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DRAFT REPORT ON ELECTORAL LAW AND ELECTORAL ADMINISTRATION IN EUROPE

Synthesis study on recurrent challenges and problematic issues

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I. Introduction

1. The main objective of the present study is to identify the recurrent challenges and weak points in the electoral legislation and the electoral administration in Europe against the background of international standards and good practices in electoral matters. The study refers to elections on both the national and the sub-national level. Problems of referendums have in principle not been considered.[1]

2. The focus of the study is on those states in which the Council of Europe has been engaged in making electoral recommendations or observing elections recently. These are the following countries: Albania, Armenia, Azerbaijan, (Belarus), Bosnia and Herzegovina, Croatia, Georgia, "The Former Yugoslav Republic of Macedonia", Moldova, Romania, Serbia and Montenegro (including elections in Serbia, Montenegro and Kosovo), the Russian Federation (including elections in the Chechen Republic), and Ukraine. Experiences from elections in other Council of Europe member states are, however, also taken into account in the analysis.

3. Systematically screening the electoral process, the report tries to identify problems and open challenges of the electoral legislation and administration process, according to electoral experts and international observers. The country examples that are mentioned in this report, have primarily illustrative character.

4. The study is based on:

   - the "Code of Good Practice in Electoral Matters", adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002) (CDL-AD (2002)023 rev);
   - opinions and recommendations of the Venice Commission (see Appendix I);
   - reports and other documents of the Venice Commission (see Appendix II);
   - reports of the Congress of Local and Regional Authorities of the Council of Europe (see Appendix III);
   - documents of the Parliamentary Assembly of the Council of Europe (see Appendix IV);
   - reports by the OSCE/ODIHR (see Appendix V);
   - further publications (see Appendix VI).

II. General remarks

Commitment to international standards

5. At the outset it should be stated that the electoral laws in most Council of Europe members states in general provide an adequate basis for conducting democratic elections and referendums. Remarkably, the electoral laws of several new democracies in Central and Eastern Europe contain quite progressive provisions, for example with regard to formally independent electoral commissions or the political representation of women and minorities, as well as comprehensive safeguards against electoral fraud and manipulation.

[1] For a detailed analysis of the legal rules on referendums in Europe see CDL-AD(2005)034. See also Recommendation 1704 (2005) and the Opinion CDL-AD(2005)028 on that Recommendation.

6. Improvements to the electoral laws are due to constant national and international efforts to improve electoral legislation in the emerging or new democracies in Europe. Many recommendations of the Council of Europe and the OSCE/ODIHR have been taken into account in amendments to the Electoral Codes in the region. Electoral reforms and amendments have mostly served to overcome practical problems in conducting democratic elections.

7. Though important improvements have been made, shortcomings remain in the electoral laws, and some provisions are still cause for concern. In various respects, there is still room for improvement or, at least, debate. As to a number of provisions, the electoral laws may benefit from further reconsideration.

8. However, it should be borne in mind that electoral laws alone cannot guarantee democratic elections. The democratic character of elections depends largely on the responsibility of the authorities to properly implement the electoral law, and the commitment of all other election stakeholders (voters, candidates, parties, media etc.) to conduct democratic elections. Thus, the extent to which possible improvements in the law can have a positive impact on the election process will mainly be determined by both the will and the capacity of the electoral authorities and other election stakeholders to respect and implement the law in an effective and non-partisan manner.

9. In most Council of Europe member states, both national and sub-national elections (and referendums) are conducted satisfactorily and in accordance with the electoral laws and international democratic standards. Only minor, mostly technical problems can be identified there. Nevertheless, in a small number of states recent elections failed to meet key commitments and still fell short of international standards for conducting democratic elections, according to observer reports. Although important improvements have been made, several aspects of the electoral administration give serious cause for concern there.

Harmonising electoral laws

10. The electoral laws are the main regulatory instruments for the conducting of elections. There is a tendency in Europe to incorporate the main aspects of the electoral legislation into one single electoral code.

11. However, there are still a number of states where different electoral laws are applied for different organs to be elected in the same territory. In Ukraine, for instance, there is a multiplicity of laws which regulate separately the presidential elections, the parliamentary elections, the local elections as well as specific aspects of the electoral administration process (e.g. Central Electoral Commission; draft law on State Register of Voters). In order to reduce the number of redundant provisions and enhance the consistency and the public understanding of the electoral legislation, it may be technically preferable to enact a unified electoral code, containing the general aspects of any election, and – in different parts of the law – the particularities of different elections (see also CDL-AD(2006)002, para. 11). As such the adoption of a single Ukrainian electoral code was recommended, "… as it would make it easier for citizens to understand, for political actors to handle, and for electoral commissions and courts to deal with electoral matters" (CDL-AD(2006)003, para. 10). Similar recommendations have been made, for example, with regard to "the Former Yugoslav Republic of Macedonia" and Slovenia.

12. Furthermore, there are sometimes inconsistencies between the electoral law and election-related provisions of other laws on, for example, political parties, mass media, referendums local self-government, or Civil and Penal Codes. Thus, a holistic approach seems to be necessary in order to harmonise election and election-related legislation.

Simplifying electoral laws

13. Unified or not, several electoral laws in the meantime seem to be excessively detailed and sometimes even over-regulated. In a number of countries the electoral laws have been criticised for being exceptionally long, complex and repetitive documents that, occasionally, even contain internal inconsistencies. However, electoral laws should be precise, clear and easily understandable for electoral officials, candidates and voters alike. Taking into account these criticisms, further electoral reforms should be careful not to add more and more detailed provisions to the electoral law. Instead a review of the election legislation should be undertaken in order to clarify and simplify complex provisions and to remove inconsistencies and unnecessary repetitions. This would enhance public understanding of the electoral legislation. It would also facilitate voter education and the training of election officials. With a growing professionalism of the electoral administration and a decreasing mistrust among election stakeholders, it will be possible to leave some margin for the adaptation and interpretation of the electoral law to independent electoral commissions.

Stabilising electoral laws

14. The "Code of Good Practice in Electoral Matters" highlights that the stability of the law is crucial to the credibility of the electoral process (see CDL-AD(2002)023rev, part II.2.d and paras 63-65). Therefore it should be avoided that rules on politically delicate issues – like the composition of election commissions, the electoral system or the drawing of constituency boundaries –, which are regarded as decisive factors in the election results, are changed frequently or just before elections. "In general any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election" (CDL-AD(2005)043, para. 5).

15. Whereas in many countries important amendments were adopted well ahead of the next elections, in other states late amendments to the law or last-minute decisions by the electoral commissions made it difficult to apply the electoral legislation properly and uniformly during elections. For example, according to international observers, the late passage of the 2005 amendments to the Election Law in Bulgaria, only 10 weeks prior to election day, combined with the late clarification of some basic issues through instructions by the Central Election Commission, could have caused confusion for voters and polling station members.[2]

16. On the other hand, in a few cases the deadlines for amending electoral laws seem to be too restrictive. For example, the provision in the Law on Elections of People's Deputies of the Ukraine that amendments may be made to the Law no later than 240 days before the day of the next parliamentary elections, may seem too long (see CDL-AD(2006)002, para. 13). According to the Code of Good Practice in Electoral Matters, only fundamental elements of the electoral law should not be open to amendments less than one year before the election.

Translating electoral laws

[2] See the international observers' opinion on http://www.hri.org/news/balkans/bta/1996/96-10-30.bta.html.

17. In order to make electoral laws and election materials accessible for all citizens it is important that these public documents are published in all officially recognised and protected minority languages.[3] This has not always been the case. In Moldova, for example the electoral law was criticised for not being issued in an official Russian translation (see CDL-AD(2004)027, para. 95).[4]

III. The electoral administration structure

Sovereignty of the electoral administration

18. Given the paramount importance of democratic elections for a nation, usually the electoral process is administered by sovereign national authorities. However, under the unique context of post-conflict situations – like those in Bosnia and Herzegovina or Kosovo – the international community might be involved in organizing or supervising the elections. This might be especially helpful for conducting elections in an initial post-conflict period. Nevertheless, the declining role of international representatives, for example, in the Electoral Commission of Bosnia and Herzegovina is welcomed in order to establish a sustainable, fully national State institution (see CG/CP (11) 13).

Independent electoral commissions

19. In many old and established West European democracies where the administrative authorities have a long-standing tradition of impartiality, elections (and referendums) are organised by a special branch of the executive government, usually vested in the Ministry of the Interior or the Ministry of Justice. This is acceptable insofar as in those countries the respective government of the day normally does not intervene in the electoral management process.

20. However, in states with little experience of organizing democratic elections, the impartiality of the electoral administration vis-à-vis the executive government can not be taken for granted.[5] This is why the Code of Good Practice in Electoral Matters makes a strong demand for independent electoral commissions in those countries. In fact autonomous electoral commissions which are independent from other government institutions are increasingly viewed as the basis of impartial electoral management in developing or new democracies throughout the world.

21. Thus, it is a positive development that formally independent electoral commissions are in the meantime common in Central and Eastern Europe. The establishment of independent electoral commissions can be regarded as an important step towards strengthening the impartiality and neutrality of the electoral administration process. However, it should be clear that legal guarantees of independence are not always fully respected in practice.

22. Furthermore the independent status is not necessarily accompanied by budgetary independence. Unpredictable ad hoc budgets and a lack of resources may make it quite

[3] See I.3.1.b of the Code of Good Practice in Electoral Matters.
[4] See CDL-AD(2006)001 Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR Adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th and 66th plenary sessions (Venice, 16-17 December 2005 and 17-18 March 2006).
[5] See II.3.1.b of the Code of Good Practice in Electoral Matters.

difficult for electoral administration bodies to work properly. In some countries the administration of previous or recent elections was marked by financial problems. This was, for example, the case in Montenegro's elections of 2003, which were, however, carried out in an independent and largely effective manner.

Permanent electoral commissions

23. Another positive development is that, as a rule, the respective national electoral commissions have been established as permanent acting bodies in Central and Eastern Europe. Non-permanent acting national election commissions which do not come together until a few months before the elections are nowadays considered inappropriate to manage the complex process of electoral administration, both in developing and established democracies. Therefore the Code of Good Practice in Electoral Matters demands that any central electoral commission must be permanent by nature (CDL-AD(2002)023rev, II.3.1c).

24. In some countries where the electoral law originally established a temporary Central Election Commission, the law has been changed and a permanent body has been established. In Croatia, for example, the absence of a permanent election administration has been criticised by electoral observers to the 2003 parliamentary elections and the 2005 presidential elections. A permanent electoral commission has been provided for in the Draft Law on the State Electoral Commission of the Republic of Croatia (2005). The planned reform has been welcomed by international experts, since the frequency of elections implies the need for continuous action by the supreme body which participates in the procedure of conducting the election itself (CDL-EL(2005)053).

25. It is, however, open to question whether permanent election commissions are needed on the sub-national level. It could be argued that it is less important for the election commissions on the sub-national level to be permanent, but this will depend on the nature of the responsibilities they are given. On the lowest level (local level), however, permanent structures are usually not necessary.

26. In any case, it makes a lot of sense for the Central Election Commission to be supported by its own Secretariat that deals with the bulk of administrative preparations for conducting elections. The importance of such a technical secretariat was positively mentioned by international observers, for example, to the 2004 local elections in Bosnia and Herzegovina (CG/CP (11) 13). In contrast, electoral observers to the 2004 referendum in "the Former Yugoslav Republic of Macedonia" criticised the fact that the permanent Secretariat, provided for by law, was not yet established.[6]

27. Finally it should be stated that a permanent election administration does not itself guarantee that the elections are professionally administered. As far as professionalism is concerned, there appears to still be room for improvement in a number of countries.

Multi-tier commission structure

28. In most countries the electoral law provides for a three-tier commission structure: a national electoral commission, regional or district electoral commissions and local electoral commissions. Some countries, e.g. the Republic of Croatia and the Russian Federation, even

[6] See the report of international observation mission on http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019016.pdf.

have a four-tier commission structure. Three-tier or, if necessary, four-tier structures of election administration seem to be appropriate for effectively administering elections and referendums.

29. Worthy of note are the commission structures in both the Republic of Serbia and the Republic of Montenegro (in Serbia and Montenegro) where only a two-tier structure exists with commissions on both the central and the local (polling board) level. The absence of an intermediate level of election administration may make it more difficult to carry out an election. According to OSCE/ODIHR observers, it created technical and logistical problems in the 2003 parliamentary elections in Serbia. Despite the criticisms the Electoral Law has retained the two-tier structure until now (see CDL-AD(2006)013, para. 18). As for Montenegro, however, there have not been similar criticisms by international observers.

30. It is very important that the duties and responsibilities of each body are clearly determined by the electoral law. Sometimes, however, provisions regarding responsibilities of election commissions are vague, and the relationship between the different level of electoral commissions is not sufficiently specified. An example is the 2004 Law on Local Elections in "the Former Yugoslav Republic of Macedonia". Observers from the OSCE/ODIHR and the Congress of Local and Regional Authorities of the Council of Europe recommended strengthening the responsibility of the State Election Commission over the action of subordinate election bodies there (CG/BUR (11) 122rev, page 14). Similarly, with regard to the 2002 parliamentary elections in Hungary, the National Election Commission's lack of binding authority over the decisions and actions of lower level commissions was criticised as possibly leading to inconsistent implementation and abuse.

31. Furthermore, there is a definite need for a continuous flow of information within the electoral administration structure. In practice instructions and clarifications of legal provisions are not always communicated from higher-level commissions to lower-level commissions clearly, and in a timely manner, which contributes to a lack of uniformity in the electoral procedures that can still be observed in a number of countries during the election process.

Composition of electoral commissions

32. Even with formally independent electoral commissions the method of the commissions' composition may strongly favour the government or pro-governmental forces. Not surprisingly the composition of election commissions is one of the most controversial aspects of the legal framework for the election in many emerging or new democracies in the region.

33. Although in many countries the influence of the executive government on the composition of the electoral commissions has, in general, greatly been reduced, in a few states still a significant number of commission members are nominated and appointed by the executive government, e.g. the President of the Republic or the Ministry of the Interior or Justice. For example, in Georgia five (out of 15) members of the Central Electoral Commission are appointed by the President, not including those members appointed by the governing parties in Parliament. To avoid the risk of governmental interference in the commission's work, as a rule the number of commission members nominated and appointed by the executive government should, if at all, be very low.

