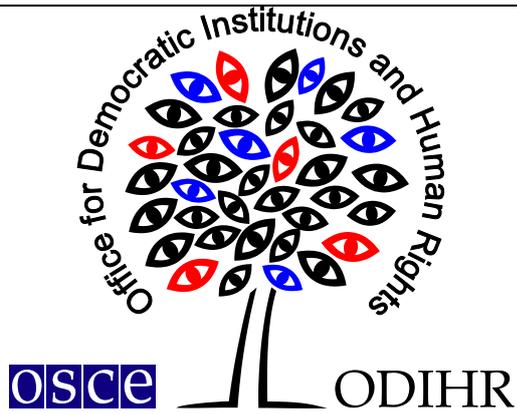


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OPINION

ON DRAFT AMENDMENTS TO THE LAW ON FUNDING OF AND CONTROL OF FUNDING OF POLITICAL CAMPAIGNS

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I. INTRODUCTION

1. On 17 September 2018, the Central Election Commission of the Republic of Lithuania sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter ODIHR) a request for an opinion on draft amendments to the Law on Financing of and Control of Funding of Political Campaigns to assess their compliance with international human rights obligations and OSCE commitments.
2. On 28 September 2018, ODIHR Director responded to this request, confirming the Office's readiness to prepare a legal opinion on these draft amendments, which will assess its compliance with OSCE human dimension commitments and international human rights obligations.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

II. SCOPE OF THE OPINION

4. The scope of this Opinion focuses on draft amendments to the Law on Financing of and Control of Funding of Political Campaigns (hereafter the law on party and campaign finance), submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of financing political parties and election campaigns.
5. The Opinion raises key issues and indicates areas of possible refinement. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the law. The ensuing recommendations are based on relevant OSCE commitments, Council of Europe and other international obligations and standards, and international good practices, including the [Joint Guidelines on Political Party Regulation \(2011\)](#) issued by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission). Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports and the Council of Europe's Group of States against Corruption (GRECO) reports. In addition, this Opinion should be read in conjunction with ODIHR Opinion ([POLIT-LIT/330/2018](#)), which highlights other aspects of this law warranting improvements.
6. This Opinion is based on an official English translation of the amendments to the law on party and campaign finance provided by the Central Election Commission of the Republic of Lithuania (CEC) on 17 September 2018. Inaccuracies may occur in this Opinion as a result of incorrect translations.
7. In view of the above, ODIHR would like to note that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in the Republic of Lithuania in the future.

III. EXECUTIVE SUMMARY AND CONCLUSIONS

8. Draft amendments to the Law on Financing of and Control of Funding of Political Campaigns were prepared by the Central Election Commission (CEC) in September 2018. These amendments introduce several changes, focusing on the role and authority of the CEC in relation to supervising the donations and expenditures of political campaign financing. Several of the proposed changes align the terms used in the law to make it

internally consistent. This is a positive step in clarifying provisions in the law and making sure that terms used are done consistently. However, a number of aspects warrant improvement, including a clear definition and regulation on third parties and concrete timeframes for interim disclosure. In addition, while introduction of additional legal remedies is welcomed, deadlines could be reviewed for more effective legal redress.

