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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING

ELECTION DISPUTE RESOLUTION[1]

(revised in August 2021)

[1] *This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 127th Plenary Session (2-3 July 2021).*

Contents

I. Introduction

The present document is a revised compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning election dispute resolution. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to election dispute resolution. This compilation is also intended to researchers and the Venice Commission's members who are requested to prepare comments and opinions on such texts. However it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The compilation therefore provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional and legal context of that country. This is not to say that such recommendations cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this compilation seek to present general standards for all members and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

The brief extracts from both opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which enables the reader to find it in the corresponding opinion or report/study. In order to avoid redundant citations from various opinions, this compilation regularly refers to other citations without quoting extensively the paragraphs and recommendations dealing with the issue of election dispute resolution.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading (venice@coe.int).

II. International norms, standards and sources

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".

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."

> *CDL-AD(2020)025, Report on election dispute resolution*

B. European Court of Human Rights' case-law

49. The […] procedural requirements are similar to those of Article 6 of the ECHR, but account must be taken of the specific context of elections. For example, a balance must be struck between the length and scope of hearings and the need to resolve electoral disputes promptly.

> *CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium*

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, this implies the full 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 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".

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. 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.

CDL-AD(2020)025, Report on election dispute resolution

C. Code of Good Practice in Electoral Matters and other Venice Commission's documents

b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should 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 body.

d. 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.

e. 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.

f. All 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.

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. […]

95. […] decisions on the results of elections must also not take too long, especially where the political climate is tense.

99. Standing 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. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.

100. The appeal procedure should be of a judicial nature, in the sense that the right of the appellants to proceedings in which both parties are heard should be safeguarded.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters

For referendums, see also similar provisions in CDL-AD(2020)031, Revised Guidelines on the holding of referendums, part I. 4.3

111. […] [I]n order to comply with international standards, this process should clearly provide the following for voters, candidates, and political parties:

- The right to file a complaint to protect suffrage rights
- The right to present evidence in support of the complaint
- The right to a public hearing on the complaint
- The right to a fair hearing on the complaint
- The right to an impartial tribunal to decide the complaint

- The right to transparent proceedings on the complaint
- The right to an effective remedy
- The right to a speedy remedy
- The right to appeal to an appellate court if a remedy is denied.

> *CDL-AD(2004)027, Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova*

42. The Code of Good Practice in Electoral Matters and the Venice Commission's opinions indicate a number of adequate and sufficient procedural safeguards which a state must ensure in procedures challenging the results of an election.

43. These safeguards include a mechanism for "verification of credentials" which may not always be purely judicial in the institutional sense of the term but must incorporate the principles of the rule of law by transposition in the processes for dealing with electoral challenges.

45. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals. The problematic issues identified in the Venice Commission's opinions include, for example, the imposition of excessive costs and pointless or opaque formal requirements that result in high rates of inadmissibility.

> *CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium*

235. […] Furthermore, in order to comply with international standards, the complaint and appeals procedures should clearly provide the following rights for voters and electoral contestants: The rights to file a complaint, to present evidence in support of the complaint, to a public and fair hearing on the complaint, to impartial and transparent proceedings dealing with the complaint, to an effective and speedy remedy, as well as to appeal to an appellate court if a remedy is denied (see for example CDL-AD(2004)027, para. 111). In practice, however, these rights are not always respected. At times, even credible complaints are left without any legal redress.

> *CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues*

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.

> *CDL-AD(2020)025, Report on election dispute resolution*

D. OSCE, 1990 Copenhagen Document and 1991 Moscow Document

21. According to paragraph 5.10 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (Copenhagen Document), "everyone" should "have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Respect for fundamental rights as well as legal

integrity make it imperative that an ultimate recourse to a court should be available to citizens. Fundamental rights cannot be left solely to administrative discretion; administrative or parliamentary decisions alone cannot provide for a legally satisfactory process. Indeed citizens should have access to "national" judicial remedies before being driven to apply to the European Court of Human Rights in Strasbourg.

22. The Document of the Moscow meeting of the Conference on the Human Dimension of the OSCE in section (18) recalls the participating States 'commitment to the rule of law and provides for different aspects of effective remedy, including judicial review of administrative regulations and decisions:

"(18.2) Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.

(18.3) To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

(18.4) The participating States will endeavour to provide for judicial review of such regulations and decisions."

CDL-AD(2010)046, Joint opinion on the electoral legislation of Norway

27. Paragraph 5.10 of the OSCE 1990 Copenhagen Document 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 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."

CDL-AD(2020)025, Report on election dispute resolution

E. Others

53. The principle of "fair elections" (Article 10) shall ensure equal legal conditions to all election participants. "Fair elections" should guarantee (Article 10, paragraph 2) [of the *Convention on the standards of democratic elections, electoral rights and freedoms in the Commonwealth of Independent States (CDL-EL(2006)031rev)*]:
[…]
f) prompt and effective adjudication of complaints about violations of electoral rights and freedoms (Article 16).

67. Article 16 includes a more programmatic provision on complaints about and responsibility for violation of electoral rights and freedoms of citizens. In the event of violation of the standards of democratic elections, electoral rights and freedom of citizens according to this Convention [*Convention on the standards of democratic elections, electoral rights and freedoms in the Commonwealth of Independent States (CDL-EL(2006)031rev)*] the injured person(s) shall have the right and possibility to complain about the violation and have the violated rights restored by courts and election bodies (paragraph 1). Persons guilty of unlawful actions (omissions) shall bear responsibility in accordance with law (paragraph 2). Electoral Documentation - as a precondition for effective control of the electoral process - is provided for in Article 17. These

provisions stand in a clear contrast to the detailed previous 15 articles of the Convention. However, without proper rules on complaints and appeals, electoral law is just *lex imperfecta*; the importance of the issue must therefore be underlined.

> *CDL-AD(2007)007, Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States*

III. Competent bodies

a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.

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.

93. There are two possible solutions:
- appeals may be heard by the ordinary courts, a special court or the constitutional court;
- appeals may be heard by an electoral commission. There is much to be said for this latter system in that the commissions are highly specialised whereas the courts tend to be less experience with regard to electoral issues. As a precautionary measure, however, it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second.

94. Appeal to parliament, as the judge of its own election, is sometimes provided for but could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible.

> *CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters*

50. Significantly, in many new democracies, the appeals review by the electoral administration bodies follows a single hierarchical line and is used before any appeal to the courts. Within the electoral administration, the superior election administration body, e.g. the CEC, therefore takes final administrative decisions about electoral complaints. In some countries, an appeal lies from decisions of the CEC to a court, but in general only to a special court, the Constitutional Court or the Supreme Court. An alternative approach would be that all electoral appeals may be dealt with by the judicial system. Such an approach, however, may only be a reasonable option in countries where there is great confidence in the professionalism and independence of the judicial system. In such a case, it would be important for an appeal to lie from the decisions of lower courts to higher courts. The Armenian Electoral Code seems to mix the appeal procedures. A complaint against a decision of an election commission may be lodged with a higher level election commission or with the Court of First Instance with jurisdiction over the election commission making that decision. Decisions of Courts of First Instance are not subject to further judicial review in Armenia. The Electoral Code should be amended to provide clear and consistent complaint and appeal procedures and to avoid any conflicts of jurisdiction […].

51. Appeal of court decisions. Even if the current appeal system is maintained, it must be guaranteed that electoral appeals are decided consistently throughout the country. At the moment, it is problematic that almost all decisions of election commissions can be appealed to a court of first instance only, but no further. Since decisions of the courts of first instance cannot be appealed across the country, there is the risk that the electoral law may not be applied consistently. […]

> *CDL-AD(2003)021, Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia*

118. […] Where the appeal body is a higher level election commission, the law must provide that it can "ex officio" rectify or set aside decisions taken by lower level election commissions.

> *CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia as revised up to July 2008*

64. The CEC should decide on complaints collegially, ensure that all complaints are properly addressed before the final election results are announced. There should be a right of appeal against all decisions of the CEC to the Supreme Court.

65. The first amendment concerns the CEC. The 2008 Report noted the lack of collegiate consideration of complaints about conduct of the elections, with most being determined by the CEC chairperson alone or by the CEC staff. This raised obvious concerns about the power of the CEC chairperson or the staff to make such decisions and the lack of transparency in such a process. The Code now provides that all complaints arising from decisions taken by subordinate commissions must be considered by the CEC on a collegiate basis (Article 33, part 3). This is a positive step, but only a first one.

> *CDL-AD(2010)012, Joint opinion on amendments to the electoral code of the Republic of Belarus as of 17 December 2009*

67. The provisions regulating the invalidation of election results should be clarified. Indeed, the inadequacy in the area of invalidation of election results has been shown by the experience of past elections. Some of this confusion derives from the fact that the power to invalidate appears to be within the authority of the DEC as per Articles 34(2), 38(2), and 643(4). However, Article 105(12) appears to extend some invalidation powers to the CEC as well. It is recommended by the Venice Commission and OSCE/ODIHR that all articles which relate to invalidation of election results be thoroughly reviewed and amended to ensure their clarity and consistency, and that they expressly state the authority of the CEC in regard to invalidation of results. It is also recommended that these articles clarify the circumstances in which elections, or part of an election, can or should be repeated. In addition, while cases of possible invalidation may be heard by election commissions in first instance, it is recommended that the proceedings offer possibilities to appeal to a competent court.

