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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**CODE OF GOOD PRACTICE
IN ELECTORAL MATTERS**

**ADOPTED GUIDELINES
AND DRAFT EXPLANATORY REPORT**

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Introduction

On 8 November 2001 the Standing Committee of the Parliamentary Assembly, acting on behalf of the Assembly, adopted Resolution 1264 (2001) inviting the Venice Commission:¹

- i. to set up a working group, comprising representatives of the Parliamentary Assembly, the CLRAE and possibly other organisations with experience in the matter, with the aim of discussing electoral issues on a regular basis;*
- ii. to devise a code of practice in electoral matters which might draw, inter alia, on the guidelines set out in the appendix to the explanatory memorandum of the report on which this resolution is based (Doc. 9267), on the understanding that this code should include rules both on the run-up to the election, the elections themselves and on the period immediately following the vote;*
- iii. as far as its resources allow, to compile a list of the underlying principles of European electoral systems by co-ordinating, standardising and developing current and planned surveys and activities. In the medium term, the data collected on European elections should be entered into a database, and analysed and disseminated by a specialised unit.*

The following guidelines are a concrete response to the three aspects of this resolution. They were adopted by the Council for Democratic Elections – the joint working group provided for by the Parliamentary Assembly resolution – at its second meeting (3 July 2002) and subsequently by the Venice Commission at its 51st Session (5-6 July 2002); they are based on the underlying principles of Europe's electoral heritage; lastly and above all, they constitute the core of a code of good practice in electoral matters.

The explanatory report explains the principles set forth in the guidelines, defining and clarifying them and, where necessary, including recommendations on points of detail.

As requested in the Parliamentary Assembly's resolution, this document is based on the guidelines appended to the explanatory memorandum to the report on which the Assembly resolution was based (Doc. 9267). It is also based on the work of the Venice Commission in the electoral field, as summarised in Document CDL (2002) 7.

¹Item 6; see Doc. 9267, Report by the Political Affairs Committee; Rapporteur: Mr Clerfayt.

GUIDELINES ON ELECTIONS

**adopted by the Venice Commission
at its 51st Plenary Session
(Venice, 5-6 July 2002)**

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. Furthermore, elections must be held at regular intervals.

1. Universal suffrage

a. Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

aa. Age

- i. The right to vote and to be elected must be subject to a minimum age.
- ii. The right to vote must be acquired, at the latest, at the age of majority.
- iii. The right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).

bb. Nationality

- i. A nationality requirement may apply.
- ii. However, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.

cc. Residence

- i. A residence requirement may be imposed.
- ii. Residence in this case means habitual residence.
- iii. A length of residence requirement may be imposed on nationals solely for local or regional elections.
- iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.
- v. the right to vote and to be elected may be accorded to citizens residing abroad.

dd. Deprivation of the right to vote and to be elected

- i. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. It must be provided for by law.
- iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them.
- iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.

v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

b. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. Electoral registers must be permanent.
- ii. There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period.
- iii. Electoral registers must be published.
- iv. There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of the voter who was not registered; the registration should not take place at the polling station on election day.
- v. A similar procedure should allow the voter to have incorrect inscriptions amended.
- vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

c. Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures.
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines.
- iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked.
- v. Validation of signatures must be completed by the start of the election campaign.
- vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

a. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

b. Equal voting power: seats must be evenly distributed between the constituencies.

- i. This must at least apply to elections to lower houses of parliament and regional and local elections:
- ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.

iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).

v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.

vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.

vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done:

- impartially;
- without detriment to national minorities;
- taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.

c. Equality of opportunity

aa. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.

bb. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

cc. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

dd. Political party, candidates and election campaign funding must be transparent.

ee. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

d. Representation of national minorities

aa. Parties representing national minorities must be permitted.

bb. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

cc. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

e. Equal representation of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

3. Free suffrage

a. Freedom of voters to form an opinion

aa. State authorities must observe their duty of neutrality. In particular, this concerns:

- i. media;
- ii. billposting;
- iii. the right to demonstrate;
- iv. funding of parties and candidates.

bb. The public authorities have a number of positive obligations; inter alia, they must:

- i. submit the candidatures received to the electorate;
- ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
- iii. The above information must also be available in the languages of the national minorities.

cc. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

b. Freedom of voters to express their wishes and action to combat electoral fraud

- i. Voting procedures must be simple.
- ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:
- iii. Postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible.
- iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent.
- v. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited.
- vi. Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud.
- vii. Two criteria should be at least used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box.
- viii. Voting slips must not be tampered with or marked in any way by polling station officials.

- ix. Unused voting slips must never leave the polling station.
- x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting.
- xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station.
- xii. Counting should preferably take place in polling stations.
- xiii. Counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records.
- xiv. Results must be transmitted to the higher level in an open manner.
- xv. The state must punish any kind of electoral fraud.

4. Secret suffrage

- a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.
- b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.
- c. The list of persons actually voting should not be published.
- d. The violation of secret suffrage should be sanctioned.

5. Direct suffrage

The following must be elected by direct suffrage:

- i. at least one chamber of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

7. Electoral system

Within the respect of the above-mentioned principles, any electoral system may be chosen.

II. Conditions for implementing these principles

1. Respect for fundamental rights

a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.

b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

2. Regulatory levels and stability of electoral law

a. Apart from technical and detail rules – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.

b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

a. Electoral commissions

aa. An impartial body must be in charge of applying electoral law.

bb. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

cc. The central electoral commission must be permanent in nature.

dd. It should include:

i. at least one member of the judiciary;

ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

It may include:

iii. a representative of the Ministry of the Interior;

iv. representatives of national minorities.

ee. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis (see point I.2.c.bb).

ff. The bodies appointing members of electoral commissions must not be free to dismiss them at will.

gg. Members of electoral commissions must receive standard training.

hh. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

b. Observation of elections

aa. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.

bb. Observation must not be confined to election day itself, but must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.

cc. The places where observers are not entitled to be present should be clearly specified by law.

dd. Observation should cover the respect by the authorities of their duty of neutrality.

c. An effective system of appeal

aa. 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.

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

cc. 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.

dd. 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.

ee. 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.

ff. 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.

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

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

ii. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

DRAFT EXPLANATORY REPORT

General remarks

Alongside human rights and the rule of law, democracy is one of the three pillars of the European constitutional heritage, as well as of the Council of Europe. Democracy is inconceivable without elections held in accordance with certain principles that lend them their democratic status.

These principles represent a specific aspect of the European constitutional heritage that can legitimately be termed the “European electoral heritage”. This heritage comprises two aspects, the first, the hard core, being the constitutional principles of electoral law such as universal, equal, free, secret and direct suffrage, and the second the principle that truly democratic elections can only be held if certain basic conditions of a democratic state based on the rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees, are met. The text which follows – like the foregoing guidelines – is therefore in two parts, the first covering the definition and practical implications of the principles of the European electoral heritage and the second the conditions necessary for their application.

