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**(VENICE COMMISSION)**

**REPORT**

**ON ELECTION DISPUTE RESOLUTION**

**Approved by the Council for Democratic Elections  
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## I. Introduction

1. The topic of election dispute resolution is recurrent in reports issued by international election observers as well as in electoral opinions<sup>1</sup> of the Venice Commission<sup>2</sup> and the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR).<sup>3</sup> The Council for Democratic Elections and the Venice Commission have thus decided to conduct a comparative study on the issue of electoral disputes and their settlement.<sup>4</sup>

2. When analysing relevant legislation of its member States,<sup>5</sup> the Commission observed a number of trends, either positive or negative. The purpose of this report is to identify such trends in the settlement of electoral disputes throughout Venice Commission's member States, in view of the elaboration of recommendations aimed at improving both laws and practice in member States. On the basis of the legislative data collected, this report will focus on dispute resolution concerning national elections in the various member States (both presidential and parliamentary elections). Moreover, many of its findings entail local and regional elections too, considering that the report covers mainly the procedural elements of election dispute resolution.<sup>6</sup>

3. It is important to make a few methodological remarks at this stage. First of all, the activity of the electoral management bodies – also called election commissions, committees, councils, boards – as well as of the other competent bodies (courts, parliaments etc.) on the resolution of electoral disputes is governed mostly by electoral legislation. The secretariat of the Venice Commission has been able to collect electoral laws – or election codes, depending on the countries' legislation – of 59 member States of the Venice Commission out of 62, for which the legislation was available in English or French – sometimes in Spanish.<sup>7</sup>

4. The report focuses on the electoral legislation of these 59 member States and therefore does not refer to other pieces of legislation which may also cover complaints and appeals' procedures in the electoral field, e.g. general administrative or procedural laws or codes. However, it should be emphasised that the electoral legislation of the member States varies in scope and may not be exhaustive as to the legal remedies available regarding electoral disputes. Therefore, the comparative overview in this report should be read with the reservation that it does not cover legal remedies beyond electoral legislation in the narrow sense.

5. The report refers on a regular basis to electoral opinions adopted by the Venice Commission and the OSCE/ODIHR in order to illustrate the problematic elements observed in the election dispute resolution systems of the various Venice Commission's member States. The references also reinforce the substance of the present report, beyond the electoral legislation as such.

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<sup>1</sup> See in this respect the 2017 Compilation of Venice Commission opinions and reports concerning election dispute resolution and the opinions quoted. All quoted documents, in particular those of the Venice Commission, are to be found in Annex 2.

<sup>2</sup> <https://www.venice.coe.int>.

<sup>3</sup> <https://www.osce.org/odihr>.

<sup>4</sup> The 16<sup>th</sup> European Conference of Electoral Management Bodies which took place in Bratislava, Slovak Republic, on 27-28 June 2019, was precisely organised in the context of this report.

<sup>5</sup> The relevant legislation is accessible at: [https://www.venice.coe.int/WebForms/pages/?p=04\\_EL\\_EDR](https://www.venice.coe.int/WebForms/pages/?p=04_EL_EDR).  
Reference document: CDL-REF(2019)010.

<sup>6</sup> It should however be mentioned that some procedural rules can differ depending on the type of elections, either local, regional or national. This can be the case for instance concerning the bodies competent on a certain type of grounds or concerning the body competent on appeal.

<sup>7</sup> Electoral laws of Cyprus, Greece and Israel do not seem to exist in English or French, which prevented the secretariat and the rapporteurs of the present report to analyse the electoral laws of these member States of the Venice Commission. The member States are mainly mentioned throughout the report as "the countries analysed" for the sake of simplification.

6. The present report was approved by the Council for Democratic Elections at its 68<sup>th</sup> meeting which was held online on 15 June 2020 and adopted by the Venice Commission at its 124<sup>th</sup> Plenary Session held online on 8-9 October 2020.

## II. General remarks

7. Electoral processes in Europe and beyond include a complex series of successive stages, requiring the involvement of numerous actors, primarily voters, candidates and electoral management bodies. Political parties, courts and other relevant public authorities are also indispensable stakeholders of electoral processes.

8. Electoral disputes cannot be limited to complaints on election day or on election results, which are often the most visible disputes of an electoral process. They must also address any types of disputes that may arise in the course of an electoral process. This means that electoral disputes can derive from the various phases of an electoral process, broadly understood. This includes mainly the following phases: when relevant boundary delimitation, procurements, voter and candidate registration (de-registration or refusal of registration as well); the official period of the electoral campaign; election day itself (voting, closing and counting operations); results (their tabulation, transmission, issuance). Election dispute resolution relates more generally to challenges against decisions issued by administrations, public agencies and any relevant electoral stakeholder, especially election commissions at all levels of an election administration.

9. The complexity inherent to electoral processes as well as the involvement of political actors and politically sensitive issues inevitably lead to disputes. Such disputes are a natural part of a lively domestic political life, which in turn is a natural part of a lively pluralistic system. The adjudication of electoral disputes – also called election dispute resolution systems – is therefore a crucial element of an effective and functional electoral governance so as to ensure confidence in electoral processes. The issue is regularly addressed by electoral opinions of the Venice Commission and the OSCE/ODIHR as well as by international observers in their election observation missions' reports, especially reports from the Parliamentary Assembly of the Council of Europe<sup>8</sup> and of the OSCE/ODIHR.<sup>9</sup> Additionally, election dispute resolution systems have been subject to a number of judgments and decisions by the European Court of Human Rights under Article 3 of Protocol No. 1.<sup>10</sup> In general terms, it has been observed that there have been structural problems while dealing with electoral disputes both in law and in practice in a number of Venice Commission's member States.<sup>11</sup>

10. As the Venice Commission noted in the Report on electoral law and electoral administration in Europe,<sup>12</sup> in a number of cases, the procedures for dealing with complaints and appeals are not clearly defined or are very complicated, depending on the domestic legal situations observed. International observers' reports repeatedly characterise domestic electoral laws and other relevant laws (including procedural laws and codes) relating to complaints and appeals' procedures as incomplete, ambiguous, confusing or too complex. This leads to an inconsistent interpretation and application of the electoral law, especially regarding the admissibility of complaints and decision-making at different levels. Moreover,

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<sup>8</sup> All Parliamentary Assembly's election observation reports are available [here](#).

<sup>9</sup> All OSCE/ODIHR election observation reports are available [here](#).

<sup>10</sup> See [here](#) the Guide on Article 3 of Protocol No. 1 "Right to free elections". See also [here](#) the dedicated fact sheet of the European Court of Human Rights on the right to free elections.

<sup>11</sup> The present report refers to a number of reports of election observation missions, which are, in addition to electoral opinions from the Venice Commission and OSCE/ODIHR, the sources where such structural problems have been mentioned.

<sup>12</sup> See 2006 Report on Electoral Law and Electoral Administration in Europe – Synthesis study on recurrent challenges and problematic issues, para. 169.

the rules and procedures are often not well understood by electoral subjects.<sup>13</sup> Furthermore, members of relevant bodies, in particular members of election commissions, are not always sufficiently trained on election complaints and appeals' rules.

11. Beyond the legislation itself, the international election observers, primarily from the Parliamentary Assembly of the Council of Europe and the OSCE/ODIHR, have regularly underlined in their assessments of elections *inter alia* the following issues: overly expeditious complaints and appeals' procedures; a lack of impartiality or of effective remedies; overlapping jurisdictions; a lack of substantive judgments while dealing with complaints lodged before electoral management bodies or courts.

12. The report will be divided as follows.

13. The report introduces first the international instruments and soft-law dealing with the right to free elections with a view to better understand and interpret domestic legal frameworks. **Part III** of the report will deal with the topic of **international instruments and case-law**. At international level, election dispute resolution systems are dealt with by international binding texts, by the case-law of the European Court of Human Rights and by standards, mainly developed at European level by the Venice Commission.<sup>14</sup>

14. Among the issues at stake concerning election dispute resolution, there are procedural challenges and in particular the question of the bodies competent to deal with the settlement of electoral disputes. In a number of countries, electoral laws and relevant procedural laws are confusing or lack relevant provisions to establish a clear competency of administrative and/or jurisdictional bodies for different grounds for complaints. Such bodies can be electoral management bodies or courts – i.e. constitutional, general, administrative or specialised courts – or more rarely other types of bodies or institutions. Sometimes, the lines between the types of disputes and the competent bodies to deal with such disputes are blurred. The report will develop the question of the **bodies competent** to deal with the settlement of electoral disputes in its **Part IV**.

15. Addressing election dispute resolution systems also implies dealing with the type of complaints that can be lodged by complainants. In this respect, situations vary greatly depending on the countries since election dispute resolution systems potentially concern almost all steps of an electoral process. **Part V** of the report will develop the situations observed in the various electoral laws concerning the most important **grounds for complaints and decisions, actions or inactions open to challenge**.<sup>15</sup>

16. The analysis of the actors of the electoral process who are or should be entitled to lodge complaints (the standing), namely citizens, candidates, political parties, non-governmental organisations, *inter alia*, is also essential for assessing the effectiveness of election dispute resolution systems. **Part VI** of the report will deal with this issue of **the persons entitled to complain**.

17. The Code of good practice in electoral matters,<sup>16</sup> the Council of Europe's reference document in the electoral field, recommends that time limits for lodging and deciding

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<sup>13</sup> Electoral subjects are primarily candidates and political parties, voters, as well as any other domestic actor impacted by or involved in an electoral process, such as the civil society, mass media, election administration etc.

<sup>14</sup> In addition to Part III, the report contains an annex (Annex 2) which presents a selection of relevant election-related case-law of the European Court of Human Rights.

<sup>15</sup> Provisions from electoral laws were analysed concerning the following stages of the electoral process: election-day operations, voting, counting and tabulation operations, transmission of election results and issuance of election results.

<sup>16</sup> 2002 Code of good practice in electoral matters: Guidelines and Explanatory Report. More details on the document are available under Part III, Section D.

appeals be short while stating that they must however be long enough to make an appeal possible, to guarantee the exercise of the rights of defence and a reflected decision. Indeed, a number of cases brought before administrative or jurisdictional bodies are rejected for procedural reasons, either because time limits are exceeded or because the competent bodies do not take the time to analyse the substantive elements of the case, arguing of short deadlines. The question of **time limits** will be developed in **Part VII** of the report.

18. **Part VIII** of the report will deal with **other procedural issues**, in particular regarding the right to a fair trial and the effectiveness of election dispute resolution systems, the transparency of such a system, the reasoning of decisions on complaints and appeals as well as the right to submit evidence and the burden of proof.

19. Last but not least, a successful system of election dispute resolution relies on the effectiveness of the decision-making power of the competent body. Electoral management bodies, courts or other relevant bodies responsible for validating elections and announcing election results have to take decisions even in sensitive cases, which includes *inter alia* the delicate issue of cancellation of elections. The report will develop in its **Part IX** the various existing systems of **decision-making**, and in particular the possibility to partially or fully cancel elections.

### III. International instruments and case-law

#### A. International Covenant on Civil and Political Rights

20. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) calls for possibilities for judicial remedy, stating that “any person [...] shall have an effective remedy [...]” and that “any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

21. Article 25 (b) of the International Covenant on Civil and Political Rights provides “every citizen” with a right “[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.<sup>17</sup>

22. General Comment No. 25, aimed at complementing and interpreting Article 25 (b) of the ICCPR, states that, regarding complaints and appeals, “[t]here should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”<sup>18 19</sup>

#### B. European Convention on Human Rights

23. For the 45 member States of the Council of Europe having signed and ratified the European Convention on Human Rights and its First Additional Protocol,<sup>20</sup> this implies the full

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<sup>17</sup> United Nations, 1966 International Covenant on Civil and Political Rights.

<sup>18</sup> United Nations, General Comment No. 25 of 1996, in particular para. 20.

<sup>19</sup> Amongst the non-binding international texts the Universal Declaration of Human Rights of the United Nations can also be quoted. It proclaims in its Article 21.3 that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

<sup>20</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Norway,

implementation of the case-law of the European Court of Human Rights related to the right to free elections (Article 3 of the First Additional Protocol of the European Convention on Human Rights), as well as related to other rights crucial for an effective and meaningful democracy, such as freedom of expression (Article 10 of the Convention), freedom of assembly and association (Article 11 of the Convention), the right to an effective remedy (Article 13 of the Convention) as well as prohibition of discrimination (Article 14 of the Convention).

24. Article 3 of the First Additional Protocol to the European Convention on Human Rights<sup>21</sup> on the right to free elections does not mention ways to complain about supposed violations during electoral processes. Nevertheless, the case-law of the European Court of Human Rights has recognised the procedural aspect of the right to free elections, implying the protection of citizens with regard to the effectiveness of the system of appeal. It emphasised that “a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections”.<sup>22</sup>

25. Article 6 §1 of the European Convention on Human Rights provides the right to a fair and public hearing in disputes concerning “civil rights and obligations” or “criminal charge”, but does not apply to electoral disputes.<sup>23</sup> Instead, guidelines for the grounds providing a right to lodge complaints and appeals in electoral disputes can be found in the case-law of the European Court of Human Rights based on Article 3 of Protocol No. 1.

### **C. Code of good practice in electoral matters**

26. The Venice Commission’s Code of good practice in electoral matters is the reference document of the Council of Europe in the electoral field.<sup>24</sup> It defines a number of required preconditions for an effective system of appeal.<sup>25</sup> Overall, it leaves to the member States the choice of the appeal body, providing that a final appeal to a court be possible. The Code of good practice in electoral matters also insists on the necessity of a procedure simple and devoid of formalism, in particular concerning the admissibility of appeals. Additionally, the law has to define clearly the powers and responsibilities of the relevant bodies and appeal bodies so as to avoid risks of conflicts of jurisdiction (whether positive or negative) and neither the appellants nor the authorities should be able to choose the appeal body. It recalls that the appeal body must have the authority on the main aspects of an electoral cycle, such as voter and candidate registration, observance of campaigns rules, the outcome of the elections, including the possibility to cancel elections where irregularities may have affected the outcome. Importantly, the Code of good practice in electoral matters recommends that any voter or candidate in the constituency concerned must be entitled to appeal. It recommends also that time limits for lodging and deciding appeals must be short, and finally, that the applicants should have the right to a hearing. All these required preconditions will be developed in the next parts of the present report. It should be noted that the European Court of Human Rights regularly refers to the Code of good practice in electoral matters in its judgments related to Article 3 of the First Additional Protocol of the Convention.<sup>26</sup>

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Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom.

<sup>21</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950.

<sup>22</sup> See for example *Namat Aliyev v. Azerbaijan*, 8 April 2010, para. 81.

<sup>23</sup> See *Pierre-Bloch v. France*, 21 October 1997, para. 51, 61. However, Article 6 §1 of the European Convention on Human Rights may be applicable to election-related cases pertaining to alleged violations of other rights and freedoms than electoral rights. See in this respect *Shapovalov v. Ukraine*, 31 October 2012, para. 45, 46, 48, 49.

<sup>24</sup> Code of good practice in electoral matters (CDL-AD(2002)023rev2-cor).

<sup>25</sup> See Guideline II 3.3 and Explanatory Report, para. 92-102.

<sup>26</sup> See e.g. *Davydov and others v. Russia*, 30 May 2017, para. 287; *Riza and others v. Bulgaria*, 13 October 2015, para. 177.

## **D. OSCE 1990 Copenhagen Document and 1991 Moscow Document**

27. Paragraph 5.10 of the OSCE 1990 Copenhagen Document<sup>27</sup> is also relevant to election dispute resolution as it entitles everyone to “have an effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity.” Paragraphs 18.2 and 18.4 of the OSCE 1991 Moscow Document<sup>28</sup> are relevant as well, as they call on OSCE participating States to grant to everyone “effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity” and to “provide for judicial review of such regulations and decisions.”

## **IV. Competent bodies**

28. Among the issues at stake concerning election dispute resolution systems, there is the question of the bodies competent to adjudicate electoral disputes. Such bodies can be electoral management bodies, constitutional, general, administrative or specialised courts, other types of bodies or a combination of these bodies; this will be developed below. In this respect, election observers and international organisations have in particular raised the following concerns: electoral laws and other relevant laws (including procedural laws and codes) are often confusing, and sometimes conflicting, or lack relevant provisions to establish a clear competency of administrative and/or judicial bodies for resolving the different grounds of disputes. Sometimes, the lines between the types of disputes and the bodies competent to deal with them are blurred or even do not appear in the law. In practice, international experts<sup>29</sup> and international election observers in their election observation reports<sup>30</sup> have regularly raised the issue of credible complaints left without any legal redress because the complaint had been lodged with a body which denies its competence.