34. Even if institutions other than the executive government nominate and appoint commission members, these institutions may be *de facto* under governmental control. Three possible solutions might be adopted to avoid that risk.

    a) It is important that not all commission members are appointed by the same institution. A "mixture" of institutions that are involved in the nomination process of commission members is nowadays the rule in developing or new democracies in Europe.

    b) It is regarded as helpful if at least some of the commission members are appointed by non-political institutions that are perceived as being neutral. In several countries specific bodies of the judiciary are regarded as suitable for that task. Significantly the Venice Commission has encouraged the involvement of the judiciary in the appointment process for electoral commissions, e.g. in Armenia (cf. CDL-AD(2005)027, para. 9). However, we must be aware that the "trust level" for institutions is country specific. Thus, country-specific solutions ought to be found.

    c) If some or all commission members are appointed by the parliament or by political parties, an adequate balance between pro-government and opposition parties has to be achieved. In some countries, however, pro-government parties are (still) favoured in the commission's composition. Among the remaining shortcomings in the Election Code of Azerbaijan, for example, is the fact that, according to international observers, the method of composition of election commissions continued to strongly favour the government and thus, undermined confidence in the independence of the election administration. In many countries, the challenge remains to find an adequate balance and a politically acceptable formula as to the distribution of commission members between the parties. Finally, with partisan bodies, careful consideration needs to be given to the selection of the chair, vice-chair and secretary, and the role of other members.

35. The provision for regular or expanded membership of electoral commissions to include party representatives is often regarded as an effective system to guarantee checks and balances of the electoral process. The underlying idea is that one party watches the other. Pro-government and opposition parties are represented in the electoral commission and can control each other. Closely related to the nomination of party representatives to electoral commissions, however, is the risk of the over-politicisation of the commission's work. In such cases, the commission's members act in the interest of their parties rather than in the interest of the electorate. The consequences can be serious: In some countries the commission's work was severely hindered by party conflicts and party interference. In such cases the integration of non-partisan members may contribute towards de-politicising the commission and making it work more professionally.

36. The Albanian Electoral Code of 2003, for example, has been criticised because the electoral law encourages a politicised election administration dominated by the two major political parties which interfere negatively in the election administration process. It was therefore recommended that impartial, independent, professional and non-partial election commissions be established, with extended membership possibilities for representatives of political parties before an election (see CDL-AD(2004)017, para. 14).

37. Another example is "the Former Yugoslav Republic of Macedonia", where the law grants exceptional privileges to the four leading political parties in the appointment of the election administration. It was criticised by Council of Europe and OSCE/ODIHR observers to the 2005 municipal elections that commission members often protected party interests rather than respecting the obligation to secure a correct and lawful election there.[7]

38. In any case, the Electoral Law should provide for a clear and transparent procedure of nomination and appointment of electoral commissioners. The lack of transparency of the nomination process has been criticised by Council of Europe electoral observers, for example, with regard to elections in Azerbaijan and "the Former Yugoslav Republic of Macedonia" (see CDL-AD(2004)016rev, para. 12.ii; CG/BUR (11) 122rev).

39. Moreover, legislation ensuring women's participation in election commissions should be considered, since women are heavily underrepresented in election management bodies in many countries.

40. In order to guarantee the independence of the election commission it is usually preferable to respect common incompatibilities in the commission members. Persons who could be involved in an inherent conflict of interests with the requirement for impartiality should not be allowed to be appointed to electoral commissions. For example, it would be problematic if registered candidates were not explicitly prohibited from being commission members. International observers highlighted this issue, for example, with regard to the 2002 parliamentary election in Montenegro,[8] or the 2005 Municipal Elections in "the Former Yugoslav Republic of Macedonia".[9]

41. Furthermore, the commission's independence can be strengthened by appointing commission members for a fixed (and sufficiently long) time period and by prohibiting their dismissal without reasonable grounds. According to the Code of Good Practice in Electoral Matters, in general bodies that appoint members to electoral commissions should not be free to recall them, as it could cast doubt on their independence. "Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible – provided that the grounds for this are clearly and restrictively specified in law…" (CDL-AD(2002)023rev, para. 77).

42. Whilst in some countries respective provisions have been amended in the electoral law in line with the Code of Good Practice, in a number of states the grounds for dismissing commission members are still vague and can lead to abuse. In several cases the problem has been pointed out by the Venice Commission and OSCE/ODIHR (see for example CDL-AD(2004)027, para. 41). The issue has to be considered seriously since there have been repeated attempts by state authorities or political parties to remove "their" designated or appointed members from the electoral commission if they do not follow the official or party line.

Mode of operation of electoral commissions

43. There are many aspects of the activities of electoral commissions that have to be regulated, and there are many ways to do so. Apart from all the technical details, there are some underlying principles that have to be respected. The rules of procedure must be clear.

[7] See for example CG/Bur(11)122rev.
[8] See international observers report http://www.osce.org/documents/odihr/2002/11/1350_en.pdf.
[9] See international observers report http://www.osce.org/documents/odihr/2005/06/15001_en.pdf.

Commissions' activities and decisions must be transparent, inclusive and consensus-oriented, but at the same time the effectiveness of the electoral administration should not be hampered by endless debates or even dead-lock situations. A way has to be found to combine the best possible transparency, inclusiveness and effectiveness of the electoral administration at the same time. Depending on what the specific problems of a country's electoral management are, recommendations focus on different, sometimes even contradictory, aspects.

44. With regard to the (effectively administered) elections in the Russian Federation, for instance, international electoral observers recommended that the transparency of the commissions' work should be enhanced by extending the guaranteed access of candidates, their financial representatives and proxies, as well as journalists, to even non-formal sessions. Also in other countries the lack of transparency of the commission's work has in fact caused serious concern.

45. As for the Ukrainian 2005 reform, in contrast, it was pointed out that extending the right to be present at commissions' meeting to many subjects (candidates, representatives of parties and mass media, foreign and international observers), combined with the "excessively high number" of commission members, may make it very difficult to perform their functions, which require continuous debating and decision-making (see CDL-AD(2006)002, para. 34). Here a solution has to be found for enabling as much transparency as possible without making commissions' work too difficult or even impossible.

46. A similar problem exists with regard to the decision making process. Reasonably, the Code of Good Practice in Electoral Matters highlights that it would make sense for decisions to be taken by a qualified (e.g. 2/3) majority, so as to encourage debate between majority and minority parties. Reaching decisions even by consensus is preferable (CDL-AD(2002)023rev, para. 80). On different occasions, the Venice Commission recommended introducing a higher quorum and/or qualified majorities to increase the inclusiveness of the electoral commissions' decisions (see for example CDL-AD(2003)021, para. 12, CDL-AD(2004)016 rev, para. 12).

47. However, qualified voting requirements can also be abused to obstruct the decision making process, particularly under the condition of a strongly politicised electoral administration. Such obstruction politics have been criticised, for example, in the Albanian case (see CDL-AD(2004)017rev2, para. 13). Generally speaking a balance is necessary between making the decision making process inclusive and representative on the one hand, and effective on the other. Institutional incentives (like qualified majorities) to ensure general agreement on electoral administration decisions have to be combined with solutions to overcome deadlock situations.

Training of election commissioners

48. It is important that members of election commissions have the necessary skills to administer elections. In order to address this problem, training courses for members of particularly lower level commissions are strongly recommended by the Venice Commission. "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" (CDL-AD(2002)023rev, para. 84). This is especially important with new electoral regulations or the introduction of new technologies.

49. Training programmes for electoral officials are, in the meantime, common in emerging or new European democracies. In many cases substantial international support was given to the organisation and conducting of training and the preparation of electoral manuals for election officials. However, the programmes vary with regard to intensity, quality, and scope. Though important improvements have been made, international observers still identify the need for more systematic and comprehensive training programmes, especially for local election officials. Frequently it is recommended that the training be intensified and made available to all electoral officials at all levels. There is a broad consensus that early and thorough training will certainly increase the professionalism of and confidence in the election administration. It was even recommended that attendance at election training be made compulsory by law (see for example CG/BUR (11) 122rev). Far-reaching proposals demand that only individuals who have been qualified through examination and testing may be considered as commission members.

Voter education

50. Voter education is an integral, albeit sometimes neglected, part of the election process. It refers to basic information on elections (e.g. date and type of elections) and explanations of electoral procedures (voter registration, voting system, etc.), and usually also addresses the voters' motivation and preparedness to participate fully in the elections. Voter education is especially important in emerging and new democracies and in situations where new electoral provisions or technologies are being applied for the first time. As far as referendums are concerned, the voters must be objectively and comprehensively informed both about the question submitted to the electorate in the referendum and its consequences.

51. Electoral observer reports, by showing irregularities, indicate the need for improving voter education in a number of countries. Election administration bodies usually play a crucial role in this process. They should provide not only basic voter information, but also comprehensive voter education programmes. This may be done with the help of political parties, non-governmental organisations, and the media. Additional resources might need to be committed to voter education.

52. Special focus should be put on voter education programmes for national minorities. This includes, among others, the use of minority languages. In the case of 2003 parliamentary elections in Estonia, for example, voter information and education was only in Estonian, but not e.g. in Russian, according to international observers.[10]

IV. The right to vote, and the voter registration

General remarks

53. Universal franchise is a key element of modern democracies. It is important that the right to vote and the process of voter registration are not unreasonably restricted on the basis of race, gender, religion, ethnic origin, past or present political affiliation, language, literacy, property or registration fees. However, the right to vote, may be subject to a number of reasonable conditions, the most usual being age, citizenship and residency. Furthermore, there might be provisions for clauses suspending political rights due to lawful detention,

[10] See I.3.1.b of the Code of Good Practice in Electoral Matters.

criminal convictions or mental incapacity.[11] As for such conditions, in general the constitutions and electoral laws in Europe meet international standards. Nevertheless there are several aspects that are worth discussing here.

Voting rights for non-citizens in local elections and referendums

54. Whilst a citizenship requirement is common for national elections and referendums, there is a growing tendency to grant (long-term) foreign residents the right to vote in local elections. Under EU law all EU citizens have already been granted the right to vote (and stand for elections) in local and European Parliament elections in their EU member state of residence (Article 17 EC). But also for non-EU citizens or non EU-member states the franchise may be expanded to non-citizens in local elections,[12] in accordance with the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

55. The Venice Commission recommends, in its Code of Good Practice in Electoral Matters, that the right to vote in local elections be granted to non-citizens after a certain period of residence,[13] and encourages countries like for example Romania to do so (see CDL-AD(2004)040, para. 9). Analogously, a recommendation of the Parliamentary Assembly refers also to the participation by foreign nationals in local referendums (see Parliamentary Assembly, Recommendation 1704 (2005), para. 13.vi.c). However, a number of Council of Europe member states have not yet followed the general recommendation, which, of course, requires additional administration efforts.

Voting rights for citizens abroad

56. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote (see Chapter X).

57. If external voting rights are granted, attention should be paid to ensure the equality of votes. Though it appears to be acceptable to limit external voting rights to certain types of elections, e.g. for President or the national Parliament, it may be problematic to not let external voters fully participate in those elections. With Armenia's two ballot system for parliamentary elections, for instance, the voting rights for citizens abroad is restricted to the proportional part of the parliamentary election which is conducted in a nation-wide "constituency". In order to ensure equal voting rights, it might be considered whether to allow citizens abroad to participate in the majority part of parliamentary elections as well (see CDL-AD(2003)021, para. 30). This would, of course, make it necessary to assign external voters to constituencies within the country, as is provided in a different manner, for example, with the – albeit not identical – two ballot papers systems for the German *Bundestag* and, until 2005, the Russian State Duma.

[11] See CDL-AD(2002)023rev, I.1.1 ; CDL-AD(2005)011, 012 and 031.
[12] European Treaty Series (ETS), No. 144.
[13] See I.1.1.b.ii of the Code of Good Practice in Electoral Matters.

***De facto* disenfranchisement**

58. Though national residents inside the country do, in principle have the right to vote, the electoral legislation may *de facto* disenfranchise a substantial part of the electorate due to a lack of special voting provisions for voters who are hospitalised, homebound, imprisoned or temporarily away from their homes. While many electoral laws provide for several forms of absentee voting, such voting is not authorised in all countries. In some case, like Serbia, the lack of respective provisions was criticised by international electoral observers.

59. A similar case is, for instance, Armenia. The 2005 amendments still do not include previous recommendations (CDL-AD(2002)029; CDL-AD(2003)021 etc.) that provision be made for voters who are unable to attend their polling station on election day. (In the case of Armenia, paradoxically, citizens abroad are able to vote but not citizens within the country who are unable to go to their polling station). Such special voting procedures were omitted from electoral legislation when the original Election Code was adopted in 1999 in an attempt to reduce fraud. However, the Venice Commission clearly stated that the argument of "unpreventable fraud" is not sufficient to justify the denial of the voting rights of these citizens (see CDL-AD(2005)027, para. 19). The right to vote is such a fundamental right that all possible measures should be taken to uphold this right. However, it must be clear that with absentee voting strict conditions should be imposed to prevent fraud.

60. More important, however, is the fact that insufficient voter registration and inaccurate voters lists can prevent a significant proportion of the electorate from using their right to vote, and, thus, *de facto* disenfranchise them.

Voter registration, and its importance for implementing universal suffrage

61. The proper establishment and maintenance of electoral registers is vital in implementing and guaranteeing universal suffrage. In practice, it is a pre-condition for enabling voters to use their right to vote. Voter registration, however, is one of the most complex, controversial and often least successful parts of electoral administration in emerging and new democracies, especially in post-conflict situations with a large number of refugees and internally displaced persons. Though in many countries considerable efforts have been made to establish proper electoral registration, voter lists are definitely an issue to be improved on in many countries. Typical problems are that voter registers are incomplete (i.e. do not including all eligible voters) and inaccurate (i.e. they contain false data, names of deceased persons etc.). Observers express concern over the inaccuracy of voter lists in a significant number of states.