I. The underlying principles of Europe’s electoral heritage

Introduction: the principles and their legal basis

If elections are to comply with the common principles of the European constitutional heritage, which form the basis of any genuinely democratic society, they must observe five fundamental rules: *suffrage must be universal, equal, free, secret and direct*. Furthermore, elections must be held *periodically*. All these principles together constitute the European electoral heritage.

Although all these principles are conventional in nature, their implementation raises a number of questions that call for close scrutiny. We would do well to identify the “hard core” of these principles, which must be scrupulously respected by all European states.

The hard core of the European electoral heritage consists mainly of international rules. The relevant universal rule is Article 25 (b) of the International Covenant on Civil and Political Rights, which expressly provides for all of these principles except direct suffrage, although the latter is implied.² The common European rule is Article 3 of the Additional Protocol to the European Convention on Human Rights, which explicitly provides for the right to periodical elections by free and secret suffrage;³ the other principles have also been recognised in human rights case law.⁴ The right to direct elections has also been admitted by

²See Article 21 of the Universal Declaration of Human Rights.

³Article 3, Right to free elections: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

⁴Where universality is concerned, cf. ECHR No. 9267/81, judgment in *Mathieu-Mohin and Clerfayt vs. Belgium*, 2 March 1997, Series A vol. 113, p. 23; judgment in *Gitonas and others vs. Greece*, 1 July 1997, No. 18747/91, 19376/92; 19379/92, 28208/95 and 27755/95, *Collected Judgments and Decisions, 1997-IV*, p. 1233; re. equality, cf. aforementioned judgment of *Mathieu-Mohin and Clerfayt*, p. 23.

the Strasbourg Court, at least implicitly.⁵ However, the constitutional principles common to the whole continent do not figure only in the international texts: on the contrary, they are often mentioned in more detail in the national constitutions.⁶ Where the legislation and practice of different countries converge, the content of the principles can be more accurately pinpointed.

1. Universal suffrage

Universal suffrage covers both active (the right to vote) and passive electoral rights (the right to stand for election). The right to vote and stand for election may be subject to a number of conditions, usually concerning *age* and *nationality*.

There must be a minimum age for the right to vote and the right to stand for election; however, attainment of the age of majority, entailing not only rights but also obligations of a civil nature, must at least confer the right to vote. A higher age may be laid down for the right to stand for election but, save where there are specific qualifying ages for certain offices (senator, head of state), this should not be more than 25.

Most countries' legislations lay down a *nationality* requirement. However, a tendency is emerging to grant local political rights to long-standing foreign residents, in accordance with the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.⁷ It is accordingly recommended that the right to vote in local elections be granted after a certain period of residence. Furthermore, under the European integration process European citizens have been granted the right to vote and stand for election in municipal and European Parliament elections in their EU member state of residence.⁸ The nationality criterion can, moreover, sometimes cause problems if a state withholds citizenship from persons who have been settled in its territory for several generations, for instance on linguistic grounds.⁹ Furthermore, under the European Convention on Nationality¹⁰ persons holding dual nationality must have the same electoral rights as other nationals.¹¹

Thirdly, the right to vote and/or the right to stand for election may be subject to *residence* requirements,¹² residence in this case meaning habitual residence. Where local and regional elections are concerned, the residence requirement is not incompatible *a priori* with the principle of universal suffrage, if the residence period specified does not exceed a few months; any longer period is acceptable only to protect national minorities.¹³ Conversely, quite a few states grant their nationals living abroad the right to vote, and even to

⁵ECHR No. 24833/94, judgment in *Matthews vs. the United Kingdom*, 18 February 1999, *Collected Judgments and Decisions 1999-I*, para. 64.

⁶E.g. Article 38.1 of the German Constitution, Articles 68.1 and 69.2 of the Spanish Constitution and Article 59.1 of the Romanian Constitution.

⁷ETS 144.

⁸Article 19 of the Treaty establishing the European Community.

⁹See *Doc. 8255*, *Observation of parliamentary elections in Latvia (3 October 1998)*; rapporteurs: Mr Elo, Finland, SOC, and Mrs Fehr, Switzerland, LDR.

¹⁰ETS 166, Article 17.

¹¹The ECHR does not go so far: *Eur. Comm. HR No. 28858/95, judgment 25.11.96 Ganchev vs. Bulgaria*, DR 87, p. 130.

¹²See most recently ECHR No. 31891/96, judgment 7.9.99, *Hilbe vs. Liechtenstein*.

¹³See *Eur. Comm. HR No. 23450/94, judgment 15.9.97, Polacco and Garofalo vs. Italy (re. Trentino-Alto Adige)*.

be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis. For example, Croatia's conferral of political rights on Croats living in Bosnia-Herzegovina has been held to be unreasonable, particularly where local elections are concerned.¹⁴ Registration could take place where a voter has his or her secondary residence, if he or she resides there regularly and it appears, for example, on local tax payments; the voter must not then of course be registered where he or she has his or her principal residence.

The free movement of citizens within the country is one of the fundamental rights necessary for truly democratic elections.¹⁵ However, if persons have been displaced against their will, they should, for a certain time, have the possibility of being considered as resident at their former place of residence. This possibility ought to be open for a minimum of five years but for no more than fifteen years to persons displaced within the national territory.

Lastly, provision may be made for *clauses suspending political rights*. Such clauses must, however, comply with the usual conditions under which fundamental rights may be restricted; in other words, they must:¹⁶

- be provided for by law;
- observe the principle of proportionality;
- be based on mental incapacity or a criminal conviction for a serious offence.

Furthermore, the withdrawal of political rights may only be imposed by express decision of a court of law. However, in the event of withdrawal on grounds of mental incapacity, such express decision may concern the incapacity and entail *ipso jure* deprivation of civic rights.

The conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them, as the holding of a public office is in issue and it may be legitimate to debar persons whose activities in such an office violate a greater public interest.

The proper maintenance of *electoral registers* is vital in guaranteeing universal suffrage. However, it is acceptable for voters not to be included automatically on the registers, but only at their request. In practice, electoral registers are often discovered to be inaccurate, which leads to disputes.¹⁷ Lack of experience on the part of the authorities, population shifts and the fact that few citizens bother to check the electoral registers when they are presented for inspection make it difficult to compile these registers. A number of conditions must be met if the registers are to be reliable:

- i. There must be permanent electoral registers.
- ii. There must be regular updates, at least once a year, so that municipal (local) authorities get into the habit of performing the various tasks involved in updating at the same time every year. Where registration of voters is not automatic, a fairly long time-period must be allowed for such registration.

¹⁴ CDL-AD (2002) 3, para. 10.

¹⁵ See Chapter II.1 below.

¹⁶ See e.g. ECHR No. 26772/95, judgment in *Labita vs. Italy*, 6 April 2002, paras. 201 ff.

¹⁷ See Doc. 8448; Ad Hoc Committee to observe the parliamentary elections in Armenia (30 May 1999); Rapporteur: Mrs Gelderblom-Lankhout, Netherlands, LDR.

