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

**DRAFT REPORT**  
**ON ELECTION DISPUTE RESOLUTION**

based on comments by

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## I. Introduction

1. Criticism of electoral dispute mechanisms and their implementation is recurrent in reports issued by international election observers and as well as in electoral opinions<sup>1</sup> of the Venice Commission<sup>2</sup> and the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR).<sup>3</sup> The Council for Democratic Elections and the Venice Commission have thus decided to conduct a comparative study on the issue of electoral disputes and their settlement.<sup>4</sup>

2. When analysing relevant legislation from its member States,<sup>5</sup> the Commission observed and analysed a number of trends, either positive or negative. The purpose of this report is to identify such trends in the settlement of electoral disputes throughout Venice Commission's member States, in view of the elaboration of recommendations aimed at improving both laws and practice in member States. On the basis of the legislative data collected, this report will focus on dispute resolution concerning elections at national level. However, many of its findings address local and regional elections too, considering that the report covers mainly the procedural elements of election dispute resolution.

3. It is important to make a few methodological remarks. First of all, the activity of the electoral management bodies – also called commissions, committees, councils, boards – on resolution of electoral disputes is governed mostly by electoral legislation. In some countries, provisions of general administrative laws are applied too. Judicial proceeding on electoral disputes is regulated by separate procedural laws – or codes –, or jointly by electoral and procedural laws. The secretariat of the Venice Commission has been able to collect electoral laws of 58 member States out of 61.<sup>6</sup> The 58 member States of the Venice Commission referenced<sup>7</sup> are not necessarily all categorised in all types of situations referenced in the document as it leaves out the countries where translations were not available or where the provisions collected did not permit to clarify all legal specificities and systems. This report does not refer to other pieces of legislation. The Venice Commission therefore invites any reader to contact the secretariat of the Commission in order to correct or add elements that may be missing in this report, with the objective to be as exhaustive as possible.<sup>8</sup> The references to electoral opinions focus on the opinions adopted since 2014.

4. *The present report was adopted by the Council for Democratic Elections at its XXX meeting (Venice, XXX) and by the Venice Commission at its XXX Plenary Session (Venice, XXX).*

## II. General remarks

5. Electoral processes in Europe and beyond include a complex series of successive stages, requiring the involvement of numerous actors, primarily voters, candidates and electoral

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<sup>1</sup> Cf. in this respect the [Compilation of Venice Commission opinions and reports concerning election dispute resolution](#) (CDL-PI(2017)007) and the opinions quoted.

<sup>2</sup> <https://www.venice.coe.int>.

<sup>3</sup> <https://www.osce.org/odihr>.

<sup>4</sup> See the comparative analysis appearing in CDL-REF(2019)010.

Available at: [https://www.venice.coe.int/WebForms/pages/?p=04\\_EL\\_EDR](https://www.venice.coe.int/WebForms/pages/?p=04_EL_EDR).

<sup>5</sup> The relevant legislation is accessible at: [https://www.venice.coe.int/WebForms/pages/?p=04\\_EL\\_EDR](https://www.venice.coe.int/WebForms/pages/?p=04_EL_EDR).

Reference document: CDL-REF(2019)010.

<sup>6</sup> Electoral laws of Cyprus, Greece and Israel do not seem to exist in English, which prevented the secretariat and the rapporteurs on the present report to analyse the electoral laws of these member States of the Venice Commission.

<sup>7</sup> It is proposed to add Canada, which will become soon the 62<sup>nd</sup> member State of the Venice Commission, in a later version of the present report.

<sup>8</sup> Contact email: [venice@coe.int](mailto:venice@coe.int); please put in the subject of the email the following reference: "EDR Report".

management bodies. Political parties, courts and other relevant public authorities are also indispensable stakeholders of electoral processes.

6. Electoral disputes cannot be limited to complaints on election day or on election results, which are often the most visible disputes of an electoral process. They must also address any types of disputes that may arise in the course of an electoral process. This means that electoral disputes can derive from the various phases of an electoral process, also called electoral cycle. This includes mainly the following phases: voter and candidate registration (de-registration or refusal of registration as well); the official electoral campaign; decisions issued by administrations, public agencies and any relevant electoral stakeholder, especially election commissions at all levels of an election administration; election day itself; results (their tabulation, transmission, issuance). Furthermore, electoral disputes do not address electoral processes only and can relate to fundamental rights impacted by electoral processes, especially restrictions to the freedom of expression and the freedom of association as well as restrictions on the liberty and movement of political representatives.

7. Since the matter is complex but also because it involves political actors and politically sensitive issues, electoral processes inevitably lead to disputes, a natural part of a lively domestic political life, which in turn is a natural part of a lively pluralistic system. The adjudication of electoral disputes – also called the system of election dispute resolution – is therefore a crucial element of effective and functional electoral governance. The issue is regularly addressed by electoral opinions of the Venice Commission and the OSCE/ODIHR as well as by international observers in their election observation mission reports, especially reports from the Parliamentary Assembly of the Council of Europe<sup>9</sup> and of the OSCE/ODIHR.<sup>10</sup> In general terms, it has been observed that there have been structural problems while dealing with electoral disputes both in law and in practice in a number of Venice Commission member States.<sup>11</sup>

8. As the Venice Commission noted in the Report on electoral law and electoral administration in Europe,<sup>12</sup> in a number of cases, the procedures for dealing with complaints and appeals are not clearly defined or are very complicated, depending on the domestic legal situations observed. International observers' reports repeatedly characterise domestic electoral laws and other relevant laws (including procedural laws and codes) relating to complaints and appeals procedures as incomplete, ambiguous, and confusing, or too complex, in particular concerning the competent bodies. This leads to an inconsistent interpretation and application of the electoral law, especially regarding the admissibility of complaints and decision making at different levels. Moreover, the rules and procedures are often not well understood by electoral subjects.<sup>13</sup> Furthermore, members of relevant bodies are not always sufficiently trained on election complaints and appeals rules.<sup>14</sup>

9. Beyond the legislation itself, the international election observers, primarily the Parliamentary Assembly of the Council of Europe and the OSCE/ODIHR, have regularly

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<sup>9</sup> All Parliamentary Assembly's election observation reports are available [here](#).

<sup>10</sup> All OSCE/ODIHR election observation reports are available at: <https://www.osce.org/odihr/elections>.

<sup>11</sup> The present report refers to a number of reports of election observation missions, which are, in addition to electoral opinions from the Venice Commission and OSCE/ODIHR, the sources where such structural problems have been noticed.

<sup>12</sup> See Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues, adopted by the Council for Democratic Elections at its 17<sup>th</sup> meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67<sup>th</sup> plenary session (Venice, 9-10 June 2006; CDL-AD(2006)018), para. 169.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)018-e).

<sup>13</sup> Electoral subjects are primarily candidates and political parties, voters, as well as any other domestic actor impacted by or involved in an electoral process, such as the civil society, mass media, election administration etc.

<sup>14</sup> As developed later on, "relevant bodies" are election commissioners, judges and any other relevant body in charge of the settlement of electoral disputes.

underlined in their assessments of elections the following issues: overly expeditious complaints and appeals' procedures; a lack of impartiality or of effective remedies; overlapping jurisdictions; a lack of substantive judgments while dealing with complaints filed before electoral management bodies or courts.<sup>15</sup>

10. Primarily, at international level, election dispute resolution is dealt with by international binding texts and by standards, mainly developed at European level by the Venice Commission. The case-law of the European Court of Human Rights based on Article 3 of the First Additional Protocol to the European Convention on Human Rights defines the reach of such standards more precisely. In national legislation, detailed provisions address this issue.

11. In order to better understand and interpret domestic legal frameworks, the international instruments and soft-law dealing with the right to free elections have first to be introduced. **Part III** of the report will deal with the topic of **international instruments and case-law**.

12. Among the issues at stake concerning election dispute resolution, there are the procedural challenges and in particular the question of the bodies competent to deal with the settlement of electoral disputes. In a number of countries, electoral laws and relevant procedural laws are confusing or lack relevant provisions to establish clear competency of administrative and/or jurisdictional bodies for the different grounds for complaints. Such bodies can be electoral management bodies or courts, i.e. constitutional, general, administrative or specialised courts. Sometimes, the lines between the types of disputes and competent bodies to deal with them are blurred. The report will develop the question of the **bodies competent** to deal with the settlement of electoral disputes in its **Part IV**.

13. Addressing the election dispute resolution process also implies dealing with the type of complaints that can be filed by complainants. Situations vary greatly depending on the countries. **Part V** of the report will develop the situations observed in the various electoral laws concerning the **grounds for complaints**.

14. The analysis of the standing, i.e. the determination of a scope of the actors of the electoral process who are entitled to file complaints, namely citizens, candidates, political parties, non-governmental organisations etc., is also essential for assessing the effectiveness of the election dispute resolution process. **Part VI** of the report will deal with this issue of **standing**.

15. The Code of good practice in electoral matters recommends that time limits for lodging and deciding appeals be short while stating that they must however be long enough to make an appeal possible, to guarantee the exercise of the rights of defence and a reflected decision. Indeed, a number of cases brought before administrative or jurisdictional bodies are rejected for procedural reasons, either because time limits are exceeded or because the competent bodies do not take the time to analyse the substantive elements of the case, arguing of short deadlines. The question of **time limits** will be developed in **Part VII** of the report.

16. **Part VIII** of the report will deal with **other procedural challenges**, in particular regarding the right to a fair trial and the effectiveness of the system of election dispute resolution, transparency of the system of election dispute resolution, the right to submit evidence and the burden of proof and the issue of the reasoning of the decision upon examination of the case.

17. Last but not least, a successful system of election dispute resolution relies on the effectiveness of the decision-making power of the competent body. Electoral management

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<sup>15</sup> The 16<sup>th</sup> European Conference of Electoral Management Bodies which will take place in Bratislava, Slovakia, on 27-28 June 2019, is precisely organised in the context of this on-going work in order to complement the present first version of the report on election dispute resolution.

Source: <https://www.coe.int/en/web/electoral-management-bodies-conference/emb-2019>.

bodies or courts responsible for validating elections and announcing election results have to take decisions even in sensitive cases, which includes *inter alia* the delicate issue of cancellation of elections. The report will develop in its **Part IX** the various existing systems of **decision-making**, and in particular the possibility to partially or fully cancel elections.