Variety of models for voter registration

62. There are several methods of producing a voter register. Whilst in many European countries voter lists are taken directly from national, regional and/or local population databases that are used for other administrative purposes, it is also acceptable for voters not to be included automatically on the registers, but at their own request (see CDL-AD(2002)023rev, para. 7). Adopting a system which requires the active participation of the voters in initiating their own registration would though be an entirely new approach in most European countries (whereas it is more commonly applied in other world regions). The Draft Law on the State Register of Voters of the Ukraine appears to follow such an new approach (see CDL-AD(2006)003).

63. In most European states, however, citizens generally do not have to take action to be registered. Instead voters lists are compiled by state authorities on the basis of official data, often under the supervision or responsibility of electoral administration bodies. This is an appropriate method, given that there are reliable and consistent data about the population that can be used for electoral purposes.

Creating centralised voter register

64. However, in a number of countries voter lists are drawn up only on a community level, and there is no consolidated, centralised voter register. But without a national voter register it can be difficult to prevent multiple entries of the same voters in the voter lists across community borders. Thus, in several cases – like for example Armenia – it was recommended to create a national voter register (see CDL-AD(2003)021, para. 34). Also, international observers of the parliamentary and presidential elections of 2003 and 2004 in Serbia repeatedly demanded the creation of a centralised voter register, as foreseen by the electoral law.

Establishing permanent voter registers

65. In any case it is important that electoral registers are permanent by nature, with a system for regular updates. In countries like Ukraine, traditionally voter lists are not permanent and are created for each election according to a particular timeframe and methodology. The Draft Law on the State Register of Voters of Ukraine constitutes an attempt to establish a permanent, computerised and constantly updated voter register (see CDL-AD(2006)003). As regards several other countries, international observers recommended updating the voter registers on an ongoing basis to maintain and improve their quality and comprehensiveness. Furthermore, efforts to remove the remaining deficiencies should be made. In particular, control checks for duplicate entries, deceased persons and entries with incomplete or incorrect data should be conducted continually.

Public review of voter register

66. According to the Code of Good Practice in Electoral Matters the electoral registers must be published and there should be an administrative procedure – subject to judicial control – or a judicial procedure enabling voters to have erroneous entries corrected or, if they are not on the register, to have their names included (see CDL-AD(2002)023rev, I.1.2). In a number of countries amendments to electoral laws have been made or have been demanded to require voter registers to be publicly accessible in advance of elections. This can be regarded as an important step towards enhancing transparency and improving the accuracy of voters lists.

67. It should be noted, however, that there are even established Western European democracies, like Denmark, where the electoral register is not published for inspection and is not accessible either to the public in general, or to political polities. This certainly should not be an example for emerging and new democracies in the region. Given the inaccuracy of the voters lists in many countries, public access to the electoral register is crucial for enhancing the quality and legitimacy of the voter registration process there. Interestingly, the report of the Parliamentary Assembly's ad-hoc committee for the observation of the 2002 parliamentary elections in Montenegro (Doc. 9037) showed that due to the public inspection of the voters lists the (transparency of the) voter registration was far less an issue of political contention than during previous elections. Furthermore, voters should be given enough time to examine preliminary voters' lists. This is not always the case (see for example CDL-AD(2004)027, para. 18).

68. However, safeguards might be introduced to protect citizens' right to privacy. In order to protect private data some countries have introduced restrictions concerning the public access to voters lists. Following a reform in 2001, for instance, German voters can only check the correctness and completeness of their *own* personal data in the electoral register of the respective municipality (the inspection of other voters' data must be justified on specific grounds). Before 2001 the whole electoral register was publicly accessible for everyone to inspect. A balance certainly has to be struck between the transparency of voter registration and the protection of citizens' private data here.

69. Quite debatable is the lack of private data protection, for example, in the United Kingdom. By law local authorities have to make the electoral register available for anyone to look at, even commercial companies. Recent reform have at least given British voters the possibility to opt for inclusion on a special version of the voter register which can not be made available for commercial purposes, but is used "only" for elections, law enforcement and checking applications for credit. It would be preferable for, electoral registers to be compiled exclusively for electoral purposes.

70. Moreover, security considerations may allow for restrictions to the transparency of voter lists. In several countries (like Germany) provisions are made for the anonymous registration of people for whom the publication of their name and address on the electoral register would pose a threat to their life or health. The Electoral Administration Bill, as brought in the British House of Commons in January 2006, would introduce the possibility of such an anonymous registration in the United Kingdom, too.

Supplementary voter lists

71. Supplementary voter lists can enable persons who have changed their address or reached the statutory voting age since the final register was published (CDL-AD(2002)023rev, I.1.2.vi). However, in a number of emerging and new democracies supplementary lists are extensively used for compensating for the inaccuracy of regular voter registration. Voters who do not find their names on the voters list on election day can, under certain conditions, be entered onto a supplementary voters list, for example in Moldova. There, the number of voters entered onto supplementary lists increased from 6% in 1998 to 10% in 2001 and 12.3% in 2003 according to the OSCE/ODIHR. In order to avoid extensive use of supplementary lists, the procedure for compiling and scrutinising regular voter lists has to be improved. As long as the accuracy of regular voter lists can not be assured, however, supplementary lists seem to be necessary to enable voters to use their right to vote.

72. Nevertheless, it has to be noted that the use of supplementary lists increases the risk of multiple voting and the risk of voters voting in the wrong municipality. One of the major problems of the elections in Moldova was in fact that the number of people added to the supplementary voters lists increased the potential for multiple voting and for voting in incorrect districts. Thus, the Venice Commission's experts pointed out that if a mechanism for supplementary voters lists is still needed, it should be only tolerated if mechanisms for checking multiple voting are improved (CDL-AD(2004)027, para. 17). As a general rule, election day registration should be avoided, if possible, and at any rate should not take place at the polling station.[14]

[14] See I.1.2.iv of the Code of Good Practice in Electoral Matters.

V. The right to stand for election, and the registration of election subjects

General remarks

73. As with the right to vote, the right to stand for elections is universal, and can not be limited for reasons of e.g. race, gender, language, religion, ethnic origin, political affiliation, or economic status. Internationally accepted restrictions may include a minimum age that is higher than the voting age, citizenship and a residency requirement for a certain period of time before elections. Furthermore, the obligation to collect a specific number of signatures or to pay a small deposit are considered as being generally compatible with the universal right to stand for elections. There might also be provisions for clauses suspending political rights (lawful detention, mental incapacity etc.). In general, the electoral laws of Council of Europe member states are in line with these standards. Nevertheless, some restriction details are worth discussing.

74. Before doing that, however, it should be noted that the registration and de-registration of candidates can be politically manipulated and provoke "absurd legal battles", as happened for example in the 2004 Mayoral Election held in the town of Mukachevo (Ukraine) (CG/Bur (10) 125). Generally speaking, restrictive or restrictively implemented registration requirements for candidates and parties may *de facto* prevent a significant number of electors from using their to right to stand for election. The electoral legislation should limit and clarify the reasons for refusing candidates for elections. Justified decisions have to be provided so that aggrieved persons can bring complaints in the courts. In several countries there is still room for improvement with regard to this point.

Granting non-citizens the right to stand for local elections

75. Following the same arguments as for granting non-citizens the right to vote in local elections, it is recommended accordingly that the right to stand for local election shall be granted to long-standing foreign residents, if possible.

Residency requirements

76. While residency requirements are not incompatible *a priori* with the principal of universal suffrage,[15] it is not acceptable to limit the right to be elected to only those citizens who have resided in a country, region or constituency for an extensively long period of time. As for Georgia and the Ukraine, for instance, the required residency period was criticised as being too long (see CDL-AD(2005)042; CDL-AD(2006)002). On the other hand, the lack of any residence requirement for the right to be elected was also criticised by Venice Commission's expert, for example, with regard to the Draft Law on the Elections to the Parliament of the Chechen Republic. Such a requirement existed there only for active suffrage, but not for the passive voting rights (CDL(2003)021fin).[16]

Suspension of the right to stand for elections due to criminal conviction

[15] See I.1.1.b of the Code of Good Practice in Electoral Matters.

[16] Initiative and Referendum Institute Europe (IRI Europe) defines passive voting right as "eligibility to be elected".

77. It is not uncommon that due to a criminal conviction for a serious offence, individuals are deprived of the right to stand for election. However, it can be regarded as problematic if the passive right of suffrage is denied on the basis of any conviction, regardless of the nature of the underlying offence. Such a blanket prohibition might not be in line with the European Convention for the Protection of Human Rights and Fundamentals Freedoms. With regard to the Law on Elections of People's Deputies of the Ukraine, for instance, the Venice Commission recommended that the law should provide greater protection for candidate rights, including removing the blanket and indiscriminate prohibition on candidacy for persons who have a criminal conviction (see CDL-AD(2006)002, paras 16 and 100). The OSCE/ODIHR recommendation that the right to be a candidate should be restored to those persons who were convicted and subsequently pardoned after the 2003 post-election disturbances in Azerbaijan goes in the same direction.

78. On the other hand, it might be not appropriate not to include (or not to implement) any restriction to eligibility to be elected for criminals at all. For instance the delegation of the Congress of Local and Regional Affairs of the Council of Europe was most concerned at the issue of the validity of the candidatures that were put forward in the 2005 local elections in "the Former Yugoslav Republic of Macedonia". An elected mayor was able to run for Mayor there despite having being sentenced to four years imprisonment for large scale theft by the court (see CG/BUR (11) 122 rev).

Submission of signatures

79. The obligation to collect a specific number of signatures is not uncommon by international standards. However, it is generally agreed that signature requirements should not be too high. In order to prevent manipulation, the Code of Good Practice in Electoral Matters stipulates a maximum 1 percent signature requirement in relation to the electorate of the national or constituency level where elections are held should not be exceeded. However, adhering to the upper boundary is not an obligation. In several elections the required number of signatures was quite high, sometimes even surpassing the 1 percent principle. This was the case for example for the 2003 parliamentary elections in Armenia (see CDL-AD(2003)021, para. 20). In the meantime, the 2005 amendments to the Electoral Code of the Republic of Armenia have eliminated completely the requirement of collecting signatures supporting a candidate's nomination, while maintaining deposits requirements (see CDL-AD(2005)027, para. 17). In contrast, similar recommendations to reduce signature requirements have not been implemented for example in Azerbaijan and Georgia.

80. In some cases, there is a controversial debate whether voters should be allowed to sign the nomination papers of more than one candidate. As supporting a candidate's right to stand for election, however, is not the same as voting for the candidate, international observers recommended removing the provision restricting citizens to being able to sign the nomination papers of only one candidate, for example in the 2003 presidential elections in Montenegro. Similarly, the Venice Commission and the OSCE/ODIHR jointly that the Election Code of Azerbaijan should allow voters to sign petitions on behalf of more than one candidate in presidential elections, as is already the case in parliamentary elections there (CDL-AD(2004)016rev, para. 13).

81. With signature requirements, the checking of signatures is necessary. The process is not only time consuming, but also open to abuse. This is especially true if, by law, only a sample of the signatures is checked at random and in an inconsistent manner (like for example in Georgia and Russia). If a certain percentage of the sample is deemed null and void, the entire

list will be invalidated and the registration application will be dismissed there and then. The verification procedure in Georgia was explicitly criticised for being inappropriate (CDL-AD(2004)005, para. 30). According to the Code of Good Practice in Electoral Matters, in principle all signatures should be checked – at least until the required minimum number has been reached.[17] However, the provision has not yet been removed from the Georgian Election Code (See the law, CDL-EL(2006)009, Article 42).

82. Furthermore, it is important that minor formal errors do not automatically result in the signature lists being declared invalid. Provisions should be made to allow for the correction of any formal or minor errors in the nomination and registration process. This was, for instance, one of the recommendations of international observers to the Russian presidential elections in 2004. At the same time, however, the falsification of signatures in candidates' petitions should be treated as a criminal offence, which is not always the case.

83. Finally, restrictive requirements for party registrations may have limiting effects on the right to stand for election. For example, the need for parties to be registered one year before the elections if they want to present candidates in Ukraine appears to be a shortcoming of the electoral legislation (CDL-AD(2006)002). In Moldova also restrictive registration requirements for parties exist. The registration of parties to run in elections is dependent on annual membership lists. Moreover, the requirement of membership across the country discriminates regionally based parties there (CDL-AD(2004)027, paras 20-21, 48-56). In order to "organise" party competition, restrictive registration requirements are also applied in some other countries like for example Russia.

Deposits

84. Alternatively there are procedures whereby candidates or parties are obliged to pay a deposit which is only refunded if the respective candidate or party wins a minimum percentage of the vote. According to the Code of Good Practice in Electoral Matters such practices appear to be more effective than collecting signatures.[18] In fact deposit systems avoid several disadvantages of signature systems (i.e. the time-consuming process of signature collection, the non-secrecy of signatures and the need to check them). However, there is one important drawback of deposit systems. Compared to signature systems, they make the qualification to stand for elections dependent on money, rather than on political support.

85. Where deposit requirements are applied, the amount of the deposit and the number of votes needed for reimbursement should not be excessive (CDL-AD(2002)023rev, para. 9). In general, the existing provisions in Europe seem to be considered as being reasonable (see for example CDL-AD(2005)027, para. 17).

De-registration of candidates

86. De-registration of candidates is a particular problem. While the initial registration of candidates may be positively assessed, the electoral commission is often allowed to de-register candidates before the election, for example, if they seriously violate the electoral law. However, inconsistent and inappropriate last-minute de-registration of candidates, often on minor technical grounds, should be avoided. Care should be taken that provisions allowing for the de-registration of candidates are not abused for political purposes.

[17] See I.1.3.iv of the Code of Good Practice in Electoral Matters.
[18] See I.1.3.iv of the Code of Good Practice in Electoral Matters and para. 9 of the explanatory report.

87. Such provisions can in fact be applied in an arbitrary fashion. As for the non-democratic 2004 parliamentary elections in Belarus, for example, a significant number of prospective candidates were disqualified on the grounds of too many invalid signatures or incorrect income and property declarations. Furthermore, a number of "primary organisations" (e.g. party offices in the respective constituency) were deregistered, which were necessary for the nomination of a candidate in that constituency. What is more, a number of registered candidates were deregistered on the grounds of alleged violations of the campaign rules and of bribery of voters shortly before the election day, according to the OSCE/ODIHR.