> *CDL-AD(2010)013, Joint Opinion on the Election Code of Georgia as amended through March 2010*

20. The United Nations Human Rights Committee, General Comment No. 32 suggests that election commissions, the administrative body most often involved in the electoral process, may not meet the criteria established for a judicial body. This is because an election commission fulfils an executive function when it administers elections. Additionally, it is unlikely that an election commission would appear impartial to the reasonable observer given their role in the electoral process. Therefore, while election management bodies (and other administrative bodies) may play a role in the resolution of election disputes, administrative remedies alone

cannot be considered sufficient, requiring access to a judicial tribunal at some point of proceedings.

38. While the Venice Commission has concluded that “the number of countries not providing a final appeal to court is small”, it is clear that the practice still exists in Europe. One can however see a prevailing tendency towards interpreting the theory of the separation of powers to mean that the adjudication of disputes, even in electoral matters, should ultimately be within the jurisdiction of the Courts. The legislative organs will still retain the right to regulate their own procedures and disciplinary measures, and in certain cases co-option, as long as there remains a final judicial appeal mechanism in the electoral process.

45. Allowing for final appeal on all electoral complaints can be achieved through various approaches: by using for appeals relevant bodies from the existing court structure, as is the case in Switzerland; by using an ad-hoc system of judicial bodies for all stages of the complaints and appeals process, as is the case in the United Kingdom; or by creating a standing specialised legal structure for complaints, as in Mexico. But international standards and commitments call for the final right of appeal to a court from decisions on all electoral matters made by the National Election Committee and Parliament of Norway, in the case of national elections, or the Ministry, in the case of local elections.

CDL-AD(2010)046, Joint opinion on the electoral legislation of Norway

15. Paragraph 6 […] on complaints and appeals introduces a system where complaints can be dealt with by electoral commissions or courts of law. It is difficult to understand the practical reasons for these alternative solutions which obviously could lead to confusion, overloading of commissions and courts with repetitive claims and contradictory decisions unless the whole system is governed by courts. The higher election commission should in principle have the power to decide whether a violation has taken place and only in cases when the higher election commission fails to do so the appeal could be submitted to the court. [...]

CDL-AD(2010)047, Opinion on the draft election code of the Verkhovna Rada of Ukraine

57. […] [E]lection results may be challenged either before the Constitutional Court (for national or European elections) or the relevant administrative court (for municipal elections). With regard to national and European elections, Article 150(1) of the Constitution confers the right to initiate proceedings before the Constitutional Court upon a few institutions. […]

CDL-AD(2011)013, Joint opinion on the election code of Bulgaria

117. […] Allowing higher election commissions to rectify or set aside ex officio decisions taken by lower election commissions is in conformity with international standards, but such rules should be applied systematically and not in a selective manner.

125. The Commission recommends strengthening and streamlining the electoral appeal system. The concentration of complaints before electoral commissions, followed by an appeal to ordinary administrative courts, would help the efficiency and specialisation of the appeal system. Moreover, procedural safeguards should also be put in place to ensure that complaints do not go unanswered or are summarily dismissed.

CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation

66. The OSCE/ODIHR final report on the 2012 parliamentary elections stated: “A significant number of complaints were rejected on procedural grounds, such as being filed with the wrong

body". Something is fundamentally wrong when complainants cannot determine the correct body for filing a complaint. In order to address this fundamental issue, and in light of current structural restraints in the Ukrainian legal system, the Venice Commission and the OSCE/ODIHR make two recommendations, both of which are found in the Venice Commission Code of Good Practice in Electoral Matters: (1) providing special forms for complainants to complete when filing a complaint or appeal (with instructions to the complainant where to file the complaint or appeal) and (2) adoption of simplified filing procedures to reduce the observed 2012 occurrence of "a significant number of complaints [being] rejected on procedural grounds, such as being filed with the wrong body". At first instance, electoral complaints should be handled by electoral commissions, and, in a second instance, they should be handed by courts. No change in the Constitution is needed in this respect; the recommendations call for a simplification and a clarification of the relevant rules in order to achieve a more efficient and effective electoral complaints and appeals procedure.

CDL-AD(2013)026, Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine

88. Firstly, these provisions introduce a system where complaints can be dealt with by election commissions or courts of law. Such dual possibilities could lead to confusion, "forum shopping" by applicants, overloading of commissions and courts with repetitive claims, as well as possibly contradictory decisions. The higher election commission should, in principle, have the authority to decide whether a violation has taken place, and only in cases when the higher election commission fails to do so, the appeal could be submitted to the court. **ODIHR and the Venice Commission recommend abolishing the possibility of choice concerning the submission of complaints, in line with international standards, in particular the Venice Commission's Code of Good Practice in Electoral Matters.**

CDL-AD(2018)027, Joint Opinion on the Draft Election Code of Uzbekistan

30. The Code of Good Practice in Electoral Matters does not prevent appeals being made in parliaments concerning their own election, but final appeals to a court must be possible (II.3.3.a). More broadly, this means that a legislature may rule on the election of its members (even in the absence of disputes), subject to judicial appeal. The court concerned may be ordinary, administrative, special (electoral court) or constitutional (as in Germany). What matters is for the decision to be taken by a "body … that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature" and therefore affords sufficient institutional and procedural safeguards against arbitrary and political decisions. Where electoral appeals do not concern political issues outside the supervision of the courts, the protection of the right to free elections, as enshrined in Article 3 of Protocol No. 1 to the European Convention on Human Rights, implies the existence of a judicial remedy.

31. The involvement of constitutional courts or their equivalent is becoming increasingly frequent, given the political nature of the disputes, yet their decisions are not subject to appeal. […] The confidence resulting from experience is probably the best test of the acceptance of a system of this kind.

32. Obviously, it is not only at first instance that the "judges" must be impartial, including in the case of political assemblies or non-judicial bodies such as electoral commissions. The composition of the relevant body and the voting rules must leave as little scope as possible for partisan decisions, in keeping with the requirement for objective impartiality that applies in judicial proceedings. Direct opponents must be excluded in each case. The rules on majorities required for decisions must ensure fair representation. Clearly, it is within this set of rules that the greatest risk of lack of objectivity in purely parliamentary systems lies. The issue is not, however, that much different from that of partisan electoral commissions (whose members are

appointed by political parties), which are very often appeal bodies. It is therefore possible to draw on the recommendation in the Code of Good Practice in Electoral Matters, which considers it at least "desirable that electoral commissions take decisions by a qualified majority or by consensus".

> *CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium*

236. Due to different legal and political traditions, a variety of procedures are used in the resolution of election disputes. […] Although there is no single "best" method suitable for all countries, the procedure before electoral administrative bodies is usually more accessible for voters and faster than before courts. However, the electoral process should not be left under the complete and final authority of an administrative body. Particularly decisions on constitutionally guaranteed rights and the validity of elections (see below) should be subject to judicial review.

> *CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues*

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. […] 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. 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 nonjudicial avenues. […]

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. 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.

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. Moreover, the Venice Commission regularly

recommended to provide clear and consistent complaints and appeals procedures so as to avoid any conflicts of jurisdiction.

CDL-AD(2020)025, Report on election dispute resolution

IV. Conflicts of jurisdiction

c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should 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 body.

97. It is also vital that the appeal procedure, and especially the powers and responsibilities of the various bodies involved in it, should be clearly regulated by law, so as to avoid any positive or negative conflicts of jurisdiction. Neither the appellants nor the authorities should be able to choose the appeal body. The risk that successive bodies will refuse to give a decision is seriously increased where it is theoretically possible to appeal to either the courts or an electoral commission, or where the powers of different courts – e.g. the ordinary courts and the constitutional court – are not clearly differentiated.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters

120. It is recommended that the provisions setting out the election day complaint and appeal procedures be simplified and clarified. The Election Code should not allow complainants to have a choice as to which election commission to submit a complaint – it should clearly provide to which one body the complaint is to be submitted.

CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia as revised up to July 2008

15. Paragraph 6 […] on complaints and appeals introduces a system where complaints can be dealt with by electoral commissions or courts of law. It is difficult to understand the practical reasons for these alternative solutions which obviously could lead to confusion, overloading of commissions and courts with repetitive claims and contradictory decisions unless the whole system is governed by courts. The higher election commission should in principle have the power to decide whether a violation has taken place and only in cases when the higher election commission fails to do so the appeal could be submitted to the court. [...]

CDL-AD(2010)047, Opinion on the draft election code of the Verkhovna Rada of Ukraine

111. Articles 44 and 45 of the draft national elections law fail to establish a uniform and consistent process for protecting suffrage rights. Articles 44 and 45 create the option of filing a complaint with either an election commission or a court, which creates the possibility for a party to file a complaint in a “favourable” forum as opposed to legally pre-established forum. This possibility – to file in different forums – could also lead to inconsistency in decisions. As uniformity and consistency in decisions is important, The Venice Commission and OSCE/ODIHR recommend that challenges to decisions be filed in only one forum designated by the law – either a court or higher election commission. If the forum designated by the law is an election commission, then the Code must provide that the right to appeal to a court is available after exhaustion of the administrative process.