### III. International instruments and case-law

#### A. International Covenant on Civil and Political Rights

18. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) calls for possibilities for judicial remedy, stating that “any person [...] shall have an effective remedy [...]” and that “any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”<sup>16</sup>

19. Article 25 (b) of the International Covenant on Civil and Political Rights provides “every citizen” with a right “[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

20. General Comment No. 25, aimed at complementing and interpreting Article 25 (b) of the ICCPR, states that, regarding complaints and appeals, “[t]here should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”<sup>17</sup>

#### B. European Convention on Human Rights

21. Article 3 of Additional Protocol 1 of the European Convention on Human Rights on the right to free elections<sup>18</sup> does not mention ways to complain about supposed violations during electoral processes. Nevertheless, the case-law of the European Court of Human Rights has recognised the procedural aspect of the right to free elections, implying the protection of citizens with regard to the effectiveness of the system of appeal. It emphasised that “a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections”.<sup>19</sup>

22. Article 6 §1 of the European Convention on Human Rights provides the right to a fair and public hearing in disputes concerning “civil rights and obligations” or “criminal charge”, but does not apply to election disputes.<sup>20</sup> Instead, guidelines for the grounds providing a right to

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<sup>16</sup> United Nations, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

Source: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>17</sup> United Nations, General Comment No. 25, adopted by the Committee at its 1510<sup>th</sup> meeting (fifty-seventh session) on 12 July 1996, in particular paragraph 20.

Source: <http://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>.

<sup>18</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950 as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16. The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at [www.conventions.coe.int](http://www.conventions.coe.int).

Source: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>19</sup> See for example *Namat Aliyev v. Azerbaijan*, 8 April 2010, Application no. 18705/06, para. 81.

Source: <http://hudoc.echr.coe.int/eng?i=001-98187>.

<sup>20</sup> See *Pierre-Bloch v. France*, 21 October 1997, no. 120/1996/732/938, paras. 51, 61. However, Article 6 §1 of the European Convention on Human Rights is to be applied for the election-related cases pertaining to alleged

lodge complaints and appeals in election disputes can be found in the case law of the European Court of Human Rights based on Article 3 of Protocol No. 1. The Court bases its judgments *inter alia* on the Code of good practice in electoral matters (see below).

### **C. Code of good practice in electoral matters**

23. The Venice Commission's Code of good practice in electoral matters is the reference document of the Council of Europe in the electoral field. Under Guideline II 3.3., it defines a number of required preconditions for an effective system of appeal.<sup>21</sup> Overall, it leaves to the member States the choice of the appeal body, providing that a final appeal to a court be possible. The Code also insists on the necessity of a procedure simple and devoid of formalism. Additionally, the law has to define clearly the powers of the relevant bodies and appeal bodies so as to avoid risks of conflicts of jurisdiction. It recalls that the appeal body must have the authority on the main aspects of an electoral cycle, such as voter and candidate registration, observance of campaigns rules, the outcome of the elections, including the possibility to cancel elections where irregularities may have affected the outcome. Importantly, the Code recommends that any voter or candidate in the constituency concerned must be entitled to appeal. It recommends also that time limits for lodging and deciding appeals must be short, and finally, that the applicants should have the right to a hearing. All these required preconditions will be developed in the next parts of the present report.

### **D. OSCE 1990 Copenhagen Document and 1991 Moscow Document**

24. Paragraph 5.10 of the OSCE 1990 Copenhagen Document<sup>22</sup> is also relevant to election dispute resolution as it entitles everyone to "have an effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity." Paragraphs 18.2 and 18.4 of the OSCE 1991 Moscow Document<sup>23</sup> are pertinent as well, as they call on OSCE participating States to grant to everyone "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity" and to "provide for judicial review of such regulations and decisions."

## **IV. Competent bodies**

25. Among the issues at stake concerning election dispute resolution, there is the question of which are the bodies competent to deal with the settlement of electoral disputes. Such bodies can be electoral management bodies or constitutional, general, administrative or specialised courts. Criticism by election observers and international organisations raised in particular the following concern: electoral laws and other relevant laws (including procedural laws and codes) are often confusing, and sometimes conflicting, or lack relevant provisions to establish a clear competency of administrative and/or judicial bodies for resolving the different grounds of disputes. Sometimes, the lines between the types of disputes and competent bodies to

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violations of other rights and freedoms than electoral rights. See in this respect *Shapovalov v. Ukraine*, 31 October 2012, (application # 45835/05), paras. 45, 46, 48, 49.

<sup>21</sup> Code of good practice in electoral matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 51<sup>st</sup> and 52<sup>nd</sup> sessions (Venice, 5-6 July and 18-19 October 2002; CDL-AD(2002)023rev2-cor-e); see para. 92-102 in the Explanatory Report for more elements.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e).

<sup>22</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. The 1990 CSCE/OSCE Copenhagen Document outlines a number of human rights and fundamental freedoms, such as the right to peaceful assembly and demonstration, the right to enjoy one's property peacefully and the rights of the child. It introduces far-reaching provisions regarding national minorities and broadens the scope of human rights matters to include election commitments. Source: <https://www.osce.org/odihr/elections/14304>.

<sup>23</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991. Source: <https://www.osce.org/odihr/elections/14310>.

deal with them are blurred. In practice, international experts raise on a regular basis the issue of credible complaints left without any legal redress<sup>24</sup> because being filed with a body which denies its competence,<sup>25</sup> an issue which is also raised regularly by international election observers in their election observation reports. Importantly, it should be raised that dual-option systems of complaints are acceptable providing that the law is clear enough to ensure that a violation may be challenged with either an electoral commission or a court alternatively, but not simultaneously.

## A. International standards

26. According to international standards and more specifically the Code of good practice in electoral matters,<sup>26</sup> the appeal body in electoral matters should be either an electoral commission or a court.<sup>27</sup> For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, a final appeal to a court must be possible.<sup>28</sup> It is also of utmost importance that, as underlined by the Code of good practice in electoral matters, “the appeal procedure and, in particular, the powers and responsibilities of the various bodies [...] be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.”<sup>29</sup> Indeed the possibility for the applicant to choose between various appeals bodies, and in particular between election commissions and courts, may lead to forum shopping. Especially when national legislation provides for the possibility of legal challenges to either an election commission or a court, the electoral law and, if necessary, other pieces of legislation should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided. Thus, the possibility of concurrent complaints procedures is to be avoided.<sup>30</sup> At least it should be ensured that if such a dual mechanism does exist, a national legislation should establish an “alternative” opportunity to challenge violation to either an election commission or to a court, but not a simultaneous option to file complaints to both bodies.

27. As underlined by the 2006 Venice Commission’s Report on electoral law and election administration in Europe, “[d]ue to different legal and political traditions, a variety of procedures are used in the resolution of election disputes. In many established democracies in Western

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<sup>24</sup> See Report on Electoral Law and Electoral Administration in Europe, para. 167. The issue of election results and more broadly of decision-making power will be developed in Part IX of the present report.

<sup>25</sup> See for instance Joint Opinion on Draft Amendments to Legislation on the Election of People’s Deputies of Ukraine, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice, 11-12 October 2013; CDL-AD(2013)026), para. 66: “The OSCE/ODIHR final report on the 2012 parliamentary elections in Ukraine stated: “A significant number of complaints were rejected on procedural grounds, such as being filed with the wrong body.” Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)026-e).

<sup>26</sup> Code of good practice in electoral matters, Guideline II 3.3. a. and Explanatory Report, para. 93.

<sup>27</sup> Code of good practice in electoral matters, Guideline II. 3.3. a., para. 168 and 170 of its Explanatory Report.

<sup>28</sup> Code of good practice in electoral matters, Guideline II. 3.3. c. Regarding opinions, see for example Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic adopted by the Council for Democratic Elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> Plenary Session (Venice, 17-18 June 2011; CDL-AD(2011)025), para. 111.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)025-e).

<sup>29</sup> Code of good practice in electoral matters, Guideline II 3.3. c. and Explanatory Report, para. 97. Regarding opinions, see for instance Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 48<sup>th</sup> meeting (Venice, 12 June 2014) and by the Venice Commission at its 99<sup>th</sup> plenary session (Venice, 13-14 June 2014; CDL-AD(2014)019), para. 120.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)019-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)019-e).

Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> Plenary Session (Venice, 17-18 June 2011; CDL-AD(2011)025), para. 111.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)025-e).

<sup>30</sup> See Report on Electoral Law and Electoral Administration in Europe, para. 170.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)018-e).



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 (as well as in other regions of the world), the responsibility for deciding on election complaints and appeals is shared between election administrations and ordinary (or specialised, including administrative) 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.<sup>31</sup>

## B. Competent bodies in first instance

28. At domestic level, the electoral law should provide a possibility to file a complaint against decisions, actions and inactions adopted or committed by electoral commissions or any other electoral management body delivering an administrative decision, or action, as well as against decisions, actions and inactions adopted, committed by other persons (candidates, political parties, mass media, public authorities and officials). Such review by the election commissions should follow a single hierarchical line, from lower to higher level commissions.<sup>32</sup> In 41 countries, the first instance competent for electoral complaints is the higher or authorised election commission.<sup>33</sup>

29. On the contrary, there are 19 countries where there is no complaint procedure through election administrations and where all electoral disputes are consequently dealt with by higher tribunals or by parliament.<sup>34</sup> Then a distinction has to be made between countries where the relevant court is the sole instance to deal with electoral disputes within their jurisdiction and the countries where electoral disputes are dealt with by two levels of courts.

30. In 15 countries, the relevant body – either a jurisdiction or the parliament or a specific independent body – is the sole instance deciding on electoral disputes, making its decisions final. In 10 of them, a court is the sole instance deciding on electoral disputes<sup>35</sup> whereas the parliament is the sole instance competent in four of them.<sup>36</sup> In Sweden, a special parliamentary body has been set up for the appeals, the Election Review Board.

<sup>31</sup> See Report on Electoral Law and Electoral Administration in Europe, para. 168.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)018-e).

See also the Joint opinion on the electoral legislation of Norway – Adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010; CDL-AD(2010)046), para. 40-41, where the main systems are explained.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)046-e).