Withdrawal from candidacies

88. In a number of countries there are problems with the last-minute withdrawal of candidates or parties from the election. The mere possibility to withdraw candidacies should be excluded in order to prevent pressures. Where such withdrawals are possible, it is recommended for them to be submitted to strict conditions. In some countries, no realistic deadlines are set, and no (clear) criteria are defined for the withdrawal of candidates. Furthermore, it is not always clear under which conditions political parties or electoral blocs may remove candidates from the lists after they have been registered.

VI. Election campaign

General remarks

89. As for the pre-election period, the basic idea is that the political parties and candidates should act on a "level playing field". According to Code of Good Practice in Electoral Matters, equality of opportunities should be ensured between different parties and candidates, at least as far as possible. It should prompt the state to be impartial towards parties and candidates and to uniformly apply the same law to all. This neutrality requirement applies to the electoral campaign and coverage by the media, especially the state media, as well as to public funding of parties and campaigns where relevant. Furthermore, it is important that political campaigning is conducted in an environment that assures freedom of movement, expression, association, and assembly. These freedoms must be safeguarded to allow political organising and campaigning, and to inform citizens about the parties, candidates and issues. The parties and candidates must have the freedom to convey their programmes and political positions to the voters throughout the country.

90. Thanks to national and international efforts, in a number of countries electoral law amendments have made significant improvements with regard to provisions that aim at guaranteeing equal campaign conditions for election contestants. However, in several cases, there are still some legislative loopholes in this regard. Even more important are problems of implementation.

Restrictions to political rights

91. In most European states freedom of expression, association and assembly is respected on the whole. However, there are exceptions to the rule: Within Europe fundamental freedoms are most seriously challenged in Belarus which is, though, not a member state of the Council of Europe. The authoritarian regime in Belarus has not yet been willing to respect the concept of free and fair political competition, and to create conditions to ensure that the will of the people serves as the basis for the legitimacy of the government. Not surprisingly the last

parliamentary elections (2004), just as the preceding ones, fell significantly short of international standards, according to the OSCE/ODIHR. In the run-up to the 2006 presidential election, the Parliamentary Assembly called on the present regime to refrain from obstructing the free and fair running of the electoral campaign (Resolution 1482 (2006)).

92. But also in some Council of Europe member states, i.e., Russia and the Caucasus' states, political rights have not always been respected before and after recent elections. In Azerbaijan, for example, there were widespread intimidations in the pre-election period, and severe restrictions of opposition candidates' ability to convey their messages effectively. It was recommended, among other things, that the electoral law be amended to curtail the unlimited powers given to the local authorities to restrict political gatherings, and to ensure that political freedoms are respected during election periods (see for example CDL-AD(2004)016rev; CG/BUR (11) 95). Still in the 2005 elections serious interferences with opposition campaigns and violations of political rights occurred, overshadowing the measures the government had taken to improve the election environment.

93. A special situation refers to the 2005 elections in the Chechen Republic (part of the Russian Federation) which took place in an overall political context where fundamental freedoms were undermined by a climate of fear and ongoing serious human rights violations. (With regard to the human right situation see Parliamentary Assembly of the Council of Europe, Resolution 1479 (2006)).

Government interferences in the electoral campaign

94. A more common problem is, however, that government officials exert undue influences on the campaign. In a number of recent elections the line between state activities and political campaigning was blurred with government facilities and resources misused for campaign purposes. Widespread abuse of power by authorities during the election campaign was, to mention a example, a cause for serious concern in the 2003 local elections of Moldova. There were also credible reports of coercion and pressure on public employees to support the incumbents, as well as instances of misuse of public resources for campaign purposes in the Moldova parliamentary elections of 2005.

95. Even if, like in Georgia, the Election Code explicitly prohibits the use of official positions during election agitation and campaigns (CDL-EL(2005)033, Article paras 73 and 76), it is not uncommon for even high-ranking state officials to be actively engaged in electoral campaigns, according to international observers. In a number of countries, like the Russian Federation, the misuse of state positions and resources for election campaigns still presents a major problem that must be addressed urgently. And, of course, it is quite unacceptable that officials exert pressure on government employees to attend meetings of and to vote for the ruling party, as routinely happens, for example in Azerbaijan.

96. Referendums represent a special situation. While there is common agreement that the authorities should provide objective voter information on the referendum, there is no consensus on whether the government should be prevented from campaigning. In some countries (e.g. Portugal, Russia, Armenia) authorities and officials are explicitly prohibited from campaigning; in other states (e.g. Austria, Hungary) they are allowed to be involved in the campaign (see CDL-AD(2005)034, paras 85-92, 219-222).

Campaign Finances

97. It is commonly accepted that an effective election campaign needs sufficient resources. Parties and candidates would not be able to convey their programmes to the electorate without financial resources. Therefore political funding is considered a necessary condition for elections in modern democracies. Nevertheless, it should be clear that money may lead to corruption and to unfair political competition in the electoral process. Thus, it is important that election (and party) legislation contains clear and comprehensive regulations on party and campaign finances. In Serbia, for example, the Law on Financing of Political Parties has set up a comprehensive and stringent framework for campaign funds (though its effective implementation is a source of controversy). In contrast, in some other countries election and party laws fail to provide for such a coherent framework.

98. Admittedly regulating party and campaign finances is a difficult task. There is a wide variety of regulations in operation throughout Europe and other world regions. Regulations may refer to party funding as a whole (including "routine activities") or only to electoral campaigns. Some countries apply direct public financing, others allow only private financing. There are systems with contribution and expenditure limits, and others without them. There may be bans on certain types of contributions, as well as on certain types of expenditure. Moreover, electoral and party laws differ considerably with regard to the disclosure of party and campaign funds as well as with regard to the public access to the disclosed information. The variety of regulations makes it difficult to set common standards.

99. Nevertheless, the Code of Good Practice in Electoral Matters places a strong emphasis on the transparency of the funding of political parties and electoral campaigns (CDL-AD(2002)023rev, paras 108-109). Correspondingly, many recommendations by electoral experts and international observers aim to improve accountability and transparency of public and even private funding. In Ukraine, for example, it was pointed out that the Law should require full disclosure, before and after elections, of sources, and amounts of financial contributions and the types and amounts of campaign expenditure, in order to provide timely and relevant campaign finance information to the public (Ukraine, CDL-AD(2006)002). Often reporting and enforcement mechanisms for campaign finances are considered to be too weak. With regard to the 2003 elections in Montenegro, for instance, there were strong demands for an independent, transparent and accountable office that should be charged with controlling and auditing campaign accounts and that should have the power to sanction violations.

100. While enhancing transparency is a primary aim of many reforms and reform proposals, it should be noted that there can be specific circumstances under which disclosure of contributions to parties may have unintended side-effects. In the context of prevailing political intolerance, full disclosure may inhibit contributions to opposition parties, and, at the same time may favour the pro-government forces. Interestingly it has been recommended that a provision of the Moldovan law that permits the Central Election Commission knowing types of financial supports that a candidate receives before election day be deleted. According to the Venice Commission, this could lead to potential donors being dissuaded and pressured in the Moldovan context (CDL-AD(2004)027, paras 71-72). In order to strike a balance between the need for transparency and the protection of individual privacy only large donations are disclosed in a number of countries.

101. Furthermore, care should be taken to ensure that election financing provisions are not so complex that they require much expertise and manpower and impose a cumbersome burden on candidates and (smaller) parties (as in Azerbaijan: CDL-AD(2003)015, para. 18; CDL-

AD(2004)016rev, paras 15, 19; in the Chechen Republic: CDL(2003)021fin see comments on Chapter VI).

102. As far as public funding is concerned, the principle of equal opportunities is of utmost importance. In general, there is a consensus on this principle of equal opportunities. Since money is involved, however, there are sometimes political conflicts about the interpretation of the principle. In may be applied in either a strict sense (equal treatment) or in a proportional sense (according to the strength in parliament or among the electorate). Thus, it is quite a challenge to find a generally accepted formula in the respective country. Relevant rules should be included in the law.

Selected aspects of election campaigning

103. Campaigning for non-participation: In some cases (e.g. Russia), there were legal and political controversies about the legality and legitimacy of campaigns for non-participation. Although a democratic election is based on the voters' participation, it should be clear that campaigning in favour on non-participation in the elections is consistent with the right to freedom of expression. This is particularly important in countries where a minimum voter participation is required for elections or referendums to be valid (see Chapter XIII).

104. "Unethical campaigning": While "dirty campaigns" are, of course, not desirable, it is quite problematic to prohibit them by law. Reference to ethical rules is usually not precise enough and could lead to abuse. The prohibition of "unethical campaigning", for instance, in the Moldovan Election Code was criticised for being too broad. It could be applied in a manner that would violate a person's right to free speech and expression (CDL-AD(2004)027, para. 80). The same refers, for instance, to the prohibition of "casting aspersion" on a candidate in the Ukraine. "In the context of a political campaign in which candidates make a conscious decision to enter the public sphere to compete for public office, a law for the protection of the reputation or rights of others cannot be applied to limit, diminish, or suppress a person's right to free political expression and speech" (CDL-AD(2006)002, para. 60). Though there are limits to the freedom of expression, as defined by international and constitutional law, it seems inappropriate to prohibit vaguely unethical campaigning or infringing the honour of a candidate in the electoral legislation. However, there may some political and moral values in so-called Codes for Conduct for political contestants (and other election stakeholders).

105. Campaign activities of non-citizens and minors: In some countries, foreign nationals and/or minors are, by law, prohibited from engaging in campaign activities. This limitation might be contrary to international instruments and domestic constitutional law (see for example CDL-AD(2004)027, paras 78, 80; CDL-AD(2006)002, para. 59).

VII. The role of the media in election campaigns

General remarks

106. Broadcasting and print media are generally the most important way that citizens find out about elections and electoral choices. Thus, the mass media play an important role in the pre-election period. This role is two-fold: Firstly, the media (should) inform the electorate by covering candidates, parties, and political issues relevant to elections in news and special information programmes. This might include even voter education tools. Secondly, they

(should) grant candidates and parties direct access to the electorate by allowing political advertisement.

107. In a number of countries the provisions of the electoral law concerning media during election campaigns are rather brief. Detailed provisions on that subject, though, are often found in media laws or in rules given by election administration or media supervisory bodies. Thus, a comprehensive analysis of media's role in elections should not only refer to electoral laws, but also to other relevant regulations. In some countries, like Estonia, the system is largely self-regulated, but appears to function well, according to international observers.

Coverage of election campaign

108. Free media are a *conditio sine qua non* for providing voters with diverse information concerning elections and referendums. Thus, it is important that freedom of the press is constitutionally and legally guaranteed and not undermined in practice. In most Council of Europe member states the media landscape is pluralistic, and the media act freely.

109. However, there are a few states in which the main mass-media are under state control, and the media's ability to operate freely is seriously restricted. Due to administrative restrictions and obstructions, strong and independent media providing unbiased coverage of campaigns were lacking, for example, in Russian elections, according to OSCE/ODIHR and Council of Europe observers. This made it difficult for voters to make a well-informed choice. In Azerbaijan, the difficult situation of the media was further exacerbated by systematic harassment and intimidation of journalists during the past years (see for example CG/BUR (11) 95). It should be noted that the government has the obligation not only to respect the freedom of the press, but also to protect the media. The legal system should effectively protect journalists from censorship, intimidation or arbitrary arrest.

110. Even in countries where the media work without undue restrictions, an unbiased coverage of election campaigns is not automatically guaranteed. Democratic elections depend largely on the ability and the willingness of the media to work in an impartial and professional manner during election campaigns. The failure of the media to provide impartial information about the election campaign and the candidates is one of the most frequent shortcomings arising during elections (CDL-AD(2002)023rev, para. 19). In a number of Council of Europe member states, contrary to the law and other regulations, the media provide neither quantitatively nor qualitatively for a balanced coverage of parties and candidates. In some instances, the degree of imbalance in broadcast coverage appears to be aimed at unduly influencing or even manipulating the voters' electoral decision.

Equal access to the media

111. In modern-day democracies, it is also important to ensure that the candidates or parties are accorded sufficiently balanced amounts of airtime and space for political advertising (CDL-AD(2003)023rev, I.2.3). Equal access to the public media should also be given to the supporters and opponents of the proposal in referendums (CDL-INF(2001)010, CDL-AD(2005)028). The electoral and media legislation in Europe generally provides for such conditions. However, in some cases the legal provisions are vague or even missing. For example, unlike in parliamentary elections, the legislative framework for referendums in Armenia does not explicitly ensure access of political parties to free campaign time in public media, according to the OSCE/ODIHR Needs Assessment Mission Report (2005).

112. Furthermore, the regulations concerning equal access to public media differ with regard to, among other things, the types of media and media access, the amounts of time and space, the format and the timing of broadcasting as well as the whole complex of financing political advertising. Due to the wide variety of provisions, it is difficult to discuss the subject on a general level. As for many details, however, there is room for country-specific discussion, for example with regard to criteria for allocating free time. In any case, it is necessary to draw a distinction between public and privately owned media, which is sometimes not done. Private media are usually less regulated.

113. As for the private media, one issue should be singled out here: While it is commonly agreed that parties and candidates should have direct access to state-owned media, there is, for example, some debate whether also private media can be obliged to include political advertisements of all electoral contestants. The Code of Good Practice in Electoral Matters emphasises that, 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.[19]

114. Accordingly, for instance, the "Rules of Procedures for Electronic Media with National Concession in the Republic of Croatia During the Election Campaign" stipulated that national electronic media, both public and private, should provide contestants free time to present their platforms in the 2003 parliamentary elections. In addition, contestants had the right to use paid advertisements. In some other countries, private media are not obliged to offer free time, but only paid time to parties and candidates.

115. There are also countries (like the United Kingdom) where the privately-owned media are not obliged to broadcast political advertisement at all. There might also be factual conditions which could justify denying political groups' participation in political campaigning, for example when their ideology opposes that of the media (see CDL-AD(2006)002, para. 63). However, if the media, voluntarily or not, provide candidates with free-of-charge time or paid time for political advertisement, they should do that at equal conditions for all contestants. And, of course, the right of private TV and radio stations to accord air time should not depend on the date of their establishment (as for the Chechen Republic, CDL(2003)021fin, comments on Article 52).