- iii. The electoral registers must be published.
- iv. The final update should be sent to a higher authority under the supervision of the impartial body responsible for the application of the electoral law.
- v. A supplementary register can enable persons who have changed address or reached the statutory voting age since the final register was published, to vote.
- vi. There should be an administrative procedure – subject to judicial control – or a judicial procedure enabling electors not on the register to have their names included. In some countries, the closing date for entry in the supplementary register may be, for example, 15 days before the election or election day itself. The latter case, whilst admirably broad-minded, relies on decisions made by a court obliged to sit on polling day, and is thus ill-suited to the organisational needs on which democracies are based. In any event polling stations should not be permitted to register voters on election day itself.
- vii. Furthermore, inaccuracies in electoral registers stem both from unjustified entries and from the failure to enter certain electors. A procedure of the kind mentioned in the previous paragraph should make it possible for electors to have erroneous entries corrected. The capacity for requesting such corrections may be restricted to electors registered in the same constituency or at the same polling station.

The obligation to collect a specific number of *signatures* in order to be able to stand is theoretically compatible with the principle of universal suffrage. In practice, only the most marginal parties seem to have any difficulty gathering the requisite number of signatures, provided that the rules on signatures are not used to bar candidates from standing for office. In order to prevent such manipulation, it is preferable for the law to set a maximum 1% signature requirement.¹⁸ The signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample;¹⁹ however, once the verification shows beyond doubt that the requisite number of signatures has been obtained, the remaining signatures need not be checked. In all cases candidatures must be validated by the start of the election campaign, because late validation places some parties and candidates at a disadvantage in the campaign.

There is another procedure where candidates or parties must pay a deposit, which is only refunded if the candidate or party concerned goes on to win more than a certain percentage of the vote. Such practices appear to be more effective than collecting signatures. However, the amount of the deposit and the number of votes needed for it to be reimbursed should not be excessive.

2. Equal suffrage

Equality in electoral matters comprises a variety of aspects. Some concern equality of suffrage, a value shared by the whole continent, while others go beyond this concept and cannot be deemed to reflect any common standard. The principles to be respected in all cases are numerical vote equality, equality in terms of electoral strength and equality of

¹⁸CDL (99) 66, p. 9.

¹⁹CDL-INF (2000) 17, pp. 4-5; CDL (99) 67, pp 7-8.

chances. On the other hand, equality of outcome achieved, for instance, by means of proportional representation of the parties or the sexes, cannot be imposed.

2.1 Equal voting rights

Equality in voting rights requires each voter to be normally entitled to one vote, and to one vote only. Multiple voting, which is still a common irregularity in the new democracies, is obviously prohibited – both if it means a voter votes more than once in the same place and if it enables a voter to vote simultaneously in several different places, such as his or her place of current residence and place of former residence.

In some electoral systems, the elector nonetheless has more than one vote. In, for example, a system that allows split voting (voting for candidates chosen from more than one list), the elector may have one vote per seat to be filled; another possibility is when one vote is cast in a small constituency and another in a larger constituency, as is often the case in systems combining single-member constituencies and proportional representation at the national or regional level.²⁰ In this case, equal voting rights mean that all electors should have the same number of votes.

2.2 Equal voting power

Equality in voting power, where the elections are not being held in one single constituency, requires constituency boundaries to be drawn in such a way that seats in the *lower chambers* representing the people are distributed equally among the constituencies, in accordance with a specific apportionment criterion, e.g. the number of residents in the constituency, the number of resident nationals (including minors), the number of registered electors, or possibly the number of people actually voting. An appropriate combination of these criteria is conceivable. When this principle is not complied with, we are confronted with what is known as *electoral geometry*, in the form either of “active electoral geometry”, namely a distribution of seats causing inequalities in representation as soon as it is applied, or of “passive electoral geometry”, arising from protracted retention of an unaltered territorial distribution of seats and constituencies. Furthermore, under systems tending towards a non-proportional result, particularly majority (or plurality) vote systems, gerrymandering may occur, which consists in favouring one party by means of an artificial delimitation of constituencies.

Constituency boundaries may also be determined on the basis of geographical criteria and the administrative or indeed historic boundary lines, which often depend on geography.

The maximum admissible departure from the distribution criterion adopted depends on the individual situation, although it should seldom exceed 10% and never 15%, except in really exceptional circumstances (a demographically weak administrative unit of the same importance as others with at least one lower-chamber representative, or concentration of a specific national minority).²¹

²⁰ See, for example, Article 64 of the Albanian Constitution and Section 1 of the German Federal Elections Act.

²¹ See CDL (98) 45, p. 3; CDL (99) 51, p. 8; CDL (2000) 2, p. 5; CDL-AD (2002) 9, para. 22.

In order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation.²²

In multi-member constituencies electoral geometry can easily be avoided by regularly allocating seats to the constituencies in accordance with the distribution criterion adopted. Constituencies ought then to correspond to administrative units, and redistribution is undesirable. Where a uninominal method of voting is used, constituency boundaries need to be redrawn at each redistribution of seats. The political ramifications of (re)drawing electoral boundaries are very considerable, and it is therefore essential that the process should be non-partisan and should not disadvantage national minorities. The long-standing democracies have widely differing approaches to this problem, and operate along very different lines. The new democracies should adopt simple criteria and easy-to-implement procedures. The best solution would be to submit the problem in the first instance to a commission comprising a majority of independent members and, preferably, a geographer, a sociologist, a balanced representation of the parties and, where appropriate, representatives of national minorities. The parliament would then make a decision on the basis of the commission's proposals, with the possibility of a single appeal.

2.3 Equality of opportunity

The concern to ensure *equality of opportunity* should prompt the state to show impartiality towards all the parties and candidates and to apply the same law uniformly to all. In particular, the *neutrality* requirement applies to the *electoral campaign* and *coverage by the media*, especially the publicly owned media, as well as to *public funding* of parties and campaigns. This means that there are two possible interpretations of equality: either "strict" equality or "proportional" equality. "Strict" equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for electioneering purposes. "Proportional" equality implies that the treatment of political parties is in proportion to the results achieved in the elections. Equality of opportunity applies in particular to radio and television airtime, public funds and other forms of support.

The basic idea is that the main political forces should be able to voice their opinions in the main organs of the country's media and that all the political forces should be allowed to hold meetings, including on public thoroughfares, distribute literature and exercise their right to post bills. All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions. Quick rights of appeal must be available in order to remedy the situation before the elections. But the fact is that media failure to provide impartial information about the election campaign and candidates is one of the most frequent shortcomings arising during elections.²³ The most important thing is to draw up a list of the media organisations in each country and to make sure that the candidates

²²CDL-AD (2002) 9, para. 23.