CDL-AD(2011)025, 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

114. The possibility for the applicant to choose between various appeals bodies, and in particular between election commissions and courts, may lead to forum shopping. The Commission recommends therefore abolishing this possibility of choice.

> *CDL-AD(2012)002*, *Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation*

98. […] First, determining the substantive nature of the complaint is necessary as the nature of the complaint determines where the complaint should be filed. However, as many electoral complaints may have overlapping issues and may involve the conduct of an election commission as well as that of a candidate or political party, alternative forums for filing are presented to the complainant. […]

> *CDL-AD(2013)016*, *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*

120. Electoral complaints procedures are in accordance with international standards only if the powers and responsibilities of the various bodies are 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 body.

121. The provisions of, inter alia, Article 68 paras 1, 4 and 5 (see also, e.g., Article 87(9)), which provide that decisions and (or) actions (inactions) of election commissions and their officials, which violate electoral rights of electoral process subjects, can be appealed in the superior election commission or in court, are clearly not in conformity with the mentioned standard. The quoted provisions not only create the possibility to choose between the superior election commission and the court but also the risk that the complaints will be submitted to both forums at the same time.

> *CDL-AD(2014)019*, *Joint Opinion on the draft Election Law of the Kyrgyz Republic*

238. Especially with dual complaint and appeal procedures, which involve electoral commissions and ordinary courts, the electoral law should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided. Neither the appellants nor the authorities should be able to choose the appeal body […]. Instead, the law should clearly state to which body the complaint is to be submitted and avoid the possibility of concurrent complaints procedures. Furthermore, it should be clear which bodies act as first instance fact-finding bodies and which act as appellate review bodies. Nevertheless, in a number of elections, unclear provisions or inappropriate handling created confusion over the jurisdiction of electoral commissions and courts to deal with election complaints and appeals. In such cases, efforts should be made to improve legislation and to increase the expertise of electoral management bodies and courts in election dispute resolution.

> *CDL-AD(2020)023*, *Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues*

V. Persons entitled to lodge complaints – Standing

f. All 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.

98. Disputes relating to the electoral registers, which are the responsibility, for example, of the local administration operating under the supervision of or in co-operation with the electoral commissions, can be dealt with by courts of first instance.

99. Standing 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. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.

CDL-AD(2002)023rev2-cor, *Code of Good Practice in Electoral Matters*

49. The answer to the question on who has the right to appeal the electoral results before judicial bodies and request cancellation of election results shows how open the way to the court is. The right to vote and the right to be elected are guaranteed by the possibility to apply to the competent court. In case the elections are carried out unlawfully the individual constitutional right to vote or to be elected is violated. Such right should be protected by individual complaint, though it might not always lead to the cancellation of election results. The cancellation of election results is not necessary if the violations of electoral law are at small scale and do not influence the electoral results (the list of members of the legislative body).

CDL-AD(2009)054, *Report on the cancellation of election results*

58. […] All candidates and voters registered in the constituency concerned must be entitled to contest the election results. The right to vote is as important in a democratic state as the right to be elected. Allowing a wide range of persons to appeal decisions concerning elections protects the legality of the elections. As it is possible to consider similar appeals together, the workload of courts after elections should not be affected. The Venice Commission explained in its Report on the Cancellation of Election Results that "[…] [in] case the elections are carried out unlawfully the individual constitutional right to vote or to be elected is violated. Such right should be protected by individual complaint, though it might not always lead to the cancellation of election results. The cancellation of election results is not necessary if the violations of electoral law are at small scale and do not influence the electoral results […]."

CDL-AD(2011)013, *Joint opinion on the election code of Bulgaria*

34. The Law does not indicate if there is a possibility for an excluded candidate to appeal against the decision of a party congress. […] The CEC does not have powers to check if the procedure in respect of (a) candidate(s) was in conformity with the party's statute. In the absence of any procedure for complaints and appeals, it is questionable whether an interested party can have a court decision within the indicated timeframe.

35. This lack of right to appeal against a decision of a party congress could create additional problems in the light of the right to be elected. If the excluded candidate wins the case in the court of law after the date when candidates next on the list get their seats in the parliament, there is practically no possibility to redress the situation. At least, the appeal should have a suspensive effect.

CDL-AD(2016)018, *Opinion on the Amendments to the Law on elections regarding the exclusion of candidates from party lists of Ukraine*

110. […] [T]he Constitution provides that parties and party alliances can bring disputes about parliamentary elections to the Constitutional Court. This is not open to candidates and voters. The grounds or timeframes are not set out. This might be in the Law on the Constitutional Court or in another law, but it should be clearly stated and regulated.

CDL-AD(2016)019, Joint opinion on the draft electoral code of Armenia as of 18 April 2016

30. The Venice Commission and OSCE/ODIHR recommend that the draft law provide for specific provisions on complaints and appeals during the referendum process, including designated avenues of redress and procedural deadlines. The system of appeal should safeguard, inter alia, the right of referendum parties, campaign participants, voters and other stakeholders to complain about the conduct of the referendum campaign and misuse of administrative resources; appeal against decisions of electoral commissions and other authorities that violate electoral legislation; challenge voting results in specific precincts; and appeal against the referendum result in court. The Venice Commission and OSCE/ODIHR recommend that all voters be entitled to appeal. A reasonable quorum may be imposed for appeal by voters against the results of a referendum.

CDL-AD(2017)029, Joint Opinion on the Draft Law on Referendum of Armenia

91. Article 99 should be interpreted in a way that those persons denied the right to vote should also have the right to submit complaints to the courts and that the notion of "voter" would not exclude those persons not entered in the voter list from the right to recourse for judicial remedy.

92. Previous ODIHR reports noted the absence of provisions for requests of recounts or for the invalidation of results. The draft Election Code did not address this concern and therefore does not provide effective remedy on these key aspects of the electoral process. **The Venice Commission and ODIHR recommend that the draft Election Code be amended to prescribe that every voter, party, candidate and observer can, subject to appropriate conditions, file a complaint on every aspect of the electoral process, including requests for recounts and the invalidation of election results. A reasonable deadline for such complaints should be stipulated.**

CDL-AD(2018)027, Joint Opinion on the Draft Election Code of Uzbekistan

8. The system of electoral dispute resolution established in democratic states is usually divided into two areas: one concerning preliminary operations (registration on the electoral roll, casting of votes, etc.) and the other directly concerning the candidates (eligibility and results).

CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium

235. Complaint and appeals procedures must be open at least to voters and electoral contestants. A reasonable quorum may, however, be imposed for appeals by voters against the results of an election […]. In some countries, however, the legal framework is unnecessarily restrictive, given that only contestants and their proxies, but not voters are able to file a claim (e.g. Armenia, Lithuania), or that complaints by voters are limited to their non-inclusion in voter lists (e.g. Georgia). […]

CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues

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." 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.

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.

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.

CDL-AD(2020)025, Report on election dispute resolution

55. The persons entitled to submit appeals are listed in very general terms. The draft revised Article 1 of the Electoral Code provides that the appellant is an electoral law subject (voter, electoral contender, initiative group, referendum participant or other person whose rights are affected) who claims the defence of his/her rights that have been prejudiced in the process of organising and carrying out the elections, through the actions, inactions or decisions of the electoral bodies or actions or inactions of the electoral contenders. This wide definition of the persons entitled to submit complaints or appeals is welcome and in line with international standards.

CDL-AD(2020)027, Urgent Joint Opinion on Draft Law No.263 Amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services of the Republic of Moldova

45. The introduction of preference voting which, under certain conditions, will lead to the seats not being allocated according to the order of the list, could lead to disputes concerning the allocation of seats inside a list to candidates. The Venice Commission and ODIHR recommend therefore to introduce the possibility for individual candidates to submit complaints and appeals against the allocation of seats inside a list.

CDL-AD(2020)036, Joint Opinion on the Amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020 of Albania

VI. Grounds for complaints and decisions, actions or inactions open to challenge

d. 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.

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.

CDL-AD(2002)023rev2-cor, *Code of Good Practice in Electoral Matters*

89. Secondly, Article 99 provides for challenges of decisions and actions by election commissions, but does not address inaction and possible failures by commissions to act on their legal obligations. Article 20 lists duties of DECs and obliges them to review and to decide on complaints against decisions and actions (inaction) by PECs. **ODIHR and the Venice Commission recommend that inaction-related complaints to all levels of the election administration be explicitly provided for. They also recommend that deadlines for complaints against inactivity of election commissions be stipulated as an exact date or time of inaction may be difficult to identify**.

CDL-AD(2018)027, *Joint Opinion on the Draft Election Code of Uzbekistan*

8. The system of electoral dispute resolution established in democratic states is usually divided into two areas: one concerning preliminary operations (registration on the electoral roll, casting of votes, etc.) and the other directly concerning the candidates (eligibility and results).

9. The latter is reflected in a mechanism which quickly came to be known as “verification of credentials”. Such mechanisms in fact exist for all systems of representation for whatever purpose: this may involve the requirement to provide a proper mandate or power of attorney or to appoint by vote the person called upon to represent another natural or legal person, for instance on a management board. The process must be verifiable so as to certify the lawfulness of the acts of the individual or body taking decisions on someone else’s behalf. It is a well established mechanism that has been confirmed by extensive practice.

CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium

99. The right to challenge CEC decisions is regulated by the Code on Administrative Procedure, with the first instance complaint to be lodged with the Administrative Court of Appeal and with further appeal to the Supreme Court. The Draft law in Art. 31(4) provides that the initiative team can appeal to court against the CEC’s decision to deny its registration and the Code of Administrative Procedure provides that any voter whose rights are directly violated by a CEC decision can bring the matter to court. Arguably, a CEC decision to register or deny registration of a referendum question/text directly affects every voters ’rights; this could be made more explicit. The Draft law could also provide that the filing of any such challenge should result in the temporary suspension of the referendum process until the final court decision on the matter has been issued, after exhaustion of all appeals. This suspension period should include any review by the Constitutional Court as referred by the Supreme Court under its constitutional powers.

CDL-AD(2020)024, *Urgent Joint Opinion on Draft Law 3612 on Democracy through all-Ukraine Referendum*

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.

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. […]

53. [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), counting and tabulation (42 countries), and transmission (11 countries) of election results. […]

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." 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." 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.

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.

CDL-AD(2020)025, Report on election dispute resolution

56. It is welcome that the appeals may be submitted against actions or inactions by the electoral contenders, candidates on the lists, initiative groups and referendum participants. As electoral

rights can be affected by individuals or groups, grounds for complaints might also include inactions and inadequate behaviour by individuals or groups, especially related to the campaigning and financing thereof.

58. The draft Law does not enlist in detail the decisions or actions of the election administration that can be challenged. The persons whose electoral rights are violated would benefit from the elaboration of a more detailed list of appealable decisions, actions and inactions. This would make it possible to declare an appeal against the results inadmissible if the violation took place at an earlier stage of the electoral process (registration of voters or candidates, decisions on the opening/non-opening of the polling stations, campaigning and its financing) and did not lead to an immediate appeal. The Venice Commission and ODIHR recommend that the most typical cases of actions, inactions and decisions open to challenge by appeal be (non exhaustively) listed in the Electoral Code. In addition, the competencies of the ordinary courts and the Constitutional Court adjudicating appeals on the vote counting and other decisions made after the election day should be clarified in order to avoid lack of jurisdiction or parallel competencies and possibilities for the voters and candidates to choose the adjudicating body.

> CDL-AD(2020)027, *Urgent Joint Opinion on Draft Law No.263 Amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services of the Republic of Moldova*

VII. Fair hearing

h. The applicant's right to a hearing involving both parties must be protected.

> CDL-AD(2002)023rev2-cor, *Code of Good Practice in Electoral Matters*

65. […] Proceedings on cases before the Supreme Court seeking to protect suffrage rights should be held in public and the parties to the appeal should have the right to present their case directly or through legal representation. The OSCE/ODIHR and the Venice Commission recommend that the law be amended to provide the following minimum guarantees for these cases:
a. The right to present evidence in support of the complaint after it is filed.
b. The right to a fair, public, and transparent hearing on the complaint.
c. The right to appeal the decision on the complaint to a court of law.

66. The above are the minimum safeguards necessary to provide due process for the protection of suffrage rights.

> CDL-AD(2006)013, *Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia*

33. Part 4 of the amended article provides that a complainant "shall not have the right to publicize, print, take excerpts from, or make copies of signed voter lists". This may be too restrictive and prevent the complainant from fully presenting a case to the election commission or in a court. This text should be revised to ensure that a complainant has the full opportunity to present all evidence relevant to a complaint, including evidence related to the voters list.

> CDL-AD(2007)013, *Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia*

33. Transparency in the adjudication of electoral rights is required under international standards. Proceedings to determine rights under a state's law:
"…must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing."

> CDL-AD(2008)012, *Joint opinion on amendments to the Election Law of Bosnia and Herzegovina*

57. […] With regard to national and European elections, Article 150(1) of the Constitution confers the right to initiate proceedings before the Constitutional Court upon a few institutions. In order to challenge election results, a political party, a coalition or a candidate must approach one of these institutions within 7 days of the CEC's decision validating the results; they then have 15 days to file a petition with the Constitutional Court. This means that there is no effective judicial procedure for challenging election results. In June 2009, the European Court of Human Rights concluded that similar provisions laid down in the then applicable Parliamentary Election Law did not provide for effective remedy due to the limited category of persons and bodies which may refer a case to the Constitutional Court. The above-mentioned articles should be amended accordingly so that the Code provides effective remedies for challenging election results.

> CDL-AD(2011)013, *Joint opinion on the election code of Bulgaria*

108. The right to an effective remedy and fair hearing by an impartial tribunal is a well-established international principle. Accordingly, failure to comply with electoral law must be open for challenge before an effective appeal body. Both challenges before ordinary courts or before electoral commissions are possible options in an appeal system; however, the explanatory report to the Code of Good Practice in Electoral Matters states first instance appeals before electoral commissions could be more desirable, due to their better knowledge of electoral law. At any rate, a final appeal to a court must be possible. Additionally, expedited consideration of electoral campaigns is necessary for the appeal system to be fair and effective.

> CDL-AD(2012)002, *Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation*

100. The complaints and appeals system should be transparent, with the publication of complaints, responses, and decisions. Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected as well as serving as a potential deterrence to future misconduct. […]

> CDL-AD(2013)016, *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*

58. […] The lack of guaranteed public hearings by the Administrative Court is contrary to OSCE commitments and other international standards and reduces public confidence in the process. The Venice Commission and OSCE/ODIHR therefore recommend reviewing the Code to ensure that hearings on election-related cases be held in public unless the court specifically finds that there is an exception in the law to hold a particular hearing in private.

> CDL-AD(2016)032, *Joint opinion on the electoral code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015*

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. 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. The guiding principles of election dispute resolution systems are therefore not different from general principles of good administration or principles of fair judicial proceedings. In electoral matters, an administrative or judicial remedy has thus to be as efficient as remedies for the protection of other fundamental rights and freedoms, according to the case-law of the European Court of Human Rights.

CDL-AD(2020)025, Report on election dispute resolution

VIII. Time limits

g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).

95. Appeal proceedings should be as brief as possible, in any case concerning decisions to be taken before the election. On this point, two pitfalls must be avoided: first, that appeal proceedings retard the electoral process, 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 the results of elections must also not take too long, especially where the political climate is tense. This means both that the time limits for appeals must be very short and that the appeal body must make its ruling as quickly as possible. Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. A time limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

96. The procedure must also be simple, and providing voters with special appeal forms helps to make it so. It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters

39. […] In the context of elections, an effective system of appeal would mean that any decision by any state authority can be challenged and that a decision by a competent body is taken immediately. Any delay in complaints and appeals procedures can seriously compromise the credibility of an election.

40. The “deadlines for taking decisions on complaints and appeals”, including of course the decision of contesting electoral results, have to be “realistic”. This is obviously an important element of the whole system of appeal, but the precise timeframe must vary not only 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 (different elections, which may be held in different contexts: uninominal districts or national constituencies, for instance; different chambers…). It does not seem easy to draw general conclusions about what deadlines should be admitted or not, and it will greatly depend on the circumstances.

CDL-AD(2006)025, Report on the Participation of Political Parties in Elections

82. The draft law […] [a]wards a right to appeal in all cases and extends this right to appeal to third persons not involved in the initial hearing of a case, but who were directly impacted by the alleged violation. Strict time limits (an appeal must be filed within two days of a decision and the appeal must be heard within the following two days) ensure the continued efficacy of the dispute resolution system and, in this iteration, the right to appeal is likely to increase the fairness of the electoral process. Such a system, as it appears in draft law, is notable for its commitment to ensuring the timely resolution of election disputes.

> CDL-AD(2009)028, *Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine*
>
> See also CDL-AD(2006)002rev, *Opinion on the Law on Elections of People's Deputies of Ukraine, para. 94*

71. The decision-making in the Administrative Court on the complaints is limited to 48 hours […]. It is one of the shortest deadlines provided by procedures in the Council of Europe member States. It is also demanding for the judges to examine the evidence and provide a legal basis for the decision in this timeframe, especially as the court has to decide on complaints collectively. It is suggested that the time-limit for the courts to decide on complaints be extended, but must remain short enough to provide for effective remedy in the election. […]

> CDL-AD(2009)032, *Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008*

81. […] While timely resolution of electoral disputes is fundamentally important, the […] timeline is overly restrictive and will likely unduly limit the ability for all electoral stakeholders to have their claims addressed as appropriate. The need to provide an effective remedy for all violations of suffrage rights and to guarantee a fair and public hearing before an impartial court should outweigh […] a stringent guideline on the timing of dispute resolution.

> CDL-AD(2009)040, *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*

57. Most countries observed follow the rule of short time-limits. In a number of countries the time-limit is less than three days: in Georgia, Hungary, Lithuania and Portugal there is only one day to introduce the claim; in Bosnia and Herzegovina, Croatia, Serbia and “the former Yugoslav Republic of Macedonia” the time-limit is two days (48 hours).