9. Furthermore, provided that the parliament is anticipated to review these draft amendments in the near future, and given the impact that this Opinion may have on the ongoing reform process, the relevant stakeholders are encouraged to ensure that they undergo extensive consultation throughout the drafting and adoption process.
10. To further improve the compliance of the law on party and campaign finance with international obligations and OSCE commitments, ODIHR makes the following key recommendations:
 - A. ODIHR recommends that the legislation benefits from a broad and inclusive consultations with an input by all relevant stakeholders [par 23];
 - B. ODIHR recommends adding the third-party expenditures in Article 14.7 by acknowledging such expenses as well as accountability of such costs [par 29];
 - C. ODIHR recommends that providing a clear deadline for interim reports with a clear timeframe for such incomes and expenditures (for example 10-15 days before election day) would both enhance the transparency of campaign financing as well as provide for the explicit regulation for the contestants to file such reports without compromising the public's right to information and transparency [par 34];
 - D. ODIHR recommends outlining in the legislation, by amending Article 21, how long financial reports should be kept online. Ideally, this should allow for sufficient time for public scrutiny [par 39]; and
 - E. ODIHR recommends that whichever methodology the legislator decides to pursue, it is important that the content of political advertisement is not unnecessarily censored and does not undermine the right to freedom of expression. [par 40]
11. These and a number of additional recommendations, which are included in this Opinion (highlighted in bold), are aimed at further improving the compliance of the legal framework governing the funding of political parties and electoral campaigns in the Republic of Lithuania with OSCE commitments, Council of Europe and other international human rights standards and obligations, as well as recommendations contained in previous ODIHR Opinion and election observation reports.

IV. ANALYSIS AND RECOMMENDATIONS

A. International Standards Relating to Financing Political Parties and Election Campaigns

12. This Opinion analyses the draft amendments submitted for review with regard to its compatibility with international obligations and standards on the financing of political parties and election campaigns, as well as with relevant OSCE commitments.
13. These obligations and standards are found principally in the [United Nations \(UN\) Convention Against Corruption](#), and in Article 22 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and Article 11 of the [European Convention on Human Rights \(ECHR\)](#), which both protect the right to freedom of association. The right to freedom of opinion and expression is guaranteed under Article 10 and 11 of the ECHR and Article 19 of the ICCPR and underpin the principle of free association. Finally, the right to free

elections guaranteed by Article 3 of the First Protocol to the ECHR is also of relevance.

14. In addition, standards in this area can be found in the recommendations of the UN, the Council of Europe and the OSCE. These include: [General Comment 25 of the UN Human Rights Committee](#) on the right to participate in public affairs, voting rights and the right of equal access to public service; Council of Europe Committee of Ministers' [Recommendation \(2003\)4](#) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns; the [Joint Guidelines on Political Party Regulation \(2011\)](#) issued by ODIHR and the Venice Commission (hereinafter the Guidelines); and the Venice Commission [Code of Good Practice in the Field of Political Parties](#).¹
15. Similarly, OSCE commitments under the [Copenhagen Document](#) include the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4).²
16. Attention is also drawn to Article 8 of Recommendation Rec (2003)4 of the Council of Europe's Committee of Ministers, according to which "the rules regarding funding of political parties should apply *mutatis mutandis* to the funding of electoral campaigns of candidates for elections."
17. Lastly, throughout the Opinion, reference is made to evaluation reports issued by GRECO and previous ODIHR Opinion, as well as to the final reports and recommendations from ODIHR election observation activities.³

B. National Legal Framework

18. The 2004 Law on Financing of and Control of Funding of Political Campaigns (hereinafter the law on party and campaign finance) was substantially amended in 2012 and 2013, with additional changes made in 2014. The latter defined donation limits by natural persons (Article 10.2) and introduced an obligation for natural persons to declare income and assets before donating (Article 10.4).
19. In its Second Compliance Report GRECO welcomed "the further measures initiated ... with a view to complying with the outstanding recommendations. In particular, the law has been further amended to prohibit the funding of political parties and election campaigns by legal persons." The report concluded that all prior GRECO recommendations related to the transparency of party funding were at least partly implemented, and 9 of 12 were fully implemented, including an increase in administrative fines and broader possibility for sanctions for violations of campaign finance provisions.
20. ODIHR Opinion, issued on 28 September 2018, noted that the existing legal framework

¹ In addition, of relevance are: the [Joint Guidelines on Freedom of Association \(2015\)](#) issued by ODIHR and the Venice Commission, the [Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes \(2016\)](#) issued by ODIHR and the Venice Commission, the Venice Commission [Guidelines and Report on the Financing of Political Parties](#), the Venice Commission [Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources](#), and the Venice Commission [Code of Good Practice in Electoral Matters](#).

