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ELECTORAL DISPUTES – PROCEDURAL ASPECTS

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Electoral disputes emerge where and when one or more electoral actors deny validation of the election process, or put under question election results or their consequences. These consequences can be distribution of the parliamentary seats, or a candidate's right to be elected M.P, for example. Electoral disputes take procedural form where and when authorised state bodies accept challenges to the electoral process and start deciding about them.

State bodies authorised to decide on electoral disputes differ from country to country. There are however no main differences in the legislation of European countries when it comes to who has standing to appeal or complain in electoral matters. This right usually belongs to any voter or electoral contestant.¹ Subsequently, electoral commissions (central or at some lower level) have an important role in this process. They generally manage the first stage of the appeal process, but in some countries they may make the final decision in some elections, usually local ones. Predominant European practice is that final decision in electoral disputes most often lies with the courts – constitutional or supreme, depending on the judicial system of different countries. In some cases, other courts – administrative, district, municipal – can be authorised to decide, while there are also instances where the decision goes to parliament, or one of its chambers, as is the case in Denmark or Luxembourg.

Differences in procedure also depend on the level at which elections are conducted – local (elections for city councils and mayoral elections; elections for parliaments, governments or governors of federal units in federal states), or national (general elections for the parliament of the country, or the European Parliament or presidential elections if the head of state is elected by the popular vote) as well as on the nature of the electoral process – whether citizens elect organs of power (parliaments, head of states) or they decide on some specific issue in a referendum.

In this short paper, we'll highlight just the basic ways in which institutions are authorised to decide on electoral disputes, in different types of elections, using examples from many European countries. The majority of European countries can be divided into two basic groups, according to which of the courts or other bodies is authorised to make a final decision in electoral disputes: a) countries where the same body decides on electoral disputes in all types of elections; b) countries where different bodies are authorised to decide in two or all of the three levels, or types, of elections. Of course we will also take into account that there are many variations within this basic framework, as well as many peculiarities in the decision-making procedure for electoral disputes. These usually start at a very local level – in polling stations and committees, subsequently in local electoral commissions, then central electoral commissions and ultimately in some of the court institutions.

In most European countries, the same judicial body decides on electoral disputes, regardless of the level at which elections are conducted, or the purpose of the elections. It actually means that the same court is authorised to decide on electoral disputes, regardless of whether it is a local or national election, or a referendum. The dominant decision-making approach is for electoral disputes to be taken out of the regular judiciary system and handed over to the constitutional courts, as is the case in Albania for instance (Article 131 of the Albanian Constitution), Austria (paragraph 67 of the Constitutional Court Act, 1953), Azerbaijan (Articles 54 and 56, Law on Constitutional Court), Bulgaria (Article 66 of the Bulgarian Constitution), Croatia (Article 125, Law on Constitutional Court; Law on on the Election of the Representative Bodies of Local and Regional Self-Government Units), Cyprus (Articles 140 and 145 of the Constitution), Georgia (Articles 19 and 23, Organic Law on the Constitutional Court), Liechtenstein (Article 104 of the Constitution of Liechtenstein; Article 1 of the Law on the Constitutional Court), Malta (Article 56

¹ Montenegrin election law, for example, provides that "any citizen, candidate or electoral contestant has the right to submit complain to the electoral commission in charge if he or she finds his or her electoral rights are violated in the election process" (Article 107, paragraph 1).

of Malta's Constitution; the General Election Act and the Local Councils Act), Montenegro (Article 149 of the Montenegrin Constitution; Article 110 Law on the Elections of the Deputies and Local Representatives), Portugal (Article 223 of the Portuguese Constitution), Slovakia (Article 129 of the Constitution). Decision-making on electoral disputes at all levels is also in the hands of the constitutional judiciary in Germany, but due to the federal character of the German state, constitutional courts from different levels – provincial and federal – decide on these matters, each of them according to their own procedures (Article 41 of the Constitution and Article 13 Law on Constitutional Court).

In some European countries – including those that do not have separate court bodies for constitutional justice – decision-making on electoral disputes comes under the regular judiciary process and usually comes to *the supreme court* of the country in question. For example, this is the case in Estonia (paragraph 8 of the Referendum Act; paragraph 73 of the Parliament Election Act; paragraph 17 of the Local Government Council Election Act), “the former Yugoslav Republic of Macedonia” (Article 60, Referenda Act), the Russian Federation (Article 75 of the Federal Law, no. 67) and the United Kingdom (Part III of the Representation of People Act, 1983 for Local and General Elections).