²³Cf. Doc. 8623, *Ad Hoc Committee to observe the parliamentary elections in Russia (19 December 1999)*, *Rapporteur: Mr David Atkinson, United Kingdom, EDG*, which points out that "the electoral campaign in the Russian media appeared to have been utterly unfair", "often crossing the line to slander and libel", and "certain media, both public and private, were clearly influenced by major stockholders, certain political circles or the administration to provide partial and incorrect information on certain political parties, blocs or candidates".

or parties are accorded sufficiently balanced amounts of airtime or advertising space, including on state radio and television stations. The authorities and parties participating in the campaign must be interviewed by the observers before the election, although it may be advisable in some cases to use organisations that specialise in media studies. Such matters can be covered by agreements between election monitoring organisations.

As regards privately owned media, an impartiality requirement would be contrary to freedom of expression. However, privately owned media may be required to allow the various participants in elections a minimum level of access for the purposes of the election campaign and of advertising.

The question of funding, and in particular of the need for it to be transparent, will be considered later.²⁴ Spending by political parties, particularly on advertising, may likewise be limited in order to guarantee equality of opportunity.

2.4 Equality and national minorities

In accordance with the principles of international law, the electoral law must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination against them.²⁵ In particular, the national minorities must be allowed to set up political parties.²⁶ Constituency delimitations and quorum regulations must not be such as to form an obstacle to the presence of persons belonging to minorities in the elected body.

Certain measures taken to ensure minimum representation for minorities either by reserving seats for them²⁷ or by providing for exceptions to the normal rules on seat distribution, eg by waiving the quorum for the national minorities' parties²⁸ do not infringe the principle of equality. However, neither candidates nor electors must be required to indicate their affiliation with any national minority.^{29,30}

2.5 Equality and parity of the sexes

If there is a specific constitutional basis³¹, rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity. In the absence of such a constitutional basis, such provisions could be considered contrary to the principle of equality and freedom of association.

Moreover, the scope of these rules depends on the electoral system. In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same.

²⁴See below, Chapter II.3.3.

²⁵Article 4.1 of the Framework Convention for the Protection of National Minorities (ETS 157).

²⁶Re. bans on political parties and similar measures, see CDL-INF (2000) 1.

²⁷As is the case in Slovenia and Croatia.

²⁸As is the case in Germany and Poland. Romanian law even provides for representation of minorities' organisations if they have secured a number of votes equivalent to 5% (only) of the average number of validly cast votes required for the election of a deputy to the lower house country-wide.

²⁹Article 3 of the Framework Convention for the Protection of National Minorities (ETS 157).

³⁰Re. electoral law and national minorities, see CDL-INF (2000) 4.

³¹See Article 3.2 of the French Constitution; cf. judgment of 18 November 1982, *Recueil des décisions du Conseil constitutionnel*, 1982, pp. 66 ff.

However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters.

3. Free suffrage

Free suffrage comprises two different aspects: free formation of the elector's opinion, and free expression of this opinion, i.e. freedom of voting procedure and accurate assessment of the result.

3.1 Freedom of voters to form an opinion

Freedom of voters to form an opinion partly overlaps with equality of opportunity. It requires the *state* – and public authorities generally – to honour their duty of even-handedness, particularly where the use of the mass media, billposting, the right to demonstrate on public thoroughfares and the funding of parties and candidates are concerned.

Public authorities also have certain positive obligations. They must submit lawfully presented candidatures to the citizens' votes. The presentation of specific candidatures may be prohibited only in exceptional circumstances, where necessitated by a greater public interest. Public authorities must also give the electorate access to lists and candidates standing for election by means, for instance, of appropriate billposting. The information in question must also be available in the languages of national minorities, at least where they make up a certain percentage of the population.

Voters' freedom to form an opinion may also be infringed by *individuals*, for example when they attempt to buy votes, a practice which the state is obliged to prevent or punish effectively.

In order to ensure that the rules relating to voters' freedom to form an opinion are effective, any violation of the foregoing rules must be punished.

3.2 Freedom of voters to express their wishes and combating electoral fraud

Freedom of voters to express their wishes primarily requires strict observance of the *voting procedure*. In practice, electors should be able to cast their votes for registered lists or candidates, which means that they must be supplied with ballot papers bearing their names and that they must be able to deposit the ballot papers in a ballot box. The state must make available the necessary premises for electoral operations. Electors must be protected from threats or constraints liable to prevent them from casting their votes or from casting them as they wish, whether such threats come from the authorities or from individuals; the state is obliged to prevent and penalise such practices.

Furthermore, the elector has the right to an accurate assessment of the result of the ballot, which implies, in particular, that the state should punish any election fraud.

3.2.1 Voting procedures

Voting procedures play a vital role in the overall electoral process because it is during voting that election fraud is most likely to occur.

In some countries the implementation of democratic practices requires a radical change of attitudes, which must be actively promoted by the authorities. In this respect some measures have to be taken to control the habits and reflexes dating back to the totalitarian period. These “habits” and “reflexes” have a negative impact on the elections. Most of these irregularities, such as “family voting”³² occur during the voting procedure.

All these observations lead us to the following conclusion: *the voting procedure must be kept simple. Compliance is therefore recommended with the criteria set out in the ensuing paragraphs.*

If the polling station officials represent a proper balance of political opinion, fraud will be difficult, and the fairness of the ballot should be judged by two main criteria alone: the number of electors who have cast votes compared with the number of ballot papers in the ballot box. The first measure can be determined by the number of signatures in the electoral register. Human nature being what it is (and quite apart from any intention to defraud), it is difficult to achieve total congruity between the two measures, and any further controls such as numbering the stubs of ballot papers or comparing the total number of ballot papers found in the ballot box plus those cancelled and unused with the number of ballot papers issued to the polling station may give some indication, but one should be under no illusion that the results of these various measures will coincide perfectly. The risk in multiplying the measures used is rather that the differences in the totals, and in the end the real irregularities, will not be taken seriously. It is better to have strict control over two measures than slack – and hence ineffective – control over a larger number of variables.

Any unused ballot papers should remain at the polling station and should not be deposited or stored in different premises. As soon as the station opens, the ballot papers awaiting use must be in full view on the table of the senior station official. There should be no others stored in cupboards or other places.

The signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot.

The voter should collect his or her ballot paper and no one else should touch it from that point on.

It is important that the polling station officials include multi-party representatives and that observers assigned by the candidates be present.

Voters should always have the possibility of voting in a polling station; other means of voting are, however, acceptable on certain conditions, as indicated below.

3.2.1.1 Postal voting or proxy voting in certain circumstances

³²See section I.4 below. For an example of family voting, see Doc. 7699 Addendum III; Information report on the presidential elections in Moldova, November 1996; rapporteurs: Mrs Durrieu (France, SOC), Mr Jeszszky (Hungary, EDG), Mr Columberg (Switzerland, EPP).

Postal voting and proxy voting are permitted in countries throughout the western world, but the pattern varies considerably. Postal voting, for instance, may be widespread in one country and prohibited in another owing to the danger of fraud. It should be allowed only if the postal service is secure – in other words, safe from intentional interference – and reliable, in the sense that it functions properly. Proxy voting is permissible only if subject to very strict rules, again in order to prevent fraud; the number of proxies held by any one elector must be limited.

