency of monitoring results; combining ex-post and ex-ante supervision; streamlining sanctioning procedures."

- On campaign financing: "*Improving the oversight mechanism through comprehensive control of fundraising and expenditures, identification of unlawful practices and proportionate and effective sanctioning of violations, as well as introducing campaign expenditure limits; providing for the distribution of funds before the start of the campaign; regulating the election-related communication activities of third parties that entail expenditure. Sections of the law on campaign finance should be reviewed to ensure clarity and removal of ambiguous formulations, in particular for the norms that impose obligations on contestants and oversight bodies.*"
- On the misuse of office and state resources**:** "*Undertaking wide-scope measures to prevent misuse of office and state resources, including a detailed regulation on such practices, the provision for mechanisms of compliance and enforcement, and the provision for proportionate and dissuasive sanctions.*

40. **In light of the above, ODIHR reiterates its call on the Serbian authorities to further consider and strengthen the electoral legal framework and its implementation in line with outstanding ODIHR and Venice Commission recommendations.**

[END OF TEXT]