58. The rule is three days in Azerbaijan, Estonia, Latvia, Malta, Switzerland (each 3 days), Albania (3 days for the introduction of the complaint before the central electoral body and five days before the court) and Liechtenstein (3 days plus 5 days to present evidence and reasons).A relatively short time-limit for the presentation of complaints is also provided for in Armenia (7days), the Czech Republic, France, Slovakia, Sweden, (10 days), Finland (14 days) and Greece (25 days). Other countries have a longer time-limit: in the United Kingdom as a general rule 21 days, in some issues 14 or 28 days, in Austria 28 days, in Korea 30 days, in Bulgaria and Cyprus one month. A long term is provided in Germany (2 months for a complaint to the Bundestag and 2 other months to the Federal Constitutional Court) and in the Russian Federation (up to one year – however this time-limit does not affect or suspend the procedures related to declaration of election results or to office-taking by the elected persons).

59. The effectiveness of the judicial procedure depends mainly on two indicators: time-limit for the court to decide on the matter brought before it and regulation on the presentation of evidence.

60. Although longer proceedings might give judicial bodies more time to discuss the matter, collect evidence and make more elaborated decisions, they might make the fulfilment of successful decisions more difficult, put the judiciary under political and public pressure and hamper the functioning of legislation or government. A short term may however make it difficult for the judiciary to consider all the issues raised in appeals or complaints thoroughly.

CDL-AD(2009)054, Report on the cancellation of election results

71. Article 64 and new Article 64[1] define the process by which complaints and appeals can be submitted on voting and counting. These articles require that a "claim/appeal" presented to a PEC be immediately registered and the complainant be provided with a receipt of such registration (Article 64(1)). Deadlines for the filing of such complaints may, however, be overly stringent. Article 641(1) requires that complaints related to voting be made before the "closure of the ballot box," and complaints on counting procedures be made "from the time of the opening of the ballot box until drafting of the concluding protocol." While expediency in the conclusion of election related disputes is laudable, such stringent deadlines may serve to silence legitimate complaints, in particular those concerning voting procedures that are not discovered until after voting has ceased. It is recommended that such deadlines be revised to allow for the filing of complaints directly to the PEC until completion of protocols.

CDL-AD(2010)013, Joint Opinion on the Election Code of Georgia as amended through March 2010

27. […] Considering that the conduct of an election requires prompt decisions and actions within a predetermined timeframe, the procedures governing election disputes should be different from those provided for general civil disputes. This could be reflected in shorter deadlines and a single appeal process, which can be justified as long as sufficient time is provided to file complaints and appeals. When setting time limits a balance should be struck between imperatives relating to the administration of justice in a timely manner within the electoral timeframe and the right to challenge decisions, actions or omissions of the electoral bodies in the fulfilment of their mandate. In particular, time limits should allow courts and electoral bodies sufficient time to process, review and make decisions upon the complaints and appeals submitted to them. The fact that some complaints or appeals, especially those related to election funding or campaigning, may require further investigation should also be taken into consideration. For each phase or facet of the electoral process (such as voter registration or the validity of candidatures), the electoral law should expressly and systematically set deadlines for filing complaints and appeals and by which either the courts or electoral bodies must reach a decision (paragraphs D 19, 20, 21, 23).

47. The establishment of time limits can be implemented in various manners. One possibility is that as a general norm all electoral disputes could be considered as of an "urgent" nature, and that a Court seized of a particular electoral question, both ex post and ex ante, must deal with the case according to the provisions for matters of urgency in its national Code of Procedure. Where and if the terms of "urgency" are not short enough to provide for an effective remedy, the imposition of fixed time limits in a number of days could also be considered.

CDL-AD(2010)046, Joint opinion on the electoral legislation of Norway

59. In many cases, the Code provides for very short time-limits for appeals. This is the case especially for disputes concerning registration of parties and coalitions and their candidates where the appeal shall be brought before the competent court no later than 24 hours after the CEC decision has been issued. It is important to avoid lengthy disputes on such sensitive matters; however, parties concerned should have access to effective remedy. Within the extremely short timeframe stipulated in the Code it might prove difficult for the appellants to bring forward all the relevant arguments in support of their case. The Code of Good Practice in

Electoral Matters calls for a time-limit from three to five days. The same comment also applies to the timeframe for deciding on the case, which is also 24 hours and may not be sufficient to allow for the case to be considered thoroughly.

> *CDL-AD(2011)013*, *Joint opinion on the election code of Bulgaria*
>
> See also *CDL-AD(2009)001*, *Joint Opinion on the Election Code of Georgia as revised up to July 2008, para. 111*

50. Political parties should also be given clear and effective procedural safeguards to contest the decisions on denial of registration, suspension or dissolution. Election related complaints can be lodged either at the election administration or at the courts. It is not very clear where the division of competences lies and whether respect of the political parties electoral rights is fully guaranteed. As said in the Guidelines on political party regulations: "232. Expedited consideration is an important element to the fairness of a hearing. Proceedings cannot be delayed without risking usurpation of the right to a fair hearing. Legislation should define reasonable deadlines by which applications should be filed and decision granted, with due respect to any special considerations arising from the substantive nature of the decision. 233. Legislation should specify the procedures for initiating judicial review (appeal) of a decision affecting the rights of a political party. Legislation should also extend the right of judicial review of such decisions to persons or other parties that are affected by the decision."

> *CDL-AD(2012)003*, *Opinion on the law on political parties of the Russian Federation*

113. […] [C]omplaints against PEC decisions on voting day, as well as applications to declare voting results in electoral precincts invalid may be submitted to the relevant DEC at the latest by 18:00 on the day following election day. Considering the need to substantiate such applications properly and the formal requirements for legal representation, this deadline is short and should be reconsidered.

115. Article 48.13, paragraph 2, provides that election commissions shall respond to the applications received on the day preceding and on election day within four days following the vote. This deadline is long and does not facilitate provision of an effective remedy to the applicants. It is recommended that these applications be dealt with by PECs before summarising voting results.

> *CDL-AD(2016)019*, *Joint opinion on the draft electoral code of Armenia as of 18 April 2016*

54. The Code (Article 68(6)) provides a short deadline for the submission of appeals against court decisions. A deadline of one day is exceptionally short. Point II.3.3.g of the Code of Good Practice in Electoral Matters states that time limits for lodging appeals must be short (three to five days at first instance). A shorter time-limit hampers the possibility to present solid reasoning and proof for the case to be dealt with efficiently. It is recommended to extend the deadline for submitting appeals to three days.

> *CDL-AD(2018)008*, *Joint Opinion on the Law for Amending and Completing certain legislative acts of the Republic of Moldova*

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.

105. […] 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. 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. The conduct of an electoral process requires prompt decisions and actions within a predetermined time frame. The electoral law and other relevant laws should therefore expressly and systematically set realistic 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.

CDL-AD(2020)025, Report on election dispute resolution

82. Article 133 of the draft law states that “election procedure shall be special and urgent legal procedure”, without further specification of the scope or effects on the performance of administrative bodies, besides the expedited deadlines prescribed by the draft law. The deadlines for revision of complaints by MECs and the CEC are extended from 24 to 48 hours. Although this is a positive development, the deadlines may benefit from further reconsideration and diversification in order to ensure an effective legal remedy, reflecting the nature of different categories of complaints and general electoral timeline. For example, election day’s complaints on violations or irregularities affecting the realization of the right to vote would require immediate review, while allegations requiring verification of facts would benefit from extended deadlines in line with international standards and ODIHR recommendations. It is recommended that both the time limits for lodging complaints – and later on for lodging appeals, if required – and the time limits for adjudicating complaints and appeals be clarified in the law.

CDL-AD(2020)026, Urgent Joint Opinion on the Draft Law on Elections of Members of Parliament and Councillors of Montenegro

59. The electoral legislation would benefit from a provision to avoid rejection of those appeals that have some formal shortcomings. In these cases, the competent authority should give a (short) deadline to the appellant to bring the appeal in line with the law.

60. Article 73.2 of the draft revised Code does not provide a deadline for decisions on appeal in case of inaction of DECs or PEBs. For the sake of consistency, short and similar deadlines should be provided for the various complaints and appeals procedures (three to five days for each at first instance).

61. The draft Law provides deadlines for the submission and adjudication of the complaints and appeals, mainly in a short time, in conformity with international standards. Appeals against the

actions and decisions of the district election commissions and of precinct electoral bureaus shall be examined within three calendar days after being submitted, but not later than on election day. Appeals against the actions / inactions of electoral contenders / candidates on lists / initiative groups / referendum participants shall be examined within five calendar days after being submitted, but not later than on election day. Those appeals submitted on election day have to be resolved on the same day. The first and the second judicial appeals are examined within three days from the receipt of the file.

62. The proposed Article 74.3 foresees that a judicial appeal may be lodged against the court decision within one day after the decision has been pronounced, and against the decision of the Court of Appeal within one day after the decision has been pronounced. It has to be noted that 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, the appellants should be provided enough time to understand the procedure (especially as it is provided for not only in the Electoral Code, but also in the Administrative Code and concerning the campaigning, in the Code of Audiovisual Media Services). It has to be noted that the appeal has to be reasoned and the appellant has to submit evidence. Thus, especially in more complex cases, the extremely short deadline may hamper the protection of electoral rights. **The Venice Commission and OSCE/ODIHR recommend extending this deadline to three to five days**. The aim to shorten the time required to solve all electoral disputes could be achieved, if necessary, by decreasing the number of instances to deal with the case, e.g. by providing a judicial remedy only in one court instance.