² See paragraph 5.8 of the 1990 OSCE Copenhagen Document, which requires "legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone." Paragraph 18.1 of the 1991 OSCE Moscow Document also provides that "[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives."

³ In particular, reference is made to the GRECO reports on Transparency of Party Funding in Lithuania, including the [Evaluation Report](#), the [Compliance Report](#), and the [Second Compliance Report](#). See also all [ODIHR election observation reports](#) and [Opinion](#) on Lithuania.

pertaining to financing political parties and campaigns largely promotes parties' independence from undue influence as well as ensures that contestants generally have the opportunity to compete in elections in accordance with the principle of equal opportunity. However, a number of aspects warrant improvement, including a clear definition of third parties, as well as stricter regulations on in-kind donations and reporting. In addition, the regulatory framework should be enhanced to ensure that the law on party and campaign finance and other relevant legislation effectively close potential loopholes that could be used to circumvent regulations on political and campaign financing.⁴

21. Sufficient regulations in political finance play an important role as they contribute to transparency and accountability. It is thus important to establish political party and campaign finance regulations that are clear, equitable and enforceable. While this Opinion only comments on aspects of enhancing the legislation pertaining to the proposed amendments, it must be emphasized that the effective implementation of the legislative framework is equally important.

C. General Remarks

22. Draft amendments to the law on party and campaign finance were prepared by the Central Election Commission (CEC) and submitted to the parliament for consideration in September 2018. They introduce several changes and modifications to the law, focusing on the role and authority of the CEC in relation to supervising the political campaign financing. Particularly, Article 10.3 and 12.1 aim to amend different aspects on donations; new paragraph (7) of Article 14 on expenditures; Article 15.4 and 15.7 on dissemination of political advertising; Article 18.1 and 18.2 on financial accounting; and Articles 21 and 22 on aspects of transparency and supervision. Several of the proposed changes align the terms used in the law to make it internally consistent. This is a positive step in clarifying provisions in the law and making sure that terms used are done consistently.
23. Provided that the parliament is anticipated to review these draft amendments in the near future, and given the impact that this Opinion may have on the ongoing reform process, the relevant stakeholders are encouraged to ensure that proposed amendments undergo extensive consultation throughout the drafting and adoption process. As a preliminary remark, it should be noted that successful reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders;⁵ and 3) political commitment to fully implement the legislation in good faith. ODIHR stresses that an open and transparent process of consultation increases the confidence and trust in the adopted legislation and in the state institutions in general. ***ODIHR recommends that the legislation benefits from a broad and inclusive consultations with an input by all relevant stakeholders.***

D. Comments on Draft Amendments

1. Donations

24. The draft amendments in Article 10.3 provide that in order to fund their own political

⁴ See ODIHR Opinion, [POLIT-LIT/330/2018](#).

⁵ See paragraph 5.8 of the 1990 OSCE Copenhagen Document which requires "legislation, adopted at the end of a public procedure."

campaign, a candidate in a single-member constituency (and referendum initiator) may donate an amount not exceeding 20 average monthly incomes. It further extends that total amount per candidate should not exceed 20 average annual incomes both during the calendar year and the one preceding. This is a positive change as it regulates the access of self-financing with an aim to circumvent the potential abuse of accepting illegal donations. It also aims to cap the overall (maximum) amount of donation per contestant as well as safeguards against possibility to circumvent restrictions.