<sup>32</sup> See Report on Electoral Law and Electoral Administration in Europe – Synthesis study on recurrent challenges and problematic issues Adopted by the Council for Democratic Elections at its 17<sup>th</sup> meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67<sup>th</sup> plenary session (Venice, 9-10 June 2006; CDL-AD(2006)018), para. 171.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)018-e).

<sup>33</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Lithuania, Malta, Mexico, Republic of Moldova, Montenegro, Morocco, North Macedonia, Norway, Peru, Romania, Russia, San Marino, Serbia, Slovenia, Spain, Turkey, United States.

Regarding opinions, see for instance the Opinion on the draft election code of the Verkhovna Rada of Ukraine, adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010; CDL-AD(2010)047), para. 15.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)047-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)047-e).

<sup>34</sup> Algeria, Costa Rica, Denmark, France, Italy, Korea, Liechtenstein, Luxembourg, Monaco, Netherlands, Poland, Portugal, Slovakia, Tunisia, United Kingdom.

<sup>35</sup> Algeria (Constitutional Council), Costa Rica (Supreme Electoral Tribunal), France (Constitutional Council), Korea (Supreme Court), Liechtenstein (State Court; Article 66.4: “Only a remedy of explanation is admissible against a decision of the Constitutional Court on an electoral complaint”), Luxembourg (Administrative Court), Netherlands (Council of State), Poland (Supreme Court), Slovakia (district court of Supreme Court depending on the issue contested), United Kingdom (High Court).

<sup>36</sup> Belgium, Denmark, Iceland, Norway. In Norway, the Storting decides on the appeals concerning the right to vote or the right to cast a vote. The National Election Committee shall make a statement to the Storting on the appeals case. The National Election Committee is the appeal body for other appeals. The National Election Committee

31. In four countries, the court is the first but not sole instance deciding on electoral disputes.<sup>37</sup> In Italy, the Regional Administrative Court is the first instance competent while the Council of State is the jurisdiction competent on appeal. In Monaco, the complaint is filed before the court of first instance and the appeal has to be filed before the municipality of Monaco, which informs the State Minister, who ultimately decides on the case. In Portugal, the Constitutional Court is the relevant body deciding both in first and second instance, the Plenary composition of the Court deciding in appeal. In Tunisia, the Administrative Court of Appeal is the first relevant appeal body, the High Administrative Court being the ultimate deciding jurisdiction on electoral disputes.

32. In various countries, the competent body is defined based on the issue filed. In Estonia, the issues related to voters' list and campaign financing have another path than all other disputes. Different paths can be found in Latvia, Lithuania, Albania (reviewing the eligibility of the members of parliament is vested on the Constitutional Court, all other appeals are aggregated to the administrative court) and North Macedonia. In Andorra and Austria, cases related to voters and candidates' registration are discussed based on complaints in other institutions than election commissions; in Andorra, disputes on the voters' registration are resolved by the local council, candidates' registration issues by the electoral commission with a recourse to the court. In Austria, the federal election authority is competent for validating the candidates for federal elections and for the contestation of tabulation and calculation about the results, while the Constitutional Court is the ultimate body responsible for examination of complaints pertaining to election results. In Armenia, the administrative courts are competent on appeals concerning decisions by district commissions on election results, in any other case the Central Election Commission has to decide on the appeals, whereas election results may be contested in the Constitutional Court. In Serbia, the nullification of electoral procedure or cancellation of election result may be ordered by the Constitutional Court, whereas an appeal against decisions on objections of the State Election Commission has to be discussed by administrative courts. In Slovenia, the competent institution is mainly the administrative court, but issues that could affect the term of office of the member of parliament are solved by the parliament.

### **C. Competent bodies on appeal (second or third instance)**

33. According to the Code of good practice in electoral matters, when it comes to the issue of second instance, appeal should be filed before a court and if not, final appeal to a court must be possible.<sup>38</sup> If the body designated by the law for the settlement of electoral disputes is an election commission, i.e. a higher election commission, the electoral legislation must therefore provide that the right to appeal to a court has to be available after exhaustion of the administrative process. This requirement stems from the main human rights instruments guaranteeing the right to judicial remedy for the protection of fundamental rights, among them the suffrage rights.<sup>39</sup>

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shall forward its decisions on the appeal cases to the Storting. In Denmark, the appeals are discussed in the Folketing. In Iceland, the Althing considers the complaints that a newly-elected member of the Althing does not meet the requirements regarding candidacy, that the electoral list was otherwise put forward illegally, or that the member was unlawfully elected. Finland has an ordinary administrative court proceeding contrary to the other countries of the region.

<sup>37</sup> Italy, Monaco, Portugal, Tunisia.

<sup>38</sup> Code of good practice in electoral matters, Guideline II 3.3. a.

<sup>39</sup> International Covenant on Civil and Political Rights, Article 2(3); United Nations Human Rights Committee, General Comment No. 32; 1990 OSCE Copenhagen Document, paragraph 5.10; 1991 OSCE Moscow Document, Section (18); Code of good practice in electoral matters, Guideline II. 3.3. d. See for instance Joint opinion on the electoral legislation of Norway, adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010; CDL-AD(2010)046), para. 18-24.

34. Regarding the sensitive issue of election results, most of the member States provide that the decision to partially or fully invalidate election results should be assigned to the highest electoral body and that this decision should be reviewable by the highest body of the judiciary or the Constitutional Court.<sup>40</sup>

35. There are other countries where the competent body to review the decision-making process regarding the cancellation of elections is not the highest judicial body.<sup>41</sup> The constitutional court can be the competent body dealing with disputes related to election results.<sup>42</sup> There are few cases where the decision to partially or fully invalidate election results is assigned to a political body.<sup>43</sup>

36. Among the Venice Commission member States, a number of countries do not allow a judicial appeal on the parliament's decision to validate the election result: Belgium, Denmark, Iceland, Italy (as per decision by the Constitutional Court), Luxembourg, the Netherlands, and Norway. In Norway, the complaints procedure is under revision to allow for judicial appeals on the election result due to the 2010 Venice Commission opinion as well as subsequent case law in the European Court of Human Rights. The ECtHR case law suggests that decisions by the parliament affecting the distribution of parliamentary seats, without the possibility of appeal to a judicial body, may constitute a breach of the right to an effective remedy in Article 13 of the ECHR in relation to Protocol 1 Article 3.<sup>44</sup>

37. In 17 member States, final instances competent to judge on electoral disputes are constitutional courts or equivalent bodies, i.e. constitutional tribunals, constitutional councils or equivalent jurisdictions, such as specialised electoral jurisdictions.<sup>45</sup> In 14 member States, the competent courts to review the complaints or appeals in matters concerning the certification of election results are the constitutional courts.<sup>46</sup> In a majority of countries

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Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)046-e).

<sup>40</sup> Algeria, Andorra, Armenia, Austria, Costa Rica, the Czech Republic, Estonia, France, Hungary, Ireland, Liechtenstein, North Macedonia, Slovak Republic, Slovenia, Turkey, the United Kingdom, United States.

Regarding electoral opinions, see for instance Report on the cancellation of election results adopted by the Council for Democratic Elections at its 31<sup>st</sup> meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009), CDL-AD(2009)054, para. 39-41.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)054-e).

<sup>41</sup> In Azerbaijan, Kyrgyzstan (In Kyrgyzstan a court is empowered to revoke a decision of the CEC on the results of election of President, and to declare election null and void. The Supreme Court is empowered to examine a cassation appeal on a decision of the 1<sup>st</sup> instance' court), Latvia, Republic of Moldova (In Republic of Moldova, the Constitutional Court is authorized to certify the results of Parliamentary Election, and to confirm legality of mandates of the elected deputies), Monaco, and Russian Federation, the electoral law mentions "a court" as the competent body to review invalidation of electoral results.

<sup>42</sup> Albania (reviewing eligibility of the members of parliament), Armenia (appeals against the decisions of the CEC and complaints related to election results), Austria (cases related to numerical calculations), Croatia, Montenegro, Slovakia (cases related to election results).

<sup>43</sup> Belgium, Denmark, Iceland, Switzerland and partially Lithuania and Germany (even if there is a last review by the Federal Constitutional Court).

<sup>44</sup> As for the ECtHR on this issue, see the 2010 decision *Grosaru v. Romania*, no. 78039/01, and the 2016 decision *Paunović and Milivojević v. Serbia*, no. 41683/06. In these decisions, the Court found a breach of Article 3 Protocol 1 as well as a lack of effective remedy according to Article 13 of the European Convention on Human Rights. Both cases concerned complaints on the election result concerning the subsequent distribution/annulment of parliamentary seats (eligibility to stand for parliament) which were decided by the parliament itself, with no possibility of appeal to judicial bodies. In the *Grosaru* decision, the European Court of Human Rights found that neither the parliament nor the Central Election Office were impartial decision-making bodies. As for the Central Election Office, seven of its members were judges from the Supreme Court, but the remaining 16 members were MPs, which allowed for politically motivated decisions.

<sup>45</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, France, Hungary, Kazakhstan, Lithuania, Malta, Montenegro, Morocco, Portugal, Slovenia.

<sup>46</sup> Algeria, Austria, Croatia, Czech Republic, France, Germany, Hungary, Kazakhstan, Lithuania, Malta, Montenegro, Morocco, Portugal, Slovenia.

however, 29 in total, such disputes are decided by ordinary courts.<sup>47</sup> Special electoral courts are set up in a smaller number of countries, seven referenced in total.<sup>48</sup> In six member States, courts are not involved in the decision-making of electoral disputes,<sup>49</sup> contrary to the Code of good practice in electoral matters.

38. Among these countries, seven countries have systems with three levels of settlement of electoral disputes.<sup>50</sup> In these countries, the first instance is dealt with by electoral commissions, the second instance by a local court and the final appeal by the constitutional court of the country, or the equivalent body.