Neither of these practices should be widely encouraged in the new democracies given the problems with their postal service, on top of all the other difficulties inherent in this kind of voting, including the heightened risk of “family voting”. Subject to certain precautions, however, postal voting can be used to enable hospital patients, persons in custody, persons with restricted mobility and electors resident abroad to vote, in so far as there is no risk of fraud or intimidation. This would dispense with the need for a mobile ballot box, which often causes problems and risks of fraud. Postal voting would take place under a special procedure a few days before the election.

The use of *mobile ballot boxes* is undesirable because of the attendant serious risk of fraud. Should they nonetheless be used, strict conditions should be imposed to prevent fraud, including the attendance of several members of the polling station election commission representing different political groupings.

3.2.1.2 Military voting

Where servicemen cannot return home on polling day, they should preferably be registered at polling stations near their barracks. Details of the servicemen concerned are sent by the local command to the municipal authorities who then enter the names in the electoral list. The one exception to this rule is when the barracks are too far from the nearest polling station. Within the military units, special commissions should be set up to supervise the pre-election period, in order to prevent the risk of superior officers’ imposing or ordering certain political choices.

Where servicemen are responsible for the security of a polling station, they may be allowed to cast their vote there, but for their constituency of residence.

3.2.1.3 Mechanical and electronic voting methods

Several countries are already using, or are preparing to introduce mechanical and electronic voting methods. The advantage of these methods becomes apparent when a number of elections are taking place at the same time, even though certain precautions are needed to minimise the risk of fraud, for example by enabling the voter to check his or her vote immediately after casting it. Clearly, with this kind of voting, it is important to ensure that ballot papers are designed in such a way as to avoid confusion. In order to facilitate verification and a recount of votes in the event of an appeal, it may also be provided that a machine could print votes onto ballot papers; these would be placed in a sealed container where they cannot be viewed. There should also be some kind of device for mixing the ballot papers so that if it proves necessary to open the container for checking, papers cannot be linked to particular voters – for example, those turning out early or late in the day.

Electronic voting methods must be secure and reliable. They are secure if the system can withstand deliberate attack; they are reliable if they can function on their own, irrespective of any shortcomings in the hardware or software. Furthermore, the elector must be able to obtain confirmation of his or her vote and, if necessary, correct it without the secrecy of the ballot being in any way violated.

Furthermore, the system's transparency must be guaranteed in the sense that it must be possible to check that it is functioning properly.

3.2.1.4 Counting

The votes should preferably be counted at the polling stations themselves, rather than in special centres. The polling station staff are perfectly capable of performing this task, and this arrangement obviates the need to transport the ballot boxes and accompanying documents, thus reducing the risk of substitution.

The vote counting should be conducted in a transparent manner. Ideally, it should be open to the public, as is the case in some western countries, but most legislators in Eastern Europe and the CIS only admit observers, representatives of the candidates and the media, and grants the first two categories the option of entering comments in the minutes. These persons must be allowed to be present in all circumstances. There must be enough copies of the record of the proceedings to distribute to ensure that all the aforementioned persons receive one; one copy must be immediately posted on the notice-board, another kept at the polling station and a third sent to the commission or competent higher authority.

The relevant regulations should stipulate certain practical precautions as regards equipment. For example, the record of the proceedings should be completed in ballpoint pen rather than pencil, as text written in pencil can be erased.

In practice, it appears that the time needed to count the votes depends on the efficiency of the presiding officer of the polling station. These times can vary markedly, which is why a simple tried and tested procedure should be set out in the legislation or permanent regulations which appear in the training manual for polling station officials.

It is best to avoid treating too many ballot papers as invalid or spoiled. In case of doubt, an attempt should be made to ascertain the voter's intention.

3.2.1.5 Transferring the results

There are two kinds of results: provisional results and final results (before all opportunities for appeal have been exhausted). The media, and indeed the entire nation, are always impatient to hear the initial provisional results. The speed with which these results are relayed will depend on the country's communications system. The polling station's results can be conveyed to the electoral district (for instance) by the presiding officer of the polling station, accompanied by two other members of the polling station staff representing opposing parties, in some cases under the supervision of the security forces, who will carry the records of the proceedings, the ballot box, etc.

However much care has been taken at the voting and vote-counting stages, transmitting the results is a vital operation whose importance is often overlooked; it must

therefore be effected in an open manner. Transmission from the electoral district to the regional authorities and the Central Electoral Commission – or other competent higher authorities – can be done by fax. In that case, the records will be scanned and the results can be displayed as and when they come in. Television can be used to broadcast these results but once again, too much transparency can be a dangerous thing if the public is not ready for this kind of piecemeal reporting. The fact is that the initial results usually come in from the towns and cities, which do not normally or necessarily vote in the same way as rural areas. It is important therefore to make it clear to the public that the final result may be quite different from, or even completely opposite to, the provisional one, without there having been any question of foul play.

4. Secret suffrage

Secrecy of the ballot is one aspect of voter freedom, its purpose being to shield voters from pressures they might face if others learned how they had voted. Secrecy must apply to the entire procedure – and particularly the casting and counting of votes. Voters are entitled to it, but must also respect it themselves, and non-compliance must be punished by disqualifying any ballot paper whose content has been disclosed.³³

Voting must be individual. Family voting, whereby one member of a given family can supervise the votes cast by the other members, infringes the secrecy of the ballot; it is one of the commonest violations of the electoral law in some former USSR states. It can be explained by the fact that the USSR used to allow electors to vote for members of their family who were ill or absent at the time of the elections. All other forms of control by one elector over the vote of another must also be prohibited. Proxy voting, which is subject to strict conditions, is a separate issue.³⁴

Moreover, since abstention may indicate a political choice, lists of persons voting should not be published.

Violation of the secrecy of the ballot must be punished, just like violations of other aspects of voter freedom.

5. Direct suffrage

Direct election of one of the chambers of the national parliament by the people is one aspect of Europe's shared constitutional heritage. Subject to such special rules as are applicable to the second chamber, where there is one, other legislative bodies, like the Parliaments of Federate States,³⁵ should be directly elected, in accordance with Article 3 of the Additional Protocol to the European Convention on Human Rights. Nor can local self-government, which is a vital component of democracy, be conceived of without local elected bodies.³⁶ Here, local assemblies include all infra-national deliberative bodies.³⁷ On the other

³³CDL (2000) 2, p. 9.

³⁴See above, Chapter I.3.2.1.1.

³⁵See ECHR No. 9267/81, judgment *Mathieu-Mohin and Clerfayt vs. Belgium*, 2 March 1997, Series A No. 113, p. 23; Eur. Comm. HR No. 27311/95, *Timke vs. Germany*, DR 82, p. 15; No. 7008/75, 12.7.76, *X vs. Austria*, DR 6, p. 120.

³⁶Article 3 of the European Charter of Local self-government (ETS 122).