25. However, additional safeguards could also be considered. For example, as already provided in previous ODIHR Opinion, in case a credible ground suggests that the permissible donations have been circumvented, ***it is recommended that the CEC be entitled to inquire into candidates' personal funds to check whether the limit and legal requirements as prescribed by law are respected and not circumvented.***
26. Article 12.1 further bans donations which are not envisaged by this law, including the anonymous donations. If a political party or a candidate receives donations from an undetermined donor, the person responsible to manage the accounts of the political party or the treasurer of the campaign must transfer the donation to the state budget.⁶ This Article has been supplemented by vesting the responsibility on a contestant as well as extending the mandate of the CEC for transferring to the state budget impermissible donations. Such an approach is welcomed, as it allows for timely internal vetting processes, as well as foresees forfeited of illegal donations.⁷

2. Expenditures

27. Generally, a campaign expenditure limits are an advisable measure to maintain independence of contestants, and ensure pluralism in elections, as it has the potential to keep the total campaign costs at a moderate level. However, campaign expenditure ceilings are relevant and enforceable only if certain conditions are met. In particular, it is necessary that there is a clear definition of what campaign expenditures are and a clearly defined period that is reasonable in length. In addition, spending limits should not be imposed in such a manner as to be overly burdensome for the contestants.⁸
28. New Article 14.7 takes into consideration that if a contestant fails to declare political campaign expenditure, the CEC obliges a contestant to transfer this sum to the state budget. It is positive that the legislation includes a provision aimed at precluding a possible circumvention of spending limits. However, ***as already noted in previous ODIHR Opinion, only the amount that is in surplus of what would constitute a legal donation would be transferred to the state budget.***
29. In addition, the way this Article is formulated, does not exclude the third party expenditures, which potentially could be considered expenses incurred by the contestant. As already mentioned in the previous ODIHR Opinion, the law on party and campaign finance does not explicitly prohibit such third parties to campaign for or against a candidate as long as they

⁶ As noted in paragraph 173 of the Guidelines donation limits “have historically also been placed on domestic funding, in an attempt to limit the ability of particular groups to gain political influence through financial advantages. It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/ controlled companies and anonymous donors.”

⁷ The Council of Europe Committee of Ministers’ Recommendation (2003)4 also requires that “[i]n case of donations over a certain value, donors should be identified in the records”

⁸ See paragraphs 196 and 197 of the Guidelines.

are not formally connected to electoral contestants or coordinate campaign. *Consideration could be given to adding the third-party expenditures in Article 14.7 by acknowledging such expenses as well as accountability of such costs.*

3. Political Advertising

30. Article 16.4 introduces the timeline for dissemination of political advertisement, as being during the political campaign until the proclamation of the results of election/referendum. While legislator aims to clarify this time- period for public information providers, it is not clear why such amendment should be necessary provided that no campaign advertisement is expected after the voting is over. Legislation also envisages the campaign silence period.⁹
31. Article 16.7 changes deadlines for submission of the information on public information producer/disseminator, a contestant must submit such information (1) within 10 days from the date of dissemination for registration of the advertisement, and (2) within 15 days after publication of final results for submitting actual declaration. Additional obligation has been added to constantly fill up the declaration electronically. Linking the disclosure deadline to the date of dissemination rather than ensuring the disclosure a certain number of days prior to the election day could diminish transparency, particularly given the critical period of 5 to 10 days prior to election day. *It is recommended that this Article is revised.*

4. Financial Accounting

32. Financial accounting of a campaign shall be managed by the campaign treasurer with whom a person wishing to be registered as an independent campaign participant must conclude a property trust agreement (Article 17.2). Campaign treasurers must submit to the CEC a financial report on campaign funds and expenses with all the supporting documents no later than 25 days after the publication of final election results. However, if funds received exceed 70 times an annual monthly income, the financial report must first be audited at the contestant's own expense, and submitted within 85 days after the publication of election results.¹⁰ *ODIHR previously noted that this is a lengthy deadline which undermines the purpose of the transparency requirement and recommended to be shortened.*
33. Transparency in the process is important because the public has the right to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable."¹¹ In addition to the obligation to publish on CEC website all donations (as well as political campaign funding agreements) within 10 working days of receipt , the draft Article 17.4(3) obliges the treasure to disclose political campaign expenditures or assumed financial liabilities within the same time period. This provision is

⁹ Article 56 of the Law on parliamentary election also regulates the campaign silence period during which time election campaign, irrespective of its methods, forms and measures shall be prohibited 30 hours before the beginning of an election and on the election day until the closing of the polls.

¹⁰ Paragraph 200 of the Guidelines recommends that "reports on campaign financing should be turned in to the proper authorities within a period of no more than 30 days after the elections."

¹¹ See Article 7(3) of the United Nations Convention Against Corruption which obliges signatory states to make good-faith efforts to improve transparency in election-candidate and political party financing. Requirements for the disclosure of political financing are the main policy instruments for achieving such transparency. While other forms of regulation can be used to control the role of money in the political process, such as spending limits, bans on certain forms of income, and the provision of public funding, effective disclosure is required for other regulations to be implemented effectively.

welcomed as it provides for public's accessibility to financial information.¹² As provided by paragraph 194 of the Guidelines "transparency in party and campaign finance [...] is important to protect the rights of voters and to prevent corruption.

34. However, it should be taken into consideration that expenditures may occur continuously during the campaign period. It would seem burdensome for the political campaign treasurer to provide information on each such expenditure within 10 days. This is particularly relevant for an obligation to disclose "assumed financial liabilities," which would lack details and preciseness that may result in future errors. ***Instead, providing a clear deadline for interim reports with a clear timeframe for such incomes and expenditures (for example 10-15 days before election day) would both enhance the transparency of campaign financing as well as provide for the explicit regulation for the contestants to file such reports without compromising the public's right to information and transparency.***
35. In addition, while this might be an error of translation, the wording of Article 17.4(3) could be reviewed to provide explicitly that the treasurer provides such information to the CEC and not "publish on the CEC website," which would be more the role of the CEC.
36. Obligation to submit the bank statement of political campaign account, as provided under Article 17.4(7), along with the documents substantiating political campaign expenditures is commendable.
37. According to draft Article 18, debts of political campaign participants incurred during political campaign shall be cleared in one-year period from the proclamation of the final results. Article 18.1 also states that a political party shall pay off the debts only from financial sources foreseen in the Law on Political Parties, which thus implies that parties can use their own resources – and therefore their own bank account – to pay off these debts. This deadline could be problematic if we read it in conjunction with Article 14(8), which provides that the unique bank account which is to be opened for collecting funds and incurring and paying for electoral expenses, has to be closed before the submission of the political campaign funding report. ***It is recommended that it is clarified.***

5. Transparency and Supervision

38. Some draft amendments in Chapter 5 expand on the role of the CEC giving it more discretion of supervision on party and campaign finance regulations. Under Article 21.1, the CEC is obliged to announce accounting records of political campaign funding, agreements and reports on its website not later than 10 working days after its receipt. This is a commendable change ensuring the timely publication of such information.¹³ This would however require amending Article 2.13 which frames the ending of "political campaign period" as 100 days after the date of proclamation of the final results of the election, and to which the reporting deadlines are linked to. This also creates the inconsistency with reporting deadlines which are currently 25 days (Article 17.4 (5)) and 85 days (Article 17.4 (6)). ***These Articles should be amended respectively.***
39. Law, however, does not specify how long financial reports shall remain on the CEC

¹² Paragraph 198 of the guidelines provides that "States should require political parties to keep records of all direct and in-kind contributions given to all political parties and candidates in the electoral period. Such records should be available for public review and must be in line with the pre-determined expenditure limits." In addition, Article 10 of the Council of Europe Committee of Ministers' Recommendation (2003)4 provide that "States should require particular records to be kept for all expenditure, direct and indirect, on electoral campaigns, in respect of each political party, each list of candidates and each candidate."