## **A. International standards**

29. International standards and in particular the Code of good practice in electoral matters do not recommend a specific model of body competent either in first instance or on appeal, provided that the conflict of jurisdiction is avoided whatever the step of an electoral process challenged. International standards and more specifically the Code of good practice in electoral matters<sup>31</sup> recommend that the appeal body in electoral matters should be either an election commission or a court.<sup>32</sup> For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case and whatever the system of adjudication of electoral disputes stipulated in the domestic law, a final appeal to a court must be possible.<sup>33</sup> It is also of utmost importance that, as underlined by the Code of good practice in electoral matters, “the appeal procedure and, in particular, the powers and responsibilities of the various bodies [...] be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal

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<sup>27</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.

<sup>28</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991.

<sup>29</sup> See 2006 Report on Electoral Law and Electoral Administration in Europe, para. 167. The issue of election results and more broadly of decision-making power will be developed in Part IX of the present report.

<sup>30</sup> See for instance the OSCE/ODIHR [final report](#) on the 2012 parliamentary elections in Ukraine, which stated: “A significant number of complaints were rejected on procedural grounds, such as being filed with the wrong body” (Section XII - A, page 25).

<sup>31</sup> Code of good practice in electoral matters, Guideline II 3.3. a, Explanatory Report, para. 93.

<sup>32</sup> Code of good practice in electoral matters, Guideline II. 3.3. a, Explanatory Report, para. 168 and 170.

<sup>33</sup> Code of good practice in electoral matters, Guideline II. 3.3. c. Regarding opinions, see for example 2011 Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic, para. 111. See also 2019 Amicus curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats. The European Court of Human Rights partly followed the 2019 Venice Commission’s Amicus curiae brief in its judgment Mugemangango v. Belgium of 10 July 2020; see for instance para. 130-131, 135.



body.”<sup>34</sup> Indeed the possibility for the applicant to choose between various appeals bodies, and in particular between election commissions and courts, may lead to forum shopping. Especially when national legislation provides for the possibility of legal challenges to either an election commission or a court, the electoral law and, if necessary, other pieces of legislation should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided. Thus, the possibility of concurrent complaints procedures is to be avoided.<sup>35</sup> At least it should be ensured that if such a dual mechanism does exist, the national legislation should establish an “alternative” opportunity to challenge the alleged violation to either an election commission or to a court, but not a simultaneous option to lodge complaints to both bodies. Such a dual mechanism is possible if the law clearly distinguishes the body competent based on the type of step, procedure, decision, action or inaction challenged, and provides an effective mechanism to prevent a simultaneous use of both judicial and non-judicial avenues. This crucial aspect is relevant for the complaints in first instance and is therefore developed below under Section B of Part IV.

## **B. Competent bodies in first instance and on appeal (second or third instance)**

30. At domestic level, a number of electoral laws provide a possibility to lodge a complaint against decisions adopted, actions and inactions by election commissions or any other electoral management body issuing an administrative decision, as well as by other persons, groups or institutions – candidates, political parties, mass media, public authorities and officials. In this respect, electoral laws have to explicitly provide for a single competent body for dealing with complaints in first instance.

31. For a number of steps of an electoral process that can be challenged, the higher or authorised election commission will be the competent body. Others will imply a complaint before a court or, more rarely, before another body – a parliament or another elected body such as a municipal council – or an independent or ad hoc body. In some cases, other bodies can be competent to deal with specific steps of an electoral process, in particular the announcement of election results.

32. According to the Code of good practice in electoral matters, in second instance, appeal should be lodged before a court and if not, a final appeal to a court must be possible.<sup>36</sup> Regarding the competent bodies, the possibility of a dual system of complaints, which can be acceptable in first instance, based on the type of step challenged, cannot be envisaged anymore in second instance – i.e. on appeal. Indeed, international standards require a court to deal with an electoral complaint on appeal and as final instance – second or third instance, according to the judicial system of the country. If the body designated by the law for the settlement of electoral disputes in first instance is an election commission, i.e. a higher or authorised election commission, the electoral legislation must therefore provide the right to appeal to a court after exhaustion of the administrative process. It is legitimate to consider this requirement as stemming from the main human rights instruments guaranteeing the right to judicial remedy for the protection of fundamental rights, among them the suffrage rights.<sup>37</sup> Although electoral disputes do not fall within the scope of Article 6 (“Right to a fair trial”) of the European Convention on Human Rights since they do not concern the

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<sup>34</sup> Code of good practice in electoral matters, Guideline II 3.3. c. and Explanatory Report, para. 97. Regarding opinions, see for instance 2014 Joint Opinion on the draft Election Law of the Kyrgyz Republic, para. 120.

See also 2011 Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic, para. 111.

<sup>35</sup> See 2006 Report on Electoral Law and Electoral Administration in Europe, para. 170.

<sup>36</sup> Code of good practice in electoral matters, Guideline II 3.3. a.

<sup>37</sup> International Covenant on Civil and Political Rights, Article 2(3); United Nations Human Rights Committee, General Comment No. 32; 1990 OSCE Copenhagen Document, para. 5.10; 1991 OSCE Moscow Document, Section (18); Code of good practice in electoral matters, Guideline II. 3.3. d. Regarding opinions, see for instance 2010 Joint opinion on the electoral legislation of Norway, para. 18-24.

determination of “civil rights and obligations” or a “criminal charge”,<sup>38</sup> the European Court of Human Rights has underlined the importance of judicial review of the application of electoral rules, including in the context of election-related disputes.<sup>39</sup> The absence of such a judicial review, with adequate guarantees of impartiality and procedural safeguards, was the reason for which the Court found a violation of Article 13 (“Right to an effective remedy”) of the Convention in conjunction with Article 3 of Protocol No. 1 in the above-cited cases. It is noteworthy that the European Court of Human Rights examines complaints regarding consideration of electoral disputes either under Article 3 of Protocol No. 1 alone where they were the subject of judicial review at the domestic level, or under Article 13 of the Convention taken in conjunction with the above-mentioned provision where no such judicial review took place.<sup>40</sup>

#### **a. Competent bodies regarding voter registration and voter lists’ corrections**

33. *In first instance* – In 31 countries, election commissions,<sup>41</sup> in 23 countries *ad hoc* committees or municipalities’ councils, administrative authorities or elected bodies<sup>42</sup> and in six countries a court<sup>43</sup> are competent with regard to corrections on the voter list or the absence of registration.

34. With regard to voter registration and voter lists’ corrections, 53 countries provide the voter with the right to lodge a complaint in first instance either to the competent election commission or to an *ad hoc* committee. This is logical as for practical reasons, the competent body has to be geographically close to the voters, who should have a direct access to the voter list. Moreover, the procedure, subject to judicial control, must be simple in order to respect the principle of universal suffrage by offering to a maximum of citizens a chance to vote, leaving a short but reasonable deadline for such control of the voter lists.

35. *On appeal* – In 41 countries, the competent body dealing with complaints on voter registrations and voter lists on appeal is a court.<sup>44</sup> On the contrary, there are 13 countries where a court is not the final instance.<sup>45</sup>

36. With regard to voter registration and voter lists’ corrections, a court is the competent body for appeal in second or third instance in the majority of the countries, in line with the Code of good practice in electoral matters. Voter registration and the correction of voter registers are sensitive issues as voters may lack confidence in the election administration or the central

<sup>38</sup> See for example *Riza and Others v. Bulgaria*, 13 October 2015, para. 184, with further case-law references

<sup>39</sup> See *Grosaru v. Romania*, 2 March 2010, para. 55-56 and 62 and *Mugemangango v. Belgium* of 10 July 2020, para. 108 and 119.

<sup>40</sup> See for example *Davydov and Others v. Russia*, 30 May 2017, para. 199-200.

<sup>41</sup> Algeria, Azerbaijan, Bulgaria (complaints on voter lists only), Bosnia and Herzegovina, Canada, Chile, Croatia, Georgia, Hungary (according to Section 236 of the [Act XXXVI of 2013 on Electoral Procedure](#), appeals regarding the electoral register shall be submitted to the head of the local election office), Italy, Kazakhstan, Republic of Korea, Kyrgyzstan, Lithuania, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia, Norway, Peru, Portugal, Romania, Russian Federation, Serbia, Spain, Sweden, Turkey, United States of America.

<sup>42</sup> Albania, Andorra, Austria, Belgium, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Iceland, Latvia, Liechtenstein, Luxembourg, the Netherlands, Poland, San Marino, Slovak Republic, Slovenia, Switzerland, Ukraine, United Kingdom.

<sup>43</sup> Armenia, Brazil, Ireland, Kosovo, Ukraine, Tunisia.

<sup>44</sup> Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria (complaints on voter lists only), Bosnia and Herzegovina, Brazil, Canada, Chile, Costa Rica, Czech Republic, Estonia, Finland, France, Georgia, Hungary, Italy, Ireland, Kazakhstan (or superior election commission), Kyrgyzstan (or superior election commission), Latvia, Lithuania, Mexico, Republic of Moldova (or superior election commission), Monaco, Montenegro, Morocco, the Netherlands, North Macedonia, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Spain, Switzerland, Tunisia, Ukraine, United States of America (at State level – and not Federal level).

<sup>45</sup> Algeria, Austria, Croatia, Denmark (election board), Iceland, Republic of Korea, Liechtenstein, Norway (Ministry), San Marino, Slovenia, Turkey, Ukraine, United Kingdom.

administration dealing with this type of complaint, which is often competent for settling such complaints in first instance. The involvement of judges therefore remains a guarantee on appeal. This presupposes that the judiciary is impartial and neutral vis-à-vis the Executive or an administrative authority. The absence of appeal to a court is therefore problematic, however less than the absence of any appeal against an administrative decision of first instance, which is even more problematic.<sup>46</sup>

### **b. Competent bodies regarding candidate registration**

37. *In first instance* – In 28 countries, election commissions,<sup>47</sup> in seven countries *ad hoc* committees or municipalities' councils, administrative authorities or elected bodies<sup>48</sup> and in 21 countries a court<sup>49</sup> are competent concerning the refusal of registration of candidates. In three countries, there is no complaint or appeal mechanism in this regard.<sup>50</sup>

38. The countries are therefore divided with regard to the legal solutions offered to the candidates who were denied registration or deregistered. In practice, prospective candidates are too often rejected for formalistic reasons. There are also countries where the submission of candidatures is made conditional on the collection of a minimum number of signatures by voters willing to express their support for one or several candidates. This procedure is welcome but can also lead to abuses by partial bodies rejecting signatures in an arbitrary way. A deposit can also be asked and should not be excessive.<sup>51</sup> Whatever the variety of situations, prospective candidates should be able to submit their candidatures through a procedure devoid of formalism. It is advisable to ensure the settlement of such complaints in first instance through election commissions or courts preferably to elected bodies, due to a risk of conflict of interest and/or the risk of a lack of neutrality in the settlement of the complaint by elected bodies.

39. *On appeal* – In 41 countries, the competent body on appeal dealing with complaints on refusal of registration or deregistration of candidates or lists of candidates is a court,<sup>52</sup> as recommended by international standards. On the contrary, there are six countries where a court is not the final instance.<sup>53</sup> There are 11 countries where there is no possibility of appeal in second instance.<sup>54</sup>

40. Candidate registration or deregistration is a sensitive matter too since denying registration to prospective candidates or deregistering them prevents them from running. It is therefore worrying and in contradiction with international standards that some countries do not include any court in the complaint process (be it that there is no appeal before a court or that a non-judicial body decides as a single instance), including when the competent body dealing

<sup>46</sup> Kosovo, Luxembourg, Malta, Peru, Sweden.

<sup>47</sup> Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Bosnia and Herzegovina, Canada, Costa Rica, Germany, Hungary, Iceland, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, Malta, Montenegro, North Macedonia, Norway, Peru, Poland, Russian Federation, San Marino, Serbia, Sweden, Slovenia, Turkey.

<sup>48</sup> Algeria, Belgium, Chile, Germany, Italy, Liechtenstein (government), Slovak Republic, Switzerland.

<sup>49</sup> Brazil, Croatia, Czech Republic, Estonia, France, Georgia, Ireland, (for political party registration/appeal board), Republic of Korea, Luxembourg, Mexico, Republic of Moldova, Monaco, Morocco, Portugal, Romania, Slovak Republic, Spain, Tunisia, Ukraine, United Kingdom, United States of America (at States' level).

<sup>50</sup> Austria, Denmark, Finland.

<sup>51</sup> See in this respect the Code of good practice in electoral matters, Guideline I. 1.3, vi.

<sup>52</sup> Albania (Electoral College), Algeria, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Bosnia and Herzegovina, Brazil, Canada, Chile, Costa Rica, Croatia, Czech Republic, Estonia, France, Georgia, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, Malta, Mexico, Montenegro, Morocco, the Netherlands (Council of State), North Macedonia, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Tunisia, Ukraine, United States of America.

<sup>53</sup> Germany (Federal Electoral Committee), Iceland, Liechtenstein (only government is competent), Norway, San Marino, Turkey.

<sup>54</sup> Austria, Denmark, Finland, Ireland, Luxembourg, Republic of Moldova, Monaco, Peru, Republic of Korea, Sweden, United Kingdom.

with candidate registration (in first instance or on appeal) is the political elected body concerned, in particular the parliament.

### c. Competent bodies regarding voting and counting/tabulation procedures

41. *In first instance* – In 35 countries, election commissions,<sup>55</sup> in six countries *ad hoc* committees or municipalities' councils, administrative authorities or elected bodies<sup>56</sup> and in 19 countries a court<sup>57</sup> are competent with regard to complaints (including objections or observations) on voting procedures – during early voting, if any, or on election day – including counting and tabulation procedures.

42. *On appeal* – In 37 countries, the competent body dealing on appeal with complaints on voting procedures – during early voting, if any, or on election day, including counting and tabulation procedures – is a court.<sup>58</sup> In 10 countries, the final instance is not a court.<sup>59</sup>

43. The decisions regarding voting and counting/tabulation procedures, which are very sensitive stages of the electoral process in any country, require the possibility of an appeal in second instance at least, as recommended by international standards.<sup>60</sup> Contesting in first instance a voting procedure or a procedure concerning the counting and tabulation period means in most cases complaining about a situation occurring at the polling station, i.e. either during the pre-opening stage, during the polling or during the counting and tabulation stages – if they take place at the polling station. Such a complaint should as a rule go to the superior election commission or to a court when it regards an action or inaction by the central election body. At least this works for the countries having autonomous, i.e. separate election commissions vis-à-vis the public administration. In these systems, where most of the countries have a three-tier election administration, the election-day related operations contested will be dealt with by the competent district or regional – or equivalent – election commission. A complaint on a decision or action or inaction done by the intermediate level of election commissions will be generally contested before the central election body. Where such a separate structure of election administration does not exist, it can be justified that the complainant goes to the competent – most often local or regional – court to challenge a voting or counting/tabulation procedure in first instance. Indeed, there would be a risk of conflict of interest or of a lack of impartiality if a local, regional or central competent administration – a

<sup>55</sup> Albania, Armenia, Austria (election result), Azerbaijan, Bulgaria, Bosnia and Herzegovina, Canada, Croatia (when challenging elections results - further "election results") Czech Republic, Estonia (election results), France, Georgia, Hungary (election results), Kazakhstan (or court), Republic of Korea, Kosovo (election result), Kyrgyzstan, Latvia (polling station commission), Lithuania, Malta, Mexico, Republic of Moldova, Montenegro, the Netherlands, North Macedonia (election results), Peru, Romania (Permanent Electoral Authority), San Marino, Serbia, Slovenia, Spain, Sweden (election results), Tunisia, (election results), Turkey, Ukraine.

<sup>56</sup> Belgium, Denmark (The Folketing – election results), Iceland (Parliament – election results), Liechtenstein (government – election result), Norway (parliament – election result) Switzerland.

<sup>57</sup> Algeria, Andorra (election results), Chile, Costa Rica (election results; Tribunal Supremo de Elecciones as a jurisdictional body), Brazil, Finland (election results), Germany (election results), Ireland (election results) Italy, Luxembourg (election results), Monaco (election results), Morocco, Poland (election results) Portugal (election results), Russian Federation (election results), Slovak Republic (election results), Ukraine (any complaints relating to voting, count of votes, tabulation of election results by the lower election commissions, and establishment of the results by the CEC), United Kingdom (election results), United States of America (election results).

<sup>58</sup> Algeria, Andorra (election results), Armenia, Austria (election results) Azerbaijan, Bulgaria (election results), Brazil, Canada, Chile, Costa Rica (election results), Croatia (election results), Estonia (election results), Finland (election results), France (election results), Georgia, Germany (election results), Hungary, Italy, Kazakhstan (or superior election commission), Republic of Korea (elections results), Kosovo (election results), Kyrgyzstan (election results), Latvia (election results), Liechtenstein (election results), Lithuania, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia (election results), Portugal (election results), Spain, Switzerland, Tunisia (election results appeal), Ukraine.

<sup>59</sup> Albania, Belgium, Bosnia and Herzegovina, Czech Republic, the Netherlands, Romania (Permanent Electoral Authority), San Marino, Serbia (Republic Electoral Commission), Slovenia (election results), Turkey (Superior Election Commission).