³⁷Article 13 of the European Charter of Local self-government.

hand, even though the President of the Republic is often directly elected, this is a matter for the Constitution of the individual state.

6. Frequency of elections

Both the International Covenant on Civil and Political Rights³⁸ and the Additional Protocol to the European Convention on Human Rights³⁹ provide that elections must be held periodically. General elections are usually held at four- or five-yearly intervals, while longer periods are possible for presidential elections, although the maximum should be seven years.

II. Conditions for implementing the principles

The underlying principles of European electoral systems can only be guaranteed if certain *general conditions* are fulfilled.

- The first, general, condition is *respect for fundamental human rights*, and particularly freedom of expression, assembly and association, without which there can be no true democracy;
- Second, electoral law must enjoy a certain stability, protecting it against party political manipulation;
- Last and above all, a number of procedural guarantees must be provided, especially as regards the organisation of polling.

Furthermore, elections are held not in a vacuum but within the context of a specific electoral system and a given party system. This second section will conclude with a number of comments on this aspect, particularly on the relationship between electoral and party systems.

1. Respect for fundamental rights

The holding of democratic elections and hence the very existence of democracy are impossible without respect for *human rights*, particularly the freedom of expression and of the press and the freedom of assembly and association for political purposes, including the creation of political parties. Respect for these freedoms is vital particularly during election campaigns. *Restrictions* on these fundamental rights must comply with the European Convention on Human Rights and, more generally, with the requirement that they have a basis in law, are in the general interest and respect the principle of proportionality.

The fact is that many countries have legal limitations on *free speech*, which, if restrictively interpreted, may just be acceptable – but may generate abuses in countries with no liberal, democratic tradition. In theory, they are intended to prevent “abuses” of free speech by ensuring, for example, that candidates and public authorities are not vilified, and even protecting the constitutional system. In practice, however, they may lead to the censoring of any statements which are critical of government or call for constitutional change, although this is the very essence of democratic debate. For example, several

³⁸ Article 25 b.

³⁹ Article 3.

international organisations agree that European standards are violated by the electoral law of Belarus, which prohibits “insulting or defamatory references to officials of the Republic of Belarus or other candidates” in campaign documents, makes it an offence to circulate libellous information on candidates, and makes candidates themselves liable for certain offences committed by their supporters.⁴⁰ Similarly, in Azerbaijan, the insistence in the law applicable in 2000 that materials intended for use in election campaigns must be submitted to electoral commissions, indicating the organisation which ordered and produced them, the number of copies and the date of publication, constituted an unacceptable form of censorship, particularly since electoral commissions were required to take action against illegal or inaccurate publications. Furthermore, the rules prohibiting improper use of the media during electoral campaigns were rather vague.⁴¹

Another very important fundamental right in a democracy is freedom of movement within the country, together with the right for nationals to return to their country at any time.

2. Regulatory levels and stability of the electoral law

Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy.⁴² Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.

In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.

It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests.

One way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries). Another, more flexible, solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that.

⁴⁰ Articles 47, 49 and 75 of the Electoral Code; see also CDL (99) 66, pp. 7-8.

⁴¹ For further details see CDL-INF (2000) 17, pp. 2 and 3, and Articles 56 and 57 of the law on elections to the Milli Majlis.

⁴² On the importance of credibility of the electoral process, see for example CDL (99) 67, p. 11; on the need for stability of the law, see CDL (99) 41, p. 1.

For the rest, the electoral law should normally have the rank of statute law. Rules on implementation, in particular those on technical questions and matters of detail, can nevertheless be in the form of regulations.

3. Procedural safeguards

3.1 Organisation of elections by an impartial body

Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.

In stable democracies, where the administrative authorities have a long-standing tradition of independence from the political authorities, the civil service applies electoral law without being subjected to political pressures. It is therefore both normal and acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior.

However, in new democracies with little experience of organising pluralist elections, there is too great a risk of government's pushing the administrative authorities to do what it wants.⁴³ This applies both to central and local government - even when the latter is controlled by the national opposition.

This is why *independent, impartial electoral commissions* must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.

According to the reports of the Bureau of the Assembly on election observations, the following shortcomings concerning the electoral commissions have been noted in a number of member States: lack of transparency in the activity of the central electoral commission; variations in the interpretation of counting procedure; politically polarised election administration; controversies in appointing members of the Central Electoral Commission; commission members nominated by a state institution; the dominant position of the ruling party in the election administration.

Any central electoral commission must be permanent, as an administrative institution responsible for liaising with local authorities and the other lower-level commissions, e.g. as regards compiling and updating the electoral lists.

The composition of a central electoral commission can give rise to debate and become the key political issue in the drafting of an electoral law. Compliance with the following guidelines should facilitate maximum impartiality and competence on the part of the commission.

As a general rule, the commission should consist of:

⁴³CDL (99) 51, p. 8.

- a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office;
- representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; “equally” may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties’ relative electoral strengths.⁴⁴ Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.

In addition, the electoral commission may include:

- representatives of national minorities; their presence is desirable if the national minority is of a certain importance in the territory concerned;
- a representative of the Ministry of the Interior. However, for reasons connected with the history of the country concerned, it may not always be appropriate to have a representative of the Ministry of the Interior in the commission. During its election observation missions the Assembly has expressed concern on several occasions about transfers of responsibilities from a fully-fledged multi-party electoral commission to an institution subordinate to the executive.⁴⁵ Nevertheless, co-operation between the central electoral commission and the Ministry of the Interior is possible if only for practical reasons, e.g. transporting and storing ballot papers and other equipment. For the rest, the executive power should not be able to influence the membership of the electoral commissions.⁴⁶

Broadly speaking, bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence.⁴⁷ Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law (vague references to “acts discrediting the commission”, for example, are not sufficient).

In the long-standing democracies where there are no electoral commissions but where another impartial body is competent in electoral matters, political parties must be able to observe the work of that body.

The composition of the central electoral commission is certainly important, but no more so than its mode of *operation*. The commission’s rules of procedure must be clear, because commission chairpersons have a tendency to let members ramble on, which the latter are quick to exploit. The rules of procedure should provide for an agenda and a limited amount of speaking time for each member – e.g. a quarter of an hour; otherwise endless discussions are liable to obscure the main business of the day.

⁴⁴See above, Chapter I.2.3.

⁴⁵See for example *Doc. 8254: observation of parliamentary elections in Slovakia (25-26 September 1998)*, Rapporteur: Mr Adamczyk (Poland, EPP/CD).

⁴⁶Cf CDL-AD (2002) 7, para. 5, 7 ff, 54.

⁴⁷On this issue (in Armenia), see CDL (2000) 103 rev., pp. 3-4; CDL (2002) 84, p. 5: the possibility of recall has been abolished; CDL-INF (2001) 24, p. 3 (Slovakia); CDL-AD (2002) 9, para. 30 (Georgia).

There are many ways of making decisions. It would make sense for decisions to be taken by a qualified (e.g. 2/3) majority, so as to encourage debate between the majority and at least one minority party. Reaching decisions by consensus is preferable.