63. Draft Article 72 of the Electoral Code foresees a deadline for submission of appeals against inactions by the election administration, the Audiovisual Council or private stakeholders. The appeal has to be submitted in this case within three days from the inaction. Such deadline is not clear and may lead to a situation where the appeals are not considered in substance due to the vagueness of the law. As the legislation provides for concrete deadlines only for some decision making, not against inaction, the starting point of such a deadline is often not clear. **It is advisable to provide that in first instance a request (petition) to take action may be submitted without a deadline, unless a concrete deadline is provided in the law.** In that case the deadline for appeal would start from the last day given by the law to the authority to take a decision.

> *CDL-AD(2020)027, Urgent Joint Opinion on Draft Law No.263 Amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services of the Republic of Moldova*

IX. Access to legal remedies

b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

96. The procedure must also be simple, and providing voters with special appeal forms helps to make it so. It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

> *CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters*

109. […] [I]t is recommended that complainants be provided with the option of using special complaint/appeal forms throughout the election period. It is necessary to eliminate formalism in the Election Code, so as to avoid decisions of inadmissibility. Any flexibility built into admissibility provisions should be clear and not based on subjective decisions, and apply as broadly as possible.

115. The relatively high cost of filing court cases was reported by complainants as a deterrent to lodging election-related complaints and appeals (approximately 45 euros to first instance courts and approximately 70 euros to appeal courts.) Due to the importance of holding democratic elections, obstacles to challenging the democratic nature of the elections should be eliminated as much as possible, which may be of particular relevance in a newer democracy. It is recommended that the cost of filing complaints and appeals to the various courts be drastically reduced or eliminated altogether in order to facilitate access to justice on election-related matters.

117. For enhanced transparency, it is recommended that the CEC develop detailed standard operating procedures that describe step-by-step its internal process and procedures by which it will register, review, investigate, consider, adjudicate, and publish complaints and appeals and decisions related thereto.

> CDL-AD(2009)001, *Joint Opinion on the Election Code of Georgia as revised up to July 2008*

X. Specific topics

A. Out-of-country voting

73. For out of country voting at the Diplomatic Consular Offices, the complaint and appeal procedures, for example those in place to “protect the right to vote” (Articles 50-51), for list submitters (Article 67) and for campaign organisers (Article 73) do not appear to have been addressed. With the current short complaint deadlines, and with the fact that submitting complaints by post is not permitted, an overseas voter, list submitter or campaign organiser will have considerable difficulty availing themselves of court protection.

> CDL-AD(2009)032, *Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008*

34. Complaints from the three out-of-country districts can be filed by the authorized representative of the electoral contestants. However, it is unclear whether or not this procedure will result in timely and effective resolution of complaints concerning out-of-country voting as there are still logistic issues and issues related to evidence that are not addressed. The provision should outline a clear timeline for complaints and appeals procedures for those citizens residing abroad, so as to ensure that they have the opportunity to file complaints and have access to an effective remedy. Moreover, provisions regarding the institutions responsible for the appeals against commissions ’decisions should be harmonised (in particular Article 147(2) and Article 148(5)).

35. Article 149 does allow for the submission of a complaint by express mail when an out-of country voter’s right to vote has been violated. The complaint must be submitted within 24 hours of the violation. This would seem to conflict with the provisions of the law which do not allow for submission of complaints by post.

> CDL-AD(2011)027, *Joint opinion on the revised electoral code of "the former Yugoslav Republic of Macedonia"*

59. […] Article 149(2) still provides for submission of complaints via express mail while Article 67(9) provides for e-mail; these provisions should be harmonised, even if they do not concern the same type of violations. This could also lead to consideration as to whether to introduce the possibility for complaints and appeals by in-country voters to be done by post or e-mail.

> *CDL-AD(2016)032*, *Joint opinion on the electoral code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015*

B. Misuse of administrative resources

1.4. The possibility to bring complaints about the misuse of administrative resources to an independent and impartial tribunal – or equivalent judicial body – or to apply to an authorised law-enforcement body should be central in ensuring the appropriate use and to prevent the misuse of administrative resources during electoral processes.

C. Remedies and sanctions

1. Complaints and appeals

1. 1. The legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body: an independent judiciary is a sine qua non condition for sanctioning the misuse of administrative resources.

1. 2. The first instance appeal body in electoral matters should be either an electoral management body or a court or an equivalent judicial body. In any case, final appeal to a court must be possible. This guidance should apply to alleged cases of misuse of administrative resources.

1. 3. The legal framework should ensure the independence of electoral management bodies, other administrative bodies, and courts in their decisions when adjudicating disputes regarding the misuse of administrative resources. This should be both reflected in their training and technical capabilities. For this purpose, electoral management bodies should get appropriate staffing and other work conditions.

1. 4. While tackling cases related to the misuse of administrative resources, including via adjudication of election-related disputes, electoral management bodies, other administrative bodies, and courts must apply laws in a uniform and impartial manner irrespective of the parties to the particular case.

1. 5. Authorised law-enforcement bodies – police, prosecutors – should investigate cases on the misuse of administrative resources effectively and timely.

1. 6. The legal framework should ensure that the electoral management bodies and courts – and other judicial bodies – hold hearings and that their decisions are made public, written and reasoned. The legal framework should also ensure a timely adjudication and appeals process.

> *CDL-AD(2016)004*, *Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes*

C. Media and the use of digital technologies

65. The Election Code should […] expressly provide for the right of electoral contestants to file complaints and appeals concerning unfair or illegal media activities during an election, and establish clear procedures for receiving and acting on such complaints.

> *CDL-AD(2009)001*, *Joint opinion on the election code of Georgia as revised up to July 2008*

49. The legal and electoral background is the result of a variety of national traditions and practices. No universal model could produce the same results in different contexts. However, there are some basic principles that should inform the set of rules, practices, and behaviours for the legal framework and election regulation.

Complaints: The implementing body should act upon candidates 'and parties 'complaints or whenever it records a violation, regardless of whether it has received any complaints. Procedures should be established to receive and act on complaints from candidates and political parties about unfair or unlawful media coverage. These procedures should be timely, clear, and accessible in order to give complainants a prompt remedy. Sanctions imposed by the supervisory body should be commensurate with the gravity of the offence committed by the media outlet. These should not include imprisonment or any measure that could prevent the media from carrying out their activities or encourage self-censorship among journalists.

Appeals: The media or complainants should have the right to contest decisions of the implementing body through a timely, accessible, and prompt judicial appeal mechanism.

71. A detailed familiarity with the norms relating to the media and elections in a country is also necessary to assess whether media outlets and political actors respect these provisions. The overall process of observation should facilitate the gathering of evidence of any infringements of the law. The media analyst should keep records of all the complaints filed by the media or by political actors with regard to freedom of expression and access to the media. Any cases that arise should be investigated.

76. Interviews with journalists and other media professionals should also focus on topics related to the campaign, such as the following:
[…]
Whether the media have received any complaints from political parties or candidates for the way they are covering the campaign.

95. In the course of the electoral process, candidates, political parties, and media professionals who are the target of discrimination or violations of their rights might file complaints in order to receive redress. Keeping track of these complaints is important when assessing the confidence of political and media actors in the process.

96. The media analyst should, however, not interfere in this process. When complaints are addressed to the EOM, for example, instead of to the competent body, the media analyst should limit himself/herself to recording the complaint without intervening in the dispute, while also reminding the complainant of the officially established channels for registering complaints. On the other hand, when aware of a complaint, the media analyst should gather as much information about it as possible while remaining impartial. To obtain a comprehensive overview of the object of the dispute, the media analyst should meet all sides involved. The media analyst should work in close co-operation with the legal analyst, as well as with the election analyst.

97. Media-related complaints should be gathered in written form and archived. They should also be classified in a specially designed form (in hard copy or electronic version), verified, and followed up. The form should include relevant information such as:
• The date the complaint was filed;
• The name of the complainant;
• The name of the body or the person the complaint was filed against;
• The name of the body where the complaint was filed;
• The location of the body where the complaint was filed;
• The place the alleged wrongdoing occurred;
• The object of the complaint;
• The legal ground on which the complaint was filed;
• A short comment on the complaint on behalf of the media analyst or the observers reporting it;
• The date on which the competent body will hear the complaint.

CDL-AD(2009)031, *Guidelines on Media Analysis during Election Observation Missions*

7. These dangers, directly linked to technology, affect the different phases of the electoral process, such as […] the election dispute resolution process.

83. In addition, conflict resolution mechanisms (CRM) in this area need to be defined. The transnational and extraterritorial nature of digital technologies poses several challenges: the definition or creation of adequate competent authorities, different national regulations, extraterritoriality issues, etc. Furthermore, the private and commercial nature of internet companies require CRM more suitable to the logic of market (i.e. alternative dispute resolution mechanisms such as arbitration) – without ruling out jurisdictional procedures before international courts.

CDL-AD(2020)037, *Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes*

D. The role of election observers

38. […] [O]bservers must have the right to control all the spheres of the voting process (polling boxes, election committees at all levels), to intervene – at least, to be heard- in the resolution of possible conflicts which may arise, and to inform the parties which they represent about the problems during the observation so that the latter could lodge appeals against any decision not grounded in legal terms.