#### **D. Other procedural issues concerning competent bodies**

39. Decisions on complaints and appeals in the electoral field are overwhelmingly taken in a collegial composition, be they election commissions or courts, except for cases related to voters' registration or disputes related to election day, where a decision by a single judge is common; this can be explained by the necessity to issue a very quick decision. Apart from such cases, the composition of the body deciding on complaints and appeals in electoral matters should preferably be a collegiate one.<sup>51</sup>

40. Moreover, some recommendations to specific countries proposed to provide clear and consistent complaints and appeals' procedures so as to avoid any conflicts of jurisdiction.<sup>52</sup> It has been recommended that dual ways for submitting the same complaint should be

<sup>47</sup> Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, Georgia, Iceland, Ireland, Italy, Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Republic of Moldova, Monaco, North Macedonia, Poland, Romania, Serbia, Slovakia, Spain, Switzerland, Tunisia, Turkey, United Kingdom, United States.

<sup>48</sup> Albania, Brazil, Chile, Costa Rica, Mexico, Norway, Slovakia.

<sup>49</sup> Denmark, Netherlands, Peru, San Marino, Sweden, Turkey.

See also Report on the cancellation of election results adopted by the Council for Democratic Elections at its 31<sup>st</sup> meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009; CDL-AD(2009)054), para. 31 et seq.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)054-e).

<sup>50</sup> Andorra, Armenia, Azerbaijan, Hungary, Kyrgyzstan, Malta, Morocco.

<sup>51</sup> See for instance Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, adopted by the Council for Democratic Elections at its 33<sup>rd</sup> meeting (Venice, 3 June 2010) and by the Venice Commission at its 83<sup>rd</sup> Plenary Session (Venice, 4 June 2010; CDL-AD(2010)012), para. 65.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)012-e).

<sup>52</sup> See Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR (17 December 2003; CDL-AD(2003)021).

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2003\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2003)021-e).

Opinion on the draft election code of the Verkhovna Rada of Ukraine, adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010; CDL-AD(2010)047), para. 15.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)047-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)047-e).

Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, adopted by the Council for Democratic Elections at its 45<sup>th</sup> meeting (Venice, 13 June 2013) and by the Venice Commission at its 95<sup>th</sup> Plenary Session (Venice, 14-15 June 2013; CDL-AD(2013)016), para. 98.

Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)016-e).

Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice, 11-12 October 2013; CDL-AD(2013)026), para. 66.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)026-e).

Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation adopted by the Council for Democratic Elections at its 40<sup>th</sup> meeting (Venice, 15 March 2012) and by the Venice Commission at its 90<sup>th</sup> Plenary Session (Venice, 16-17 March 2012; CDL-AD(2012)002).

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)002-e).

Republic of Moldova - Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) adopted by the Council for Democratic Elections at its 61<sup>st</sup> meeting, Venice, 15 March 2018 and the Venice Commission Plenary at its 114<sup>th</sup> meeting (Venice, 16-17 March 2018; CDL-AD(2018)008), para. 53.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)008-e).

removed.<sup>53</sup> It should be ensured that a conflict of jurisdictions is eliminated within the judicial system too, which might take place in cases related to defamation, for instance between “civil” and other (including, administrative) jurisdictions. Also, election commissions as administrative bodies may not be involved in the examination of disputes pertaining to electoral violations that constitute crimes, in particular vote buying. It can be seen as a trend that courts are competent to decide on electoral disputes even if in some countries no courts are involved in the respective proceedings.<sup>54</sup> The Venice Commission and the OSCE/ODIHR recommend that a right to appeal to a competent court as the final authority, with regard to all election-related matters and election results, be allowed.<sup>55</sup> Taking into account the variety of competent bodies dealing with electoral disputes, no trend can be observed with regard to making constitutional or ordinary courts competent to decide in electoral matters in final instance.

## V. Grounds for complaints and decisions open to challenge

41. Complainants in the context of an electoral process must be entitled to file complaints if they consider that electoral rights, freedoms, and interests were violated or that inactions and inadequate enforcement of the state’s obligations would have infringed their electoral rights. This notion covers numerous different situations. Indeed, situations vary greatly depending on Venice Commission’s member States; overall, it potentially concerns almost all steps of an election cycle: registration and de-registration of voters and candidates; complaints that may arise during the official campaign; complaints following decisions issued by election commissions as well as actions/inactions of these bodies, decisions/actions/inactions of public administrations, public agencies and any relevant electoral stakeholder, impacting the electoral process; and complaints on e-day procedures; complaints on the results (their tabulation, transmission, issuance); etc.

42. The European Court of Human Rights has accepted that the right of individual voters to appeal against the result “may be subject to reasonable limitations in the domestic legal order.”<sup>56</sup> However, while the right to appeal against the election result may be subject *inter alia* to procedural limitations, these results should nonetheless be appealable. The European Court has maintained that a failure to accept appeals and the effective examination of complaints related to the election result may violate the right to free elections under Article 3 of Protocol No. 1.<sup>57</sup> Similarly, the case law of the ECtHR, General Comment No. 25 to the ICCPR suggests that the election result, including the counting process, should be appealable.

<sup>53</sup> Code of Good Practice in Electoral Matters, especially Guideline II. 3.3 c. With regard to the electoral opinions, see for instance Uzbekistan, Joint opinion on the draft election code, adopted by the Council for Democratic Elections at its 63<sup>rd</sup> meeting (Venice, 18 October 2018) and by the Venice Commission at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018; CDL-AD(2018)027), para. 13.

Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)027-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)027-e).

<sup>54</sup> See for example Joint opinion on the electoral legislation of Norway, adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010; CDL-AD(2010)046), para. 38.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)046-e).

<sup>55</sup> See for an overview the Compilation of Venice Commission opinions concerning election dispute resolution, adopted by the Venice Commission at its 111<sup>th</sup> Plenary Session (Venice, 16-17 June 2017; CDL-PI(2017)007), p. 10. Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2017\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2017)007-e).

<sup>56</sup> Davydov and others v. Russia, 30 October 2014, Application no. 75947/11, para. 335.

Source: <http://hudoc.echr.coe.int/eng?i=001-147440>.

<sup>57</sup> Davydov and others v. Russia, 30 October 2014, Application no. 75947/11, para. 335: “The Court confirms that the right of individual voters to appeal against the results of voting may be subject to reasonable limitations in the domestic legal order. Nevertheless, where serious irregularities in the process of counting and tabulation of votes can lead to a gross distortion of the voters’ intentions, such complaints should receive an effective examination by the domestic authorities. A failure to ensure the effective examination of such complaints would constitute a violation of individuals’ right to free elections guaranteed under Article 3 of Protocol No. 1 to the Convention, in its active and passive aspects.”

Source: <http://hudoc.echr.coe.int/eng?i=001-147440>.

## A. International standards

43. It follows from the European Court of Human Rights case law that the right to effective examination of election complaints flowing from Article 3 of Protocol No. 1 requires the grounds for election related complaints to be defined broadly.<sup>58</sup>

44. In Guideline II 3.3. d., the Code of good practice in electoral matters lists a number of issues that should be subject to complaints: “The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.” Violations of the applicable rules in all these fields should be grounds for complaints and appeals.

45. The wording makes it clear that the listing is not exhaustive. In the Explanatory Report, the Guideline is explained as follows (para. 92): “If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.” The Explanatory Report makes it clear that all violations of electoral law or irregularities in its exercise should in principle be considered sufficient grounds for complaints and appeals, covering a wide range of appealable decisions, corresponding to pre-election, election-day and post-election phases of an electoral process.

## B. Types of complaints, challenged decisions, actions or inactions

46. In principle, any breach of electoral law affects the exercise of electoral rights, freedoms, and interests directly or indirectly, or possibly affects the outcome of elections. Thus, such a breach should constitute a ground for complaint. Regarding complaints, 47 member States<sup>59</sup> provide in their electoral laws and other laws the possibility to file a complaint before the competent body for violation of the law during the pre-electoral phase of an electoral process. More specifically, 23 states explicitly offer the possibility to file a complaint regarding voters' registration,<sup>60</sup> 31 regarding candidates' registration,<sup>61</sup> six regarding media coverage during the electoral campaign.<sup>62</sup>

47. member States<sup>63</sup> regulate appeals against election-day and post-election day operations. This concerns more particularly the possibility to challenge the operations or the decisions,

<sup>58</sup> *Uspaskich v. Lithuania*, 20 December 2016, Application no. 14737/08, para. 93.

Source: <http://hudoc.echr.coe.int/eng?i=001-169844>.

See also *Gahramanli and others v. Azerbaijan*, 8 October 2015, Application no. 36503/11, para. 69.

Source: <http://hudoc.echr.coe.int/eng?i=001-157535>.

<sup>59</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Luxembourg, Malta, Montenegro, Morocco, Netherlands, North Macedonia, Norway, Peru, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States.

<sup>60</sup> Andorra, Austria, Bosnia and Herzegovina, Chile, Costa Rica, Denmark, France, Georgia, Italy, Kazakhstan, Luxembourg, Malta, Morocco, Netherlands, North Macedonia, Norway, Peru, Romania, Russia, Slovakia, Switzerland, Turkey, Ukraine.

<sup>61</sup> Albania, Andorra, Armenia, Belgium, Bulgaria, Chile, Costa Rica, Czech Republic, France, Georgia, Germany, Iceland, Ireland, Italy, Kazakhstan, Luxembourg, Morocco, Netherlands, North Macedonia, Norway, Peru, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey.

<sup>62</sup> Andorra, Bulgaria, North Macedonia, Norway, Romania, Russia, Switzerland.

<sup>63</sup> Albania, Algeria, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Denmark, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein,

actions or inactions, taken by electoral commissions regarding voting,<sup>64</sup> counting (15 states),<sup>65</sup> tabulation (seven states)<sup>66</sup> and transmission (five states)<sup>67</sup> of election results, as well as the election results<sup>68</sup> themselves (36 states). As indicated in the introduction of the report among the methodological remarks, these figures have to be taken cautiously considering that some domestic laws may have not explicitly detailed such possibilities to file complaints on very specific aspects of the electoral processes while this could be dealt with by infra-legislative texts.

48. Regarding the sensitive issue of election results, some countries provide for the verification of election results by a constitutional court or bodies otherwise competent to address legal disputes without the need for an application (such as ordinary courts or Parliament).<sup>69</sup> This could even lead to such a major decision as the cancellation of elections. There are still numerous countries whose electoral laws do not specify whether the entities vested with the power to invalidate the election results can act without being submitted a formal complaint.<sup>70</sup> This is particularly problematic due to the impact of such a decision.