The meetings of the central electoral commission should be open to everyone, including the media (this is another reason why speaking time should be limited). Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection.

Other electoral commissions operating at regional or constituency level should have a similar composition to that of the central electoral commission. Constituency commissions play an important role in uninominal voting systems because they determine the winner in general elections. Regional commissions also play a major role in relaying the results to the central electoral commission.

Appropriate staff with specialised skills⁴⁸ are required to organise elections. Members of central electoral commissions should be legal experts, political scientists, mathematicians or other people with a good understanding of electoral issues.

There have been several cases of commissions lacking qualified and trained election staff, e.g. in Azerbaijan, during the November 2000 parliamentary elections. The rapporteur noted that "... the staff in the polling stations were neither motivated nor trained to implement the election procedures properly. The stakes were such that, on the day, people forgot the rules in order to get the 'correct' results".⁴⁹

Members of electoral commissions have to receive standardised training at all levels of the election administration. Such training should also be made available to the members of commissions appointed by political parties.

The electoral law should contain an article requiring the authorities (at every level) to meet the demands and needs of the electoral commission. Various ministries and other public administrative bodies, mayors and town hall staff may be directed to support the election administration by carrying out the administrative and logistical operations of preparing for and conducting the elections. They may have responsibility for preparing and distributing the electoral registers, ballot papers, ballot boxes, official stamps and other required material, as well as determining the arrangements for storage, distribution and security.

3.2 Organisation and operation of polling stations

The quality of the voting and vote-counting systems and proper compliance with the electoral procedures depend on the mode of organisation and operation of the polling stations. The reports of the Bureau of the Assembly on the observation of elections in different countries have revealed a series of logistical irregularities. In October 1999, for example, they noted significant differences between polling stations across different regions of Georgia; according to the report on this country,⁵⁰ "a great difference was observed between

⁴⁸See CDL (98) 10, p. 5.

⁴⁹See Doc. 8918; *Ad Hoc Committee to observe the parliamentary elections in Azerbaijan (5 November 2000)*; Rapporteur: Mr Martínez Casañ (Spain, EPP/CD).

⁵⁰See Doc. 8605, *Ad Hoc Committee to observe the parliamentary elections in Georgia (31 October 1999)*, Rapporteur: Mr Davis (United Kingdom, SOC).

the polling stations in cities and in villages. Some out-of-city polling stations did not have heating or electricity and were situated in cramped premises unable to accommodate all local observers and voters at the same time.”

Assembly observation missions have also noticed several cases of technical irregularities such as wrongly printed or stamped ballot boxes, overly complex ballot papers, unsealed ballot boxes, inadequate ballot papers or boxes, misuse of ballot boxes, insufficient means of identification of voters and absence of local observers.

All these irregularities and shortcomings, in addition to political party electioneering inside the polling station and police harassment, can seriously vitiate the voting process, or indeed undermine its integrity and validity.

3.3 Funding

Regulating the funding of political parties and electoral campaigns is a further important factor in the regularity of the electoral process.

First of all, funding must be *transparent*; such transparency is essential whatever the level of political and economic development of the country concerned.

Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances. The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

In unitary states, any expenses incurred by local authorities in connection with the running of a national election, the payment of election commission members, the printing of ballot papers, etc, should normally be borne by the state.

It should be remembered that in the field of *public funding* of parties or campaigns the principle of equality of opportunity applies (“strict” or “proportional” equality).⁵¹ All parties represented in parliament must in all cases qualify for public funding. However, in order to ensure equality of opportunity for all the different political forces, public funding might also be extended to political formations that represent a large section of the electorate and put up candidates for election. The funding of political parties from public funds must be accompanied by supervision of the parties' accounts by specific public bodies (e.g. the Auditor General's Department). The states should encourage a policy of financial openness on the part of political parties receiving public funding.⁵²

⁵¹See section I.3.3 above.

⁵²For further details on funding of political parties, see CDL-INF (2001) 8.

3.4 Security

Every electoral law must provide for intervention by the security forces in the event of trouble. In such an event, the presiding officer of the polling station (or his or her representative) must have sole authority to call in the police. It is important to avoid extending this right to all members of the polling station commission, as what is needed in such circumstances is an on-the-spot decision that is not open to discussion.

In some states, having a police presence at polling stations is a national tradition, which, according to observers, does not necessarily trigger unrest or have an intimidating effect on voters. One should note that a police presence at polling stations is still provided for in the electoral laws of certain western states, even though this practice has changed over time. The presidential elections in Ukraine (31 October and 14 November 1999) provided an example of the possible impact of such “traditions” on the polling: “militia personnel were present inside most polling stations visited – a possible factor of intimidation, particularly when too close to the voting booths and ballot boxes”.⁵³

3.5 Observation of elections

Observation of elections plays an important role in the new democracies as it provides evidence of whether the electoral process has been regular or not.

There are three different types of observer: partisan national observers, non-partisan national observers and international (non-partisan) observers. In practice the distinction between the first two categories is not always obvious. This is why it is best to make the observation procedure as broad as possible at both the national and the international level.

Observation is not confined to the actual polling day but includes ascertaining whether any irregularities have occurred in advance of the elections (e.g. by improper maintenance of electoral lists, obstacles to the registration of candidates, restrictions on freedom of expression, and violations of rules on access to the media or on public funding of electoral campaigns), during the elections (e.g. through pressure exerted on electors, multiple voting, violation of voting secrecy etc.) or after polling (especially during the vote counting and announcement of the results). Observation should focus particularly on the authorities’ regard for their duty of neutrality.

International observers play a primordial role in the new democracies, which have no established tradition of impartial verification of the lawfulness of elections.

Generally, international as well as national observers must be in a position to interview anyone present, take notes and report to their organisation, but they should refrain from making comments.

The law must be very clear as to what sites observers are not entitled to visit, so that their activities are not excessively hampered. For example, an act authorising observers to visit only “sites where the election (or voting) takes place” could be construed by certain polling stations in an unduly narrow manner.⁵⁴

⁵³See *Doc. 8603, Ad Hoc Committee to observe the presidential elections in Ukraine (31 October and 14 November 1999)*; Co-Rapporteurs: Mrs Jones (United Kingdom, SOC) and Mr Gross (Switzerland, SOC).

⁵⁴Re. election observation, see *Handbook for Observers of Elections, Council of Europe, 1996*.

3.6 An effective system of appeal

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.

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 *au fait* with 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.

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.