CDL-AD(2006)025, *Report on the Participation of Political Parties in Elections*

124. Thus, it is recommended that the Election Code expressly provide that accredited domestic observers and party proxies can serve as witnesses in complaints filed by voters and other persons involved in the electoral process or in the alternative, it should allow an individual accredited domestic observer or party proxy to file a complaint on election day on behalf of the relevant domestic observer organisation or political party, thus allowing the domestic observer/proxy to provide witness testimony in support of the complaint.

CDL-AD(2009)001, *Joint Opinion on the Election Code of Georgia as revised up to July 2008*

23. The Venice Commission's Guidelines on an internationally recognised status of election observers consider the following areas of assessment for pre-voting and post-voting phases:
[…]

"The post-voting phase covers the following areas of assessment:
i) counting process;
ii) tabulation process;
iii) transmission and publication of the preliminary results;
iv) complaints and appeals procedures;
v) publication of the final results;
vi) taking up office of elected officials."

27. The United Kingdom Code of Practice allows the witnessing of vote counting as a post-voting area of assessment. Even so, observation of post-voting electoral stages could also be helpful, including notably: complaints and appeal procedures, prolonged decision processes, guarantees of due process and the enforcement of court decisions, as well as the implementation of election results to grant further assurance of the duly installation in office of persons elected.

> *CDL-AD(2010)045, Opinion on the Code of Practice on observing elections of the United Kingdom*

79. Article 111 of the draft Code states that observers can conduct their activities up until the announcement of the election results. This text implies that, after the announcement of election results, observers will no longer be allowed to carry out their activities. However, in order to obtain an overall view of the election process, it is necessary for observers to be present during post-announcement stages, such as complaints and appeal procedures. It is recommended that the timeframe during which observers can implement their activities be extended.

> *CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria*

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." 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, domestic election observers "must not interfere in the electoral process and must be politically impartial".

> *CDL-AD(2020)025, Report on election dispute resolution*

XI. Transparency of the procedure and other procedural aspects

43. All decisions of electoral commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.

> *CDL-AD(2004)016, Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan*

43. One simple but possibly very effective measure to enhance transparency would be for the CEC to make its register of complaints, including the CEC decision on the complaint, publicly accessible. Where necessary, such materials could be made anonymous to protect the privacy of individuals involved in the complaint. Such a measure would provide a ready indication of the

extent to which complaints are referred to the CEC, the nature of such complaints, and the CEC's approach to dealing with them.

80. It is important that the CEC does not determine the final results of the election until it has received the rulings on any complaints filed with the electoral commissions and the courts which may have a bearing on the outcome of the election.

> CDL-AD(2009)028, *Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine*
>
> See also CDL-AD(2006)002rev, *Opinion on the Law on Elections of People's Deputies of Ukraine, para. 94*

121. Each act of the election administration should be formally published, broadly available for information to election stakeholders and appealable in a court of law. Publicity can be ensured through the public media and by immediate posting on the Internet. Any possible clarifications of the legal framework issued by the election administration should be made in a timely manner, so that the "rules of the game" are publicly available prior to or at an early stage in order to avoid surprises for election stakeholders and allegations for manipulation and fraud.

> CDL-AD(2010)043, *Report on figure based management of possible election fraud*

56. In connection with the 2009 parliamentary elections, concerns were expressed by both OSCE/ODIHR and the PACE Ad Hoc Committee with regard to the lack of written procedural rules concerning the review of complaints and appeals lodged with the CEC. The criteria upon which the CEC based its decision of what constituted a complaint were unclear, as was the appropriate form of its decisions. It is recommended that the Code explicitly require that the CEC adopts procedural rules for its decisions in writing as well as for those applying to lower election commissions. All election commissions should be required to issue written decisions and duly argue all their decisions. The format of decisions should also be standardized. This should apply to all decisions, whether or not they can currently be appealed to the Supreme Administrative Court.

> CDL-AD(2011)013, *Joint opinion on the election code of Bulgaria*

64. Article 147 of the Code has been reorganised and the language clarified in respect of the information required to be in the submission, as previously recommended. This includes a requirement that the complainant submit an email address for receiving correspondence. Any means of communication should be possible, providing that the deadline is respected. This should be clarified so that all voters have the same rights to access the complaints process. Moreover, if email is used as a means to file complaints, it should be clarified that the SEC has the duty of acknowledging receipt. Failure to do so could undermine the requirement to adhere to set deadlines, hampering the right to file a lawsuit at the Administrative Court.

65. […] Complaints should be handled based upon merits of the evidence, not up on the number of complaints. There should be no threshold on the number of complaints to be filed before they are considered. The requirements for two complaints should be deleted as it undermines the right to effective legal remedy. […]

> CDL-AD(2011)027, *Joint opinion on the revised electoral code of "the former Yugoslav Republic of Macedonia"*

66. The OSCE/ODIHR final report on the 2012 parliamentary elections stated: "A significant number of complaints were rejected on procedural grounds, such as being filed with the wrong

body". Something is fundamentally wrong when complainants cannot determine the correct body for filing a complaint. In order to address this fundamental issue, and in light of current structural restraints in the Ukrainian legal system, the Venice Commission and the OSCE/ODIHR make two recommendations, both of which are found in the Venice Commission Code of Good Practice in Electoral Matters: (1) providing special forms for complainants to complete when filing a complaint or appeal (with instructions to the complainant where to file the complaint or appeal) and (2) adoption of simplified filing procedures to reduce the observed 2012 occurrence of "a significant number of complaints [being] rejected on procedural grounds, such as being filed with the wrong body". At first instance, electoral complaints should be handled by electoral commissions, and, in a second instance, they should be handed by courts. No change in the Constitution is needed in this respect; the recommendations call for a simplification and a clarification of the relevant rules in order to achieve a more efficient and effective electoral complaints and appeals procedure.

> CDL-AD(2013)026, *Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine*

53. The Code (Article 66) describes complaint procedures against election management bodies (EMBs) at all levels and candidates. Current complaint procedures against candidates could lead to a confusion between administrative (electoral) and civil procedures. The Code does not explicitly provide in which case a complaint should be lodged against a candidate. In case candidates violate their duties, it is the obligation of EMBs to order them to stop their illegal activities. Thus, the civil cases initiated during election periods should not be considered as electoral complaints even if the case was initiated due to irregularities while campaigning. Possible defamation cases should not be solved in an exceptionally speedy manner without a reasonable time for providing legal arguments before the court. Otherwise candidates might be involved in numerous court cases initiated against them and left little time for campaigning. The aim of specific regulations concerning legal remedies during an election period should be to guarantee the legality of the election process and election results. Therefore, the Venice Commission and ODIHR recommend revising the law in order to distinguish clearly between proceedings against decisions of election commissions and against candidates.

> CDL-AD(2018)008, *Joint Opinion on the Law for Amending and Completing certain legislative acts of the Republic of Moldova*

237. It is of paramount importance that appeal procedures should be clear, transparent, and easily understandable. However, in a number of cases, the procedures for dealing with complaints and appeals are complicated and not clearly defined. […] In a number of countries, the lack of clearly defined procedures, inter alia, for campaign and media-related complaints and/or unclear responsibilities for the handling of electoral disputes has undermined the effectiveness of the respective complaint and appeal system (e.g. Albania, Czech Republic, Poland, Republic of Moldova, Serbia, and Slovakia). The rules and procedures are often not well understood by electoral subjects, and members of relevant bodies are not always sufficiently trained in how to handle election disputes.

> CDL-AD(2020)023, *Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues*

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. Moreover, the Venice Commission regularly

recommended to provide clear and consistent complaints and appeals procedures so as to avoid any conflicts of jurisdiction.

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. 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.

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 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. 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. 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. Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrence to future misconduct.

CDL-AD(2020)025, Report on election dispute resolution

84. Previous ODIHR and PACE EOM reports stated that election commissions did not always ensure the transparency of the election dispute resolution process, as decisions on complaints, in particular at MECs 'level, were not made public in a consistent or timely manner, and the complaints registers were not maintained. The specific mechanisms to ensure the transparency of election dispute resolution systems among election commissions should be guaranteed by the working methods of the election administrations, such as sessions open to public, the duty to publish sessions 'protocols on the web or streaming of the sessions. Therefore, in order to address long-standing issues and respond to the expectation of transparency of election dispute resolution procedures, **it is recommended to prescribe in the law rules aimed to ensure transparency and publicity of election commissions 'decisions on election dispute resolution, in particular by the publication by all election commissions of such decisions**.

CDL-AD(2020)026, Urgent Joint Opinion on the Draft Law on Elections of Members of Parliament and Councillors of Montenegro

XII. Decision-making power

e. 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.

f. All 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.

101. The powers of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes –annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated.

102. Where higher-level commissions are appeal bodies, they should be able to rectify or annul ex officio the decisions of lower electoral commissions.

CDL-AD(2002)023rev2-cor, *Code of Good Practice in Electoral Matters*

54. The code should make it clear that, once a complaint has been made to an electoral commission, the commission (including the CEC) must consider the complaint. It should be clear that electoral commissions do not have the power to refuse to consider a properly made complaint and refer it to a court. The court considering a complaint should not only have the power to quash the decision of an electoral commission but also to order the electoral commission to comply with its duties under the code.