49. Most countries allow the final election result to be contested through appeal due to violations of electoral legislation that may have had impact on the election result.<sup>71</sup>

50. A second group of countries only allows a limited appeal on the election result. In some countries, it is only possible to contest preliminary results. Appeals against electoral results must therefore be filed and resolved before the validation and announcement of the final results.<sup>72</sup> In this respect, the lack of appeal on the final counting is far more significant than the lack of appeal on a formal validation of the election result after the counting and tabulation of the result has been done.<sup>73</sup>

51. A third group of countries does not allow any appeals on election results.<sup>74</sup> In these countries, the parliament is the judge of its own election,<sup>75</sup> and the parliament's validation of

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Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Norway, Poland, Portugal, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States.

<sup>64</sup> Albania, Algeria, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, Norway, Poland, Portugal, Russia, Switzerland, Tunisia, Turkey.

<sup>65</sup> Algeria, Armenia, Austria, Belgium, Brazil, Chile, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Mexico, Turkey, Ukraine.

<sup>66</sup> Albania, Austria, Brazil, Chile, Luxembourg, Republic of Moldova, Ukraine.

<sup>67</sup> Austria, Brazil, Chile, Luxembourg, Ukraine.

<sup>68</sup> Algeria, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Morocco, Norway, Poland, Portugal, Russia, Switzerland, Tunisia, Ukraine.

<sup>69</sup> See for instance Report on the cancellation of election results adopted by the Council for Democratic Elections at its 31<sup>st</sup> meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009; CDL-AD(2009)054), paras 32-34.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)054-e).

<sup>70</sup> Azerbaijan, Belgium, Denmark, Kazakhstan, Kyrgyzstan, Peru, Slovak Republic.

<sup>71</sup> Albania, Algeria, Austria, Brazil, Bulgaria, Costa Rica, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Iceland (presidential elections only), Ireland, Latvia, Lithuania, Macedonia, Malta, Morocco, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

<sup>72</sup> Liechtenstein, Mexico, Montenegro, Peru, San Marino, Tunisia.

<sup>73</sup> Turkey is a special case in this respect. The election result is determined by each Provisional Electoral Board and transmitted to the Supreme Board of Electors, which announces the national election result. The Supreme Board of Elections will also hear complaints on the decisions of the Provisional Electoral Boards, but no appeal is possible on the decisions of the Supreme Board of Elections, including its decisions on the final election result.

<sup>74</sup> Armenia, Azerbaijan, Belgium Bulgaria, Chile, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Korea, Kyrgyzstan, Luxemburg, Monaco, Montenegro, the Netherlands, Peru, Romania, Russian Federation, San Marino, Slovak Republic, Tunisia, United States.

<sup>75</sup> In some countries, an appeal is possible to parliament. See footnote no. 41.

the election result cannot be appealed to a judicial body as required by the Code of good practice in electoral matters.<sup>76</sup>

52. The main lesson learned from the overview of international standards is that domestic legislation should allow for appeals on all types of errors, irregularities and violations of election law falling under the positive and negative obligations of the state to hold free elections. While procedural limitations to the exercise of the complaints and appeal system may be permitted, the standards leave little room for limitations on the appeal grounds themselves as long as they concern the exercise of the right to vote and to stand for election, as well as all aspects of the election process flowing from these rights.

### **C. Who are the authors of electoral violations?**

53. Election dispute resolution mechanisms are primarily remedies to the state's failure to comply with electoral law. While the decisions open to challenge are those of state authorities, the question is whether grounds for complaint should be limited to the violation of electoral rights by decisions and actions of election authorities and other public officials or extended to the consequences of the behaviour of private subjects. Grounds for appeal should also include inactions and inadequate behaviour by private persons or groups subject to obligations in the election law, such as candidates, observers, and the media.

54. In 22 member States, the grounds for complaints and appeals follow from a general rule referring to violations of the electoral law or rights flowing from it.<sup>77</sup> Another common approach is to combine a general rule providing grounds for violation of electoral law or rights with specific grounds for certain decisions, for example registration of voters and candidates. This is the case in 24 member States in total.<sup>78</sup>

55. member States have provisions referring to grounds for complaints on supposed violations related to electoral campaigns and media coverage.<sup>79</sup> Other states do not regulate these issues in the electoral legislation and other legislation, and campaign and media issues may therefore not be subject to specific election dispute mechanisms. However, it should be possible to challenge such issues on the basis of legislation not specific to elections, such as administrative law and human rights law.<sup>80</sup> Other states include the actions of candidates, political parties, or other electoral subjects, such as observers, as grounds for appeal.<sup>81</sup>

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<sup>76</sup> See the Code of Good Practice in Electoral Matters, II, 3.3 a.

<sup>77</sup> See the Election Act of Estonia of 2002, amended as of 1 January 2017, articles 70 and 72. Other examples are Algeria, Bosnia Herzegovina, Croatia, Finland, Germany, Italy, Korea, Latvia, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Poland, San Marino, Serbia, Spain, Tunisia, the United Kingdom, and the United States.

<sup>78</sup> Albania, Andorra, Armenia, Austria, Bulgaria, Czech Republic, Denmark, France, Georgia, Hungary, Iceland, Ireland, Lichtenstein, Lithuania, Macedonia, Morocco, Norway, Portugal, Romania, Russia, Slovakia, Slovenia, Switzerland, Turkey.

<sup>79</sup> Andorra, Bulgaria, Brazil, Bulgaria, Costa Rica, France, Georgia, Kazakhstan, Kosovo, Republic of Moldova, Ukraine.

<sup>80</sup> One example is Norway, where party financing and registration are subject to a legal regime and appeals system separate from the election law and its appeals system.

<sup>81</sup> Costa Rica, Kosovo, North Macedonia, Republic of Moldova, Ukraine. An example of particularly wide-ranging grounds is Article 225 of the Election Law of Costa Rica, which considers grounds for appeal "any act or omission including against simple material actions that violate or threaten to violate any of the claimant's rights, if the perpetrator of any of them is a political party or other public or private entity that is de facto or de jure in a position of power capable of affecting the lawful exercise of the aforementioned rights." Another example of wide-ranging grounds is Article 108.9 of the Law on Parliamentary Election of Ukraine, which extends the grounds for appeal to decisions, actions, or inactions of "mass media, enterprises, institutions, organisations, their officials or employees, creative media workers, candidates, their proxies, parties, their officials and authorised persons, and official observers that violate election legislation."



56. In summary, the majority of member States expressly provide that the violation of electoral legislation by private subjects (authors of the violation) may be a ground for an electoral complaint or appeal. That is why electoral laws and other laws provide for a full range of complaints and appeals on all types of errors, irregularities or violations that may arise in the whole course of an electoral process. It is recommended that as a minimum, grounds for appeal not be limited to violations of electoral rights, freedoms, and interests due to the state's decisions and actions but also include inactions and inadequate enforcement.

## **VI. Standing**

57. Effectiveness of a system of election dispute resolution also relies on the standing, i.e. stakeholders who are or should be entitled to file complaints on any irregularity or inaccuracy, or on some of them depending on the standing granted by law.

### **A. International standards**

58. In order to comply with international standards, complaint and appeals procedures should clearly provide the right for voters, candidates and political parties to file complaints.

59. The Code of good practice in electoral matters does not develop extensively the categories of persons able to file electoral complaints, stipulating that “[a]ll candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.”<sup>82</sup> The Explanatory Report specifies however that “[s]tanding in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal”,<sup>83</sup> which should be interpreted as the possibility for other categories of persons involved in electoral processes to file electoral complaints as well.

### **B. Domestic situations**

60. Persons entitled to appeal can be: citizens (i.e. voters, registered or not), candidates and political parties (or coalitions) – registered or not –, election commissioners, political parties, non-partisan election observers, non-governmental organisations. National electoral laws and other laws provide with such possibilities, but situations vary a lot depending on the countries concerned.

61. In some countries, there are still excessive limitations: for instance, it happens that voters can complain on issues that relate to their individual situations, such as not being registered in voter registers, but cannot complain about other phases of an electoral process, which however impact them, such as election results. In a number of electoral laws and other laws, it has been observed that rights to file electoral complaints are too limited, taking into account the relation between the accessibility to complaints' procedures and the ability of competent bodies to examine the cases on the merit within a reasonable timeframe.

62. In 10 member States, voters and candidates can file electoral complaints on any aspect of the electoral process.<sup>84</sup> On the contrary, limitations of the categories of persons potentially entitled to file complaints on some aspects of an electoral process are observed in 45 member States.<sup>85</sup> Only four member States provide explicitly the possibility for election commissioners

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<sup>82</sup> Code of good practice in electoral matters, Guideline II 3.3. f. The European Court of Human Rights also accepts reasonable quorum requirements: *X. v. Germany*, Decision 7 May 1979, Application no. 8227/1978.

<sup>83</sup> Code of good practice in electoral matters, Explanatory Report, para. 99.

<sup>84</sup> Austria, Chile, Costa Rica, France, Georgia, Germany, Kyrgyzstan, Luxembourg, Malta, Montenegro.

<sup>85</sup> Albania, Algeria, Andorra, Armenia, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Kazakhstan, Korea, Kosovo, Latvia, Liechtenstein,

to contest a decision of an election commission,<sup>86</sup> 35 member States for representatives of political parties,<sup>87</sup> 14 for non-partisan election observers<sup>88</sup> and 9 for non-governmental organisations.<sup>89</sup>

63. In summary, most of the countries provide the right to file electoral complaints to the main stakeholders, namely the voters and the candidates and few countries provide for the possibility for other categories of persons to file electoral complaints. Developing in the law the categories of persons entitled to file complaints could be a way to reinforce procedures with regard to the settlement of electoral disputes and increase trust in electoral processes overall, although such categories are not indicated as entitled categories to file complaints by international standards and specifically the Code of good practice in electoral matters.

## VII. Time limits

64. While international standards recommend short time limits for lodging and deciding appeals in the electoral field, a number of domestic cases brought before administrative or jurisdictional bodies are rejected for procedural reasons, either because time limits are exceeded or because the competent bodies do not take the time to analyse the substantive elements of the case, arguing of short deadlines. This issue of time limits in election dispute resolution mechanisms is therefore an indispensable aspect to consider in the present report.