116. Irrespective of the details of regulation, in quite a substantial number of countries, public and private media were found to have breached the rules on equal access, according to observer reports. Moreover, even a fixed amount of free television and radio airtime for contestants might not be sufficient to address strongly unbalanced campaign coverage in regular news programmes. Therefore, media behaviour should be carefully monitored and, if breaches of the law occur, be adequately sanctioned.[20]

Supervisory body

117. The establishment of a neutral supervisory body to monitor and regulate the media and to deal with complaints about media behaviour during the campaign can be an important step in implementing the law and promoting free, equal, and fair access to broadcasting. Such a body might be a media monitoring unit within the election administration or a parliamentary commission, a multi-party board, a commission of selected persons or a self-

[19] See I.2.3.c of the Code of Good Practice in Electoral Matters.
[20] For a thorough analysis of the issue of media and elections, see CDL-AD(2005)032.

regulatory-body of the media. Electoral experts from the OSCE/ODIHR and the Venice Commission demanded the establishment of such an independent mass media supervision body on different occasions, not always successfully, as the Ukrainian case shows (CDL-AD(2006)002, para. 61).

118. However, in practice, the effectiveness of such bodies differs considerably between countries. Concerning the 2004 presidential elections in Serbia, for instance, the Republican Broadcasting Agency did not demonstrate an ability to regulate the media effectively, and a parliamentary Supervisory Board, as foreseen by law, had not been created at that time. The Parliament of Montenegro, in contrast, established a Board for Mass Media Supervising before recent and preceding elections to monitor compliance by state and private media with the rules on coverage of election campaigns. The Board provides an accessible forum for addressing complaints, according to international observers. However, it had no authority to impose sanctions.

119. In several cases, electoral observers recommended defining sufficient and detailed provisions regarding the penalties for broadcasters in the case of misconduct. It is important that in such a case graduated penalties would be available for minor violations of electoral rules by the media. It does not seem to be appropriate, for example, to suspend temporarily broadcasting activities due to minor violations, as it seems to be possible in some countries.

Publication of opinion polls

120. Since election-related opinion polls may have an effect on the vote itself, the publication and broadcasting coverage of opinions polls results should be regulated, providing, for example, that the source and other relevant information are included. Usually it is also forbidden to publish the results of opinion polls and projections immediately before and on election day (before the closure of the polling stations). If not already provided for, the introduction of such a deadline is generally welcomed (as for Georgia see, CDL-AD(2005)005, para 43). However, in some cases – like Moldova (10 days) and Ukraine (15 days) – the time restrictions are excessive. It was recommended that the period be reduced to a more reasonable duration there (CDL-AD(2004)027, para.32; CDL-AD(2006)002, para. 68).

VII. Election observation

121. Electoral observation plays an important role in insuring transparency in elections, particularly in emerging and new democracies. The guarantee of domestic and international observers' rights in the electoral law has been repeatedly demanded in cases where they are missing. (Such provisions might also be adopted in many established West European democracies, like France or Spain, which do not have any regulation on non-partisan domestic and international observers at all.) Especially the rights of domestic non-partisan observers need to be enhanced in a number of cases. Even if observer rights are guaranteed in the law, sometimes there is a lack of clarity of rules, resulting in widely differing interpretations of the regulations.

122. According to the Code of Good Practice in Electoral Matters, it is best to make the observation process as broad as possible, including party observers, non-partisan observers, and international (non-partisan) observers (CDL-AD(2002)023rev, para. 87). However, sometimes electoral commissions approve only a limited list of observers prior to the

election, leading to an exclusion of other observers. In Ukraine, for example, the electoral law stipulates that a public organisation may only observe elections if it was registered at least two years prior to election day and if election observation is one of their charter tasks. As the 2005 amendments provide the first opportunity for non-partisan domestic observation, these rules would create undue obstacles for the 2006 elections (see CDL-AD(2006)002, para. 73).

123. In the 2003 and 2004 elections in Azerbaijan, to mention another example, domestic non-governmental organisations enjoying more than 30% of foreign funding were prohibited from observing the elections (see CDL(2003)054, para. 39; CDL-AD(2004)016rev, para. 22; CDL-AD(2005)029, para. 23). As a result, a number of domestic NGOs were barred from electoral observation. This ban was allegedly temporarily lifted for (only) the local 2004 elections, a last-minute decision that was generally unknown. The absence of domestic observers, along with the fact that the number of international observers was very low, clearly facilitated fraudulent behaviour (CG/BUR (11) 95). In contrast, a high level of domestic observation was welcomed, for example, by the Parliamentary Assembly's Ad hoc Committee for the Observation for the 2002 parliamentary elections in Montenegro (Doc. 9621, Addendum IV).

124. Obviously, it might be helpful if observers are formally accredited and the accreditation criteria stipulated clearly. Cumbersome and complex registration procedures for observers should be avoided. Unfortunately, an overly bureaucratic approach to the accreditation of observers can be observed in a number of countries. In Ukraine, for instance, there are extremely detailed provisions for nominating observers, including the requirement of authentified signatures, notarised copies of the organisation's statutes, etc. If formal accrediting for election day observation is not required, observers should have the necessary documents with them to identify themselves at the polling station.

125. Both national and international observers should be given the widest possible opportunity to observe the elections. Observation cannot be confined to election day itself, but must include the whole electoral process, from the registration of candidates (and, if necessary, voters) to the post-election period. However, the observers' right to attend all election commission meetings, observe the election activities at all times, and obtain copies of protocols, tabulations, minutes, and other documents at all levels is not always guaranteed by law or in practice.

126. While awareness that the pre-election period should be comprehensively observed is increasing, the post-election process is frequently neglected. International observers, for example, often depart from a country shortly after election day and long before the declaration of final results. However, it is important that some observer presence remains until the verification and announcement of the final results. Correspondingly, the electoral rules should specify that observers have a role and a right to observe the post-election period and have a right of access to electoral commissions until all the electoral tasks are completed (as for Azerbaijan, CDL-AD(2004)016rev; CDL-AD(2005)029).

IX. Election day – the polling stations

Location, size and layout of polling stations

127. Evidently, there should be enough polling stations throughout the country. They should be easy to find and accessible to all voters. They are preferably located in prominent and suitable locations (like schools or other public buildings). Many electoral observers highlight the paramount importance of the appropriateness and the accessibility of voting stations. In several countries there are still too many polling stations of unacceptable size in relation to the number of voters. Polling stations are sometimes over-crowded, according to observer reports. Furthermore, they not always offer unimpeded access to elderly and disabled persons. In general, it can be said that more thought should be given to polling station selection and arrangements, particularly in some emerging and new democracies in the region.

128. The same refers to the polling station layout – i.e. the positioning of tables for polling station procedures, barriers for voter queues, voting booths, ballot boxes, etc. – which should ensure the effective flow of voters through the polling station and the secrecy of the vote. It is very important that polling station members (as well as the observers) have an effective overview of all staff and voter activity. For example, it is quite problematic if voting booths cannot be supervised by polling station members because they are completely out of sight or even placed in different rooms. Exactly this was criticised, for instance, by observers in the 2004 local elections in Azerbaijan.

Persons present in the polling station

129. The electoral laws or instructions given by electoral administration bodies should clarify which persons are authorised to be in the polling stations. Besides the voters and the polling station officials, authorised persons are usually representatives (agents, proxies) of candidates or political parties/ alliances, domestic and, if invited, international observers, and the media. However, there is always the risk that unauthorised persons are present inside the polling station, too. In a number of elections, observers reported the presence of unauthorised persons due to unclear instructions given to electoral officials or failures to implement respective rules.

130. As has already been mentioned, the presence of electoral observers is of paramount importance for the integrity of the electoral process. While the free access of proxies and observers to polling stations is generally respected in almost all European countries (Belarus being an exception until recently), in several occasions proxies and observers had problems to enter the polling stations or move freely inside. The small size and the over-crowding of polling stations has often been used as a justification for restricting the movement of proxies and observers. It should be clear, however, that the inappropriateness of the polling station cannot be used as an excuse for restricting the observers' free movement. Instead, it is the obligation of the electoral authorities to select and prepare polling stations in such a manner that an effective observation is possible without hindering the polling station activities.

131. Furthermore, it is commonly agreed that policy and security forces should not routinely be inside (or even outside) the polling station, as this may have an intimidating effect on voters, especially in countries with a rather poor democratic tradition or in (post-)conflict situations. As a rule, the police should only be allowed to enter the polling station when asked by the chairman of the respective electoral commission to secure order. Of course, it should *only* be called when the situation could otherwise get out of control. During 2004 municipal elections in Moldova, for example, the provision that the police may be called by the chairman of the polling station to restore legal order, was misinterpreted in such as a way as to ensure police presence even when there was no unrest (see CDL-AD(2004)027, para.

94). In a number of cases, the electoral legislation or the instructions given by the Central Election Commission might establish greater clarity in the regulations for the presence of police officers in polling stations and their role on election day. Police training on the rights and obligations during the elections should, if necessary, be intensified.

X. Voter identification, and voting procedures

Voter identification

132. The process of voter identification is of paramount importance for the overall integrity of the electoral process. Before voting, voters are required to prove their identity, usually through presentation of identity documents. It is important that the Election Law or instructions by the electoral administration body clearly specify what kind of identity document is valid for the purpose of voter identification. In some countries, the legal situation is complex and not very clear. International observers criticised, for example, the case of the 2003 parliamentary elections in Croatia. Special care should be taken with regard to groups that may lack necessary identity documents, like, for example, refugees, internally displaced persons or specific minority groups (e.g. Roma). Especially in those countries where "multiple voting" is a well-known problem, not effectively verifying voters' identities is considered to be a severe problem.

133. Following confirmation of the voter's identity, the next step is usually to check whether the voter has the right to vote at that particular polling station. Such a check is normally done by voters list. However, the problem of voters coming to polling stations without their names being on the voter register, either because they went to the wrong polling station or because the voter lists were in a sorry state, was reported in several countries. Given the poor quality of regular voter lists in some countries, supplementary lists might be necessary, but this is far from being ideal (see Chapter IV).

134. Alternatively, voters may cast a so-called conditional ballot (in other countries and world regions known as provisional or tendered ballots). In Kosovo's 2004 elections, for example, voters who did not find their names on the voters' list in the polling station in question were re-directed to an alternative polling station, physically situated in the same polling centre, where the voters could cast their votes according to a special procedure that enabled a later check of their eligibility, i.e. conditional ballot voting. This was a change from earlier elections in which such voters could be put on a supplementary list on-the-spot, with the provision of adequate proof of identity and residence. The reform's purpose was to give additional safeguards, as supplementary on-the-spot lists were not without risk of fraud. Despite misgivings from the delegation about extensive use of conditional voting, the system seemed to work well (see CG/BUR (11) 74).

135. In any case, however, there is still an urgent need to improve regular voter lists in order to reduce voting by supplementary lists or conditional ballots (see Chapter IV).

Safeguards against "multiple voting"

136. Furthermore, polling station officials must check whether the voter has already voted in the election. Unfortunately, "multiple voting" is still a common problem in a number of states in the region. In principle, it can be avoided if the voters are properly identified and registered, and the voter lists are signed by the voter (or marked by the election officials)

when voters receive the ballot papers. However, in practice, there are many instances in which voter lists were not signed by voters, or in which multiple similar signatures with the same handwriting were found on the voters lists (see for example, CG/BUR (11) 95; CG/BUR (11) 122rev). The latter may indicate either "multiple voting" or "family voting".

137. An additional method to diminish the risk of "multiple voting" is to mark the voter's finger with indelible (visible or invisible) ink to indicate that he or she has voted. Though inking of voters' finger is uncommon in Western Europe, it is widely used in other regions of the world and repeatedly recommended for emerging and new democracies. As the Armenian case shows, however, such recommendations are not always implemented. Despite the fact that inking was recommended by Venice Commission's and OSCE/ODIHR experts and was included in previous draft amendments to the Election Code, the recently adopted amendment does not provide for this procedure in Armenia (see CDL-AD(2003)021; CDL-AD(2005)019; CDL-AD(2004)049; CDL-AD(2005)027; CDL-EL(2006)020). In contrast, the inking of voters' fingers was introduced, for example, shortly before the 2005 parliamentary elections in Azerbaijan, thus implementing a longstanding recommendation by international experts. If "inking" is provided for, however, it is necessary that the procedures of applying ink and checking ink marking are properly followed. This is not always the case, as, for instance, the 2005 municipal elections in "the Former Yugoslav Republic of Macedonia" shows, according to international observers.

Ballot papers

138. Following the determination that a voter is entitled to vote at the polling station, the ballot papers should, as a rule, be immediately issued to the voter. Of course, it is strictly forbidden by law that voters receive more ballot papers than they are entitled to have. Not acceptable is the practice, still observed in some regions, that extra ballot papers are given to citizens after showing identity documents of their non-present relatives. Totally unusual – and not recommendable for emerging and new democracies in Europe – is the Spanish model. There, political parties may produce their own ballot papers according to an approved model and can freely distribute them prior to and on election day.

139. It is common practice in Europe to use single integral ballot papers which contain the names of all parties and/or candidates and have to be marked by the voters. This is normally preferable to systems in which voters choose from different (coloured) party ballots and seal the ballot of their choice in an envelope before placing it in the ballot box. The latter system was used in Bulgaria until the 2005 amendments to the electoral law.

140. In order to safeguard the ballot, in many countries ballot papers bear an official stamp specific to the polling station and/or the signature of authorised polling station officials. Some electoral laws contain clear and detailed provisions on that subject. According to the Code of Good Practice in Electoral Matters, the signing and stamping of ballot papers should not take place at the point at which the ballot is presented to the voter because, theoretically, the stamp or the signature might mark the ballot in such a way that the voter could be identified later during the count. (CDL-AD(2002)023rev, para. 34). Even more important is that the ballots are not stamped by a member of the polling station commission *after* the voter has made his/her choice. In Moldova, for instance, this procedure was criticised for violating the secrecy of the vote, especially since it was possible to see the marked ballot during the stamping of the rear side of the ballot before entering it into the box (CDL-AD(2004)027, para. 25). In order to ensure the secrecy of the vote, the Code of Good

Practice in Electoral Matters clearly points out that the voter should collect his or her ballot paper and no one else touch it from that point on (CDL-AD(2002)023rev, para. 35).

141. Still unusual for established West European democracies is the possibility of casting a negative vote ("against all"). The negative vote system stems from the communist tradition of non-competitive elections and is still used in a number of Council of Europe member states. It gives voters the possibility of expressing their annoyance with the candidates and parties/blocs on the ballot paper. In this way, however, political and party apathy in the population can be strengthened if the voters are able to simply reject candidates and parties instead of making the (often not easy) decision as to who is better (or best of the worst) candidate or party. As a matter of principle, voters should be encouraged to vote for their preferred candidate or party and thereby take the responsibility for the body that is being elected (see, for example, CDL-AD(2003)021, para. 31; CDL-AD(2005)027, para. 23; CDL-AD(2006)002rev, para. 78).

Voting procedures - irregularities

142. After being issued a ballot paper, voters usually are directed to a vacant voting booth in order to mark the ballot. Naturally, it is quite helpful if voters are familiarised with voting procedures. Voter education programmes and clear voting instructions in the polling stations are necessary, particularly if ballot structures and voting systems are complicated. Such programmes are common throughout Europe. In some cases, the ballot paper itself contains instructions for voters on how to fill out the ballot. According to the election law of the Chechen Republic, for example, such instructions are printed on the ballot in Russian and Chechen. Nevertheless, voters may make mistakes in filling out the ballot paper. In such cases, the election legislation or election commission instructions should provide for the possibility of voters who have made a mistake to void their ballot and be provided with as second ballot paper, as it was recommended, for example, by observers to the 2005 municipal elections in "the Former Yugoslav Republic of Macedonia".

143. Although the voting processes were considered to be professionally and efficiently administered in most Council of Europe member states, there are still some irregularities observed in several cases. Multiple voting (see above) and open and family voting are among such irregularities. Democratic elections require that ballots be completed by the voters in secret. The secrecy of the vote is not only a fundamental right, but also an obligation. Thus, any voting outside the voting booths is usually forbidden. In practice, however, there are a number of examples in which open voting has been tolerated by electoral officials. In the Russian presidential elections of 2004 open voting was even actively encouraged by the respective election commission in a high proportion of the polling stations. However, it should be clear that polling station officials should be obliged to stop voters from deliberately showing their marked ballot.

144. In order to secure the voter's secrecy, the voter should generally be alone in the voting booth. Only in special cases, e.g. blind voters, are exceptions to be allowed. The conditions for giving assistance to voters should, if necessary, be formalised in the electoral law or electoral commission instructions. In any case, it is unacceptable that "interpreters" accompany voters to the voting booth and indicate the name of the candidate for whom the voter wants to vote. This is what happened, for example, with illiterate Roma voters during the rigged Mayoral Election held in the town of Mukachevo (Ukraine) in 2004 (see CG/BUR (10) 125).

145. Though prohibited by law, in practice, so-called family voting or group voting is still tolerated in a number of countries. Electoral observers witnessed widespread family and group voting, to mention a few examples, in Azerbaijan, "the Former Yugoslav Republic of Macedonia", Moldova, Serbia and Montenegro and Russia. Even in countries like Bosnia-Herzegovina, where the polling conduct was assessed as "excellent" in recent municipal elections (2004), there were many cases of family members, and especially elderly married couples, voting together, according to international observers.

146. Obviously, family and group voting is by no means acceptable. It tends to deprive women, and sometimes young people, of their individual voting rights and as such amounts to a form electoral fraud (see for example CG/BUR (11) 95). The Congress Recommendation 111 (2002) emphasised the paramount importance of women's right to an individual, free, and secret vote and underlined that the problem of family voting is unacceptable from the standpoint of women's fundamental rights (CG/BUR (11) 122 rev). It should be clear, however, that preventing effectively family and group voting requires a radical change of attitudes, which must be actively promoted by the authorities (CDL-AD(2002)023rev, para. 30).

147. Strictly forbidden by law, but rather difficult to prove, is vote buying, i.e. the distribution of goods or money to people combined with the request to vote for a particular candidate or party. This is allegedly common practice in the pre-election period and on election day in some countries, according to international observers. In order to reduce the risk of vote buying on election day, it is important to guarantee the secrecy of the vote. It should also be ensured (and observed) that voters do not leave the polling station without depositing their ballots in the ballot boxes because some voters may try to take blank ballots outside the polling station and give or sell them to other people. As a rule, any unused ballot paper should remain at the polling station. However, in several cases, there were confirmed instances of stamped and signed ballots circulating outside polling stations on election day.

148. In a number of countries, transparent ballot boxed are used in order to prevent ballot box stuffing before or during the voting. In principle, this makes sense, as ballot-box-stuffing still remains to be a problem in singular cases. However, transparent ballot boxes may also raise concern with regard to the secrecy of the vote if ballot papers are not properly folded.

Special voting procedures

149. As mentioned, the lack of special voting procedures, i.e. absentee voting, may disenfranchise a substantial part of the voters who are not able to vote in their respective polling station on election day (see above Chapter IV). With absentee voting, voters are able to vote at a place other than the polling station at which they are included in the voters' list. There is a wide variety of absentee voting procedures in operation throughout Europe. Some countries allow voting in advance of election day (early voting), others do not. Regulations differ, furthermore, with regard to the place where absentee voting is conducted (special or regular polling stations; only in the voter's district or in any district; inside and/or outside the country) and the way it is done (by attending a polling station or by mail, proxies or mobile boxes).

150. Unfortunately, serious irregularities occur with absentee voting in several countries. Thus, where absentee voting procedures are provided for, special care must be taken to ensure the secrecy of the vote and to prevent fraud. International observers have recommended introducing more safeguards in a number of cases. In the 2005 presidential

election in Croatia, for example, the loose control of out-of-country voting, especially in Bosnia-Herzegovina, was a matter of serious concern. Particular attention should also be paid to early voting by military personnel, prisoners, persons in custody, and displaced persons. This is not always conducted satisfactorily. Strict safeguards should also be applied to the use of mobile ballot boxes, including pre-election application for mobile voting and attendance of several members of the polling station commission from different political groupings. In a number of countries, the organisation of mobile voting was rated as weak.

151. Postal voting is permitted in several established democracies in Western Europe, e.g. Germany, Ireland, Spain, Switzerland and, for voters abroad, the Netherlands, Norway, and Sweden (CDL-AD(2004)012, Chapter III). It was also used, for example, in Bosnia and Herzegovina and the Kosovo in order to ensure maximum inclusiveness of the election process (CG/BUR (11) 74). However, it should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting.[21]

152. In any case, absentee voting procedures require additional, and in many cases improved, efforts to prevent fraud, special voter education programmes, and extra training for members of election commissions. Special attention should be paid to guaranteeing the secrecy of the vote when introducing new voting technologies.

XI. Vote count and the announcement of provisional results

Vote counting

153. According to the Code of Good Practice in Electoral matters, the votes should preferably be counted at the polling station immediately after poll close, rather than in special counting centres (CDL-AD (2002)023rev, para. 45). This has the advantage of providing quick results for the polling station. Further, counting away from the polling station may raise security problems, since the transport of ballot boxes and accompanying documents is always a security risk. However, in some elections (e.g. Albania 2005) ballot boxes were transferred to counting centres where the votes are counted. In such cases, great care has to be taken to assure the transparency and security of the ballot box and ballot paper transport from the polling stations to the counting centres. It should be noted, however, that security problems can also arise on the polling station level (see for example CG/BUR (10) 125).

154. For the counting process to be open and transparent, it has to be carried out in the presence of observers and representatives of candidates, parties, and electoral alliances. (In some countries, like France and Spain, the vote count is completely open to the public). Authorised persons should be able to witness all aspects of the count. However, in some cases electoral observers reported that the distance they were required to remain from the counting tables lessened their ability to observe the process effectively. There were also singular incidents in which observers or proxies were completely denied access to the place of counting. Contrarily, in other cases non-authorised persons were present during the count. Both should be avoided.

155. It is of paramount importance that the vote count is conducted correctly. The correctness of the count depends on clear procedures, adequate staff training and their commitment to

[21] See I.3.2.2.1 of the explanatory report to the Code of Good Practice in Electoral Matters.

the process. The correctness of the results does not only refer to the vote share of each candidate, party or electoral alliance. It refers also to the accuracy of the whole electoral data, including, for instance, the number of votes cast (which is especially important in those countries where a minimum turnout is needed for elections or referendums to be valid). Great care must be taken to ensure that all figures are accurately recorded in election protocols.

156. Though the overall process of the vote counting is reasonably organised in most Council of Europe member states, there are still technical and political problems. International observers were concerned about serious irregularities of the vote counting in a number of countries in the past years. Among them are Albania, Armenia, Azerbaijan, "the Former Yugoslav Republic of Macedonia", and the Russian Federation. In some cases, the deficiencies appeared to result from poor administration rather than attempts at manipulation. This underlines the importance of polling station members being well trained. Furthermore, election manuals might be helpful as a reference guide in doubtful cases and should be provided for if still missing. Sometimes though there were also clear attempts at fraud, including ballot box stuffing and the falsification of results and protocols.

157. In several cases, the number of votes in the ballot boxes is higher than the number of voters indicated on the voters' lists who were delivered ballot papers. This typical ballot stuffing situation is not easy to resolve. As recommended, for example, for Moldovan elections, there must be clear rules to deal with such a problem, e.g. a recount, an entry in the protocol and even the possibility to declare the election invalid in the respective polling station. However, the situation international observers reported at one polling station in the 2003 parliamentary elections in Croatia, that the whole polling station results were annulled based on a single extra ballot seems exaggerated. There, the electoral law provided the mandatory annulment of results and conduct of repeat elections in polling stations where the number of ballots in the box exceeds in any way the number that should have been cast according to the records of the polling. Instead, the criteria for annulling the election should be based on whether extra ballots influence the voting results, i.e. the allocation of mandates (see Chapter XIII).

158. Quite uncommon, and not acceptable by international standards, is the fact that in Spain all counted ballot papers are destroyed by polling station members immediately after the count. Thus, no recount is possible. OSCE/ODIHR observers to the Spanish elections recommended adopting legal provisions to safeguard the counted ballots at least until all appeal processes have been completed and the final results have been announced.

Election results protocols

159. Close attention has to be paid to ensure that results protocols are correctly completed and signed by all authorised persons, according to the law. It goes without saying that the protocols have to be signed *after* the count has finished, rather than beforehand, as it is sometimes the case. Properly completing election protocols is no easy task. In order to ensure the safety and uniformity of the process, the laws of many emerging or new democracies in Europe provide for a quite complex procedure with many items on the protocols. Recent amendments to the electoral law of Ukraine, for example, have significantly increased the information required on the polling station protocols, thus making additional training of election commission members necessary. However, care should be taken not to make the procedure too complex. In some cases like, for example, Azerbaijan or Russia, international experts suggested considering the simplification of the (overly)

complex provisions for filling out the protocols. In any case, enhancing training sessions on how to correctly fill out election result protocols were recommended.

160. In accordance with the Code of Good Practice in Electoral Matters, distributing results protocols to observers and proxies and publicly posting the results outside the polling station are recommended. Until recently, not all electoral laws included respective provisions. Even if provided by law, observers and proxies sometimes have problems to obtain copies of the elections protocols in practice. In some elections, like the 2004 municipal elections in Bosnia and Herzegovina, international observers reported a widespread failure of polling station commissions to publicly post the results.

Transmission and announcement of provisional results

161. The transmission of the results per telephone, fax or electronically and the personal transfer of copies of election protocols to higher level electoral commission are vital operations, the importance of which is often overlooked (see also CDL-AD(2002)023rev, para. 51). Although these processes deserve closer attention, they seldom attract the observers' interest. It should be noted, however, that the transmission of election results and the transfer of election documents from lower to higher electoral commissions can be a source of error and manipulation. Special safeguards should be considered (security codes for transmitting; accompanied and observed transport; re-check of results based on original copies of election protocols; etc.).

162. Provisional election results can be published in different ways. In some countries, the incoming results from lower level to higher electoral commission are publicly displayed as and when they come in. With this system of "piecemeal reporting", first results can be quickly provided, but the initial results may be different from the final outcome, as the results come in from different areas. Alternatively, provisional results may not be announced until all results, or a representative portion of them, have been reported from lower level to higher level electoral commissions. In such cases, the first published provisional results are close to the final outcome. Under this system, however, taking too much time to publish the first provisional results might be problematic.

163. Thus, both the inaccuracy and the delay of provisional results might negatively affect the level of confidence in the elections and can meet with opposition. Depending on the electoral system and the political context, a balance has to be found between the need for an early announcement and the need for a reliable consolidation of provisional results. Not acceptable, however, are delays which are attributable to the fact that lower level electoral commissions do not work properly and fail to provide the Central Election Commission with preliminary results, as it was observed, for instance, in the 2005 parliamentary elections in Albania.

164. In any case, it is highly desirable that the Central Electoral Commission publishes (reliable) provisional results not only as fast as possible, but also as detailed as possible. Breaking down the results by polling station may considerably contribute to the transparency of election. An important element of transparency is the voters' and party representatives' ability to check results protocols issued at polling station level in comparison with the results published by higher level electoral commissions. In the meantime, many Central Election Commissions publish election results broken down by polling station results on their website, a practice which is generally welcomed.

XII. Election appeals and accountability for electoral violations

165. The management of complaints and appeals is an essential part of democratic elections. The Code of Good Practice in Electoral Matters underlines that irregularities in the election process must be open to challenge before an appeal body. Generally speaking, complaints and appeals may result in the partial or full invalidation of election results. They also may aim to correct problems and decisions even before the elections, especially in connection with the right to vote and voter registration, the right to stand for elections, the validity of candidatures, compliance with the rules governing the electoral campaign, access to the media, and party funding (CDL-AD(2002)023rev, para. 92).