Finally, in some cases, as for example in Finland, the administrative judiciary, that is the courts that deal with procedural matters, decide on electoral disputes. That means that Finland's Supreme Administrative Court is authorised to make final decision on this matter at all electoral levels (Local Government Act, 1995). In some countries, on the contrary, courts are not authorised to decide on electoral disputes at all. Instead, there are specific bodies whose role is to protect the regularity of the electoral process, as is the case in Sweden where the Election Review Board is the final decision-making body on irregularities connected with elections at all levels (Section 16 of the Act of National Referenda). Similarly, in Belgium this role is played by the *Conseil d'Etat* (Article 16, Law on State Council, 1973).

Table No. 1
The same institution decides on electoral disputes at all levels

<i>Country</i>	<i>Local elections</i>	<i>General/Presidential Elections</i>	<i>Referendum</i>
Albania	Constitutional Court	Constitutional Court	Constitutional Court
Azerbaijan	Constitutional Court	Constitutional Court	Constitutional Court
Bulgaria	Constitutional Court	Constitutional Court	Constitutional Court
Croatia	Constitutional Court	Constitutional Court	Constitutional Court
Cyprus	Supreme Constitutional Court	Supreme Constitutional Court	Supreme Constitutional Court
Georgia	Constitutional Court	Constitutional Court	Constitutional Court
Liechtenstein	Constitutional Court	Constitutional Court	Constitutional Court
Malta	Constitutional Court	Constitutional Court	Constitutional Court
Montenegro	Constitutional Court	Constitutional Court	Constitutional Court
Portugal	Constitutional Court	Constitutional Court	Constitutional Court
Slovakia	Constitutional Court	Constitutional Court	Constitutional Court
Germany	Constitutional Court of the Land	Constitutional Court	not available
Estonia	Supreme Court	Supreme Court	Supreme Court
“the former Yugoslav Republic of Macedonia“	Supreme Court	Supreme Court	Supreme Court
Russian Federation	Supreme Court	Supreme Court	Supreme Court
United Kingdom	The Royal Court of Justice	The Royal Court of Justice	not available
Finland	Supreme Administrative Court	Supreme Administrative Court	Supreme Administrative Court
Belgium	Conseil d'Etat	Conseil d'Etat	not available
Sweden	Election Review Board	Election Review Board	Election Review Board

However, many countries distinguish between local and national elections in the decision-making process for electoral disputes. Actually, they usually treat local electoral disputes as administrative ones and thus authorise some administrative bodies, or at least the administrative courts, to decide on them, while electoral disputes at the national level are treated as matters to be ultimately decided by the constitutional or supreme courts.

Some countries stay committed to the most common practice – constitutional courts decide on electoral disputes at a national level, but it is not considered necessary to use the same process to deal with local electoral disputes. In Armenia and Ukraine, for example, courts at lower levels – the Administrative Court in Armenia and the Courts of Appeals in Ukraine – decide on local electoral disputes while in general elections or referendums this authority belongs to the Constitutional Court (Article 40.9, Electoral Code of the Republic of Armenia; Article 12(7) and 17(7), Law on the Central Election Commission and Article 22, Law of Ukraine on Elections of Local Radas and of the Villages, Settlement, City Chairman). To some extent there is a similar situation in France, where the Conseil d'Etat decides on electoral disputes at a local level, while the Conseil constitutionnel – the institution that plays the role of the constitutional court in the French institutional system – decides on the same matter in the national elections and referendums (Article LO180/Article L250 Electoral Code and Article 60 of the French Constitution). In Romania, Moldavia and Slovenia decision-making is divided in such a way that bodies conducting elections (such as municipal electoral commissions in Slovenia and central ones in Moldavia and Romania) are authorised to decide on electoral disputes at the local level, while constitutional courts are once again the final authority on national elections and

referendums (Articles 82 and 146 of the Romanian Constitution and Article 33 of the Law on the Election of Local Public Administration Authorities; Article 72, 92, 137 Election Code of Moldova; Article 99 of the Law on local elections of the Republic of Slovenia and Article 69 Law on the Constitutional Court).