### A. International standards

65. The Code of good practice in electoral matters recommends that “[t]ime-limits for lodging and deciding appeals must be short (three to five days for each at first instance).” The Code also stipulates that “[t]ime limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision.”<sup>90</sup>

66. Appeal proceedings should be as brief as possible in any case concerning decisions to be made before election day. On this point, two pitfalls must be avoided: first, that appeal proceedings delay the electoral process, and second, that due to their lack of suspensive effect, decisions on appeals which could have been taken before, are taken after the elections. In addition, decisions on election results must not take too long, especially in countries where the political climate is tense and where doubts about the composition of new legislatures may develop or increase mistrust both on the electoral process and in democratic institutions as a whole.

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Lithuania, Mexico, Republic of Moldova, Monaco, Morocco, Netherlands, North Macedonia, Norway, Peru, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States.

<sup>86</sup> Armenia, Bulgaria, Georgia, Azerbaijan.

<sup>87</sup> Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Estonia, France, Germany, Kazakhstan, Korea, Kosovo, Latvia, Lithuania, Mexico, Republic of Moldova, Montenegro, North Macedonia, Poland, Portugal, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey.

<sup>88</sup> Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Georgia, Germany, Hungary, Kyrgyzstan, Lithuania, Russia, Turkey, Ukraine.

<sup>89</sup> Bosnia and Herzegovina, Chile, Georgia, Germany, Hungary, Kyrgyzstan, Mexico, Russia, Switzerland.

<sup>90</sup> Code of good practice in electoral matters, Guideline II 3.3. g.

67. The importance of a timely remedy is widely recognised at the international level and has been recognised by courts as inextricably linked to fair public participation in government and elections.<sup>91</sup> Regarding the time limits for lodging a complaint/an appeal there is a general trend towards a reduction in the period of time during which electoral appeals can be initiated.<sup>92</sup>

68. Regarding the time limits for deciding on complaints/appeals in electoral matters, the requirements set up by international standards are not that clear. As the Report on the Participation of Political Parties in Europe emphasised,<sup>93</sup> deadlines for taking decisions on complaints and appeals have to be realistic. The precise timeframe may vary from one country to another (depending on multiple factors such as the systems of ballot-counting and of transmitting results) but also from case to case (different elections, which may be held in different contexts). The Report however refrained from drawing general conclusions on deadlines.

### **B. Time limits for lodging complaints and appeals**

69. With regard to time limits for lodging complaints, 35 member States<sup>94</sup> provide time limits in line with the recommendations of the Code of good practice in electoral matters, meaning three to five days. On the contrary, 16 member States<sup>95</sup> provide for longer periods.

70. In appeal, 25 member States<sup>96</sup> provide for short time limits whereas 14 member States<sup>97</sup> provide for longer periods.

### **C. Time limits for adjudicating complaints and appeals**

71. With regard to time limits for adjudication of complaints and appeals, 23 member States<sup>98</sup> provide short time limits as recommended by the Code of good practice in electoral matters, meaning three to five days at first instance. On the contrary, 14 member States<sup>99</sup> provide for longer periods.

72. Overall, in most countries, time limits for introducing and deciding appeals are within the period set by the Code of good practice in electoral matters (three to five days). It is

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<sup>91</sup> International Foundation for Electoral System, "Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)", 2011, para. 50.

Source: <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>.

<sup>92</sup> Ace Project, Electoral Dispute Resolution, 2012. Available at: <http://aceproject.org/ace-en/topics/lf/lfb12/lfb12c>.

<sup>93</sup> Report on the Participation of Political Parties in Elections adopted by the Council for Democratic Elections at its 16<sup>th</sup> meeting (Venice, 16 March 2006) and the Venice Commission at its 67<sup>th</sup> plenary session (Venice, 9-10 June 2006; CDL-AD(2006)025), para. 40.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)025-e).

<sup>94</sup> Albania, Algeria, Andorra, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Costa Rica, Croatia, Denmark, Estonia, France, Hungary, Italy, Latvia, Liechtenstein, Luxembourg, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia, Peru, Portugal, Romania, Serbia, Slovakia, Spain, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom.

<sup>95</sup> Chile, Czech Republic, Finland, Czech Republic, Germany, Iceland, Ireland, Kazakhstan, Korea, Malta, Netherlands, Norway, Poland, Russia, Sweden, United States.

<sup>96</sup> Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Costa Rica, Croatia, Czech Republic, Estonia, Georgia, Germany, Hungary, Ireland, Kyrgyz Republic, Republic of Moldova, North Macedonia, Portugal, Romania, Serbia, Slovenia, Tunisia.

<sup>97</sup> Chile, Czech Republic, France, Italy, Kazakhstan, Korea, Latvia, Lithuania, Malta, Mexico, Morocco, Netherlands, Norway, Slovakia.

<sup>98</sup> Algeria, Andorra, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, Republic of Moldova, North Macedonia, Portugal, Romania, Serbia, Slovakia, Slovenia, Tunisia.

<sup>99</sup> Albania, Austria, Czech Republic, Estonia, Korea, Kosovo, Latvia, Mexico, Morocco, Netherlands, Poland, Russia, Spain, United States.

understandable that there is a wide range of different time limits and deadlines in the respective laws of the various countries. There is no consistent practice in Europe to institute shorter time limits for election dispute resolution. It appears that there is a trend to determine in the law time limits not only for possible applicants to complain but also for the competent bodies to adjudicate the complaint.<sup>100</sup> Opinions related to some countries show that in a number of countries the time limit of the decision-making of the competent body is too short.<sup>101</sup>

73. In summary, it is difficult to determine a positive or negative trend among Venice Commission's member states regarding time limits for filing or solving complaints, taking into account that the Code of good practice in electoral matters envisages such expanded periods to guarantee the exercise of the rights of defence and to a reflected decision.<sup>102</sup> Overall, the time limit for the competent body has to be taken into account with regard to the effectiveness of the (judicial) control of the election process.<sup>103</sup> The conduct of an electoral process requires prompt decisions and actions within a predetermined timeframe. The electoral law and other relevant laws should therefore expressly and systematically set deadlines for filing complaints and appeals for each phase of the electoral process, by which either the courts or the electoral bodies must reach a timely decision. A balance is thus necessary and advisable in the law between the thoroughness and complexity of the dispute resolution system on the one side and speedy and flexible procedures on the other side.

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<sup>100</sup> For example, see the Report on the cancellation of election results adopted by the Council for Democratic Elections at its 31<sup>st</sup> meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009; CDL-AD(2009)054), para. 57 et seq.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)054-e).

See also Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 29<sup>th</sup> meeting (Venice, 11 June 2009) and by the Venice Commission at its 79<sup>th</sup> Plenary Session (Venice, 12-13 June 2009; CDL-AD(2009)028).

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)028-e).

See also Joint opinion on amendments to the electoral code of Bulgaria, adopted by the Council for Democratic Elections at its 59<sup>th</sup> meeting (Venice, 15 June 2017) and by the Venice Commission at its 111<sup>th</sup> Plenary Session (Venice, 16-17 June 2017; CDL-AD(2017)016), para. 14.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)016-e).

<sup>101</sup> See for example the Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, adopted by the Council for Democratic Elections at its 29<sup>th</sup> meeting (Venice, 11 June 2009) and the Venice Commission at its 79<sup>th</sup> Plenary Session (Venice, 12-13 June 2009; CDL-AD(2009)032), para. 71.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)032-e).

Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 30<sup>th</sup> meeting (Venice, 8 October 2009) and by the Venice Commission at its 80<sup>th</sup> Plenary Session (Venice, 9-10 October 2009; CDL-AD(2009)040), para. 81.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)040-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)040-e).

Joint Opinion on the Election Code of Georgia as amended through March 2010 Adopted by the Council for Democratic Elections at its 33<sup>rd</sup> meeting (Venice, 3 June 2010) and by the Venice Commission at its 83<sup>rd</sup> Plenary Session (Venice, 4 June 2010; CDL-AD(2010)013), para. 71.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)013-e).

Joint opinion on the election code of Bulgaria adopted by the Council for Democratic elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011; CDL-AD(2011)013), para. 59.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)013-e).

Uzbekistan – Joint opinion on the draft election code, adopted by the Council for Democratic Elections at its 63<sup>rd</sup> meeting (Venice, 18 October 2018) and by the Venice Commission at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018; CDL-AD(2018)027), para. 50.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)027-e).

<sup>102</sup> Code of good practice in electoral matters, Guideline II. 3.3. g.

<sup>103</sup> See, e.g., Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation adopted by the Council for Democratic Elections at its 40<sup>th</sup> meeting (Venice, 15 March 2102) and by the Venice Commission at its 90<sup>th</sup> Plenary Session (Venice, 16-17 March 2012; CDL-AD(2012)002), para. 108.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)002-e).

## VIII. Other procedural issues

### A. Right to a fair trial and effectiveness of the system of election dispute resolution

74. The European Court of Human Rights case law emphasises that “a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections.”<sup>104</sup> From the “effective examination” requirement established in the case law, it follows that grounds for appeals should not be construed in the law or interpreted so narrowly that they prevent the effective examination of complaints.

75. Additionally, the European Court of Human Rights has noted in its recent case law that the right to an effective examination of complaints extends to “an arguable claim concerning election irregularities” both relating to individual rights as well as the state’s positive obligations to hold free and fair elections.<sup>105</sup> According to the Court, states have to undertake an effective examination of the applicants’ claims.<sup>106</sup>

76. In order to comply with international standards, complaints and appeals procedures should clearly provide *inter alia* for the right for voters, candidates, and political parties to effective and speedy remedies as well as the possibility to appeal before a court in final instance if a remedy is denied.<sup>107</sup> They should also be entitled to present evidence in support of their complaints, to a public and fair hearing, to impartial and transparent proceedings on the complaints, to effective and speedy remedies as well as the possibility of appeal to a court in final instance if a remedy is denied.<sup>108</sup> The guiding principles of election dispute resolution are therefore not different from general principles of good administration<sup>109</sup> or principles of fair judicial proceedings. In electoral matters, an administrative or judicial remedy has thus to be as efficient as remedies for the protection of other fundamental rights and freedoms according to the case-law of the European Court of Human Rights.