166. Complaint and appeals procedures must be open at least to each voter, candidate, and party. A reasonable quorum may, however, be imposed for appeals by voters on the results of election (CDL-AD(2002)023rev, para. 99). In order to comply with international standards, the complaint and appeals procedures should clearly provide the following rights for voters, candidates, and political parties: The rights to file a complaint, to present evidence in support of the complaint, to a public and fair hearing on the complaint, to an impartial and transparent proceedings on the complaint, to an effective and speedy remedy, as well as to appeal an appellate court if a remedy is denied (see for example CDL-AD(2004)027, para. 111). In practice, however, these rights are not always respected. At times, even credible complaints are left without any legal redress.

167. Due to different legal and political traditions, a variety of procedures are used in the resolution of election disputes. In many established democracies in Western Europe (like France, Germany, Italy, or the United Kingdom) election appeals are heard by ordinary administrative and judicial bodies operating under special procedures. In contrast, in most emerging and new democracies in Central and Eastern Europe (and in other regions of the world), the responsibility for deciding on election complaints and appeals is shared between independent electoral commissions and ordinary courts. In several countries, mostly outside Europe, special electoral courts are responsible for resolving election disputes. Although there is no single "best" method suitable for all countries, several issues are open to debate.

168. It is of paramount importance that appeal procedures should be clear, transparent, and easily understandable.[22] However, in a number of cases, the procedures for dealing with complaints and appeals are not clearly defined and are very complicated. International observers' reports repeatedly characterise complaint and appeals procedures as complex, ambiguous, and confusing, leading to an inconsistent interpretation and application of the electoral law. The rules and procedures are often not well understood by electoral subjects. Furthermore, members of relevant bodies are not always sufficiently trained on election complaints and appeals rules.

169. Especially with dual complaint and appeal procedures, which involve electoral commissions and ordinary courts, the electoral law should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided. Neither the appellants nor the authorities should be able to choose the appeal body (see CDL-AD(2002)023rev, II.3.3.c. and para. 97). Thus, the possibility of concurrent complaints procedures is avoided. Furthermore, it should be clear which bodies act as first instance fact-

[22] See II.3.3 of the Code of Good Practice in Electoral Matters.

finding bodies and which bodies act as appellate review bodies. Nevertheless, in a number of elections, inappropriate provisions generated confusion over the jurisdiction of electoral commissions and courts to deal with election complaints and appeals. In the 2004 municipal elections in Bosnia and Herzegovina, for instance, it was quite unclear to which instance violations should be appealed. The OSCE/ODIHR observer report noted many cases of simultaneous filing of complaints there. Also with regard, for example, to Moldova and Ukraine, the option of making challenges in different forums, possibly leading to "forum shopping" and inconsistency in decisions, was criticised (see CDL-AD(2004)027, CDL-AD(2006)002).

170. Moreover, the electoral law should provide that the appeals review by the election commissions follow a single hierarchical line, from lower to higher level commissions. With regard to the 2005 municipal elections in "the Former Yugoslav Republic of Macedonia", however, the State Election Commission did not have any role in the complaints and appeals process. The Municipal Electoral Commissions served as the first avenue for lodging complaints and appeals. Appeals against the MEC decisions were filed to the courts. In order to enhance the uniformity of decision making on appeals, it was recommended that the State Election Commission be made the second instance for all complaints and appeals, even in local elections, before appealing to the court.

171. Appeal bodies should have the authority to annul elections.[23] There is consensus that the annulment should not necessarily affect the entire election. Instead, partial invalidation should be possible if irregularities affect a small area only. The central criterion for (partly or completely) annulling elections is, or should be, the question of whether irregularities may have affected the outcome, i.e. may have affected the allocation of mandates. In some countries (like Azerbaijan and Ukraine), however, the electoral law establishes a tolerance level for fraud (based on certain percentages of irregular votes), a practice which does not meet international standards (see for example, CDL-AD(2005)029, paras 42–43; CDL-AD(2006)002, para. 84).

172. As a matter of principle, electoral violations should be investigated and electoral violators should be held accountable by law. Thus, election (and party) legislation and/or framework legislation such as Civil and Penal Codes should specify election-related offences (which can be committed by voters, candidates, parties, media, electoral and public officials, etc.) and the legal sanctions for such offences (e.g. forfeiture of contributions or public funding, suspension or disqualification for a candidate, fines or imprisonment).

173. Though widespread electoral violations were acknowledged to have taken place, there was a general failure to enforce the law in a number of elections. In some countries, there is still a "culture of impunity" for election-related offences. Of particular concern is the fact that election officials are seldom held legally or administratively accountable for electoral violations. Electoral observers have frequently demanded that election officials found guilty of irregularities should be held accountable and not be reappointed for future elections. The relevant authorities' general failure to take measures against election violations undermined the credibility of, and public confidence in, elections of several countries. Prompt and radical measures by the authorities are needed to curtail any tolerance for election-related offences as well as to fully restore the rule of law and confidence in the election process.

[23] See II.3.3.e of the Code of Good Practice in Electoral Matters and para. 101 of the explanatory report.

174. In sum: There is still a lot to do in order to improve election complaints and appeals procedures and to reverse the culture of impunity for election-related offences. The OSCE/ODIHR Guidelines "Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System" offer valuable clues to improvements.

XIII. Final results, and the electoral system

Announcement of final results

175. Final results cannot be announced until the electoral authorities have received the decisions on any complaints and appeals that might have bearing on the outcome of the elections. Partial or full recounts of votes and annulments of elections might be required by complaints and court decisions. Some legislation calls for automatic recounts if the resulting differences of candidates/parties are within a certain margin. In some cases, the extremely long delay of the announcement of final results was a source of conflict. Moreover, it was criticised that international observers were not allowed to monitor the post-election activities at the Central Election Commission in the crucial days before the announcement of the final results in some elections, for instance, in the 2003 presidential elections in Azerbaijan.

General remarks on the electoral system

176. The conversion of votes to political mandates depends largely upon the electoral system. The Code of Good Practice in Electoral Matters is quite indifferent about the electoral system, as long as these systems are democratic in nature.[24] With respect to democratic principles, thus, any electoral system may be chosen, regardless if it is a plurality or majority system, a proportional system or a combined system. It should be underlined that there is no such thing as the "best" electoral system that could be exported to all countries in the world.

177. Apart from the fact that the effects of one particular electoral system can be different from country to country, we must appreciate that electoral systems can pursue different, sometimes even antagonistic, political aims. One electoral system might concentrate more on a fair representation of the parties in parliament, while another one might aim to avoid a fragmentation of the party system and encourage the formation of a governing majority of one party in Parliament. One electoral system encourages a close relationship between voters and "their" constituency representatives, while another makes it easy for the parties to specifically introduce women, minorities or specialists into parliament by way of closed party lists. In some countries, complicated electoral systems are accepted in order to combine several political aims. In other countries, it is seen as a priority that the electoral system be not too difficult for the electorate and the administration to understand and operate. The appropriateness of an electoral system is determined according to whether it will do justice, bearing in mind the local conditions and problems. Thus, the electoral system and proposals to reform it should be assessed in each individual case.[25]

Electoral systems and women representation

178. There is broad agreement that women's representation should be increased in democratic institutions. The electoral system may affect the structure of opportunities for women's

[24] See II.4 of the Code of Good Practice in Electoral Matters.
[25] For a more detailed study on electoral systems, see CDL-AD(2004)003.

representation. There is some empirical evidence, for example, that women are generally better represented under proportional representation list systems than, for example, in plurality or majority systems in single-member constituencies. Usually closed lists are preferable to open list voting systems. In the municipal elections in Bosnia and Herzegovina, for instance, preferential voting reduced the percentage of women elected (see CG/CP (11) 13). Depending on the political culture, however, the effects of such provisions can differ in individual cases.

179. Furthermore, there might be gender quotas for the composition of or the candidacies for Parliament. According to the Code of Good Practice in Electoral Matters, 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 (CDL-AD(2002)023rev, I.2.5). In a number of Council of Europe member states, such a minimum percentage of women in the list of candidates is required by law. In the 2004 municipal elections in Kosovo, for example, a third of the candidates had to be women, otherwise political entities would have been disqualified (see CG/BUR (11) 74). In Armenia, the required minimum percentage of women in a list of candidates has recently been increased from 5% to 15% (CDL-AD(2005)027, para. 16). In addition a minimum gender balance, the election law may also stipulate a detailed order to ensure balance throughout the list (as for Bosnia and Herzegovina, see CG/CP (11) 13). A composition of the candidates' lists with alternating men and women might be considered. Even with elections in single-member constituencies, a minimal percentage of members of each gender among candidates might be possible (see CDL-EL(2005)031).

180. However, it should be clear that the electoral system itself is neither a necessary nor a sufficient condition to ensure women's representation. Additional measures are needed to encourage the increase in women's representation. Some measures have been included in the Council of Europe Parliamentary Assembly recommendation 1676 (2004), adopted on 5 October 2004.

Electoral systems and minority representation

181. Sometimes there also strong demands for a better representation of national minorities in Parliament. In such cases, the electoral systems may facilitate the minority representation, for example, by the use of proportional representation systems in nation-wide or in large multi-member constituencies (without a high threshold of representation). But also PR list systems in small multi-member districts or even plurality/majority systems in single-member constituencies may ensure minority representation if the minorities are territorially concentrated. Also, the candidacy and voting form, among other things, may have an influence on minority representation. In some countries (e.g. Poland and Germany), there are "threshold exemptions" for candidates lists or parties presenting national minorities (see CDL-AD(2005)009, paras 35, 49).

182. Alternatively, or additionally, there are sometimes provisions for reserved seats that are separately allocated to national minorities (e.g. in Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Slovenia, Romania). However, the notion of setting aside seats reserved for minorities is debatable (CG/BUR (11) 74). While reserved seats might be a short-term mechanism to secure the representation of minorities in a transitional period, in the long term the interest of the minorities and the country itself might be better served by representation through the "ordinary" electoral system (see for discussion the Parliamentary Assembly's report on the 2002 parliamentary elections in Montenegro; Doc 9621

Addendum IV). Furthermore, with reserved seats, there is always the problem of deciding which minorities should be entitled to have such seats and who legitimately represents the respective minority in national or local parliaments (see for example CDL-AD(2004)040).

Further issues to discuss in regard to the electoral system and referendums

183. Without entering into a discussion on the "best" electoral system, a few general issues related to the electoral systems in the region might be reconsidered, as they seem to be inconsistent with international standards. For example, in a number of countries the required vote share for candidates or parties to win the elections or gain political mandates is not calculated on the basis of the *valid* votes cast, but rather on the *total* votes cast, including invalid votes. This is quite uncommon and seems inappropriate. This problem is acute with regard to some absolute majority systems (Two Round Systems) applied in the region. Usually, with this system the winning candidate is required to get the absolute majority of valid votes (50% plus 1) to win the mandate in the first round. However, in several Council of Europe member states, the electoral law provide for the majority of the total votes cast.

184. The same problem occurs in regard to the calculation of election thresholds in a few countries. It seems to be inappropriate that, for example, a 5 per cent threshold for gaining parliamentary representation is calculated on the basis of the total votes cast or even the total number of voters, as in the 2004 parliamentary elections in Serbia. There, the electoral law stipulated that seats should be allocated to "candidates' lists that have won at least 5 per cent of the voters who have voted". In an official interpretation of this provision by the election commission, it was specified that the threshold is calculated on the number of voters who go to the polls by counting the number of signatures on the extract of the voter register in each polling station. In some other countries, like Georgia and Ukraine, the electoral law still provides for calculating the threshold on the basis of the votes cast. Even if such provisions are applied differently in practice, the electoral law should be changed to be consistent with international standards.

185. A quite specific problem was observed in the 2003 parliamentary elections in Serbia. The electoral legislation did not oblige political parties and electoral alliances to determine the order of candidates on their lists beforehand. Instead, parties and electoral alliances were allowed to arbitrarily choose which candidates from their lists become members of parliament *after* election day, thus limiting the transparency of the vote. It should be clear that under PR list systems, the order on the list usually determines the allocation of mandates if voters are obliged to vote for the party list and not, by preferential votes, for individual candidates on the list.

186. In a number of countries, the Election Code still contains a requirement for a minimum turnout for the election to be valid. Since turnout rates remain arbitrary without the existence of accurate voter registration, such a requirement might be problematic. Furthermore, the requirement might provoke attempts to fraudulently inflate turnout rates (see, for example, CDL-AD(2004)005, para. 49). It is a question of whether there should be a turnout requirement at all for elections. Such criteria may end up in a stalemate. In fact, several presidential elections held during 2002 and 2003 in Serbia failed because voter turnout fell below the requirement minimum of 50%. For this reason, the 2004 amendments to the presidential election law abolished the voter turnout requirement.

187. In a number of states in which referendums are held on a national and/or sub-national level (e.g. Bulgaria, Croatia, Italy, Malta, Lithuania, Russia, Slovenia, "the Former Yugoslav

Republic of Macedonia"), a minimum turnout (quorum of participation) is required for the referendum to be valid. Usually, a turnout of 50 per cent of the registered voters is needed (the exception being Azerbaijan with 25 per cent). However, as long as voter registration is not accurate, the appropriateness of turnout requirements might be questioned in some countries. Furthermore, there is a serious problem with a quorum of participation: "The opponents of the draft proposal submitted to referendum, as several examples have shown, appeal to people to abstain even if they are very much in the minority among the voters concerned by the issue" (CDL-AD(2005)034, para. 111). It should be noted, however, that the Venice Commission opposed proposals to abandon the quorum of participation for the planned referendum on independence in Montenegro at the present stage. It considers a minimum turnout of 50 per cent of the registered voters as appropriate for a referendum on the change of state status (CDL-AD(2005)041, paras 23-26).

188. Alternatively, or additionally, a quorum of approvals might be applied. Such a quorum makes the validity of the results dependent on the approval (or rejection) of a certain percentage of the electorate (which also makes accurate voter registration necessary) or the valid votes. Quorums of approval are often considered as preferable to requiring a minimum turnout (CDL-INF(2001)010, item II.O; CDL-AD(2005)034, para. 111). However, the required rates for approval differ considerably throughout Europe. As for the planned referendum on the independence in Montenegro, the approval rate was debated controversially (CDL-AD(2005)041, paras 29-37).