It is imperative that appeal proceedings be as brief as possible. 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 – other than those concerning the voting in the elections and the results – are taken after the elections have been held. Finally, 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 and for the commission to give its ruling. A time limit of three to five days (both for lodging appeals and making rulings) seems reasonable. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

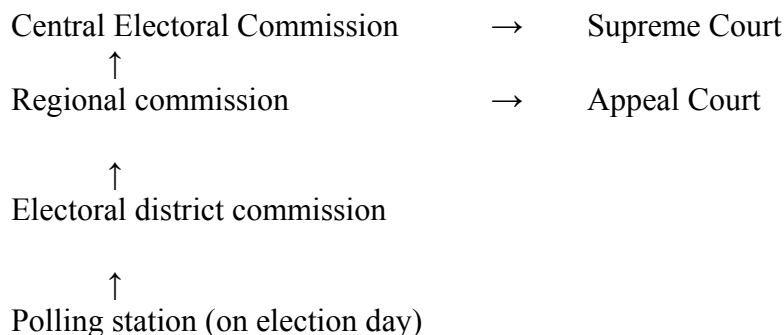
The procedure must also be simple, and providing voters with special appeal forms helps to make it so.⁵⁵ The training sessions on application of Albania's electoral law by the courts (April 2001) stressed the need to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

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

⁵⁵CDL (98) 45, p. 11.

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. This problem has arisen in several CIS countries.⁵⁶

Example:



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.

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.

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.

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.⁵⁷

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

⁵⁶Armenia: CDL (2000) 103 rev., pp. 12, 13, 15 and 16; CDL-AD (2002) 7, para. 12 ff, Appendices; Azerbaijan: CDL-INF (2000) 17, pp.6 and 7; and Belarus.

⁵⁷There was a problem here with the November 2000 elections in Azerbaijan. Under Section 3.1 of the Law on elections to the Milli Majlis, 100 seats are allocated on a single-round, single-candidate, plurality vote, and 25 under a proportional system. Both the plurality and the proportional votes were annulled in eleven constituencies, but only the plurality vote was repeated, and the votes cast in those constituencies under the proportional system were simply ignored when the seats concerned were allocated. This was because, under Sections 73.8.2 and 76.1 of the Law on elections to the Milli Majlis, the proportional segment of an election can be repeated only in its entirety, and then only if the results have been annulled in 25% of polling stations (or constituencies?).

4. The electoral system

4.1 Electoral system and party system

Where the underlying principles of European electoral systems are respected there is an enormous choice of electoral system (in the narrow sense). Before coming down in favour of one particular system, however, a number of factors must be taken into account.

First, a system which has been working well, perhaps for decades, in one country is not necessarily exportable to another, and account must always be taken of local circumstances in choosing the electoral system (e.g. the need to ensure that national minorities or other groups are represented in the elected body). Obviously, the current interests of the ruling party must play no part in the choice, and priority must always be given to the stability of the electoral system, which should preferably be adopted with a view to its remaining in force for several decades to come.

Furthermore, careful thought should be given before introducing in a new democracy a system which has seen little use elsewhere, such as the alternative vote system proposed but finally rejected for the Presidency of Bosnia-Herzegovina.⁵⁸

The influence of the electoral system on the party system must be analysed in two stages: the influence of the electoral system on the results, and the influence of the results on the party system.⁵⁹

How does the electoral system influence the results? First of all it has a *direct influence on results* because of the method of converting votes into seats. Some systems reduce the fragmentation of the vote more radically than others, i.e. they allocate seats in a less proportional manner and favour the large parties to the detriment of the smaller ones. Although proportional systems clearly have less of a tendency to reduce fragmentation than majority systems, not all of them provide perfectly proportional results. Proportionality can be diminished in three different ways:

- by introducing a quorum, which eliminates the smaller parties: a threshold of 3 to 5% of the vote in order to win seats seems appropriate;
- by using a seat distribution method that tends to favour the large parties;
- by establishing a small number of seats for each constituency.

On the other hand, the majority election system eliminates the smaller parties, except in two fairly exceptional cases: where strong independent candidates emerge unlinked to any party, and where local (possibly regionalist and small) parties are very strong in a specific part of the country.

As shown by this last example, the effect of an electoral system also depends heavily on the spread of votes cast.

⁵⁸See CDL (99) 40, p. 7.

⁵⁹For further information see CDL-INF (2001) 16, pp. 2 ff.

The electoral system also influences the results *indirectly* in that it has some effect on voters' attitudes. The general trend is that the more the system counteracts fragmentation, the more it prompts the voter to accentuate its effects through "tactical voting", shunning the parties with little chance of winning seats.

Broadly speaking, the more the system counteracts fragmentation, the more it tends to over-representation of the large parties and under-representation of the smaller parties, which enables one single party to win an absolute majority of seats.

The influence of the results (and therefore of the electoral system) on the party system is much more difficult to assess, and no general rules can be laid down in this field. However, what matters is not the number of parties registered but the number of parties capable of entering parliament. The number of parties in parliament should not be too great in order to minimise the risk of unstable government.

To achieve this, legislators can act at three different levels:

- Restricting the number of parties registered,
- Restricting the number of parties that are allowed to field candidates in elections,
- Restricting the number of parties that can win seats by introducing thresholds in proportional representation ballots or majority-voting ballots or in systems which rely on both.

Preventing an excessive number of parties through the electoral system would seem to be the most effective and least objectionable method as far as political rights are concerned. The general trend is to avoid restricting the number of parties by tinkering with the terms and conditions governing *registration*, because refusal to register a party is often a convenient way for the authorities to get rid of a competitor who is irksome rather than insignificant.⁶⁰

4.2 Voter's freedom of choice

There are no common European standards requiring the elector to be able, during multi-seat elections, to choose between several candidates, apart from his/her choice of different party lists.

However, in the case of plurinominal systems of majority voting (which are no longer used in Europe for electing lower chambers), voters should be able to engage in split voting ("*panachage*") so as to enable several parties to be represented in a given constituency and thus prevent the majority from obtaining any "overwhelming" victory.

In proportional representation systems it should be remembered that party apparatuses have greater weight in fixed party-list systems than where voters can cast preferential votes, cross candidates off lists or use split voting. One of the reasons why the international community intervened to secure preferential voting in Bosnia-Herzegovina and Kosovo was to ensure that electors were not forced to follow the choices made by party leaders.

The right to cast preferential votes can, in particular, promote the representation of minorities where they are in the majority in a given constituency; otherwise, it is not a

⁶⁰ *Re. requirements for presentation of candidatures, see end of section I.2 above.*

suitable means of ensuring representation of minorities, because where it is used the majority candidates on each list are likely to obtain most votes. Similarly, preferential or cross-voting can promote representation of women, but on condition that voters vote for women, otherwise the end result will be opposite to that intended, as it may lead to the exclusion of women.

Conclusion

Compliance with the five underlying principles of the European electoral heritage (universal, equal, free, secret and direct suffrage) is essential for democracy. It enables democracy to be expressed in different ways but within certain limits. These limits stem primarily from the interpretation of the said principles; the present text lays out the minimum rules to be followed in order to ensure compliance. Second, it is insufficient for the electoral law (in the narrow sense) to comprise rules that are in keeping with the European electoral principles: the latter must be placed in their context, and the credibility of the electoral process must be guaranteed. First, fundamental rights must be respected; and second, the stability of the rules must be such as to exclude any suspicion of manipulation. Lastly, the procedural framework must allow the rules laid down to be implemented effectively.