77. Whereas provisions governing election dispute resolution mechanisms proper to election administrations’ decisions, actions, and inactions are stated in electoral laws and other relevant laws, general administrative procedure rules contained in another piece of legislation may be applicable concerning the burden of proof, the right to submit evidence or other procedural guarantees in the context of elections. In some countries, the disputes related to

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<sup>104</sup> Namat Aliyev v. Azerbaijan, 8 April 2010, Application no. 18705/06, para. 81.

Source: <http://hudoc.echr.coe.int/eng?i=001-98187>.

<sup>105</sup> Namat Aliyev v. Azerbaijan, 8 April 2010, Application no. 18705/06, para. 88.

Source: <http://hudoc.echr.coe.int/eng?i=001-98187>.

<sup>106</sup> Gahramanli and others v. Azerbaijan, 8 October 2015, Application no. 36503/11, para. 73-74.

Source: <http://hudoc.echr.coe.int/eng?i=001-157535>.

<sup>107</sup> Code of good practice in electoral matters, II 3.3.

See among the electoral opinions issued for example 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 9<sup>th</sup> meeting (Venice, 17 June 2004) and the Venice Commission at its 59<sup>th</sup> plenary session (Venice, 18-19 June 2004; CDL-AD(2004)027), para. 111.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)027-e). See above Part VI.

<sup>108</sup> Code of good practice in electoral matters, II 3.3.

See among the electoral opinions adopted by the Venice Commission, for example, 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 9<sup>th</sup> meeting (Venice, 17 June 2004) and the Venice Commission at its 59<sup>th</sup> plenary session (Venice, 18-19 June 2004; CDL-AD(2004)027), para. 111.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)027-e).

<sup>109</sup> See for example Stocktaking on the notions of “good governance” and “good administration” (CDL-AD(2011)009), para. 65.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)009-e).

voters' registration are solved in a procedure provided for the complaints concerning the civil register in general. Thus, the applicable procedure might not be found in electoral legislation. The appeal procedure in court – either administrative or constitutional court – is usually not necessarily stipulated in electoral laws, but in court procedures' acts.

78. In order to guarantee full electoral rights, election dispute resolution's mechanisms should avoid obstacles to lodging complaints and appeals.<sup>110</sup> The procedure should not be too complex and rigid, eliminating the possibility to submit an application which would be considered in substance. As indicated by the Code of good practice in electoral matters, "[t]he procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals."<sup>111</sup> The legislation should clearly provide consequences for the situation where the application has shortcomings. The competent bodies should have the obligation to provide assistance in submitting the complaints and the procedure should be carried out in good will. In case the application has not been presented to a competent body, the person should be advised about the correct procedure or the application could be forwarded to the competent body by the institution which has received the application. A margin of appreciation might be given to the institutions.

79. complainants and appellants must be permitted to familiarise themselves with the materials related to their complaints and appeal.<sup>112</sup> Where they complain to an election commission, they must be informed of the time and date of the session at which their complaint will be considered so that they can attend the session. Similarly, assistance for the presentation of complaints should be ensured to complainants. Complaints on voters' registration or right to vote on election day are usually not complicated neither legally nor in fact. In such issues, an oral complaint might be acceptable. In other cases where the dispute is more detailed, requires an investigation of factual circumstances and legally complex issues, a written form might be suitable. In most countries, a written form for the complaint is necessary.<sup>113</sup> In some countries, an oral complaint is possible.<sup>114</sup>

80. Applicants should be free to present their complaints or appeals without legal assistance. Especially in disputes concerning the cancellation of election results, an obligation for legal advice might be reasonable to eliminate manifestly unfounded complaints and appeals. In five member States, electoral laws clearly state the possibility to submit applications without a representative.<sup>115</sup>

81. Not many countries define in their electoral laws and other laws the persons having the right to be heard in the election dispute resolution procedure in addition to the applicant.<sup>116</sup>

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<sup>110</sup> See for instance Joint Opinion on the Election Code of Georgia as revised up to July 2008 by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 26<sup>th</sup> meeting (Venice, 18 October 2008) and by the Venice Commission at its 77<sup>th</sup> Plenary Session (Venice, 12-13 December 2008; CDL-AD(2009)001), para. 109.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)001-e).

<sup>111</sup> Code of good practice in electoral matters, Guideline II. 3.3. b.

<sup>112</sup> See for example Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, adopted by the Council for Democratic Elections at its 33<sup>rd</sup> meeting (Venice, 3 June 2010) and by the Venice Commission at its 83<sup>rd</sup> Plenary Session (Venice, 4 June 2010); CDL-AD(2010)012, para. 68.

Source: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)012-e).

<sup>113</sup> Estonia (except for notice concerning deficiency in electoral management, which may not lead to an appeal to the court), Norway (for the complaints concerning voters' list), Albania, Algeria, Andorra (voters' registration and candidates' registration), Armenia, France, Bosnia and Herzegovina, Germany, Korea, Mexico, Netherlands, Poland, Slovakia, Spain, Switzerland. In Bosnia and Herzegovina, the complaint has to be submitted in a form prescribed by the Central Election Commission.

<sup>114</sup> Austria, Chile, Latvia, Monaco, Turkey. In Austria, complaints concerning voters' registration and issuing of voting cards may be submitted orally with the duty of the competent body to protocol the applications.

<sup>115</sup> Algeria, Andorra (cases concerning candidates' registration), Azerbaijan, Estonia, Latvia.

<sup>116</sup> Andorra, Austria, Azerbaijan, Czech Republic, Ireland. Other candidates concerning disputes related to candidates' registration and Attorney-General's Office take part in the proceedings in Andorra. In Azerbaijan, the

Legislation on the court procedure might provide for additional parties or stakeholders in addition to the applicant and the institution whose decision or act is contested.

## **B. Transparency of the system of election dispute resolution**

82. The principles of openness and transparency are generally stated in domestic electoral laws and other laws for all electoral processes. The specific mechanisms to guarantee the transparency of the election dispute resolution among election commissions is guaranteed by the working methods of election administrations, such as sessions open to public, the duty to publish sessions' protocols on the web, streaming of the sessions etc. The judicial procedure has to be, in general, public, as underlined by the Venice Commission in several electoral opinions.<sup>117</sup>

83. More precisely, each act of the election administration should be formally published, broadly available for information to election stakeholders and appealable in a court of law.<sup>118</sup> Publicity can be ensured through the public media and by immediate posting on the Internet. All decisions of election commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.<sup>119</sup> The complaints and appeals system should also be transparent thanks to the accessibility of a number of sources, such as, depending on the countries: the publication of complaints, responses, and decisions, for instance through a freely accessible database on the complaints and appeals, not only containing the information on the disputable question, but as far as possible, also access to the documents submitted by the parties, as well as resolutions and protocols of the hearings.<sup>120</sup> Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrence to future misconduct.<sup>121</sup>

84. Whereas an electronic system can be set up, an oral hearing is not always necessary to guarantee the public nature of the proceedings. The aims of the transparency – trust in the electoral processes – can be ensured, if the stakeholders are able to inspect whether all similar cases have been solved in an equal manner and the reasoning of the decisions is verifiable.<sup>122</sup>

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law explicitly provides that the electoral management body whose decision is contested, takes part in the proceedings. In Austria, the opposing party has the right to be present in the process. In Russia, candidates or parties concerned have the right to attend the process.

<sup>117</sup> See the next paragraph for such examples of opinions.

<sup>118</sup> See for instance Report on figure based management of possible election fraud; adopted by the Council for Democratic Elections at its 35<sup>th</sup> meeting (Venice, 16 December 2010) and by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010); CDL-AD(2010)043, para. 121.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)043-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)043-e).

<sup>119</sup> See for instance Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan by the Venice Commission and the OSCE/ODIHR adopted at the 8<sup>th</sup> meeting of the Council for Democratic Elections and endorsed by the Venice Commission at its 58<sup>th</sup> Plenary Session (Venice, 12-13 March 2004); CDL-AD(2004)016, para. 43.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)016-e).

<sup>120</sup> In some cases, the documents cannot be public in order to protect the personal data (e.g. disputes on the voter's registration). In these cases, only the relevant personal information should be hidden, while leaving the information on the complaint, arguments of the parties and reasoning of the competent body accessible.

<sup>121</sup> See for instance Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine; adopted by the Council for Democratic Elections at its 45<sup>th</sup> meeting (Venice, 13 June 2013) and by the Venice Commission at its 95<sup>th</sup> Plenary Session (Venice, 14-15 June 2013); CDL-AD(2013)016, para. 100.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)016-e).

<sup>122</sup> See for example Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 29<sup>th</sup> meeting (Venice, 11 June 2009) and by the Venice Commission at its 79<sup>th</sup> Plenary Session (Venice, 12-13 June 2009); CDL-AD(2009)028, para. 43.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)028-e).

85. As stated in the Code of good practice in electoral matters, the applicant's right to a hearing involving both parties must be protected.<sup>123</sup> An oral hearing is a means to provide the parties to give reasons to their requests in a speedy manner and ask questions to the other parties to point out the substance of the dispute. In some cases, an oral hearing is necessary to hear the witnesses in a speedy manner, as the parties have a chance to ask questions to the witnesses.

86. There are not many countries with specific rules on the right to request an oral hearing of the case or the competent institution's obligation to provide an oral hearing.<sup>124</sup>

87. In some opinions of the Venice Commission, it has been observed that the procedure for lodging a complaint was too complicated or caused relatively high costs.<sup>125</sup> Furthermore, the principle of transparency was concretised by some opinions. Accordingly, it requests a written decision by the competent body as well as a reasoning of the decision;<sup>126</sup> decisions should be made public;<sup>127</sup> and finally, written procedural rules concerning the review of complaints and appeals should exist.<sup>128</sup> These different aspects relating to the fairness of the procedure seem to be strongly connected with the nature of the competent body. If the decision in electoral matters in first instance is made by an electoral body (not by a court), it has to be guaranteed by specific procedural rules that the core elements of a fair proceeding are fulfilled. Therefore, a structural problem with respect to the fairness of the proceedings in electoral complaints can be established for some of the countries where the decision in first instance is not taken by a court.