<sup>60</sup> See in particular the Code of good practice in electoral matters, Guideline II. 3.3, d.

municipality or a directorate of a ministry for instance – were competent to judge on complaints on decisions or actions or inactions done by its own administration/employees. There is still a minority of countries where such complaints go to *ad hoc* committees or municipalities' councils or similar bodies. As raised earlier, if in principle nothing prevents from exercising such a right to challenge a decision, action or inaction before other bodies than election commissions or courts, an *ad hoc* committee and even more an elected body do not seem to be the appropriate instances to deal with election-day related issues.

#### **d. Competent bodies regarding election results<sup>61</sup>**

44. Regarding the sensitive issue of election results, most of the countries provide in the law the possibility to partially or fully invalidate election results – and sometimes correct election results or ask for a total or partial recount. It would be suitable for such decisions to be taken by the highest electoral body – including the central election authority of the country<sup>62</sup>; its decision should be reviewable by the highest judicial body or the Constitutional Court or a specialised electoral court when such a judicial body exists.

45. In 31 countries, the Constitutional Court, the highest judicial body or a specialised electoral court, is the body competent to review election results.<sup>63</sup> On the contrary, there are nine countries where the competent body to review the decision about the confirmation or cancellation of election results is a court but not the highest court.<sup>64</sup> There are also nine countries where the decision to partially or fully invalidate election results is assigned to the parliament.<sup>65</sup> Seven of them do not allow a judicial appeal on the parliament's decision to validate election results.<sup>66</sup> In this respect, the European Court of Human Rights underlines in its case-law that decisions by the parliament affecting the distribution of parliamentary seats, without the possibility of appeal to a judicial body, may constitute a breach of the right to an effective remedy in Article 13 of the European Convention on Human Rights in conjunction with Article 3 of Protocol No. 1.<sup>67</sup> In this respect, the European Court of Human Rights stated

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<sup>61</sup> The issue of election results and the possibility to challenge them is developed in Part IX – B of the present report.

<sup>62</sup> Azerbaijan, Kazakhstan, Kosovo, Norway, the Netherlands, Peru, San Marino, Sweden, Turkey.

<sup>63</sup> Albania (Constitutional Court), Algeria (Constitutional Council), Andorra (Administrative Chamber of the Higher Court of Justice), Armenia (Constitutional Court, appeals against the decisions of the Central Election Commission and complaints related to election results), Austria (Constitutional Court, cases related to numerical calculations), Bosnia and Herzegovina (Appellate Division of the Court), Bulgaria (Constitutional Court), Brazil (Regional Electoral Court), Canada (Federal Court), Costa Rica (Supreme Electoral Tribunal), Chile (Regional Electoral Court), Croatia (Constitutional Court, shared with the State Electoral Commission), the Czech Republic (Supreme Administrative Court), Estonia (Supreme Court, shared with the Electoral Commission), France (Constitutional Council), Germany (Federal Constitutional Court), Hungary (Supreme Court; there is a possibility to lodge a constitutional complaint to the Constitutional Court challenging the constitutionality of the decision of the Supreme Court (Kúria). However the Constitutional Court has the competence only to annul the decision but not to modify the election results), Republic of Korea (Supreme Court), Liechtenstein (State Court), Malta (Constitutional Court), Mexico (Electoral Court), Montenegro (Constitutional Court), Morocco (Constitutional Court), Poland (Supreme Court), Portugal (Constitutional Court), Romania (High Court of Cassation and Justice), Slovak Republic (Constitutional Court) (cases related to election results), Serbia (Administrative Court), Spain (Supreme Court, Constitutional Court: appeals for protection against violation of fundamental rights – “recursos de amparo”), Ukraine (Supreme Court), United Kingdom (Election Court).

Regarding opinions and reports, see for instance 2009 Report on the cancellation of election results, para. 39-41.

<sup>64</sup> Georgia, Luxembourg, Latvia, Republic of Moldova (where the Constitutional Court is authorised to certify the results of Parliamentary Elections, and to confirm the legality of mandates of the elected deputies), Monaco, North Macedonia, Russian Federation (the electoral law mentions “a court” as the competent body to review invalidation of electoral results), Tunisia, the United States of America.

<sup>65</sup> Belgium, Denmark, Iceland, Italy, partially Lithuania, Luxembourg, the Netherlands, Norway, Slovenia, Switzerland (shared with the Supreme Federal Tribunal).

<sup>66</sup> Belgium, Denmark, Iceland, Italy, Luxembourg, the Netherlands and Norway.

Regarding opinions, see for example 2010 Joint opinion on the electoral legislation of Norway, para. 38.

<sup>67</sup> As for the European Court of Human Rights on this issue, see *Grosaru v. Romania*, 2 March 2010, and *Paunović and Milivojević v. Serbia*, 24 May 2016. In these decisions, the Court found a breach of Article 3 Protocol 1 as well as a lack of effective remedy according to Article 13 of the European Convention on Human Rights. Both cases

in the Grand Chamber judgment *Mugemangango v. Belgium* of 10 July 2020 that “a judicial or judicial-type remedy, whether at first instance or following a decision by a non-judicial body, is in principle such as to satisfy the requirements of Article 3 of Protocol No. 1”. Regardless of which body decides on the validity of election results, the law must guarantee procedural safeguards, such as impartiality, precise norms to limit the discretion of the authority, guarantees of a fair, objective and reasoned decision, in order to prevent arbitrary decisions and to be in accordance with the Convention.<sup>68</sup>

46. In summary, a majority of countries provide for a judicial review, at least in last instance, as recommended by the Code of good practice in electoral matters. There are also cases of countries allowing electoral complaints before the Constitutional Court or an equivalent body in first and final instance. In electoral matters like in other fields, the judiciary, including a specialised electoral jurisdiction, remains a guarantee of impartiality of the whole process, provided that it offers enough guarantees of independence.

47. The number of levels of appeals is another important element to be taken into account for assessing the effectiveness of the remedies regarding electoral disputes. Several levels of appeals may be a guarantee for electoral stakeholders. However, for certain types of pre-election disputes, multiple levels of administrative and judicial appeal can potentially disrupt the electoral calendar and create uncertainty. A balance is therefore necessary between an effective remedy and ensuring smooth and continuous electoral processes, i.e. without disruptions endangering the continuity of the electoral cycle as a whole.

### **C. Other procedural issues concerning competent bodies**

48. Decisions on complaints and appeals in the electoral field are overwhelmingly taken in a collegial composition, be they by election commissions or courts, except for cases related to voter registration or disputes related to election day, where a decision by a single judge is common; this can be explained by the necessity to issue a very quick decision. Apart from such cases, the composition of the body deciding on complaints and appeals in electoral matters should preferably be a collegiate one.<sup>69</sup> Moreover, the Venice Commission regularly recommended to provide clear and consistent complaints and appeals procedures so as to avoid any conflicts of jurisdiction.<sup>70</sup>

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concerned complaints on the election results concerning the subsequent distribution/annulment of parliamentary seats (eligibility to stand for parliament) which were decided by the parliament itself, with no possibility of appeal to judicial bodies. In the *Grosaru* decision, the European Court of Human Rights found that neither the parliament nor the Central Election Office were impartial decision-making bodies. As for the Central Election Office, seven of its members were judges from the Supreme Court, but the remaining 16 members were MPs, which allowed for politically motivated decisions. See also 2019 *Amicus curiae* brief for the Grand Chamber of the European Court of Human Rights in the case of *Mugemangango v. Belgium* on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, para. 27, 50, and the Grand Chamber judgment of the European Court of Human Rights *Mugemangango v. Belgium* of 10 July 2020, para. 70, 76, 97-99, 137-139.

<sup>68</sup> *Mugemangango v. Belgium* of 10 July 2020, para. 135, 137-139.

<sup>69</sup> See for instance 2010 Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, para. 65.

<sup>70</sup> See 2003 Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia, para. 50; 2010 Opinion on the draft election code of the Verkhovna Rada of Ukraine, para. 15; 2013 Joint Opinion on the Draft Amendments to the Laws on election of people’s deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, para. 98; 2013 Joint Opinion on Draft Amendments to Legislation on the Election of People’s Deputies of Ukraine (CDL-AD(2013)026), para. 66; 2012 Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation, para. 41-42, 114-115; 2018 Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) of the Republic of Moldova, para. 53; 2018 Joint opinion on the draft election code of Uzbekistan, para. 13.

## **V. Grounds for complaints and decisions, actions or inactions open to challenge**

### **A. Types of complaints, challenged decisions, actions or inactions**

49. Regarding the existing standards, the Code of good practice in electoral matters lists a number of issues that should be subject to complaints: “The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.”<sup>71</sup> Violations of the applicable rules in all these fields should be grounds for complaints and appeals.

50. The wording makes it clear that the list is not exhaustive. In the Explanatory Report, the Guideline is explained as follows (para. 92): “If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.” The Code of good practice in electoral matters recommends that all violations of electoral law or irregularities in its exercise be in principle considered as sufficient grounds for complaints and appeals, covering a wide range of appealable decisions, actions or inactions corresponding to pre-election, election-day and post-election phases of an electoral process.

51. This notion covers numerous different situations; overall, it potentially concerns almost all steps of an electoral cycle: registration and de-registration of voters and candidates; complaints that may arise during the official campaign; complaints following decisions issued by election commissions as well as actions/inactions of these bodies, decisions/actions/inactions of public administrations, public agencies and any other relevant electoral stakeholder, impacting the electoral process; complaints on e-day procedures; and complaints on the results (their tabulation, transmission, issuance).

52. In principle, any breach of electoral law affects the exercise of electoral rights, freedoms, and interests of electoral stakeholders directly or indirectly, or possibly affects the outcome of elections. Thus, such a breach should constitute a ground for complaint. All the 59 countries analysed provide in their legislation the possibility to lodge a complaint before the competent body for violation of the law during the pre-electoral phase of an electoral process. Similarly, all the 59 countries analysed explicitly offer the possibility to lodge a complaint regarding voter

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<sup>71</sup> Guideline II 3.3.d.

registration,<sup>72</sup> 45 regarding candidate registration,<sup>73</sup> 29 regarding media coverage during the electoral campaign.<sup>74</sup>

53. All countries analysed regulate explicitly complaints against **election results**. Additionally, a number of electoral laws explicitly regulate the possibility to complain on **election-day operations**. This concerns more particularly the possibility to challenge the operations or the decisions, actions or inactions, taken by election commissions regarding **voting** (47 countries),<sup>75</sup> **counting and tabulation** (42 countries),<sup>76</sup> and **transmission** (11 countries)<sup>77</sup> of election results. These figures have to be taken with caution considering that some domestic laws may have not explicitly detailed such possibilities to lodge complaints on very specific aspects of the electoral processes, while this could be dealt with by infra-legislative texts or thanks to the domestic case-law.<sup>78</sup>

54. The present report dealt earlier with the issue of election results from the perspective of the competency of bodies entitled to adjudicate complaints on election results.<sup>79</sup> Regarding the grounds for complaining on election results, 39 countries allow to challenge final election results based on potential violations of electoral legislation that may have had an impact on

<sup>72</sup> See for more detail para. 36 of the present report.

<sup>73</sup> Albania (Electoral College of the Court of Appeal), Andorra (Higher Court of Justice), Armenia (the Constitutional Court or the Administrative Court), Belgium (House of Representatives), Bosnia and Herzegovina (Appellate Division of the Court of Bosnia and Herzegovina), Bulgaria (Supreme Administrative Court), Chile (Elections Qualifications Court), Costa Rica (Supreme Electoral Tribunal), Czech Republic (Supreme Administrative Court), France (Constitutional Council), Estonia (Supreme Court), Georgia (Tbilisi City Court), Germany (Federal Constitutional Court), Hungary (judicial review, no judicial body is specified), Iceland (no judicial body is specified, complaints are heard by the Ministry of Justice or the Althing), Ireland (High Court), Italy (Regional Administrative Court), Kazakhstan (Supreme Court), Kyrgyzstan (Supreme Court), Kosovo (Supreme Court), Latvia (District Administrative Court or Senate of the Supreme Court), Liechtenstein (State Court), Luxembourg (Administrative Court), Malta (Court of Magistrates), Mexico (Electoral Court), Republic of Moldova (legislation does not specify the competent court), Monaco (Court of First Instance), Morocco (Constitutional Court), Montenegro (Constitutional Court), the Netherlands (Council of State), North Macedonia (Administrative Court), Norway (The Storting), Peru (National Electoral Jury), Poland (Supreme Court), Portugal (Constitutional Court), Romania (High Court of Cassation and Justice), Russian Federation (Supreme Court), Serbia (Administrative Court), Slovak Republic (Supreme Court), Slovenia (Constitutional Court), Spain (Administrative Court), Sweden (no court specified; the Election Review Board can order a witness hearing in district court), Tunisia (Administrative Appeal Court), Turkey (Supreme Electoral Council), Ukraine (any decision of the election commission may be challenged at the court).

<sup>74</sup> Albania, Andorra, Bulgaria, Brazil, Canada, Chile, Costa Rica, Croatia, Denmark, France, Georgia, Hungary, Italy, Kazakhstan, Kosovo, Republic of Korea, Republic of Moldova, North Macedonia, Mexico, Norway, Poland, Romania, Russian Federation, Serbia, Spain, Tunisia, Turkey, Ukraine, United Kingdom.

<sup>75</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Belgium, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Estonia, Finland (for early voting), France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, the Netherlands, North Macedonia, Norway, Poland, Portugal, Russian Federation, Serbia, Slovenia, Switzerland, Tunisia, Turkey, Ukraine.

<sup>76</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Croatia, Denmark, Estonia, Georgia, Hungary, Ireland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Mexico, Republic of Moldova, Montenegro, Morocco, North Macedonia, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovenia, Spain, Tunisia, Turkey, Ukraine, United Kingdom.

<sup>77</sup> Austria, Azerbaijan, Brazil, Chile, Luxembourg, Montenegro, Norway, Serbia, Russian Federation, Turkey, Ukraine.

<sup>78</sup> For instance, in Czech Republic, there is no such a division as suggested in the report between voting, counting and tabulation, and transmission of results when it concerns the steps of the process that can be challenged. If any of these steps is suspicious/potentially illegal, the relevant categories of citizens can challenge the election results on the basis of this suspicion. They can then either ask the courts to annul the results of one election district, or to annul the result pertaining to one candidate, or to annul the election results as a whole; these options are listed from the least intrusive to the most intrusive interference. It does not matter whether the irregularity happened at one of these stages of the electoral process. The only element that matters is that election results have been influenced by the claimed irregularity. Furthermore, the Supreme Administrative Court of the Czech Republic has ruled in its case law that in some cases, courts themselves should recount the votes.

<sup>79</sup> Paragraphs 45-48 of the report.



the results.<sup>80</sup> However, only 19 countries allow to challenge preliminary results.<sup>81</sup> In these countries, complaints against election results must therefore be lodged and decided upon before the validation and announcement of the final results.<sup>82</sup>

55. As underlined in the 2009 Report on the cancellation of election results, “[a]lthough the wording in legislation or case-law may vary, it may be said that in almost all countries the main criteria are that violations occurred in the election constituency during the conduct of voting or during the determination of the election results, that have made it impossible to determine the voters’ will, or that the irregularities and violations may have affected the election results.”<sup>83</sup> Regarding the notion of violations, the 2009 Report states that “[c]ancellation of a mandate is meant as a consequence of a violation of electoral legislation or other legislation applicable to the electoral process, including noncompliance with rules on the eligibility to be elected. The possibility to cancel election results after the elected candidate has entered office may be limited to the most serious violations of electoral procedure, e.g. cases of criminal offences, while in some disputable and not so evident cases the cancellation is not allowed.”<sup>84</sup> This includes serious irregularities and/or violations evidenced during the pre-electoral period and/or on election day, including during the pre- and post-voting operations.

## **B. Who are the authors of electoral violations?**

56. Election dispute resolution systems are primarily remedies to the state’s failure to comply with electoral law. While the decisions, actions or inactions open to challenge are those of state – national or local/regional – authorities, the question is whether grounds for complaint should be limited to the violation of electoral rights by decisions, actions or inactions of election authorities, other electoral stakeholders – candidates, political parties, non-governmental organisations observing elections, media broadcasters or internet providers –, or extended to the consequences of the behaviour of private subjects, e.g. individual election observers. As electoral rights can be affected by private persons or groups, grounds for complaints might also include inactions and inadequate behaviour by private persons or groups as previously described.

57. Grounds for lodging complaints and appeals should not be limited to violations of electoral rights, freedoms and interests due to the state’s decisions and actions. They should also include inactions and inadequate enforcement by public and private electoral stakeholders. While procedural limitations to the exercise of the complaints and appeals’ system may be permitted, the standards leave little room for limitations on the complaint/appeal grounds themselves as long as they concern the exercise of the right to vote and to stand for election, as well as all aspects of the election process flowing from these rights. That is why electoral laws and other laws should provide for a full range of complaints and appeals on all types of errors, irregularities or violations of the law that may arise in the whole course of an electoral process, falling under the positive and negative obligations of the state to hold free elections.

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<sup>80</sup> Algeria, Andorra, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Finland (no appeal for presidential elections), France, Georgia, Germany, Hungary, Iceland (presidential elections only), Ireland, Italy, Kazakhstan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Morocco, the Netherlands, Poland, Portugal, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States of America.

<sup>81</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Costa Rica, Croatia, Estonia, Kosovo, Kyrgyzstan, Mexico, Republic of Moldova, Montenegro, North Macedonia, Norway, Peru, Romania, San Marino, Tunisia, Turkey.

<sup>82</sup> Turkey is a special case in this respect. The election results are determined by each Provincial Electoral Board and transmitted to the Supreme Board of Elections, which announces the national election result. The Supreme Board of Elections will also hear complaints on the decisions of the Provisional Electoral Boards, but no appeal is possible on the decisions of the Supreme Board of Elections, including its decisions on the final election results.

<sup>83</sup> 2009 Report on the cancellation of election results, para. 10. See Part X-B of the present report regarding the decision-making power and more specifically the authority of the appeal body on the cancellation of election results.

<sup>84</sup> 2009 Report on the cancellation of election results, para. 70-71.

## VI. Persons entitled to lodge complaints – Standing

58. Effectiveness of election dispute resolution systems also relies on the capacity of the stakeholders who are or should be entitled to lodge complaints on any irregularity or inaccuracy in the course of an electoral process, or on some of them depending on the possibilities granted by law, to lodge electoral complaints.

### A. International standards

59. In order to comply with international standards, complaint and appeals procedures should clearly provide the right for voters, candidates and political parties to lodge electoral complaints. The Code of good practice in electoral matters does not develop extensively the categories of persons able to lodge electoral complaints, stipulating that “[a]ll candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.”<sup>85</sup> The Explanatory Report of the Code of good practice in electoral matters specifies however that “[s]tanding in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal”,<sup>86</sup> which should be interpreted as the possibility for other categories of persons involved in electoral processes to lodge electoral complaints as well. The European Court of Human Rights also accepts reasonable quorum requirements.<sup>87</sup>

60. The European Court of Human Rights has recognised that the right of individual voters to appeal against elections results “may be subject to reasonable limitations in the domestic legal order.”<sup>88</sup> However, while the right to appeal against election results may be subject *inter alia* to procedural limitations, these results should nonetheless be subject to a judicial appeal. Similarly, General Comment No. 25 to the International Covenant on Civil and Political Rights suggests that election results, including the counting process, should be appealable.

### B. Domestic situations

61. Persons entitled to appeal can be: citizens – i.e. voters, registered or not –, candidates and their proxies, political parties or coalitions – registered or not –, election commissioners – including representatives of political parties seating in election commissions or observing –, non-partisan election observers and non-governmental organisations. Domestic legislation provides in general with most of these possibilities, but situations vary a lot depending on the countries concerned.

62. In some countries, there are still excessive limitations: for instance, it happens that voters can complain on issues that relate to their individual situations, such as not being registered on voter registers, but cannot complain on other phases of an electoral process, which however impact them. In a number of electoral laws, it has been observed that rights to lodge electoral complaints are too limited, taking into account the relation between the accessibility

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<sup>85</sup> Code of good practice in electoral matters, Guideline II 3.3. f.

<sup>86</sup> Code of good practice in electoral matters, Explanatory Report, para. 99.

<sup>87</sup> Cf. in particular *X. v. Germany*, European Commission of Human Rights, Decision 7 May 1979.

<sup>88</sup> *Uspaskich v. Lithuania*, 20 December 2016, para. 93. See also *Gahramanli and others v. Azerbaijan*, 8 October 2015, para. 69. *Davydov and others v. Russia*, 30 May 2017, para. 335: “The Court confirms that the right of individual voters to appeal against the results of voting may be subject to reasonable limitations in the domestic legal order. Nevertheless, where serious irregularities in the process of counting and tabulation of votes can lead to a gross distortion of the voters’ intentions, such complaints should receive an effective examination by the domestic authorities. A failure to ensure the effective examination of such complaints would constitute a violation of individuals’ right to free elections guaranteed under Article 3 of Protocol No. 1 to the Convention, in its active and passive aspects.”

to complaints' procedures and the ability of competent bodies to examine the cases on the merit within a reasonable/lawful time frame.

**63. Decisions taken by election commissions** – Only three countries provide explicitly the possibility for election commissioners to contest a decision of an election commission,<sup>89</sup> 34 countries for representatives of political parties,<sup>90</sup> 12 for non-partisan election observers<sup>91</sup> and nine for non-governmental organisations.<sup>92</sup>

64. Decisions taken by election commissions cover multifaceted situations. The most known and visible decisions are the ones taken during voting and counting operations. However, election commissions take, at all levels of the election administration, decisions all along an electoral process, starting by the validation of voter lists, the registration or refusal of registration of candidates, regarding electoral and campaign material, the pre-opening, voting, counting and tabulation operations, and finally regarding election results through the elaboration and validation of results protocols at precinct, regional and central levels. This list is of course not exhaustive.

65. The role of election observers is crucial for identifying electoral irregularities. In this respect, the Venice Commission's Guidelines on an internationally recognised status of election observers underline that "[e]lection observation missions should have the right to make suggestions or comments to the authorities in charge of the electoral process, in case they observe any irregularity, which should be rectified."<sup>93</sup> However, the Guidelines are silent on the possibility to lodge complaints. Electoral laws often provide the right to report possible inaccuracies or irregularities or to make suggestions, either on a record book that is part of the election material, or on the protocol of the election commission. These precious elements are factors among others that can be used in an electoral dispute, whoever has standing (preferably not the observers themselves). The same is true for individual comments by election commissioners, when they are possible. As underlined by the Venice Commission's Guidelines on an internationally recognised status of election observers,<sup>94</sup> domestic election observers "must not interfere in the electoral process and must be politically impartial".

**66. Voter registration and voter lists' corrections** – In 53 countries, voters are competent to complain on errors on voter lists or on their absence from the list, including concerning errors regarding other voters.<sup>95</sup> In six countries, candidates or political parties are also competent to complain on this step of the electoral process.<sup>96</sup>

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<sup>89</sup> Armenia, Azerbaijan, Georgia.

<sup>90</sup> Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Estonia, France, Germany, Kazakhstan, Republic of Korea, Kosovo, Latvia, Lithuania, Republic of Moldova, Montenegro, North Macedonia, Poland, Portugal, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey.

<sup>91</sup> Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Chile, Georgia, Germany, Hungary, Kyrgyzstan, Lithuania, Russian Federation, Turkey, Ukraine (in Ukraine, this right is granted to both categories of partisan and non-partisan election observers).

<sup>92</sup> Bosnia and Herzegovina, Chile, Georgia, Germany, Hungary, Kyrgyzstan, Mexico, Russian Federation, Switzerland.

<sup>93</sup> Guidelines on an internationally recognised status of election observers, Guideline III. 1.7 iv.

<sup>94</sup> 2009 Guidelines on an internationally recognised status of election observers, III. 2.3.

<sup>95</sup> Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Malta, Republic of Moldova, Montenegro, Morocco, the Netherlands, North Macedonia, Norway, Peru, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom, United States of America.

<sup>96</sup> Mexico, Monaco, Lithuania, North Macedonia (political parties can complain on errors on voter lists), Spain, Turkey.

67. It is normal that the vast majority of the countries allow voters to challenge inaccuracies on voter lists as they are primarily concerned by such potential inaccuracies. This is in line with the Code of good practice in electoral matters underlining that “there should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered”.<sup>97</sup> The Code of good practice does not mention the candidates as a potential category entitled to challenge such inaccuracies. Nonetheless, a small number of countries also allow candidates to challenge potential mistakes, which is welcome, provided that these same countries also allow voters to challenge voter lists. The capacity for requesting such corrections may be restricted to electors registered in the same constituency or at the same polling station, as underlined by the Code of good practice in electoral matters.<sup>98</sup>

68. **Candidate registration** – In 44 countries, prospective candidates are competent to complain against the refusal of their registration.<sup>99</sup> In 11 countries, voters are also competent to complain on this step of the electoral process.<sup>100</sup> In three countries, no elements were found in the electoral legislation about the possibility to challenge decisions in this field.<sup>101</sup>

69. Refusals of candidate registration should be mostly challenged by prospective candidates. While they are directly impacted by a possible refusal of registration, this also impacts the freedom of voters to form an opinion and ultimately to express their wishes if candidates from some political colours are not present in the political arena. Therefore, it would be an improvement for the transparency and the pluralism of electoral processes to allow voters to challenge refusals of candidate registration in other countries than the 12 identified by the report.

70. **Voting and counting/tabulation procedures** – In 25 countries, voters are competent to complain on potential irregularities during the voting – during early voting, if any, or on election day, including concerning counting and tabulation procedures.<sup>102</sup> In 33 countries, candidates are also competent to complain on these steps of the electoral process.<sup>103</sup> In seven countries, observers are competent to complain on such steps.<sup>104</sup>

71. Voters and candidates should have standing when they are impacted, for example by biased election results, but also by potential irregularities in voting and counting procedures. It is therefore recommended that countries include on a broader scale in their electoral laws

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<sup>97</sup> Code of good practice in electoral matters, Guideline I. 1.2 iv.

<sup>98</sup> Guideline I. 1.2 v and Explanatory Report, para. 7.

<sup>99</sup> Algeria, Albania, Andorra, Armenia, Belgium, Bulgaria, Bosnia and Herzegovina, Croatia (political party) Czech Republic, Estonia, France, Georgia, Germany, Hungary (political party), Iceland, Ireland, (spokesperson for the constituency nomination) Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, the Netherlands, North Macedonia, Norway (candidate or registered political party) Peru, Poland, Romania (candidate or electoral competitors), Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United States of America.

<sup>100</sup> Azerbaijan, Brazil, Canada, Chile, Italy, Kazakhstan, Luxembourg, Malta, Portugal, Serbia, United Kingdom.

<sup>101</sup> Austria, Denmark, Finland.

<sup>102</sup> Andorra, Brazil, Belgium, Chile, Costa Rica, Czech Republic (when challenging election results – further: “election results”), Denmark (election results), Germany (election results), Hungary (election results), Iceland (election results), Ireland (election results), Italy, Republic of Korea, Kosovo, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, Norway (election results), Poland (election results), Portugal, Russian Federation (election results), San Marino, Ukraine (unlike other potential claimants, a voter has to prove that his or her rights or interests have been violated by an infringement during a voting, counting or tabulation operation).

<sup>103</sup> Albania (election results), Algeria, Armenia, Austria (political parties), Azerbaijan (all electoral subjects), Bosnia and Herzegovina, Bulgaria, Canada, Croatia (election results) Estonia, Finland (election results), France, Georgia (representatives of electoral subjects), Kyrgyzstan, Latvia, Liechtenstein, Mexico, Republic of Moldova, Monaco, Morocco, North Macedonia (election result), Peru, Russian Federation (election results), Slovenia, Slovak Republic (election result), Spain, Sweden, Switzerland, Tunisia, Turkey (political party representatives), Ukraine, United Kingdom, United States of America (election results).

<sup>104</sup> Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kyrgyzstan, Tunisia, Ukraine.

the possibility for voters and candidates to complain against the conduct of election day. In a number of electoral laws, record books allow observers and/or candidate/party proxies to write observations, objections they may have on an aspect of the election day. This does not allow them subsequently to challenge irregularities they may have detected in most of the countries analysed but provides elements for challenges by other electoral stakeholders.

**72. Election results** – In 49 countries, candidates and voters can complain on the validity of election results.<sup>105</sup> In 20 countries, voters cannot complain on the validity of election results.<sup>106</sup>

73. Election results are the most crucial, visible and sensitive element of any electoral process, since they determine who is elected. They thus lead to satisfaction or on the contrary dissatisfaction of electoral stakeholders. This is why electoral disputes are often limited to complaints and appeals on election results. This is not necessarily restrictive despite it focuses all complaints related to any step of an electoral process on its election results. The importance of the issue implies to have a broad approach of the potential categories of electoral stakeholders able to challenge election results. However, opening too broadly the possibility for challenging election results may lead to abusive complaints with the only aim to block the system and prevent the relevant authority to announce the election results on time. In countries where the public trust in public authorities and in electoral processes is still fragile, a delayed announcement of election results may even lead to the contrary effect by raising suspicion against the electoral process and the electoral authority. For sure, candidates and voters are the primary categories of citizens directly impacted by potential frauds or irregularities that can drastically change the results. According to the data analysed, a small number of countries allow candidates to challenge election results, which seems surprising and may be explained by the absence of explicit provision in the law rather than by a ban for candidates to challenge the results. More countries – albeit a minority of those analysed – allow for voters to challenge election results. This is surprising as voters, and citizens as a whole, directly suffer from potential irregular election results. In this respect, the Code of good practice in electoral matters underlines that “[a]ll candidates and all voters registered in the constituency concerned must be entitled to appeal” and that “[a] reasonable quorum may be imposed for appeals by voters on the results of elections.”<sup>107</sup>

**74. In summary**, most of the countries provide the right to lodge electoral complaints to the main stakeholders, namely the voters and the candidates, and a small number of countries provide such a possibility for other categories of persons. Developing in the law the categories of persons entitled to lodge complaints could be a way to reinforce procedures with regard to the settlement of electoral disputes and increase trust in electoral processes overall. This broader approach should be considered, although such additional categories of electoral stakeholders are not indicated as entitled categories to lodge complaints by international standards and specifically the Code of good practice in electoral matters, and provided that safeguards are in place to prevent frivolous complaints aimed at blocking the relevant bodies from accomplishing their duties and ultimately issuing election results in a timely manner.

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<sup>105</sup> Andorra, Azerbaijan, Bosnia and Herzegovina, Chile, Canada, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy Republic of Korea, Kosovo, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, the Netherlands, Norway, Poland, Portugal, Russian Federation, San Marino, Slovenia, Sweden, Switzerland, Ukraine (unlike other potential claimants, a voter has to prove that his or her rights or interests have been violated by an infringement during a voting, counting or tabulation operation), United Kingdom, United States of America.

<sup>106</sup> Albania, Algeria, Armenia, Austria, Belgium, Brazil, Bulgaria, Croatia, Czech Republic, Georgia, Kyrgyzstan (and observers), Latvia, Liechtenstein, North Macedonia, Peru, Romania, Russian Federation, Serbia, Spain, Tunisia.

<sup>107</sup> Guideline II 3.3. f.

## **VII. Time limits**

75. While international standards recommend short time limits for lodging and deciding on electoral disputes, a number of domestic cases brought before administrative or jurisdictional bodies are rejected for procedural reasons, either because time limits are exceeded or because the competent bodies do not take the time to analyse the substantive elements of the case, arguing of short deadlines. This issue of time limits in election dispute resolution systems is therefore an indispensable aspect to consider in the present report.

76. It is therefore important to analyse both the time limits for lodging complaints – and later on for lodging appeals, if required – and the time limits for adjudicating complaints and appeals.

### **A. International standards**

77. The Code of good practice in electoral matters recommends the following: “Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)”; while stating that: “Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision.”<sup>108</sup>

78. Appeal proceedings should be as brief as possible in any case concerning decisions to be made before election day. On this point, two pitfalls must be avoided: first, that appeal proceedings delay the electoral process – or, as said earlier in the report, disrupt the electoral calendar, and second, that due to their lack of suspensive effect, decisions on appeals which could have been taken before, are taken after the elections. In addition, decisions on election results must not take too long.

79. The importance of a timely remedy is widely recognised at the international level and has been recognised by courts as inextricably linked to fair public participation in government and elections.<sup>109</sup>

### **B. Time limits for lodging complaints and appeals**

80. Regarding time limits for lodging complaints and appeals, the persons entitled to lodge electoral complaints, primarily the voters and the candidates, should act quickly in order to avoid disruption of the on-going electoral process. At the same time, it remains problematic in a number of countries to ensure transparency and clarity of the procedure for lodging electoral complaints. Due to these imperfections in the law, and sometimes a lack of willingness from the authorities and/or the bodies in charge to adjudicate those complaints,<sup>110</sup> the voters or the candidates waste a precious time to understand the procedure, to find the correct form to fill in or to redirect a complaint which would not have been submitted to the right body, and sometimes exceed the required deadline due to unclear or complex procedures.

81. Concerning the time limits for lodging complaints in first instance, 36 member States<sup>111</sup> generally provide time limits in line with the recommendations of the Code of good practice in electoral matters, meaning three to five days and sometimes less than three days. On the

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<sup>108</sup> Code of good practice in electoral matters, Guideline II 3.3. g, Explanatory Report, para. 95.

<sup>109</sup> International Foundation for Electoral System, Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections, 2011, para. 50.

<sup>110</sup> See inter alia Gahramanli and others v. Azerbaijan, 8 October 2015, paras. 80-86.

<sup>111</sup> Albania, Algeria, Andorra, Azerbaijan, Bosnia and Herzegovina, Brazil, Costa Rica, Croatia, Denmark, Estonia, Georgia, Hungary, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia, Peru, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

contrary, 23 member States<sup>112</sup> generally provide for longer periods, meaning more than five days.

82. Concerning the time limits for lodging appeals, 35 member States<sup>113</sup> provide for short time limits (from three to five days and sometimes less than three days) whereas 20 member States<sup>114</sup> provide for longer periods (i.e. more than five days).

**83. Decisions or actions taken by election commissions – General rules** – In 25 countries, time limits for lodging a complaint about a decision or action of an election commission are short (i.e. from three to five days and sometimes less than three days).<sup>115</sup> In seven countries, time limits for lodging such complaints are longer ones (i.e. more than five days).<sup>116</sup>

84. In the majority of the countries dealing explicitly in the law with time limits for lodging complaints about decisions or actions taken by election commissions, such limits are short, in line with international standards. Seven countries provide for longer time limits for this type of complaints. Moreover, 32 out of the 59 countries analysed do not provide specific legal provisions for lodging such complaints. This absence of explicit provisions regarding time limits for lodging specific types of complaints is not necessarily problematic, provided that the electoral law provides overall short or reasonable time limits covering the different categories of complaints, whatever the instance which has taken the decision.

**85. Candidate registration** – In 49 countries,<sup>117</sup> the time limits concerning complaints lodged on refusal of candidate registration are short (from three to five days and sometimes less than three days) whereas six countries<sup>118</sup> provide for longer periods (i.e. more than five days).

86. The big majority of countries providing for short time limits concerning complaints lodged on refusal of candidate registration are in line with the Code of good practice in electoral matters,<sup>119</sup> although the Code does not distinguish time limits duration between types of complaints. Time limits for both lodging and adjudicating a complaint should be as short as possible as a late registration of a candidate can reduce her or his campaign period. Denmark does not have administrative appeal mechanisms for candidate registration, at least in its electoral laws.<sup>120</sup> It is not appropriate to leave more than five days, which is the case of seven

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<sup>112</sup> Armenia, Austria, Belgium, Bulgaria (regarding time limits for candidates), Canada, Chile, Czech Republic, France (except for the presidential election: 48 hours), Finland, Germany, Iceland, Italy, Ireland, Kazakhstan, Republic of Korea, the Netherlands, Norway, Poland, Russian Federation, Slovak Republic, Sweden, United Kingdom, United States of America.

<sup>113</sup> Albania, Algeria, Andorra (48 hours), Azerbaijan, Bosnia and Herzegovina (48 hours), Brazil, Bulgaria, Costa Rica, Croatia (48 hours), Denmark, Estonia, Georgia (two days), Hungary, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Mexico, Montenegro, Republic of Moldova, North Macedonia (48 hours), Monaco, Peru, Portugal (two days), Romania, Serbia (two days), San Marino, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>114</sup> Armenia, Austria, Belgium, Canada, Chile, Czech Republic, France, Finland, Germany, Ireland, Italy, Kazakhstan, Republic of Korea, Morocco, Poland, Slovak Republic, Russian Federation, Sweden, United Kingdom, United States of America.

<sup>115</sup> Albania, Algeria, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Costa Rica, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kyrgyzstan, Mexico, Republic of Moldova, Montenegro, North Macedonia, Serbia, Slovak Republic, Slovenia, Switzerland, Turkey, Ukraine.

<sup>116</sup> Canada, Finland, Kazakhstan, Malta, Norway, Peru, Sweden.

<sup>117</sup> Albania, Algeria, Andorra, Armenia, Azerbaijan, Belgium, Brazil, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, the Netherlands, North Macedonia, Peru, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>118</sup> Canada, Kazakhstan, Republic of Korea, Norway, Sweden, United Kingdom.

<sup>119</sup> Guideline II. 3.3 g.

<sup>120</sup> This specificity of Denmark should be seen in light of the fact that the power to decide on candidate registration lies with an independent authority ("Ankestyrelsen") which is usually a final appeal institution. This does not mean that its

countries among the 59 countries analysed, for challenging a refusal of registration. Once the refusal is notified, a shorter time frame should be enough for the candidate to collect the elements needed to prove the potential illegality of such a refusal and lodge the complaint.

**87. Voter registration and voter lists' corrections** – Time limits for lodging complaints on potential mistakes on the voter list or the absence of registration have to be made in time enough before election day.<sup>121</sup> In 13 countries, time limits for lodging such complaints have to be done from the registration to one day before election day.<sup>122</sup> In six countries, time limits for lodging such complaints have to be made within from the registration to 15 days before election day.<sup>123</sup> In 14 countries, time limits for lodging such complaints are very broad and have to be made from the registration to 16 days before election day.<sup>124</sup> In 21 countries, the legislation does not specify any explicit time limit or remains unclear on this issue in the formulation of the law.<sup>125</sup>

88. The great variety of time limits for lodging complaints on potential mistakes on the voter list or the absence of registration prevents from drawing any trend. It is however interesting to underline that some countries provide very specific time limits, with clear beginning and end of the periods while a number of them provide for very broad periods of time for lodging such complaints, which is probably a wise approach. The countries allowing time limits till the eve of election day imply a very well organised electoral process and especially centralised voter registers, allowing almost last minute corrections without preventing the concerned voters from exercising their electoral rights.

**89. Voting and counting/tabulation procedures** – In 24 countries, time limits for lodging a complaint on potential irregularities during the voting – during early voting, if any, or on election day, including concerning counting and tabulation procedures, are short (i.e. from three to five days and sometimes less than three days).<sup>126</sup> In 15 countries, time limits for lodging such complaints are longer ones (i.e. more than five days).<sup>127</sup>

90. 26 out of the 39 countries providing for specific legal provisions on time limits for lodging complaints on potential irregularities during the voting – during early voting, if any, or on election day, provide short time frames, which is welcome. There remain 20 out of 59 countries which do not provide for specific provisions in the electoral law regarding the time limits for lodging such complaints. These steps of any electoral process require prompt decisions which should make corrections possible. This implies short or reasonable time limits for lodging complaints. It is therefore recommended that the law provide for such complaints to be lodged

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decisions cannot be challenged, but this would have to be done either before the Ombudsperson or before the courts. An appeal to the Ombudsperson could possibly be decided in time for the election whereas this would not be realistic with the courts. There are no specific time limits for such challenges (under the Ombudsperson Act, there is a general time limit of one year for lodging a complaint).

<sup>121</sup> Concerning the United States of America, such rules are developed at States' level (in State laws) and most of the States if not all of them have clear time limits for such complaints.

<sup>122</sup> Bulgaria, Denmark, France, Georgia, Kazakhstan, Kosovo, Monaco, Moldova, Russian Federation, Serbia, Spain, Sweden, Switzerland.

<sup>123</sup> Algeria, Andorra, Armenia, Belgium, Ireland, Kyrgyzstan.

<sup>124</sup> Albania, Austria, Chile, Finland, Hungary, Iceland, Italy, Republic of Korea, Luxembourg, Liechtenstein, Malta, the Netherlands, Romania, San Marino.

<sup>125</sup> Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Mexico, Montenegro, Morocco, North Macedonia, Norway, Peru, Poland, Portugal, Slovakia, Slovenia, Tunisia, Turkey, United Kingdom. In Costa Rica, Article 153 of the Electoral Code establishes a two month and 15 day period to establish the final lists of voters. In practice, after such a deadline, no changes are allowed.

<sup>126</sup> Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Costa Rica, Croatia, Estonia, Georgia, Hungary, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Mexico, Republic of Moldova, North Macedonia, San Marino, Slovenia, Switzerland, Ukraine.

<sup>127</sup> Canada, Czech Republic, Finland, Germany, Iceland, Ireland, Italy, Kazakhstan, Republic of Korea, Monaco, Norway, Poland, Slovak Republic, United Kingdom.



in a short time frame, since the final elections results depend on the time allocated both for lodging and adjudicating such complaints.

91. **Election results** – In 35 countries,<sup>128</sup> the time limits concerning complaints lodged against election results are short (from three to five days and sometimes less than three days) whereas 24 countries<sup>129</sup> provide for longer periods (i.e. more than five days).

92. Allowing a short time limit for complaints lodged against election results is mainly justified by the necessity to announce preliminary and then final results within the time frame specified by the law. Moreover, announcing election results within a reasonable time frame participates in the stability of the democratic process and the reinforcement of the public trust in electoral processes.

### **C. Time limits for adjudicating complaints and appeals**

93. The competent bodies, mainly either election commissions or courts, should also have short deadlines (three to five days as well) for adjudicating electoral complaints and appeals, for the same reason that voters, candidates, political parties and other potential complainants have short deadlines for lodging complaints, i.e. the necessity to ensure continuous and smooth electoral processes.<sup>130</sup> However, judges also face challenges to fulfil their duties in time either due to complaints not lodged in line with the required procedure, or because they do not have enough time to issue reflected decisions.

94. **Decisions or actions/inactions taken by election commissions – General rules** – In 25 countries, time limits for adjudicating complaints about decisions or actions/inactions of election commissions are short (i.e. from three to five days and sometimes less than three days).<sup>131</sup> In four countries, time limits for adjudicating such complaints are longer ones (i.e. more than five days).<sup>132</sup>

95. In the majority of the countries providing in the electoral law for time limits for adjudicating complaints about decisions or actions/inactions taken by election commissions, such limits are short, in line with international standards. Five countries provide for longer time limits for adjudicating this type of complaints. Moreover, 30 out of the 59 countries analysed do not provide for explicit legal provisions for adjudicating such complaints. It may however be necessary to adjudicate certain types of complaints within a particularly short time limit, i.e. within the hours following a decision or action of an election commission, especially on election day: this implies rules to lodge those types of complaints within a very short time frame as well. It is particularly important in some situations that complaints be adjudicated on the very day when the supposed violation is alleged, in order to correct a malpractice that may affect the integrity of the pre-opening, voting or counting operations.

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<sup>128</sup> Albania, Algeria, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Brazil, Canada, Costa Rica, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Montenegro, Morocco, North Macedonia, Peru, Portugal, Romania, San Marino, Serbia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>129</sup> Austria, Belgium, Bulgaria, Chile, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Kazakhstan, Republic of Korea, Kyrgyzstan, Monaco, the Netherlands, Norway, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden, United Kingdom, United States of America.

<sup>130</sup> Guideline II 3.3. g.

<sup>131</sup> Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Chile, Croatia, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Lithuania, Republic of Moldova, North Macedonia, Peru, Portugal, Romania, Serbia, Slovenia, Turkey, Ukraine.

<sup>132</sup> Albania, Mexico, Spain, Tunisia.

96. **Candidate registration** – In 39 countries,<sup>133</sup> the time limits concerning the adjudication of complaints lodged on refusal of candidate registration are short (i.e. from three to five days and sometimes less than three days) whereas 11 countries<sup>134</sup> provide for longer periods (i.e. more than five days). Five countries do not provide in their electoral laws any time limit for adjudicating complaints related to candidate registration.<sup>135</sup>

97. Similarly to the time limits for lodging complaints on refusal of candidate registration, the time limits for adjudicating such complaints should be short in order to avoid a disruption of the electoral calendar and to offer to all candidates the same campaign period.

98. **Voter registration and voter lists' corrections** – In 14 countries, time limits for adjudicating complaints on potential mistakes on the voter list or the absence of registration are short (i.e. from three to five days and sometimes less than three days).<sup>136</sup> In two countries, time limits for adjudicating such complaints are longer ones (i.e. more than five days).<sup>137</sup>

99. A majority of the countries providing for specific time limits for adjudicating complaints on potential mistakes on the voter list or the absence of registration, provide for short periods. This is welcome in order to avoid disenfranchisement. Two countries provide for longer time limits whereas 44 out of the 59 countries analysed do not provide explicit provisions regarding the time limits for adjudicating such complaints. It is essential that voters be able to request on time corrections on voter lists, including their registration in case of unjustified absence from the electoral registers. This should be done very quickly, within the official period provided for scrutiny and corrections on voter lists, in order to allow all eligible voters to vote at the next elections.

100. **Voting and counting/tabulation procedures** – In 12 countries, time limits for adjudicating complaints on potential irregularities during the voting – during early voting, if any, or on election day, including concerning counting and tabulation procedures, are short (i.e. from three to five days and sometimes less than three days).<sup>138</sup> In four countries, time limits for adjudicating such complaints are longer ones (i.e. more than five days).<sup>139</sup>

101. The majority of the countries providing explicit provisions concerning time limits for adjudicating complaints on potential irregularities during the voting – during early voting, if any, or on election day stipulate short periods, which is welcome. Similar to time limits for lodging such complaints, it is advisable that such complaints be adjudicated within a short time frame in order to avoid delayed announcements of final election results.

102. **Election results** – In 28 countries,<sup>140</sup> the time limits concerning the adjudication of complaints and appeals lodged against election results are short (from three to five days and

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<sup>133</sup> Albania, Algeria, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Croatia, Estonia, France, Georgia, Hungary, Ireland, Italy, Kazakhstan, Kosovo, Liechtenstein, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia, Peru, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Tunisia, Turkey, Ukraine.

<sup>134</sup> Chile, Costa Rica, Czech Republic, Republic of Korea, Kyrgyzstan, Latvia, Mexico, the Netherlands, Sweden, Switzerland, United Kingdom.

<sup>135</sup> Canada, Germany, Iceland, Luxembourg, Norway. In Austria, the denial to stand as a candidate can be subject to judicial control by the Constitutional Court after the election has taken place. Denmark does not have any appeal mechanism.

<sup>136</sup> Algeria, Armenia, Bosnia-Herzegovina, Bulgaria, Czech Republic, France, Iceland, Kazakhstan, Kyrgyzstan, North Macedonia, Portugal, Romania, Slovak Republic, Ukraine.

<sup>137</sup> Chile, the Netherlands.

<sup>138</sup> Algeria, Bosnia-Herzegovina, Bulgaria, Croatia, Italy, Kosovo, Kyrgyzstan, Latvia, North Macedonia, Portugal, Romania, Ukraine.

<sup>139</sup> Albania, Armenia, Czech Republic, Kazakhstan.

<sup>140</sup> Algeria, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Brazil, Canada, Chile, Costa Rica, Croatia, Estonia, Hungary, Kazakhstan, Kosovo, Lithuania, Malta, Republic of Moldova, Montenegro, Morocco, North Macedonia, Peru, Portugal, Romania, San Marino, Serbia, Spain, Turkey, Ukraine.

sometimes less than three days) whereas 31 countries<sup>141</sup> provide for longer periods (i.e. more than five days).

103. Similarly to the time limits for lodging complaints on election results, complaints related to election results have to be adjudicated within a short or at least, in case of multiple complaints, within a reasonable deadline, in order to avoid suspicions or mistrust vis-à-vis the electoral process as a whole. However, considering the possibility for numerous complaints challenging election results at precincts and national levels, a longer period than the usual 3-5 days recommended by the Code of good practice in electoral matters is recommended. In this respect, it should be reminded that the Code of good practice in electoral matters does not detail the types of complaints relating to time limits. Therefore, legal provisions have to be provided within the electoral legislation in order to leave enough time to adjudicate the complaints related to election results while putting a reasonable legal deadline for adjudicating such complaints.

104. It is understandable that there is a wide range of different time limits and deadlines in the respective laws of the various countries. Overall, most countries provide for time limits for introducing and deciding on electoral complaints and appeals within the period set by the Code of good practice in electoral matters, i.e. three to five days. There is no consistent practice among the countries analysed to stipulate shorter time limits for election dispute resolution than the recommended period set by the Code of good practice in electoral matters (i.e. from three to five days). It appears that there is a trend to determine in the law time limits not only for possible applicants to complain, but also for the competent bodies to adjudicate the complaint.<sup>142</sup> Moreover, such rules must necessarily distinguish time limits according to the type of steps challenged. Opinions of the Venice Commission and the OSCE/ODIHR related to some countries, show that in a number of countries the time limit of the decision-making of the competent body is too short.<sup>143</sup>

105. **In summary**, it is difficult to determine a positive or negative trend among Venice Commission's member States regarding time limits for lodging and adjudicating the various types of complaints analysed – i.e. candidate registration, decisions or actions taken by election commissions, voter registration and voter lists' corrections, voting and counting/tabulation procedures and election results. Overall, it has to be reminded that the Code of good practice in electoral matters recommends short time limits for lodging and adjudicating electoral complaints, i.e. within three to five days. However, the Code of good practice in electoral matters also envisages expanded periods to guarantee the exercise of the rights of defence and to a reflected decision.<sup>144</sup> Overall, the time limit for the competent body has to be taken into account with regard to the effectiveness of the administrative or judicial control of the electoral process.<sup>145</sup> The conduct of an electoral process requires prompt decisions and actions within a predetermined time frame. The electoral law and other relevant

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<sup>141</sup> Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Georgia, Germany, Iceland, Ireland, Italy, Republic of Korea, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Mexico, Monaco, the Netherlands, Norway, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden, Switzerland, Tunisia, United Kingdom, United States of America.

<sup>142</sup> For example, see 2009 Report on the cancellation of election results, para. 57 et seq.

See also 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine. See also 2017 Joint opinion on amendments to the electoral code of Bulgaria, para. 14.

<sup>143</sup> See for example 2009 Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008, para. 71; 2009 Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR, para. 81; 2010 Joint Opinion on the Election Code of Georgia as amended through March 2010, para. 71; 2011 Joint opinion on the election code of Bulgaria, para. 59; 2018 Joint opinion on the draft election code of Uzbekistan, para. 50.

<sup>144</sup> Code of good practice in electoral matters, Guideline II. 3.3. g.

<sup>145</sup> See for instance 2012 Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation, para. 108.

laws should therefore expressly and systematically set realistic<sup>146</sup> deadlines for lodging and adjudicating complaints and appeals for each phase of the electoral process, by which either the courts or the electoral bodies must reach a timely decision. A balance is thus necessary and advisable in the law between the thoroughness and complexity of the election dispute resolution system on the one side, and speedy and flexible procedures on the other side. Considering that a majority of countries do not provide explicit legal provisions regarding time limits for the main steps of electoral processes, it may be recommended to include such time frames in the legislation, especially in countries where trust in electoral processes remains weak. Moreover, it is crucial that the legitimacy of the elected bodies is determined early, preferably before they take office, and it has to be avoided that decisions are taken only close to the end of their mandates.

## VIII. Other procedural issues

### A. Right to a fair trial and effectiveness of election dispute resolution systems

106. The European Court of Human Rights case-law emphasises that “a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections.”<sup>147</sup> The “effective examination” requirement as established in the case-law of the Court implies that grounds for appeals should not be stipulated in the law or interpreted so narrowly that they prevent the effective examination of complaints.

107. Additionally, the European Court of Human Rights has underlined in its case-law that the right to an effective examination of complaints extends to “an arguable claim concerning election irregularities” both relating to individual rights and state’s positive obligations to hold free and fair elections.<sup>148</sup> According to the Court, states have to undertake an effective examination of the applicants’ claims.<sup>149</sup>

108. In order to comply with international standards, complaints and appeals procedures should clearly provide *inter alia* for the right for voters, candidates and political parties to effective and speedy remedies.<sup>150</sup> They should also be entitled to present evidence in support of their complaints, to a public and fair hearing, to impartial and transparent proceedings on the complaints, to effective and speedy remedies as well as the possibility of appeal to a court – or at least another impartial body – in final instance if a remedy is denied.<sup>151</sup> The guiding principles of election dispute resolution systems are therefore not different from general principles of good administration<sup>152</sup> or principles of fair judicial proceedings.<sup>153</sup> In electoral matters, an administrative or judicial remedy has thus to be as efficient as remedies for the

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<sup>146</sup> As underlined by the 2006 Report on the Participation of Political Parties in Elections, para. 40, “The precise time frame may vary from one country to another depending on multiple factors such as the systems of ballot counting and of transmitting results but also from case to case due to the organisation of different elections, which may be held in different contexts. The Report however refrained from drawing general conclusions on deadlines.”

<sup>147</sup> *Namat Aliyev v. Azerbaijan*, 8 April 2010, para. 81.

<sup>148</sup> *Namat Aliyev v. Azerbaijan*, 8 April 2010, para. 88.

<sup>149</sup> *Gahramanli and others v. Azerbaijan*, 8 October 2015, para. 73-74.

<sup>150</sup> Code of good practice in electoral matters, II 3.3.

See among the opinions issued for example 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova, para. 111. See above Part VI.

<sup>151</sup> Code of good practice in electoral matters, II 3.3. See also *Mugemangango v. Belgium*, 10 July 2020, para. 70. See among the opinions 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova, para. 111.

<sup>152</sup> See for example 2011 Stocktaking on the notions of “good governance” and “good administration”, para. 65.

<sup>153</sup> See 2016 Rule of Law Checklist, II. Benchmarks, E. Access to justice, 2. Fair trial, a. Access to courts and c. Other aspects of the right to a fair trial.

protection of other fundamental rights and freedoms, according to the case-law of the European Court of Human Rights.<sup>154</sup>

109. Whereas provisions governing election dispute resolution systems proper to election administrations' decisions, actions, and inactions are stated in electoral laws and other relevant laws, general administrative procedure rules contained in other pieces of legislation may also be applicable concerning the burden of proof, the right to submit evidence or other procedural guarantees in the context of electoral processes. For instance, in some countries, the disputes related to voter registration are solved in a procedure provided for the complaints concerning the civil register in general.<sup>155</sup> Thus, the applicable procedure might not be found in electoral legislation. Similarly, the appeal procedure before a court – an administrative or constitutional court, or an equivalent body – is usually not stipulated in electoral laws, but more often in laws on courts' procedures.

110. In order to guarantee full electoral rights, election dispute resolution systems should avoid obstacles to the lodging of complaints and appeals.<sup>156</sup> The procedure should not be too complex and rigid, eliminating the possibility to submit an application which would deserve to be considered in substance. As indicated by the Code of good practice in electoral matters, "[t]he procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals."<sup>157</sup> The legislation should clearly provide consequences for the situation where the application contains shortcomings. The competent bodies should have the obligation to provide assistance when the complaints are submitted and the procedure should be carried out in good will. Moreover, in case the application is not submitted to the competent body, the applicant should be advised about the correct procedure to redirect his/her complaint, or, if need be, the application could be forwarded to the competent body by the body which has wrongly received the complaint. A margin of appreciation might be given to the institutions.

111. Applicants must be permitted to familiarise themselves with the materials related to their complaints and appeals.<sup>158</sup> Where they complain to an election commission, they must be informed of the time and the date of the session at which their complaint will be considered so that they can attend the session. Similarly, assistance for the presentation of complaints should be ensured to complainants. Complaints on voter registration or the right to vote on election day are usually not complicated neither legally nor in fact. In such issues, an oral complaint might be acceptable. In other cases where the dispute is more detailed and legally complex and requiring an investigation of factual circumstances, a written form might be suitable. In most countries, a written form for the complaint is necessary.<sup>159</sup> In some countries, an oral complaint is possible, depending on the type of complaint lodged.<sup>160</sup>

112. Applicants should be free to present their complaints or appeals without legal assistance. Especially in disputes concerning the cancellation of election results, an obligation for legal advice might be reasonable to avoid manifestly unfounded complaints and appeals. In

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<sup>154</sup> See *Mugemangango v. Belgium*, 10 July 2020, para. 130-131.

<sup>155</sup> Cf. Part IV. B. for more developments regarding voter lists.

<sup>156</sup> See for instance 2009 Joint Opinion on the Election Code of Georgia as revised up to July 2008, para. 109.

<sup>157</sup> Code of good practice in electoral matters, Guideline II. 3.3. b.

<sup>158</sup> See for example 2010 Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, para. 68.

<sup>159</sup> Albania, Algeria, Andorra (voter and candidate registration), Armenia, Bosnia and Herzegovina, Estonia (except for notice concerning deficiency in electoral management, which may not lead to an appeal to the court), France, Germany, Republic of Korea, Mexico, the Netherlands, North Macedonia (by e-mail to the State Election Commission), Norway (for the complaints concerning voter lists), Poland, Slovak Republic, Spain, Switzerland, Ukraine. In Bosnia and Herzegovina, the complaint has to be submitted in a form prescribed by the Central Election Commission.

<sup>160</sup> Austria, Chile, Latvia, Monaco, Turkey. In Austria, complaints concerning voter registration and issuing of voting cards may be submitted orally with the duty of the competent body to protocol the applications.

five member States, electoral laws explicitly state the possibility to submit applications without a representative.<sup>161</sup> However, this does not mean that a representation is explicitly required in all the other countries analysed.

113. Not many countries define in their electoral laws and other laws the persons having the right to be heard in election dispute resolution systems in addition to the applicant.<sup>162</sup> Laws on courts' procedures might provide for additional parties or stakeholders having the right to be heard, in addition to applicants and bodies whose decisions or inactions are challenged.

114. As stated in the Code of good practice in electoral matters, the applicant's right to a hearing involving both parties must be protected.<sup>163</sup> An oral hearing is a means to provide the parties to justify the relevance of their requests in a speedy manner as well as to ask questions to the other parties in order to point out the substance of the dispute. In some cases, an oral hearing is necessary to hear the witnesses in a speedy manner, giving the parties a chance to ask questions to the witnesses. The aims of the transparency – i.e. the overall trust in electoral processes – can be ensured if the stakeholders are able to inspect whether all similar cases have been solved in an equal manner and whether the reasoning of the decisions is verifiable.<sup>164</sup> There are not many countries with specific rules on the right to request an oral hearing of the case or the competent institution's obligation to provide an oral hearing.<sup>165</sup> However, this does not mean that an oral hearing is explicitly excluded in all the other countries analysed.

115. If the decision in electoral matters in first instance is made by a non-judicial body, it has to be guaranteed by a specific procedural rule that the core elements of a fair proceeding are fulfilled. Moreover, if the appeal procedure is made before a non-judicial body, the procedure should ensure that the competent body offers sufficient guarantees of its impartiality and afford effective guarantees of a fair, objective and sufficiently reasoned decision, as recently recalled by the case-law of the European Court of Human Rights.<sup>166</sup> In any case, the competent body should have a high-level of expertise on electoral matters, which, depending on the issue challenged, may involve experts or judicial lay members *inter alia* with a geographical or IT background.

## **B. Transparency of election dispute resolution systems**

116. For all electoral processes, the principles of openness and transparency are generally stated in domestic electoral laws as well as in other laws. The specific mechanisms to guarantee the transparency of election dispute resolution systems among election commissions is guaranteed by the working methods of election administrations, such as

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<sup>161</sup> Algeria, Andorra (cases concerning candidate registration), Azerbaijan, Estonia, Latvia, Mexico.

<sup>162</sup> Andorra, Azerbaijan, Czech Republic, Ireland, Mexico, Ukraine. In Andorra, concerning disputes related to candidate registration, candidates and the Attorney-General's Office take part in the proceedings. In Azerbaijan, the law explicitly provides that the electoral management body whose decision is contested, takes part in the proceedings. In Mexico, Article 13 of the Law on electoral dispute resolution procedures refers to all persons entitled to lodge complaints and appeals, such as political parties, citizens, candidates and political non-governmental organisations. In the Russian Federation, candidates or parties concerned have the right to attend the process. In Ukraine, all parties are to be notified about a date and time of examination of a complaint. However, a failure to attend a session of an election commission does not prevent the examination of the case. The same applies to proceeding at courts.

<sup>163</sup> Code of good practice in electoral matters, Guideline II 3.3. h.

<sup>164</sup> See for example 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine, para. 43.

<sup>165</sup> Armenia, Germany, Peru, Tunisia, Ukraine. In Armenia, an oral hearing is obligatory except in some cases concerning disputes related to election results. In Azerbaijan, the applicant has the right to request an oral hearing. In Ukraine, there is no provision in the law allowing the election commissions to conduct written proceedings. Regarding the judicial proceeding, an oral hearing should be provided, unless otherwise requested by the parties or unless the parties have failed to be present at a hearing.

<sup>166</sup> See *Mugemangango v. Belgium*, 10 July 2020, para. 70, 137.

sessions open to public, the duty to publish sessions' protocols on the web, streaming of the sessions and so on.

117. More precisely, each act of the election administration should be formally published, broadly available for information to electoral stakeholders and appealable to a court.<sup>167</sup> Publicity can be ensured through public media and by immediate publication on the Internet. All decisions of election commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.<sup>168</sup> Complaints and appeals' procedures should also be transparent thanks to the accessibility of a number of sources, such as, depending on the countries: the publication of complaints, responses and decisions, for instance through a freely accessible database on the Internet of complaints and appeals lodged, which should not only contain the information on the issues challenged, but as far as possible, also an access to the documents submitted by the parties, as well as the resolutions and protocols of the hearings.<sup>169</sup> Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrence to future misconduct.<sup>170</sup>

118. In some opinions of the Venice Commission, it has been observed that the procedure for lodging a complaint was too complicated or caused relatively high costs.<sup>171</sup> The principle of transparency was addressed in several opinions of the Venice Commission. It requires a written decision by the competent body as well as a reasoning of the decision;<sup>172</sup> decisions should be made public;<sup>173</sup> and finally, written procedural rules concerning the review of complaints and appeals should exist.<sup>174</sup>

### **C. Reasoning of decisions on electoral complaints and appeals**

119. Reasoning of decisions on electoral complaints or appeals is a necessity to guarantee the verifiability of the decision and the recourse to a remedy against the decision, if applicable. Due to the urgency of election dispute resolution systems, especially relating to decisions made, actions committed or inactions on election day, i.e. concerning pre-opening, voting and counting procedures, the resolutions cannot be reasoned in detail to a large extent. The necessary promptness of the proceedings may outweigh the requirement of a detailed reasoning. Still, a short reasoning both in fact and in law is required.

120. The Venice Commission has therefore recommended that all election commissions should issue written decisions and duly argue all their decisions. The format of decisions should also be standardised. This should apply to all decisions, whether or not they can be appealed to a court.<sup>175</sup> All decisions of election commissions should be clear and reasoned so

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<sup>167</sup> See for instance 2010 Report on figure based management of possible election fraud, para. 121.

<sup>168</sup> See for instance 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan, para. 43.

<sup>169</sup> In some cases, the documents cannot be public in order to protect the personal data (e.g. disputes on the voter's registration). In these cases, only the relevant personal information should be hidden, while leaving the information on the complaint, arguments of the parties and reasoning of the competent body accessible.

<sup>170</sup> See for instance 2013 Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, para. 100.

<sup>171</sup> See for instance 2009 Joint Opinion on the Election Code of Georgia as revised up to July 2008, para. 109, 115; 2013 Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine, para. 66.

<sup>172</sup> See for instance 2004 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court), para. 43; 2011 Joint opinion on the election code of Bulgaria, para. 56.

<sup>173</sup> See for instance 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine, para. 43.

<sup>174</sup> See for example 2011 Joint opinion on the election code of Bulgaria, para. 56.

<sup>175</sup> See for example 2011 Joint opinion on the election code of Bulgaria, para. 56.

that aggrieved persons can judge whether to make a formal complaint.<sup>176</sup> The requirement that the decision should be reasoned is stipulated in electoral legislation only in a few countries. However, this does not prejudice the application of provisions to be found in the Constitution, general legislation on courts or administrative disputes.<sup>177</sup>

#### **D. Right to submit evidence and burden of proof**

121. The Venice Commission has considered the right to submit evidence as a minimum guarantee for the protection of suffrage rights in a fair procedure.<sup>178</sup> In some cases, if the applicant does not have access to documentary proof, the electoral management bodies or other relevant institutions should have the duty to present it to the competent body.<sup>179</sup>

122. The burden of proof in electoral disputes is an important element, which should be stipulated in the law. There are different possibilities to address the issue. The applicant may have the burden of proof, i.e. of submitting evidence for the arguments the application is based on.<sup>180</sup>

123. Another solution might be to oblige the competent body deciding on the complaint or appeal to collect the relevant evidence *ex officio*,<sup>181</sup> or in addition to the evidence provided by the applicant. However, it might be in reality problematic to exercise such power in practice due to the very limited time for adjudicating the complaint or the appeal.

### **IX. Decision-making power**

124. A successful election dispute resolution system relies on the effectiveness of the decision-making power of the competent body, either administrative bodies – electoral management bodies –, judicial bodies – constitutional, ordinary courts or specialised courts – or other types of bodies – including parliaments.

#### **A. International standards**

125. As underlined by the Code of good practice in electoral matters, “[t]he appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.” In addition, “[t]he appeal body must have authority to annul elections where irregularities may have affected the outcome.”<sup>182</sup>

<sup>176</sup> See for instance 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan, para. 43.

<sup>177</sup> See for instance Estonia, Norway. Factual reasons are required in Albania, Algeria, Austria (disputes on the registration of voters), Estonia, Norway and Slovak Republic (disputes on election results), whereas legal reasons are explicitly obligatory in Albania, Bosnia and Herzegovina and Ukraine. In Mexico, even though no electoral law explicitly requires reasoned decisions for electoral authorities, Article 16 of the Constitution provides that all decisions of all authorities that may affect rights must be reasoned.

<sup>178</sup> See for example 2006 Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia, para. 65.

<sup>179</sup> The Venice Commission has argued that in such cases, the applicant should have the right to make copies of the documents even if they contain personal data. See 2007 Joint Opinion on the 26 February 2007 Amendments to the Electoral Code of the Republic of Armenia, para. 33.

In Albania, Algeria and Austria, the law provides the parties of the dispute the right to submit evidence.

<sup>180</sup> Such is the situation in Andorra (disputes concerning voter registration), France, Bosnia and Herzegovina, Mexico (Article 15 of the Law on electoral dispute resolution procedures provides that the burden of proof lies on the part that asserts a fact), Slovak Republic. The legislation is similar in Armenia, where the burden of proof lies with the person who makes a statement (with some special rules). In Latvia, the burden of proof lies in the participants in the administrative proceedings.

<sup>181</sup> Such obligation is provided in the electoral laws of Armenia, Azerbaijan, Liechtenstein, Mexico and Ukraine.

<sup>182</sup> Code of good practice in electoral matters, Guidelines II 3.3. d. and e.



126. Additionally, the OSCE/ODIHR publication *Resolving Election Disputes*<sup>183</sup> lists several recommendations concerning the possibility to nullify election results. Among them: (i) the decision to partially or fully invalidate election results should be assigned to the highest electoral body. This decision should be reviewable by the highest body of the judiciary or the Constitutional Court; (ii) the electoral law should specify whether the entities vested with the power to invalidate the election results can take action without being presented with a formal complaint; (iii) it should be clear from the law whether a general or restricted invalidation mechanism applies; (iv) both the preliminary and the final results should be subject to challenges.

## **B. Authority of the appeal body on the cancellation of election results**

127. In order to safeguard and guarantee the integrity of electoral processes as a whole, domestic legislation should grant appeal bodies with the power to cancel elections, partially or fully.<sup>184</sup> The central criterion for cancelling elections, recognised by international standards and primarily by the Code of good practice in electoral matters, is the question of whether irregularities may have affected the outcome of the vote. The Venice Commission affirms that “the appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.”<sup>185</sup> Cancellation of election results due to minor misconduct which has not affected the outcome could make the electoral process more vulnerable or would lead to mistrust in the judicial remedies or lead to lower interest in cycles of repeat elections, and possibly a lower turnout.

128. Indeed, considering the extreme effects of cancellation of election results, such a decision should only be concretised in extraordinary circumstances where evidence of illegality, dishonesty, unfairness, malfeasance or other misconduct is clearly established and where such improper behaviour has distorted election results.<sup>186</sup>

129. The transparency of election dispute resolution systems provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrent to future misconduct.<sup>187</sup> A country where the electoral law allows for a tolerance level for fraud, based on a certain percentage of irregular votes,<sup>188</sup> or where the allocation of seats takes place before the results of the repeated elections are made public<sup>189</sup> does not follow international standards.

130. In a number of countries, electoral laws use rather general clauses concerning the cases of cancellation.<sup>190</sup> Some countries provide for a general invalidation mechanism<sup>191</sup> while some

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<sup>183</sup> *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, 2000, Section II. G.

<sup>184</sup> See 2009 Report on the cancellation of election results. See also Ace Project, *Electoral Dispute Resolution*, 2012.

<sup>185</sup> Code of good practice in electoral matters, Guideline II 3.3. e.

<sup>186</sup> International Foundation for Electoral System, *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections*, 2011, para. 104.

<sup>187</sup> 2013 Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, para. 100.

<sup>188</sup> 2005 Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan, para. 42-43; 2006 Opinion on the Law on Elections of People's Deputies of Ukraine, para. 84.

<sup>189</sup> 2010 Joint Opinion on the Draft Working Text amending the Election Code of Moldova, para. 70.

<sup>190</sup> Algeria, Andorra, Armenia, Belgium, Brazil, Bulgaria, Chile, Canada, Costa Rica, Denmark, Finland, Iceland, Italy, Malta, Mexico, Norway, Poland, Liechtenstein, Lithuania, Luxembourg, San Marino, Slovak Republic, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States of America.

<sup>191</sup> Algeria, Andorra, Belgium, Bulgaria, Canada, Costa Rica, Denmark, Finland, Iceland, Italy, Malta, Norway, Poland, Liechtenstein, Lithuania, Luxembourg, San Marino, Slovak Republic, Sweden, Switzerland, Turkey, Ukraine.

others for a partial one.<sup>192</sup> It should be noted that one option (a general invalidation for instance) does not necessarily exclude the other option offered to the judge (a partial invalidation). There are many cases where the competent authority can cancel results in one or more electoral constituencies.<sup>193</sup> In other cases, there are provisions that allow for the general invalidation of the elections.<sup>194</sup>

131. On this sensitive issue of (cancellation of) election results, the role of the electoral judges is crucial, since they are the institution responsible for ultimately deciding on the sincerity of an electoral process. The electoral judge is tasked with an appreciation of the circumstances in which electoral malpractice is taking place and how it may affect the outcome of the elections. Based on such circumstances, the judge has therefore either to confirm or to invalidate the elections, partially or fully. In this context, the role of the electoral judge may differ from that of a “judge of the legality”, who should immediately and unequivocally sanction any shortcoming and/or illegal action. In this regard, circumstances and impact matter as much as the infringement of legal proceedings.

132. In summary, the legislation of most member States of the Venice Commission does not provide for detailed legislation on the decision-making power of the appeal body and leaves a broad decision-making power to courts, in particular regarding the sensitive issue of cancellation of elections. There remains room for improvement in a number of countries where the law does not provide necessarily for the possibility to cancel an entire electoral process, a decision which can be necessary in situations of distortion of election results. This also implies the possibility to modify election results, to order a total or partial recount of the votes. There may be consequently a need to clarify the legislation accordingly concerning the cases of partial or full cancellation of election results and the consequences deriving from such decisions of cancellation. Among the possible consequences, there can be a recount, a repeat voting either with the same candidates or fully reorganised including with a new candidate registration procedure.

## **X. Conclusions**

133. The proper settlement of electoral disputes is an essential part of a successful electoral process. This implies ensuring an effective system of challenging electoral violations and examination of election-related disputes, combining an effective mechanism of lodging complaints and an effective decision-making process on such electoral complaints. However, while the legislation of all the Venice Commission’s member States includes legal provisions on complaints and appeals’ procedures, most of the domestic laws and their implementation regarding various aspects of election dispute resolution systems could be improved, as regularly underlined by opinions on electoral legislation as well as by election observation reports.

134. According to most electoral laws, courts are competent to decide on electoral disputes, at least in last instance, in line with international standards. The Venice Commission reiterates its recommendation that electoral legislation provide for judicial bodies to be the final authority to decide on electoral disputes while avoiding at the same time risks of conflicts of jurisdictions.

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<sup>192</sup> Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Chile, Croatia, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Ireland, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Mexico, Republic of Moldova, Montenegro, Monaco, Morocco, the Netherlands, North Macedonia, Peru, Portugal, Romania, Russian Federation, Serbia, Slovenia, Spain, Tunisia, United Kingdom, United States of America.

<sup>193</sup> Albania, Armenia, Austria, Bosnia and Herzegovina, Denmark, Estonia, Finland, Georgia, Kazakhstan, Republic of Korea, Lithuania, Malta, Mexico, Republic of Moldova, North Macedonia, Norway, Portugal, Slovenia, Spain.

<sup>194</sup> Croatia, Estonia, Finland, Ireland, Malta, Mexico, Monaco, Morocco, Poland, Russian Federation, Serbia, Slovak Republic.

The composition of the body deciding on complaints and appeals, except concerning voter registration or disputes related to election day, should preferably be a collegial one.

135. Concerning the grounds for complaints and the decisions, actions, inactions open to challenge, the majority of Venice Commission's member States provide for provisions ensuring voters, candidates and political parties the right to lodge complaints for violations of the law for the essential steps of the electoral process, such as registration of voters and candidates, electoral campaign, voting operations and election results. Nevertheless, there remains room for improvement: the Venice Commission indeed recommends that grounds for complaints and appeals should not be limited to violations of electoral rights and interests due to the State's decisions and actions but also include inactions and inadequate enforcement, as well as violations of electoral law by private actors.

136. Concerning the persons entitled to complain (standing), most of the Venice Commission's member States enable in their legislation voters, candidates and political parties to lodge electoral complaints, in line with international standards, but only few go beyond and provide such rights to other categories of persons. Extending the right to complain to additional electoral stakeholders could be envisaged to reinforce procedures regarding the settlement of electoral disputes and increase trust in electoral processes as a whole. If necessary, safeguards must be put in place to prevent the misuse of the complaints system, to avoid frivolous complaints with the only aim to disrupt or block the electoral process.

137. The variety of situations concerning time-limits among the Venice Commission's member States prevents drawing trends. The Venice Commission reiterates its recommendation that national legal frameworks stipulate short periods for lodging complaints and prompt decisions by competent bodies, inherent to the nature of electoral processes. A balance is however necessary and advisable in the law between the thoroughness and complexity of the election dispute resolution system on the one side, and speedy and flexible procedures on the other side.

138. Other procedural issues involve ensuring the right to a fair trial in electoral matters and the effectiveness of the appeal system, which includes the necessity of providing legal guarantees regarding evidence and the possibility of hearing parties contesting an election-related decision. The emphasis must also be put on the transparency of election dispute resolution systems, by ensuring procedures devoid of formalism. The importance of reasoned and substantive decisions must be underlined, despite the requirement of making the procedures of examination of electoral complaints and appeals short.

139. The legislation of a number of Venice Commission's member States does not address the issue of the decision-making power of the body entitled to examine a complaint or appeal and to resolve an electoral dispute; the Venice Commission recommends in particular the reinforcement of the legislation regarding the cases of partial or full cancellation of election results and underlines the crucial role of the electoral judge in this respect, as well as of other remedies following electoral frauds or malpractices.

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**Elections on Trial: The Effective Management of Election Disputes and Violations**

May 2018

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## **XII. Annex 2 – Selection of relevant case-law of the European Court of Human Rights on election dispute resolution**

### **Role of a domestic system for election dispute resolution**

The existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote and to stand for election, maintains general confidence in the State's administration of the electoral process and constitutes an important device at the State's disposal in achieving the fulfilment of its positive duty under Article 3 of Protocol No. 1 to hold democratic elections. Indeed, the State's solemn undertaking under Article 3 of Protocol No. 1 and the individual rights guaranteed by that provision would be illusory if, throughout the electoral process, specific instances indicative of failure to ensure democratic elections are not open to challenge by individuals before a competent domestic body capable of effectively dealing with the matter.<sup>195</sup>

### **General requirements**

The Court has developed in its case-law a number of general principles regarding the effectiveness of a domestic system for election dispute resolution. Many of them are outlined below. This list should not, however, be regarded as exhaustive.

#### **(a) Existence of procedural safeguards against arbitrariness**

The decision-making process must be surrounded by minimum safeguards against arbitrariness.<sup>196</sup> One of such safeguards is procedural fairness.

#### **Specific case:**

In the case of *Podkolzina v. Latvia* (no. 46726/99, 9 April 2002) the applicant complained about the removal of her name from the list of parliamentary election candidates for insufficient knowledge of Latvian. The list in question had been registered with the Central Electoral Commission ("the CEC") after all the documents required by the legislation on parliamentary elections had been supplied to it, including a copy of the certificate attesting to the fact that the applicant knew the State's official language - Latvian - issued by the Standing Committee for Language Certification, an administrative institution answerable to the Ministry of Justice. In a week after the registration of the list, an examiner belonging to the language examination service of the State Language Centre came to the applicant's workplace to check how well she knew Latvian, and to that end began a conversation with her in that language in the course of which the applicant was asked, among other questions, why she supported the party, on whose list she was, rather than another party. The examiner returned the next day accompanied by witnesses and asked the applicant to write an essay in Latvian. Being extremely nervous, because she had not expected such an examination and because of the constant presence of the witnesses, the applicant stopped writing and tore up her work. The examiner then drew up a report to the effect that the applicant did not have an adequate command of the official language and the CEC struck the applicant's name off the list of candidates.

The Court found that the purpose of the legislation on parliamentary elections barring citizens without an advanced degree of proficiency in the national language from standing for election

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<sup>195</sup> See *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 81, 8 April 2010.

<sup>196</sup> See, for example, *Podkolzina v. Latvia*, no. 46726/99, § 35, 9 April 2002, *Kovach*, cited above, §§ 55 et seq., *Namat Aliyev*, also cited above, § 72, 8 April 2010, and *Davydov and Others*, cited above, §§ 273 and 336.

was to ensure the proper functioning of the Latvian institutional system. It added that it was not for the Court to determine the choice of the working language of a national parliament, as that choice was dictated by historical and political considerations and, in principle, was exclusively for the State concerned to determine. Requirements of that kind pursued a legitimate aim. The Court therefore had to decide whether the measure removing the applicant's name from the list of candidates had been proportionate to the aim pursued.

The Court noted that the applicant held a valid language certificate in due form that had been issued by a standing committee following an examination. The standing committee had deliberated and had followed objective marking criteria and a set of rules when voting. Although the authorities had not contested the validity of that document, the applicant had nonetheless been required to sit a further language examination, in company with eight other candidates of the twenty-one who had been required to furnish a certificate of proficiency in the national language. The assessment had been left to the sole discretion of a single official, whose discretionary powers the Court considered to be excessive. The Court also expressed surprise that, according to the applicant in an account that was not disputed by the Government, the official had questioned the applicant about the reasons for her political affinities. Consequently, the Court considered that, in the absence of any objective guarantees, the procedure followed in the applicant's case was incompatible with the procedural requirements of fairness and legal certainty for determining eligibility for election. That conclusion was, in the Court's view, supported by the fact that when examining the applicant's application for judicial review the Riga Regional Court had only had regard to the certificate issued as a result of the impugned examination and had accepted those results as incontrovertible. The Court accordingly held that there had been a violation of Article 3 of Protocol No. 1.

(b) Respect of those safeguards in practice

Any safeguard written into a legislative act is meaningless if it merely remains on paper, as it does when the competent domestic authorities, charged with conducting the electoral procedures, systematically fail to abide by those safeguards in situations for which they are designed. It is a fundamental corollary of the rule of law that rights prescribed in legislative acts must be effective and practical, and not theoretical and illusory.<sup>197</sup>

Specific case:

In *Tahirov v. Azerbaijan* (no. 31953/11, 11 June 2015) the applicant complained about the refusal of his request for registration as a parliamentary election candidate. As required by the Electoral Code, he collected more than 450 voter signatures in support of his candidacy and submitted them to the Constituency Electoral Commission ("the ConEC"). He was informed that the validity of his supporting signatures had been examined and that the ConEC had held a hearing on whether to register him as a candidate. The next day his candidacy was refused. According to an expert working group established by the commission, a number of signatures were invalid, allegedly because several signatures had been executed by the same person or because the information on the relevant voters' addresses was incomplete.

The applicant lodged a complaint with the CEC arguing in particular that, following the requirements of the Electoral Code, he should have been invited to participate in the examination process of the signatures. The applicant further alleged that the finding that 172 signatures had been "executed by the same person" had not been factually verified and that he could have rectified the incomplete addresses of some of the voters if he had been given the opportunity. Enclosed with his complaint, the applicant notably submitted written statements by 91 voters, whose signatures had been declared invalid, affirming the

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<sup>197</sup> See *Tahirov v. Azerbaijan*, no. 31953/11, § 67, 11 June 2015.

authenticity of their signatures. The CEC conducted another examination of the signatures by members of its own working group. The applicant was not invited to participate in this process either. They concluded that 178 out of 600 signatures submitted by him were invalid and that the remaining 422 valid signatures was below the minimum required by law. The CEC therefore dismissed the applicant's complaint and upheld the decision of the constituency election commission. Both the Baku Court of Appeal and the Supreme Court dismissed the applicant's appeal as unsubstantiated, without examining his arguments in detail.

The Court observed that none of the procedural guarantees against the arbitrariness provided for by the Electoral Code – such as the nominee's right to be present during the examination of signature sheets or to receive the examination report 24 hours before the relevant electoral commission's meeting – had been respected.

The applicant had been deprived of the opportunity to challenge the findings of the working groups throughout the process. Furthermore, neither the CEC nor the domestic courts had addressed any of the well-founded arguments put forward by the applicant or provided proper reasoning in their judgments. The Court therefore found a violation of Article 3 of Protocol No. 1.

(c) Legal certainty

In addition to the requirement of procedural fairness, the election dispute resolution procedures must be characterised by legal certainty.<sup>198</sup>

Specific case:

In *The Russian Conservative Party of Entrepreneurs and Others v. Russia* (nos. 55066/00 and 55638/00, 11 January 2007) the applicant party alleged, in particular, a violation of its right to stand for election.

The applicant party nominated 151 candidates for the State Duma elections and the CEC confirmed receipt of the party's list and that it had paid its electoral deposit. Subsequently the CEC, however, refused registration of the applicant party's list of candidates, having found that certain people on the list had provided incorrect information about their income and property. As a result, all candidates on the list were disqualified. Disagreeing with the CEC's interpretation, the applicant party successfully challenged its decision before the domestic courts. On 22 November 1999 the applicant party obtained a final judgment to the effect. It was immediately enforced and, that same day, the CEC registered the applicant party and allowed it to carry on its electoral campaign. Nevertheless, on 26 November 1999 a deputy prosecutor general lodged an application for supervisory review, requesting the Supreme Court to reopen the proceedings and to accept the CEC's original approach. The Presidium of the Supreme Court subsequently quashed the earlier judgments by way of supervisory-review proceedings and upheld the CEC's position. The CEC annulled its earlier decisions, refused the registration of the applicant party's list and ordered its name to be removed from the ballot papers. The applicant party appealed unsuccessfully.

The Court noted that the final and enforceable judgment of 22 November 1999, which had cleared the way for the applicant party to stand in the elections, was quashed by means of supervisory-review proceedings on an application by a State official who was not a party to the proceedings. The purpose of his application was precisely to obtain a fresh determination of the issue that had been already settled. The Government did not point to any circumstances of a substantial and compelling character that could have justified that departure from the principle of legal certainty in the applicants' case. As a result of the re-examination, the

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<sup>198</sup> See, for example, *Orujov v. Azerbaijan*, no. 4508/06, § 42, 26 July 2011, with further case-law references.

applicant party was prevented from standing for election. It followed that, by using the supervisory-review procedure to set aside the judgment of 22 November 1999, the domestic authorities violated the principle of legal certainty in the procedure for determining the applicant party's eligibility to stand in the elections.

(d) Effective remedies

The body responsible for examining a complaint challenging election results and seeking recount must be impartial and operate through a procedure ensuring adequate and sufficient safeguards.

Specific case:

In *Mugemangango v. Belgium* (no. 310/15, 10 July 2020) the applicant party alleged, in particular, that the refusal of the Walloon Parliament to recount the ballot papers declared blank, spoiled or disputed in the Charleroi constituency, after it had acted as both judge and party in the examination of his complaint, had infringed his right to stand as a candidate in free elections.

The applicant stood on 25 May 2014 in the election to the Parliament of the Walloon Region. He was not elected and subsequently lodged a complaint with the Walloon Parliament, the competent body, requesting a recount of ballot papers, alleging numerous problems during the post-counting operations. The Walloon Parliament declared Mr Mugemangango's complaint admissible but ill-founded concluding, among other things, that there was no compelling evidence of irregularities in the vote counting. Mr Mugemangango alleged that the refusal of the Walloon Parliament to recount the ballot papers declared blank, spoiled or disputed in the Charleroi constituency, after it had acted as both judge and party in the examination of his complaint, had infringed his right to stand as a candidate in free elections. He also submitted that his appeal to the Walloon Parliament had not constituted an effective remedy.

The Court concluded that Mr Mugemangango's complaint had been examined by a body which had not provided the requisite guarantees of its impartiality and whose discretion had not been circumscribed with sufficient precision by provisions of domestic law. The safeguards afforded to Mr Mugemangango during the procedure had likewise been insufficient, having been introduced on a discretionary basis. The Court thus concluded that Mr Mugemangango's grievances had not been dealt with in a procedure offering adequate and sufficient safeguards to prevent arbitrariness and to ensure their effective examination in accordance with the requirements of Article 3 of Protocol No. 1. There had therefore been a violation of that Article. Moreover, the Court found that the procedure for complaints to the Walloon Parliament had not provided adequate and sufficient safeguards ensuring the effective examination of Mr Mugemangango's grievances.

(e) Transparency and independence of decision-taking bodies

It is important for the authorities in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation.<sup>199</sup>

Specific case:

In *Georgian Labour Party v. Georgia* (no. 9103/04, ECHR 2008) one of the complaints was about the composition of the electoral commissions at the time of the repeat parliamentary

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<sup>199</sup> See *Georgian Labour Party v. Georgia*, no. 9103/04, § 101, ECHR 2008.

election. Pursuant to provisional legal provisions, five members out of the fifteen-member boards of the electoral commissions at every level, as well as their chairmen, were either directly or indirectly appointed by the President of Georgia. In addition, at least one member of those electoral commissions was a representative of the President's National Movement party, since the latter had won the earlier local elections in Tbilisi. Pro-presidential forces thus had a relative majority vis-à-vis the representatives of other political parties in electoral commissions at every level.

The Court noted that, although there could be no ideal or uniform system to guarantee checks and balances between the different State powers within a body of electoral administration, a proportion of seven members out of fifteen-member electoral commissions, including the chairmen who had the casting votes and were appointed by the President of Georgia and his party, was particularly high in comparison to other legal orders in Europe.

Furthermore, the Court observed that so long as the presidential party – the National Movement – was simultaneously running in the repeat parliamentary election, it was not implausible that other candidate parties, including the applicant party, might have been placed in an unfavourable position by the presidential majority in the electoral administration. The Government's argument that, once appointed to office, the members of the electoral commissions had to quit their respective political parties or to suspend their membership, was not found reassuring in this regard. The Court was not convinced that a party's representative to an electoral commission, whom that party has most likely nominated because of his or her loyalty to its values and discipline, would necessarily and immediately become an independent and impartially thinking civil servant just by virtue of filing a formal declaration to that end.

The Court noted, however, that the applicant party did not submit any evidence that the presidential majority in the electoral commissions had misappropriated the votes cast in its favour or otherwise limited its rights and legitimate interests during the repeat parliamentary election. The Court held that it could not find a violation of Article 3 of Protocol No. 1 solely on the basis of the allegation, no matter how plausible it was, that the system had created possibilities for electoral fraud; instead, the applicant party should have submitted evidence of specific incidents of alleged violations.

The Court concluded that the contested composition of electoral commissions at all levels indeed had lacked sufficient checks and balances against the President's power and that those commissions could hardly enjoy independence from the outside political pressure. However, in the absence of any proof of particular acts of abuse of power or electoral fraud committed within the electoral commissions to the applicant party's detriment, no breach of the latter's right to stand for election was established.

(f) Sufficient reasoning of decisions and indication of a genuine effort to address the substance of arguable claims

The authorities must make genuine effort to address the substance of arguable individual complaints concerning electoral irregularities and the relevant decisions must be sufficiently reasoned.<sup>200</sup>

Specific case:

In the case of *Namat Aliyev* (cited above) the applicant complained that, in the electoral constituency where he stood as a candidate, there had been a number of serious irregularities which had made it impossible to determine the true opinion of voters and thus had infringed

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<sup>200</sup> See *Namat Aliyev*, cited above, §§ 76-93.



his right to stand as a candidate in free elections. He argued that the domestic authorities, including the electoral commissions and courts, had failed to duly examine his complaints.

In complaints to the constituency election commission and the CEC, the applicant alleged various irregularities (including unlawful interference, undue influence, ballot-box stuffing, harassment of observers, inaccuracies in the electoral rolls and discrepancies in electoral protocols). He submitted to the CEC originals of affidavits by election observers, together with audio tapes and other evidence. The constituency election commission rejected the applicant's complaint as unsubstantiated without further elaboration, while the CEC did not reply to the applicant but issued a final protocol approving the overall election results nationwide. The applicant appealed to the court of appeal, but it dismissed his claims as unsubstantiated, after ruling that the photocopies of the affidavits he had produced were inadmissible in evidence as domestic (civil procedural) law required production of either the originals or notarised copies. A further appeal to the Supreme Court was also dismissed. Although the applicant explained that the original affidavits were with the CEC, the Supreme Court noted that he had failed to establish that he had lodged a complaint with the CEC at all.

The Court observed that the irregularities alleged by the applicant were serious as, if confirmed, they were capable of thwarting the democratic process. It noted that, in dismissing the applicant's complaint the constituency election commission appeared to have relied exclusively on the statements of local electoral officials – who, not surprisingly, had denied any wrongdoing – without explaining why their statements were considered more reliable than the much more detailed and fact-specific evidence the applicant had presented. Nor had it given any reason for finding the applicant's claims "unsubstantiated". As to the complaint the applicant had made directly to the CEC, it seemed simply to have been ignored, without any explanation. The Court also held that the domestic courts had been excessively formalistic. Furthermore, they had not requested the electoral commissions to submit the contested protocols to them for independent examination and had remained silent on that part of the applicant's complaint.

The Court acknowledged that, owing to the complexity of the electoral process and associated time-restraints necessitating streamlining of various election-related procedures, the relevant domestic authorities might be required to examine election-related appeals within comparatively short time-limits in order to avoid retarding the electoral process. For the same practical reasons, the States may find it inexpedient to require these authorities to abide by a set of very strict procedural safeguards or to deliver very detailed decisions. Nevertheless, these considerations may not serve to undermine the effectiveness of the appeal procedure, and it must be ensured that a genuine effort is made to address the substance of arguable individual complaints concerning electoral irregularities and that the relevant decisions are sufficiently reasoned. In the case at hand, however, the conduct of the electoral commissions and courts and their respective decisions revealed an appearance of lack of any genuine concern for the protection of the applicant's right to stand for election.

(g) Prevention of excessive formalism

The Court has held, with the reference to the Venice Commission's Code of Good Practice in Electoral Matters, that examination of election-related appeals should be devoid of excessive formalism, in particular where the admissibility of appeals is concerned.<sup>201</sup>

Specific case:

In *Namat Aliyev* (cited and summarised above) the domestic courts relied on extremely formalistic reasons to avoid examining the substance of the applicant's complaints, finding that

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<sup>201</sup> See *Namat Aliyev*, cited above, §§ 86-93.

he had not submitted duly certified copies of the relevant observers' affidavits and that he had not attached to his cassation appeal documentary proof that he had indeed applied to the CEC.

The Court noted that it was not its task to assess whether, from the standpoint of the domestic law, the domestic courts had been correct to apply so strictly the civil procedure rules on admissibility of written evidence to a case giving rise to election-related issues which normally fell within the realm of public law. In the circumstances of the present case, however, the Court found that such a rigid and overly formalistic approach was not justified under the Convention.

#### (h) Prevention of undue delays

The timely registration of candidates is crucial in order for them to be known to voters and to be able to convey their political message during the electoral campaign period in an effort to gain votes and get elected. The free choice of the electorate depends on, *inter alia*, having information concerning all eligible candidates, and receiving it in a timely manner in order to form an opinion and express it on election day. Accordingly, major delays in resolution of disputes regarding registration of candidates may seriously undermine their electoral campaigns and even curtail their individual electoral rights to such an extent as to significantly impair their effectiveness.<sup>202</sup>

#### Specific case:

In *Abdalov and Others v. Azerbaijan* (nos. 28508/11, 37602/11 and 43776/11, 11 July 2019) the applicants complained that, owing to arbitrary decisions initially refusing to register them as candidates and the subsequent delayed registrations following a number of appeals, they had been unable to participate in the parliamentary elections under equal conditions vis-à-vis other candidates, because they had been left with a very short time to conduct their respective electoral campaigns. The first applicant had only one full day to campaign, the second applicant had only three full days, and the third applicant had practically no time left for campaigning.

The domestic law provided for a maximum three-day period for electoral appeals and a maximum three-day period for the electoral commissions and courts to examine the appeals. At the electoral commission level, the three-day period for examination could be extended for an indefinite duration. With three levels of appeal against an electoral commission decision, the electoral appeal proceedings in cases concerning refusals to register candidates could theoretically take up to eighteen days (and sometimes longer). Since the decision on refusal to register could be delivered as late as on the eve of the official start of the electoral campaign period, the examination of appeals against such decision could take place after the start of the campaign period, as happened in the applicants' cases. Thus, under this system, a degree of overlap was possible between the period for examination of appeals against refusals to register and the electoral campaign period (fixed at twenty-two days). Consequently, given the possibility of overlap between the time periods allocated for those stages of the electoral process and the reduced length of the electoral campaign period, it was of utmost importance to conduct the appeal proceedings in a timely manner in order to ensure that, should an appellant be successful, he or she would have sufficient time before election day to conduct his or her campaign.

The Court noted that the proceedings had been subject to a number of delays attributable to the electoral commissions and the courts, which on several occasions had delivered their respective decisions in a belated manner, sometimes in breach of the three-day limit prescribed by law. The delays in the applicants' registrations had not been minor. The

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<sup>202</sup> See *Abdalov and Others v. Azerbaijan*, nos. 28508/11, 37602/11 and 43776/11, §§ 89-104, 11 July 2019.

applicants had been registered so late and so close to election day that they had not had a reasonable amount of time to conduct effective electoral campaigns. The late registration had been due to a lack of safeguards against arbitrariness in the candidate registration procedures and to delays in the examination of their appeals by the electoral authorities and courts. In such circumstances, the applicants' individual electoral rights had been curtailed to such an extent as to significantly impair their effectiveness.

(i) Concern for integrity of the electoral process

In fulfilling their duties, electoral authorities and courts must demonstrate concern for integrity of the electoral process.<sup>203</sup>

Specific case:

In *Kerimova v. Azerbaijan* (no. 20799/06, 30 September 2010) the applicant, who had stood as an opposition candidate in the November 2005 parliamentary elections, complained about arbitrary invalidation of election results in her constituency and ineffectiveness of judicial review.

She received the largest number of votes in her constituency, having obtained 5,566 votes as compared to the 3,922 votes cast in respect of a candidate from the ruling political party, who came second. Following the official tabulation of the results the next day, she featured in the electoral protocol as "the elected candidate". On 8 November 2005 the CEC invalidated the election results in the applicant's constituency after finding that the protocols had been tampered with making it impossible to determine the will of the voters. The applicant appealed, arguing that the changes in the protocols had in effect reduced the number of votes recorded in her favour and had increased those cast in favour of the candidate immediately after her and that she remained the winner despite the changes. Her appeals were unsuccessful. In the meantime, two election officials were convicted of having falsified the election results in the applicant's constituency, for the benefit of other candidates.

The Court observed that, even despite the fact that the irregularities had been made in an attempt to inflate the number of votes for the applicant's opponents, the election results had still showed the applicant as a clear winner. Yet in their decision to invalidate the results, the election authorities had not given any reasons to explain why the alleged breaches had altered the outcome of the elections. Nor had they even considered the possibility of recounting the votes once the irregularities had been established. Furthermore, the Electoral Code prohibited the invalidation of election results at any level on the basis of a finding of irregularities committed for the benefit of candidates who lost the election. However, neither the electoral authorities, nor the domestic courts had endeavoured to determine in whose favour the alleged irregularities had worked. Despite the fact that the applicant had repeatedly raised these points in her appeals, the domestic courts had failed to adequately address them. Nor had they examined any primary evidence. The examination of the applicant's appeals was therefore ineffective.

As a result, the authorities' inadequate approach brought about a situation where the election process in the entire electoral constituency was single-handedly sabotaged by two electoral officials who had abused their position by making changes to a number of election protocols. By arbitrarily invalidating the election results because of those officials' actions, the national authorities essentially helped them to obstruct the election. Consequently, the decision to invalidate the election was unsubstantiated and was in apparent breach of the procedure established by the domestic electoral law. This decision arbitrarily infringed the applicant's electoral rights by depriving her of the benefit of election to Parliament. It also showed a lack

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<sup>203</sup> See *Kerimova v. Azerbaijan*, no. 20799/06, § 53, 30 September 2010.

of concern for the integrity and effectiveness of the electoral process which could not be considered compatible with the spirit of the right to free elections.

(j) Enforceability of final judicial decisions

Failure to abide by final decisions given in response to electoral appeals undoubtedly undermines the effectiveness of a domestic system for election dispute resolution.<sup>204</sup>

Specific case:

In *Petkov and Others v. Bulgaria* (nos. 77568/01, 178/02 and 505/02, 11 June 2009) the applicants complained about the failure of the electoral authorities to abide by final court judgments and reinstate them on list of candidates for parliamentary elections.

All three applicants were registered as candidates in the parliamentary elections to be held on 17 June 2001. Some two and a half months prior to the election, new legislation came into force which contained a provision allowing parties or coalitions to withdraw nominations of individuals who had allegedly collaborated with the former State security agencies. The applicants were struck off the lists of candidates on account of such allegations just ten days before the elections took place. The decisions to strike them off the lists were subsequently declared null and void by the Supreme Administrative Court. However, the electoral authorities did not restore their names to the lists and as a result they could not run for Parliament.

The Court noted that it was not its task to decide whether or not it had been contrary to the Convention to allow political parties to withdraw their candidates on account of their links with the former State security agencies. Nor was it required to determine the correctness of the Supreme Administrative Court's rulings. Its task was confined to assessing whether the electoral authorities' failure to give effect to the final and binding judgments of the Supreme Administrative Court had violated their rights to stand for election.

The reason the electoral authorities had not complied with the judgment was either that they considered that the Supreme Administrative Court had given erroneous rulings or that they believed that the judgments had not become final. However, the Court held, in a democratic society abiding by the rule of law, it was not open to the electoral authorities to cite their disapproval of findings made in a final judgment as a reason for not complying with it. It was not only contrary to domestic law not to give effect to those judgments, but it also deprived the procedural guarantees available to the applicants of any useful effect and was, in the Court's view, arbitrary.

The Court took account of the difficulties the electoral authorities faced on account of the fact that two of the Supreme Administrative Court's judgments had been given only a couple of days before the elections. However, those difficulties had been largely attributable to the authorities themselves. Firstly, the new electoral law had been adopted just over two months before the elections took place, at odds with the Council of Europe's recommendation on the stability of electoral law. Furthermore, instead of requiring political parties to verify links with former State security agencies before nominating their candidates, the parties were allowed to do so afterwards. Finally, the practical arrangements for the withdrawal of candidates had been clarified only twelve days before the elections took place. All this resulted in serious practical difficulties and led to legal challenges that had to be adjudicated and acted upon under extreme time constraints.

The Court therefore found a violation of Article 3 of Protocol No. 1.

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<sup>204</sup> See *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 63, 11 June 2009.