Withdrawal of elected representatives

189. Another, common problem was visible in the 2003 parliamentary elections in Serbia. According to the Serbian electoral law, parties and coalitions were allowed to terminate mandates of representatives who lost party membership, regardless of whether it was voluntary or followed expulsion. Such a provision is not consistent with international standards and, according to the Serbian Constitutional Court, the Serbian constitution. Although political parties might try to recall members of parliaments after they have been elected and duly installed in office, it is commonly agreed that the individual members of parliament, and not the parties or alliances, should have legal ownership over the mandates. This is the essence of the principle of "free mandate" (which should only be lifted in exceptional, clearly specified cases).

190. Very exceptional, and problematic by democratic standards, is the fact that in the unique context of the post-war arrangements in Bosnia and Herzegovina, many elected officials have been removed in the years since the Peace Agreement by international authorities without due process protections. While such actions by international community representatives are in line with their mandates to promote peace in compliance with UN Security Council resolutions, they are at least irregular, and even undemocratic, by international election standards, according to the Report on the 2004 municipal elections by the Congress of Local and Regional Authorities. Surely, "(i)t is regrettable that the situation in BIH remains at a point where such measures are still deemed necessary" (CG/CP (11) 13, p. 4).

XIV. Conclusions

191. The electoral laws in most Council of Europe member states provide an adequate basis for democratic elections, and in most cases elections and referendums are conducted satisfactorily and in accordance with international standards. However, there are a number of countries in which the electoral legislation and the electoral administration face serious problems. In some cases recent elections even fell short of democratic standards.

192. Since the quality of the elections differs considerably among Council of Europe member states, it is difficult to make general statements on the recurrent problems of elections in Europe. This report's considerations focus mainly on those countries in which the elections are still characterised by serious shortcomings according to international observers and the Venice Commission's experts.

193. Although much progress has already been made, there is still room for improvement in regard to both the electoral legislation and administration in a number of countries. The most important areas for such improvements are the following:

- Enhancing the independence, professionalism, and legitimacy of the electoral administration: In a number of countries, efforts should be made to improve the electoral administration bodies' independence vis-à-vis both the government and political party interests. Measures might also be taken to enhance the transparency and effectiveness of electoral management and to install confidence in the electoral administration process among political contestants and voters. Especially the commissions' composition is an extremely controversial issue in emerging and new democracies.

- Ensuring fair and equal conditions for the political contestants in the pre-election period: Although fundamental political rights are openly violated in the forefront to elections in only a few states, the misuse of state positions and resources for election campaigns as well as unbalanced campaign coverage in the media are common shortcomings in a larger number of countries. Among the issues that have to be considered more thoroughly is the question of whether (and how far) not only public, but also private, media should be regulated during the election campaign. The funding of political parties and electoral campaigns is also being controversially debated.

- Improving voter registration and the voting procedures: The poor quality of the voters' lists is a matter of serious concern in several countries. In several cases special care has to be taken to guarantee the integrity of the vote and to effectively prevent "multiple voting" or family and group voting. While special voting procedures (absentee voting, etc.) are considered appropriate to enhance elections' inclusiveness, they require additional efforts to avoid malpractice and prevent fraud. In a few cases, there are still incidents of vote buying, ballot-box stuffing, and falsification of election protocols.

- Paying more attention to the post-election period: Whereas awareness about the importance of the pre-election period for democratic elections is increasing, the post-election period is often neglected. However, there is still a lot to do in order to improve election complaints and appeals procedures and to reverse the culture of impunity for election-related offences. Not only electoral authorities, but also electoral observation missions, should pay more attention to the time period between the end of the count and the announcement of the final results.

- Protecting women's and minorities' rights: Despite some progress, further legal and practical measures can be taken to effectively protect the rights of women and national minorities and to improve their participation in the election process. Such measures may refer, for example, to the composition of election commissions, the translation of

electoral documents, voter education programmes, special requirements for candidacies and party lists, the practice of voting, and the inclusiveness of the electoral system.

194. However, further electoral reforms should be careful not to add increasingly detailed provisions to the electoral law. While it may be necessary to fill loopholes in the law, a review of the election legislation should be undertaken with the aim to clarify and simplify complex provisions as well as to remove inconsistencies and unnecessary repetitions. Furthermore, serious effort should be made to harmonise electoral and election-related legislation.

195. Of course, it depends on the will and the commitment of the electoral authorities and other elections stakeholders whether the electoral law is properly implemented and the elections conducted in accordance with international democratic standards. Here, much remains to be done in order to build a culture of respect for the law and democratic procedures in some countries. Intensified training for election officials at all levels and comprehensive voter education programmes can be helpful tools to improve the commitment to democratic elections.

196. In view of the insufficient implementation of and respect for the electoral law and the severe problems in regard to the election administration process in several countries, it might be appropriate to oblige the respective election authority to provide a post-election report following each election and referendum. Such a report might indicate problems in applying the law and in administering the elections or referendums and it might suggest measures to overcome these problems. It might also include an analysis of electoral violations and of measures taken against violators.

APPENDICES

Appendix I: Opinions and recommendations of the Venice Commission

CDL(2003)021fin. Comments on the Draft Law of the Chechen Republic on Elections to the Parliament of the Chechen Republic as submitted to Referendum on 23 March 2003.

CDL(2003)054 Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE and the European Commission for Democracy through Law (Venice Commission, Council of Europe).

CDL-AD(2002)023rev Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002).

CDL-AD(2003)021 Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR.

CDL-AD(2004)001 Opinion on the Draft Law on Election of People's Deputies of Ukraine adopted by the Venice Commission at its 57th plenary session (Venice, 12-13 December 2003).

CDL-AD(2004)002 Opinion on the Draft Law on Election of People's Deputies of Ukraine adopted by the Venice Commission at its 57th plenary session (Venice, 12-13 December 2003).

CDL-AD(2004)005 Opinion on the Unified Election Code of Georgia as amended on 14 August 2003.

CDL-AD(2004)010 Opinion on the draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms adopted by the Venice Commission at its 58th plenary session (Venice, 12-13 March 2004).

CDL-AD(2004)016rev Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan by the Venice Commission and the OSCE/ODIHR adopted at the 8th meeting of the Council for Democratic Elections and endorsed by the Venice Commission at its 57th plenary session (Venice, 12-13 March 2004).

CDL-AD(2004)017 Joint Recommendations on the Electoral Law and the Electoral Administration in Albania of the European Commission for Democracy through Law (Venice Commission, Council of Europe) and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE adopted by the Council for Democratic Elections at its 9th meeting (Venice, 17 June 2004) and endorsed by the by the Venice Commission at its 60th plenary session (Venice, 8-9 October 2004).

CDL-AD(2004)027 Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova of the European Commission for Democracy through Law (Venice Commission, Council of Europe) and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE adopted by the Council for Democratic Elections at its 9th meeting (Venice, 17 June 2004) and the Venice Commission at its 59th plenary session (Venice, 18-19 June 2004).

CDL-AD(2004)029 Opinion on the Referendum of 17 October 2004 in Belarus adopted by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004).

CDL-AD(2004)040 Opinion on the Law for the Election of Local Public Administration Authorities in Romania adopted by the Council for Democratic Elections at its 11th meeting

(Venice, 2. December 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004).

CDL-AD(2004)042 Opinion on the Draft Federal Law amending the Federal Law "On General Principles governing the Organisation of Legislative (Representative) and Executive State Authorities of Constituent Entities of the Russian Federation" and the Federal Law "On Fundamental Guarantees of Russian Federation Citizens' Electoral Rights and Right to Participate in a Referendum" adopted by the Commission at its 61st plenary session (Venice, 3-4 December 2004).

CDL-AD(2004)049 Joint Opinion on the Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004).

CDL-AD(2005)008 Preliminary Joint Opinion on the Revised Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62nd plenary session (Venice, 11-12 March 2005).

CDL-AD(2005)018 Interim Opinion on proposed amendments to the Election Code of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR endorsed by the Council for Democratic Elections at its 13th meeting (Venice, 9 June 2005) and by the Venice Commission at its 63rd plenary session (Venice, 10-11 June 2005).

CDL-AD(2005)019 Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 13th meeting (Venice, 9 June 2005) and the Venice Commission at its 64rd plenary session (Venice, 10-11 June 2005).

CDL-AD(2005)027 Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 63rd plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)028 Opinion on Parliamentary Assembly Recommendation 1704 (2005) on Referendums: Towards Good Practices in Europe adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)029 Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 63rd plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)041 Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with applicable International Standards adopted by the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005).

CDL-AD(2005)042 Opinion on the Draft Organic Law on "Making Amendments and Additions into the Organic Law – Election Code of Georgia" adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005).

CDL-AD(2006)002 Opinion on the Law on Elections of People's Deputies of Ukraine by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its

15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005).

CDL-AD(2006)003 Joint Opinion on the Draft Law on the State Register of Voters of Ukraine by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005).

Appendix II: Reports and other documents of the Venice Commission

CDL(2005)076 Law on Referendum of the Republic of Montenegro (Serbia and Montenegro) of 19 February 2001 (OSCE-ODIHR Unofficial translation).

CDL-AD(2004)003 Report on Electoral Systems – Overview of available solutions and selection criteria adopted by the Venice Commission at its 57th Plenary Session (Venice, 12-13 December 2003).

CDL-AD(2004)012 Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe adopted by the Venice Commission at its 58th plenary session (Venice, 12-13 March 2004).

CDL-AD(2004)047 Report on Media Monitoring during Election Observation Missions adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004).

CDL-AD(2005)009 Report on Electoral Rules and Affirmative Action for National Minorities' Participation in Decision-Making Process in European Countries adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62th plenary session (Venice, 11-12 March 2005).

CDL-AD(2005)032 Guidelines on media analysis during election observation missions prepared in co-operation between the OSCE's Office for Democratic Institutions and Human Rights, the Council of Europe's Venice Commission and Directorate General of Human Rights, and the European Commission, adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)034 Referendums in Europe – An Analysis of the Legal Rules in European States. Report adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)036 Declaration of Principles for International Election Observation and Code of Good Conduct for International Election Observers and Pledge to Accompany the Code of Good Conduct for International Observer prepared by the United Nations Electoral Assistance Division (UNEAD), The National Democratic Institute for International Affairs (NDI), and The Carter Center (TCC) (7 July 2005) endorsed by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

CDL-AD(2005)043 Interpretative Declaration of the Stability of the Electoral Law adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005).

CDL-EL(2005)023rev Electoral Code of Moldova of 21 November 1997 – (Law no. 1381-XIII) including the amendments passed on 22 July and 4 November 2005.

CDL-EL(2005)024 Law of the Republic of Armenia on Amendments and Additions to the Electoral Code of the Republic of Armenia (Adopted on 17 May 2005 by the National Assembly of Armenia).

CDL-EL(2005)025 Law on electing the President of the Republic of Serbia (1990 as amended 1992, 2002, 2003, and February 2004).

CDL-EL(2005)026 Law on the elections of representatives of the Republic of Serbia (update May 2004).

CDL-EL(2005)031 Draft Declaration on Women's Participation in Elections.

CDL-EL(2005)033 Election Code of Georgia.

CDL-EL(2005)050 3rd Conference of Global Electoral Organisations organised by ACEEEO (Association of Central and Eastern European Election Officials) on "Legal Remedies in the Electoral Processes – Standards of Electronic Voting (Siofok, Hungary, 14-17 September 2005). Report "Legal remedies in the electoral processes in the Republic of Macedonia".

CDL-EL (2005)053 Draft Law on the State Electoral Commission of the Republic of Croatia.

CDL-INF(2001)010: Guidelines for Constitutional Referendums at National Level, adopted by the Venice Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001).

Appendix III: Reports of the Congress of Local and Regional Authorities of the Council of Europe

CG (12) 16 Part II: Twelfth Session (Strasbourg, 31 May – 2 June 2005): Local and Regional Democracy in Netherlands. Explanatory Memorandum.

CG/Bur (9) 17 Report on Local Elections in Georgia (2 June 2002). Document adopted by the CLRAE Bureau on 5 July 2002.

CG/BUR 10 (125) Report on the Mayoral Election held in the town of Mukachevo (Ukraine) on 18 April 2004. Document adopted by the Bureau of Congress on 4 May 2004.

CG/BUR 11 (25) Report on the Observation of Local and Regional Elections in Romania (6 June 2004). Document adopted by the Bureau of Congress on 12 July 2004.

CG/BUR (11) 40 Report on the Regional Elections in Adjara (Georgia) 20 June 2004). Document adopted by the Bureau of Congress on 17 September 2004.

CG/BUR (11) 74 Report on the Elections of the Kosovo Assembly 23 October 2004. Document adopted by the Bureau of the Congress on 10 December 2004.

CG/BUR (11) 75 Report on the Referendum in "the Former Yugoslav Republic of Macedonia" (7 November 2004). Document adopted by the Bureau of the Congress on 10 December 2004.

CG/BUR (11) 95 Report on Local Elections in Azerbaijan 17 December 2004. Document adopted by the Bureau of the Congress on 23 February 2005.

CG/BUR (11) 122rev. Report on the Observation of the Local Elections in "The Former Yugoslav Republic of Macedonia" held on 13, 27 March and 10 April 2005. Document adopted by the Bureau of the Congress on 29 April 2005.

CG/CP (11) 13 Report on the Municipal Elections in Bosnia and Herzegovina (2 October 2004). Document adopted by the Standing Committee 5 November 2004.

CG/CP (12) 13 Report on the Local Elections in Armenia observed on 25 September and 16 October 2005. Document adopted by the Standing Committee of the Congress on 9 November 2005.

Appendix IV: Documents of the Parliamentary Assembly f the Council of Europe

Parliamentary Assembly, Ad hoc Committee on the observation of the parliamentary elections in the Republic of Moldova (22–26 February 2001), Doc. 9037, 23 April 2001.

Parliamentary Assembly, Report of the Ad Hoc Committee for the Observation of the Parliamentary Elections in the Republic of Montenegro (20 October 2002), Doc. 9621 Addendum IV, 8 November 2002.

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