In some other cases, the principle of divided decision-making is introduced in a similar way, but within the framework of the regular judiciary system, as, for example in the cases of Ireland and Poland. In these two countries, district courts – Irish circuit courts and Polish district courts (*Sad Okregowy*) decide on local electoral disputes and irregularities, while in the case of general elections and referendums this role is given to the Supreme Court (Article 42 of the Referendum Act 1994 of the Republic of Ireland; Articles 58 and 60 of the Polish Electoral law). A very similar situation can be found in Serbia, where decision-making on electoral disputes is also in the hands of the regular judiciary. In fact, municipal courts decide on local electoral disputes (Articles 46 and 50 of the Law on Local Elections), while the Supreme Court decides on disputes in general elections (Article 97, Law on the Elections of Representatives), but the Constitutional Court can have a role in this procedure too, because the Constitution of the Republic of Serbia provides that the Constitutional Court "decides in those electoral disputes where other courts are not authorised to decide by law" (Article 167, Constitution of the Republic of Serbia).

We can find the principle of divided decision-making on electoral disputes at a local and national level in both Lithuania and Luxembourg, but with a somewhat different underlying logic. In both cases the administrative court decides on local electoral disputes and referendums, while in general elections the same role is given to the Constitutional Court in Lithuania (Article 74/1, Law on Referendum and Article 80, Law on Elections to Municipal Councils), and to the lower chamber of the parliament – *Chambre des députés* in Luxembourg (Article 278, Election Law and Article 62, Law on Referendum). In Turkey, on the other hand, where it is a matter of decision-making on electoral disputes, different bodies decide on elections and referendums and consequently the Supreme Election Council decides in the first two cases, while the Constitutional Court rules in the case of a referendum (Article 79 of the Constitution of the Republic of Turkey).

Finally, in some countries, different bodies, judicial or otherwise, decide in all three of the electoral situations mentioned, regardless of the election level (local-national) or the purpose of the election (electing power organs, referendums). In the Czech Republic decision-making is divided among organs for conducting elections: district electoral commission for local electoral disputes, regular judiciary (Supreme Court) for the general election disputes and constitutional judiciary (Constitutional Court) for the disputes on referendums (Law 152/1994, modified by Law 491/2001, concerning elections for municipal councils and Article 89, Act 247 on Elections to the Parliament of the Czech Republic). Another example of this kind is Spain, where municipal courts decide on a local electoral level, *Audiencias Territoriales* in case of referendum, while the Constitutional Court decides at the level of general elections, such as elections for the Spanish or European Parliament.

Table No. 2
Different institutions decide at two or all of three levels

Country	Local elections	General/Presidential Elections	Referendum
Armenia	Administrative Court	Constitutional Court	Constitutional Court
Ukraine	Courts of Appeals	Constitutional Court	Constitutional Court
France	Conseil d'Etat	Conseil constitutionnel	Conseil constitutionnel
Moldova	Central Electoral Commission	Constitutional Court	Constitutional Court
Romania	Central Election Bureau	Constitutional Court	Constitutional Court
Slovenia	Municipal Electoral Commission	Constitutional Court	Constitutional Court
Ireland	Circuit Courts	Supreme Court	Supreme Court
Poland	District Courts	Supreme Court	Supreme Court
Serbia	Municipal Courts	Supreme Court	Supreme Court
Lithuania	Supreme Administrative Court	Constitutional Court	Supreme Administrative Court
Luxembourg	Administrative Court	Chambre des députés	Administrative Court
Turkey	Supreme Election Council	Supreme Election Council	Constitutional Court
Czech Republic	District Electoral Commissions	Supreme Court	Constitutional Court
Spain	Supreme Tribunal of Justice of the Autonomous Communities	Constitutional Court	Audiencias Territoriales

There are European countries we couldn't find relevant data for and therefore they have not been included in this short overview. There are also, obviously, many other procedural aspects relevant to the decision-making process on electoral disputes we haven't considered here. Many of them are not only connected with the question of which institution is authorised to make a final decision, but also with other procedural issues. But, bearing in mind that many interesting issues are to be discussed in the conference, we offer this short comparative description on the institutional differences just as one of the things to keep in mind during our discussion.