¹³ With the current wording, the CEC had this obligation within 100 days after the announcement of the final results.

website.¹⁴ *It is therefore recommended outlining in the legislation, by amending Article 21, how long financial reports should be kept online. Ideally, this should allow for sufficient time for public scrutiny.*

40. According to draft Article 22.5, the CEC, after beginning of each political campaign, has a right to apply to the Radio and Television Commission of Lithuania, the Public Information Ethics Commission, the Office of the Inspector of Journalist Ethics regarding the assessment of the content of disseminated information or delegation of representatives to the working group set up by the CEC. This appears to be a measure for assessing the language of the political advertisement. However, as noted in ODIHR [observation report on the 2016 parliamentary elections in the Republic of Lithuania](#) “the vague definition of political advertising leaves space for arbitrary decisions and has the potential to result in infringements on free expression.”¹⁵ *Whichever methodology the legislator decides to pursue, it is important that the content of political advertisement is not unnecessarily censored and does not undermine the right to freedom of expression.*
41. Draft Article 22.7 further states that the CEC, “having determined that the contestant exceeded the political campaign expenditure limit, by its decision obliges the contestant not to accept new financial liabilities due to the expenditure of the political campaign, except for the contract with the audit company or auditor if an independent political campaign participant has an obligation according to the Article 20(1).” This is also relevant for costs incurred for preparing financial reports. This appears to be a preventive measure and is welcomed provided that the CEC has sufficient resources to provide such monitoring in a timely and effective manner. As provided by paragraph 220 of the Guidelines, “legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing to ensure the proper functioning and operation of the regulatory body are also necessary.”
42. Lastly, Article 22.8 introduces legal remedies for the CEC decisions emanating from the “monitoring the funding of political campaigns and advertising,” which is welcomed and in line with OSCE commitments.¹⁶ However, the law envisages a 7-day deadline to appeal such decision to the Supreme Administrative Court, and a 48-hour deadline for adjudication of such appeals. Overall timeframe may undermine an effective legal redress. One best practice for election-related disputes is to provide for an expedited process of complaint and appeal, to permit resolution of complaints in an effective manner.¹⁷ Paragraph 95 of

¹⁴ See Council of Europe Recommendation 2003(4), which in its Article 14 requires states to provide for independent monitoring in respect of political party funding and electoral campaigns; this shall include supervision over political parties’ accounts and over expenses involved in electoral campaigns, as well as their presentation and publication.

¹⁵ Paragraph 9.1 of the 1990 OSCE Copenhagen Document provides “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” In addition, Paragraphs 21-25 of the 2011 UN CCPR General Comment No. 34 to Article 19 of the ICCPR indicate that “the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted [...]. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself... Restrictions must be provided by law... For the[se] purposes ... a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public”.

¹⁶ Paragraph 5.10 of the 1990 OSCE Copenhagen Document states, “[e]veryone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. Under Article 2.3(a) of the ICCPR States obligated themselves “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

¹⁷ See [Existing Commitments for Democratic Elections in Participating States](#), page 85.

Explanatory Report to the Venice Commission's Code of Good Practice in Electoral Matters recommends a time limit of three to five days both for lodging appeals and making rulings, possibly with more time for Supreme and Constitutional Courts. ***Consideration should be given to review current deadlines to ensure effective legal redress.***

E. Other Issues

43. Article 16 of the Council of Europe's Committee of Ministers Recommendation Rec (2003)4 states that "States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to proportionate, effective and dissuasive sanctions."
44. Sanctions available for infringements of party and campaign financing rules are regulated in Articles 23-25. These provisions have not changed, and respectably have not addressed previous recommendations. As it is also noted in the ODIHR [observation report on the 2016 parliamentary elections](#) "the sanctions envisaged by the law are not always proportionate, effective, and dissuasive, resulting in perceptions of over-regulation in some areas and under-regulation in others." ***As an additional safeguard to ensure the integrity of elections, it could be considered to reassess the existing sanctions to ensure that they remain effective, dissuasive and proportionate. In addition, administrative and criminal sanctions should be envisaged specifically for violations in connection with third party involvement and contributions, as underlined in the previous opinion.***

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