CDL-AD(2003)015, *Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan*

33. The Election Code must unambiguously specify which body is responsible for invalidating an election. It is recommended that the procedure is clearly established. The provision according to which DECs can invalidate the voting in a precinct where the law has been “grossly” violated should be reviewed, as invalidation should not be based on a subjective appreciation.

CDL-AD(2006)037, *Joint Opinion on the Election Code of Georgia as amended through 24 July 2006*

31. In most countries the decisions on certifying the electoral results are taken by central electoral bodies or district electoral bodies. […]

33. There are countries where judicial bodies are involved in the certification procedure even without any complaints.[…]

36. In most countries, judicial bodies are involved in the certification or cancellation of electoral results only on the basis of complaints or appeals. […]

39. The competent courts to review the complaints or appeals in matters concerning the certification of electoral results are in most countries constitutional courts. […]

40. In many countries such disputes are considered in ordinary courts. […]

48. The procedure before the administrative bodies is usually more accessible for voters, the complaints have to be introduced faster than before courts (if the time-limit for the presentation of an appeal to the court is short, it is short also for the presentation of objections before central electoral bodies). In many countries the electoral bodies have to collect evidence ex officio.

CDL-AD(2009)054, Report on the cancellation of election results

69. In the last Joint Opinion (paragraph 91), the interpretation of Article 92 was raised as it could be read to give the Constitutional Court the authority to declare the entire election null even if violations were found only in isolated precincts or districts. The Code of Good Practice in Electoral Matters calls for repeat elections to be held only in those areas where the violations were established. The added paragraph (2) to Article 92 attempts to address this concern.

70. However, the new paragraph also seems to imply that despite the invalidation of results of elections in some polling stations and the conduct of repeat elections in those polling stations, the CEC will proceed with awarding mandates to some elected candidates before repeat elections take place. Such approach is not satisfactory as there is no guarantee that the repeat elections will not impact the overall allocation of mandates given the fact that Moldova has only one electoral constituency. The allocation of seats must therefore take place after the results of the repeated elections are made public.

CDL-AD(2010)014, Joint Opinion on the Draft Working Text amending the Election Code of Moldova

79. According to Article 46.10 of the Electoral Code, the CSEC should declare the voting results invalid after an appeal if the violations could significantly have affected the result. The word "significantly'" is subject to different interpretations. Article 46.10 should clearly state that if there are reasons to believe that the violations could have changed the election results then the result should be invalidated. Any violations should be reported to the CEC who may invalidate the elections based upon the CSEC reports. Secondly, the CSEC should take this action even if there is no appeal. The CSEC should take this action on its own initiative should it be aware of facts justifying such action. Finally, consideration should be given to revising the code so that the CSEC only makes the recommendation for invalidation and the decision on invalidation is made by the CEC.

CDL-AD(2011)032, Joint final opinion on the electoral code of Armenia

40. The provisions of Article 151(1), which detail the situations in which the results in a polling station should be annulled by the SEC, should be amended as previously recommended in the 2011 Joint Opinion. The current version of Article 151 states that the SEC "shall" annul the results in a polling station if one of the listed irregularities has occurred, no matter how severe. This could result in the disenfranchisement of all of the voters in a given polling station even though the alleged irregularity was minimal and was not proven to have affected the results.

CDL-AD(2013)020, Joint opinion on the electoral code of "the former Yugoslav Republic of Macedonia"

See also CDL-AD(2011)027, Joint opinion on the revised electoral code of "the former Yugoslav Republic of Macedonia", para. 68

92. Previous ODIHR reports noted the absence of provisions for requests of recounts or for the invalidation of results. The draft Election Code did not address this concern and therefore does not provide effective remedy on these key aspects of the electoral process. **The Venice Commission and ODIHR recommend that the draft Election Code be amended to prescribe that every voter, party, candidate and observer can, subject to appropriate conditions, file a complaint on every aspect of the electoral process, including requests for recounts and the invalidation of election results. A reasonable deadline for such complaints should be stipulated.**

CDL-AD(2018)027, Joint Opinion on the Draft Election Code of Uzbekistan

241. Appeal bodies should have the authority to annul elections. There is consensus that the annulment should not necessarily affect the entire election. Instead, partial invalidation should be possible if irregularities affect a small area only. The central criterion for (partly or completely) annulling elections is, or should be, the question of whether irregularities may have affected the outcome, i.e. may have affected the allocation of mandates. In some countries, however, the electoral law establishes a tolerance level for fraud (based on certain percentages of irregular votes), a practice which does not meet international standards. Following complaints of election day irregularities, recently, election results have been annulled in some polling stations, inter alia, in Serbia (2017) and Russia (2018). In Austria, the presidential elections of May 2016 were repeated after the constitutional court annulled the election results.

> *CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues*

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. 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. […] 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.

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. A country where the electoral law allows for a tolerance level for fraud, based on a certain percentage of irregular votes, or where the allocation of seats takes place before the results of the repeated elections are made public does not follow international standards.

130. In a number of countries, electoral laws use rather general clauses concerning the cases of cancellation. Some countries provide for a general invalidation mechanism while some others for a partial one. 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. In other cases, there are provisions that allow for the general invalidation of the elections.

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.

CDL-AD(2020)025, Report on election dispute resolution

Appendix: reference documents

CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters
CDL-AD(2003)015, Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan
CDL-AD(2003)021, Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia
CDL-AD(2004)016, Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan
CDL-AD(2004)027, Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova
CDL-AD(2006)002rev, Opinion on the Law on Elections of People's Deputies of Ukraine
CDL-AD(2006)013, Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia
CDL-AD(2006)025, Report on the Participation of Political Parties in Elections
CDL-AD(2006)028, Joint Opinion on the Electoral Legislation of the Republic of Belarus
CDL-AD(2006)037, Joint Opinion on the Election Code of Georgia as amended through 24 July 2006
CDL-AD(2007)007, Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States
CDL-AD(2007)013, Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia
CDL-AD(2008)012, Joint opinion on amendments to the Election Law of Bosnia and Herzegovina
CDL-AD(2009)001, Joint Opinion on the Election Code of Georgia as revised up to July 2008
CDL-AD(2009)028, Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine
CDL-AD(2009)031, Guidelines on Media Analysis during Election Observation Missions
CDL-AD(2009)032, Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008
CDL-AD(2009)040, 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
CDL-AD(2009)054, Report on the cancellation of election results
CDL-AD(2010)012, Joint opinion on amendments to the electoral code of the Republic of Belarus as of 17 December 2009
CDL-AD(2010)013, Joint Opinion on the Election Code of Georgia as amended through March 2010
CDL-AD(2010)043, Report on figure based management of possible election fraud
CDL-AD(2010)045, Opinion on the Code of Practice on observing elections of the United Kingdom
CDL-AD(2010)046, Joint opinion on the electoral legislation of Norway
CDL-AD(2010)047, Opinion on the draft election code of the Verkhovna Rada of Ukraine
CDL-AD(2011)013, Joint opinion on the election code of Bulgaria
CDL-AD(2011)025, 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
CDL-AD(2011)027, Joint opinion on the revised electoral code of "the former Yugoslav Republic of Macedonia"
CDL-AD(2011)032, Joint final opinion on the electoral code of Armenia
CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation
CDL-AD(2012)003, Opinion on the law on political parties of the Russian Federation
CDL-AD(2013)016, 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

CDL-AD(2013)020, Joint opinion on the electoral code of “the former Yugoslav Republic of Macedonia”
CDL-AD(2013)026, Joint Opinion on Draft Amendments to Legislation on the Election of People’s Deputies of Ukraine
CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria
CDL-AD(2014)019, Joint Opinion on the draft Election Law of the Kyrgyz Republic
CDL-AD(2016)004, Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes
CDL-AD(2016)018, Ukraine, Opinion on the Amendments to the Law on elections regarding the exclusion of candidates from party lists
CDL-AD(2016)019, Joint opinion on the draft electoral code of Armenia as of 18 April 2016
CDL-AD(2016)032, Joint opinion on the electoral code of “the former Yugoslav Republic of Macedonia” as amended on 9 November 2015
CDL-AD(2017)016, Joint Opinion on Amendments to the Electoral Code of Bulgaria
CDL-AD(2017)029, Joint Opinion on the Draft Law on Referendum of Armenia
CDL-AD(2018)008, Joint Opinion on the Law for Amending and Completing certain legislative acts of the Republic of Moldova
CDL-AD(2018)027, Joint Opinion on the Draft Election Code of Uzbekistan
CDL-AD(2019)021, Amicus Curiae Brief for the European Court of Human Rights in the Case of Mugemangango v. Belgium
CDL-AD(2020)011, Opinion on the Replacement of Elected Candidates and Mayors of Turkey
CDL-AD(2020)023, Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues
CDL-AD(2020)024, Urgent Joint Opinion on Draft Law 3612 on Democracy through all-Ukraine Referendum
CDL-AD(2020)025, Report on election dispute resolution
CDL-AD(2020)027, Urgent Joint Opinion on Draft Law No.263 Amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services
CDL-AD(2020)036, Joint Opinion on the Amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020 of Albania
CDL-AD(2020)037, Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes