

Bratislava, 28 June 2019

CDL-EL(2019)002syn

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)**

in co-operation with

**THE SECTION FOR PUBLIC ADMINISTRATION OF THE MINISTRY
OF INTERIOR OF THE SLOVAK REPUBLIC**

AND

**THE STATE COMMISSION FOR THE ELECTIONS AND CONTROL
OF POLITICAL PARTIES FUNDING OF THE SLOVAK REPUBLIC**

**16TH EUROPEAN CONFERENCE OF ELECTORAL
MANAGEMENT BODIES
“ELECTION DISPUTE RESOLUTION”**

27-28 JUNE 2019

Bratislava Castle, Slovak Republic

SYNOPSIS AND CONCLUSIONS

Synopsis

The Venice Commission of the Council of Europe organised, in co-operation with the Section for Public Administration of the Ministry of Interior of the Slovak Republic and the State Commission for the Elections and Control of Political Parties Funding of the Slovak Republic, the sixteenth European Conference of Electoral Management Bodies in Bratislava, Slovak Republic, on 27 and 28 June 2019.

The topic of the Conference was “Election Dispute Resolution”. More specifically, the participants discussed three main issues:

- Electoral disputes, recurrent problems;
- International and domestic case-law with regard to electoral disputes; and
- How to make EDR more accessible and effective? Recommendations for improvements

Denisa Sakova, Minister of Interior of the Slovak Republic, Miroslav Lajčák, Minister of Foreign Affairs of the Slovak Republic, and Gianni Buquicchio, President of the Venice Commission of the Council of Europe, opened the Conference.

100 participants from 37 countries attended the Conference, representing national electoral management bodies and other bodies involved in electoral processes, especially judges dealing with electoral disputes.

Several international institutions participated in the Conference, including the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Organization of American States (OAS), the International Foundation for Electoral Systems (IFES), the International Institute for Democracy and Electoral Assistance – International IDEA, the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS).

Conclusions

The 16th edition of the European Conference of Electoral Management Bodies (EMBs) is the continuation of a successful series of international conferences in the electoral field. This edition was held in Bratislava, Slovak Republic, on 27-28 June 2019 and was dedicated to “Election Dispute Resolution” (EDR), which has been a challenging subject for electoral management bodies and other relevant bodies involved in elections all over the world.

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. They inevitably lead to disputes, a natural part of a lively domestic political life, which in turn is a natural part of a robust pluralistic system.

Assessment of electoral dispute mechanisms and their implementation is an intrinsic part of reports issued by international election observers as well as electoral opinions of the Venice Commission and the OSCE/ODIHR. Both international legal review and election observation remain crucial tools for ensuring effective systems of EDR, which requires clear legislation and its implementation in good faith.

The effective adjudication of electoral disputes is an essential part of a successful electoral process and should be ensured before, during and after election day. It has been observed in this respect that disputes can occur at any time in an electoral cycle, primarily during the pre-electoral period, including voter and candidate registration, the electoral campaign and its coverage by media. The election day procedures, consisting of pre-opening, voting, closing and counting phases, naturally lead to disputes. Election results and their tabulation are other

parts of the process which are often subject to appeal. At each of these stages, electoral management bodies are directly involved and impacted by such disputes.

EDR is directly or indirectly guided by international instruments and international case-law, interpreted and implemented at the national level in domestic electoral legislation and case-law. The International Covenant on Civil and Political Rights and, for the Council of Europe member States, the First Additional Protocol to the European Convention on Human Rights are the relevant international instruments in the electoral field, more particularly in the settlement of electoral disputes. These texts have been supplemented in Europe by a developed case-law of the European Court of Human Rights through which it provides its autonomous interpretation of the European Convention and its protocols. International standards have also complemented these texts and case-law, especially the Venice Commission's Code of good practice in electoral matters, the OSCE 1990 Copenhagen and the 1991 Moscow Documents. The Latin American experience of EDR is also of particular interest as a source of good practice.

While EDR might appear as a technical subject, the necessary political will and proper implementation of law are crucial. Efficient EDR also requires respect of fundamental rights and international standards, such as independent judiciary, effective judicial remedy and the right to a fair trial with due process. The conformity with international standards has to be ensured, in particular, with regard to the competency of bodies dealing with such disputes, the grounds for complaints and the decisions open to challenge, the persons or categories of persons entitled to complain, the time limits to file complaints and to decide on complaints and the clarity of the decision-making process. More specifically, if the deadlines are either too long or too short or the rules for submission too strict, they might prevent complainants from receiving the right to an effective remedy.

Regarding the competent bodies, it is recommended to provide clear and consistent complaints and appeals' procedures so as to avoid excessive complexity. Conflicts of jurisdictions between election commissions and courts and dual ways for submitting the same complaint should be avoided. Electoral legislation should provide for judicial bodies – constitutional or ordinary courts – to be the final authority to decide on electoral disputes while avoiding at the same time risks of conflicts of jurisdictions.

Decisions in the electoral field should be open to challenge and domestic legislation allowing for appeals on all types of errors. The states should have the obligation to prevent and sanction irregularities and violations of electoral legislation. It is recommended that, as a minimum standard, the grounds for appeal should not be limited to violations of electoral rights, fundamental freedoms, and interests due to the state's decisions and actions, but should also include inactions and inadequate enforcement, as well as violations of electoral law by non-state actors. This also includes decisions taken by election commissions at all levels.

Most countries provide the right to file electoral complaints on the right to vote and to stand as a candidate, to both voters and candidates, whereas a few countries also provide for this possibility to other categories of persons. Developing in the law the categories of persons entitled to file complaints could be envisaged to reinforce procedures with regard to the settlement of electoral disputes and increase trust in electoral processes as a whole, provided that safeguards are in place to prevent the misuse of the complaints system by frivolous complaints submitted by people who are interested in blocking the relevant bodies from accomplishing their duties. A distinction could be made depending on the subject matter of the decision under consideration (e.g. the registration of voters and candidates, campaign, results of the elections).

Concerning time limits, the conduct of an electoral process requires prompt decisions and actions within a predetermined timeframe. Domestic electoral legislation should therefore stipulate short periods for filing complaints and prompt decisions by competent bodies, due to

the urgency of EDR – with possible exceptions for complex decisions on the validity of the elections, without restricting the rights and freedoms of voters, political parties and candidates in their suffrage and candidacy rights. Among the problems observed in the systems of EDR, there is tension between the time limits for filing complaints and deciding on appeals on the one side, and the complexity of the facts of some electoral cases concerning the review of election results, election campaigns and their funding on the other.

Regarding the decision-making power, most systems of EDR leave the broad decision-making power to courts or election commissions, in particular, with regard to the sensitive issue of cancellation of elections. There is room for improvement in a number of countries where the law does not necessarily provide for the possibility to cancel an entire electoral process, a decision which can be necessary in some situations, as there may be a need to clarify the legislation with regard to the cases of partial or full cancellation of election results. When it comes to cancellation of election results, the role of courts is essential in considering such matters, especially in the interpretation of the law. This is of particular importance when the judge appreciates to which extent infringements of the law may have influenced the results and consequently the distribution of seats in parliament. Elected candidates are often the main victims of elections cancelled as they may not be directly guilty of a violation of law.

Other procedural issues to be considered in electoral matters involve ensuring the effectiveness of domestic systems of EDR. This provides the effective exercise of the right of individuals to vote and to stand for elections – while any limitation must be interpreted restrictively. Trust in the administration of the state and the whole electoral process as well as the necessity of providing legal guarantees regarding evidence and the possibility of hearing parties contesting a decision in the electoral field are essential guarantees for democratic elections. The system of EDR should be transparent, easily accessible and devoid of formalism. Good practices in this respect include a participatory decision-making process, introducing an online register of complaints, audit of EDR, awareness raising, trainings of EMBs as well as other stakeholders, including potential complainants. The importance of reasoned and substantive decisions must be underlined, despite the requirement for the speedy examination of electoral complaints and appeals.

Later this year, the Venice Commission should adopt a comparative report on EDR with the goal of addressing common problems and tendencies in the effective settlement of electoral disputes, taking into account the different existing legal systems. The participants of the Conference supported the idea of drafting guidelines aimed at reinforcing EDR mechanisms in the legislation of their member States.