### C. Reasoning of the decision on complaints and appeals

88. Reasoning of the decision on the complaint or appeal is a necessity to guarantee the verifiability of the decision and the recourse to a remedy against the decision, if applicable. Due to the urgency of the election dispute resolution, especially relating to decisions made on the election day concerning the participation in the voting, the resolutions cannot be reasoned

<sup>123</sup> Code of good practice in electoral matters, Guideline II 3.3. h.

<sup>124</sup> Armenia, Germany, Peru, Tunisia. In Armenia, an oral hearing is obligatory except in some cases concerning disputes related to election results. In Azerbaijan, the applicant has the right to request an oral hearing. In Armenia, an oral hearing is obligatory except in some cases concerning disputes related to election results. In Azerbaijan, the applicant has the right to request an oral hearing.

<sup>125</sup> See for instance Joint Opinion on the Election Code of Georgia as revised up to July 2008 by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 26<sup>th</sup> meeting (Venice, 18 October 2008) and by the Venice Commission at its 77<sup>th</sup> plenary session (Venice, 12-13 December 2008); CDL-AD(2009)001, para. 109, 115;

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)001-e).

Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice, 11-12 October 2013); CDL-AD(2013)026, para. 66.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)026-e).

<sup>126</sup> See for instance Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court) adopted by the Venice Commission at its 61<sup>st</sup> Plenary Session (Venice, 3-4 December 2004), CDL-AD(2004)043, para. 43;

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)043-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)043-e).

Joint opinion on the election code of Bulgaria adopted by the Council for Democratic elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011); CDL-AD(2011)013, para. 56.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)013-e).

<sup>127</sup> See for instance Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 29<sup>th</sup> meeting (Venice, 11 June 2009) and by the Venice Commission at its 79<sup>th</sup> Plenary Session (Venice, 12-13 June 2009); CDL-AD(2009)028, para. 43.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)028-e).

<sup>128</sup> See for instance Joint opinion on the election code of Bulgaria adopted by the Council for Democratic elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011), CDL-AD(2011)013, para. 56.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)013-e).



in detail to a large extent. The necessary promptness of the proceeding may outweigh the requirement of a detailed reasoning. Still, a short reasoning both in fact and in law is required.

89. The Venice Commission has therefore recommended that all election commissions should issue written decisions and duly argue all their decisions. The format of decisions should also be standardised. This should apply to all decisions, whether or not they can be appealed to court.<sup>129</sup> All decisions of electoral commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.<sup>130</sup> The requirement that the decision be reasoned is stipulated in electoral legislation only in a few countries.<sup>131</sup> However, this does not prejudice the application of provisions in the field to be found in general legislation on courts or administrative disputes.

#### **D. Right to submit evidence and burden of proof**

90. The Venice Commission has considered the right to submit evidence as a minimum guarantee for the protection of suffrage rights in a fair procedure.<sup>132</sup> In some cases, if the applicant does not have access to documentary proof, the electoral management bodies or other relevant institutions should have the duty to present it to the competent body.<sup>133</sup>

91. The burden of proof in electoral disputes is an important element, which should be stipulated in the law. There are different possibilities to address the issue. The applicant may have the burden of proof, i.e. submit evidence for the arguments the application is based on.<sup>134</sup>

92. Another solution might be to oblige the competent body deciding on the complaint or appeal to collect the relevant evidence *ex officio*,<sup>135</sup> or in addition to the evidence provided by the applicant. However, in reality it might be problematic to exercise such power in practise due to very limited time for examination (adjudication) or the complaint or appeal.

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<sup>129</sup> See for example Joint opinion on the election code of Bulgaria adopted by the Council for Democratic elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011), CDL-AD(2011)013, para. 56.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)013-e).

<sup>130</sup> See for instance Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan by the Venice Commission and the OSCE/ODIHR adopted at the 8<sup>th</sup> meeting of the Council for Democratic Elections and endorsed by the Venice Commission at its 58<sup>th</sup> Plenary Session (Venice, 12-13 March 2004), CDL-AD(2004)016, para. 43.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)016-e).

<sup>131</sup> e.g. Estonia, Norway. Factual reasons are required in, Albania, Algeria, Austria (disputes on the registration of voters), Estonia, Norway and Slovakia (disputes on election results), whereas legal reasons are explicitly obligatory in Albania and Bosnia and Herzegovina.

<sup>132</sup> See for example Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission at its 66<sup>th</sup> Plenary Session (Venice, 17-18 March 2006), CDL-AD(2006)013, para. 65.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)013-e).

<sup>133</sup> The Venice Commission has argued that in such cases, the applicant should have the right to make copies of the documents even if they contain personal data. See Joint Opinion on the 26 February 2007 Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), CDL-AD(2007)013, para. 33.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)023-e).

In Albania, Algeria and Austria, the law provides the parties of the dispute to submit evidence.

<sup>134</sup> Such is the situation in Andorra (disputes concerning voters' registration), France, Bosnia and Herzegovina, Slovakia. The legislation is similar in Armenia, where the burden of proof lies with the person who makes a statement (with some special rules). In Latvia, the burden of proof lies in the participants in the administrative proceedings.

<sup>135</sup> Such obligation is provided in electoral laws of Armenia, Azerbaijan and Liechtenstein.

## IX. Decision-making power

93. Successful system of election dispute resolution relies on the effectiveness of the decision-making power of the competent body, either competent administrative (electoral management bodies) or judicial bodies (ordinary courts or specialised courts).

### A. International standards

94. As underlined by the Code of good practice in electoral matters, “[t]he appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.” In addition, “[t]he appeal body must have authority to annul elections where irregularities may have affected the outcome.”<sup>136</sup>

### B. Authority of the appeal body on the cancellation of election results

95. In order to safeguard and guarantee electoral integrity, the legal framework must grant appeal bodies with the power to cancel elections, partly or completely.<sup>137</sup> The central criterion for cancelling elections, recognised by international standards and primarily by the Code of good practice in electoral matters, is the question of whether irregularities may have affected the outcome of the vote. The Venice Commission affirms that “the appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.”<sup>138</sup> Cancellation of election results due to minor misconduct which has not affected the outcome would however lead to mistrust in the judicial remedies or lead to a boredom of elections and lower turnout.

96. Moreover, the OSCE/ODIHR publication *Resolving Election Disputes*<sup>139</sup> lists several recommendations concerning the possibility to nullify elections results. Among them: (i) the decision to partially or fully invalidate election results should be assigned to the highest electoral body. This decision should be reviewable by the highest body of the judiciary or the Constitutional Court; (ii) the electoral law should specify whether the entities vested with the power to invalidate the election results can take action without being presented with a formal complaint; (iii) it should be clear from the law whether a general or restricted invalidation mechanism applies; (iv) both the preliminary and the final results should be subject to challenges.

97. It is important to underline that there is a widespread understanding about the extreme effects of cancellation of election results. Given that elections are meant to give voice to the will of the people, their results should not be disregarded lightly or easily. Election outcomes should only be overturned in extraordinary circumstances where evidence of illegality, dishonesty, unfairness, malfeasance or other misconduct is clearly established and where such improper behaviour has distorted election results.<sup>140</sup>

98. The transparency of the EDR system provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrent to future

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<sup>136</sup> Code of good practice in electoral matters, Guidelines II 3.3. d. and e.

<sup>137</sup> Ace Project, Electoral Dispute Resolution, 2012. Available at: <http://aceproject.org/ace-en/topics/lf/lfb12/lfb12c>.

<sup>138</sup> Code of good practice in electoral matters, Guideline II 3.3. e.

<sup>139</sup> Source: <https://www.osce.org/odihr/elections/17567?download=true>.

<sup>140</sup> International Foundation for Electoral System, “Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)”, 2011, para. 104.

Source: <https://www.ifes.org/publications/guidelines-understanding-adjudicating-and-resolving-disputes-elections-guarde>.

misconduct.<sup>141</sup> A country where the electoral law allows for a tolerance level for fraud, based on a certain percentage of irregular votes,<sup>142</sup> or where the allocation of seats takes place before the results of the repeated elections are made public<sup>143</sup> does not follow the international standards.

99. A number of electoral laws use rather general clauses concerning the cases of cancellation.<sup>144</sup> Some countries provide for a general invalidation mechanism and some others for a partial one.<sup>145</sup> There are many cases where the competent authority can cancel results in one or more electoral constituencies.<sup>146</sup> In other cases, there are provisions that allow for the general invalidation of the elections.<sup>147</sup>

100. In summary, the legislation of most member States of the Venice Commission does not provide for detailed legislation on the decision-making power of the appeal body and leaves a broad decision-making power to courts, in particular with regard to the sensitive issue of cancellation of elections. There remains room for improvement in a number of countries where the law does not provide necessarily for the possibility to cancel an entire electoral process, a decision which can be necessary in some situations, as there may be a need to clarify the legislation with regard to the cases of partial or full cancellation of election results.

## X. Conclusions

101. The proper settlement of electoral disputes is an essential part of a successful electoral process. This implies ensuring an effective system of challenging electoral violations and examination of election-related disputes, combining both an effective mechanism of filing complaints and an effective decision-making process on such electoral complaints. However, while the legislation of all the Venice Commission's member States includes legal provisions on complaints and appeals' procedures, there is room for improvement of law and its implementation in a number of countries with regard to various aspects of election dispute

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<sup>141</sup> Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), CDL-AD(2013)016, para. 100.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)029-e).

<sup>142</sup> 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 64th plenary session (Venice, 21-22 October 2005), CDL-AD(2005)029, paras. 42-43;

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)029-e).

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)002, para. 84.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)002-e).

<sup>143</sup> Joint Opinion on the Draft Working Text amending the Election Code of Moldova adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010), CDL-AD(2010)014, para. 70.

Source: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)014-e).

<sup>144</sup> Armenia, Azerbaijan, Belgium Bulgaria, Chile, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Republic of Korea, Kyrgyzstan, Luxemburg, Monaco, Montenegro, the Netherlands, Peru, Romania, Russian Federation, San Marino, Slovak Republic, Tunisia, United States.

<sup>145</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Ireland, Kazakhstan, Republic of Korea, Kosovo, Luxemburg, Malta, Republic of Moldova, Monaco, Morocco, Norway, Poland, Portugal, Serbia, Spain, Sweden.

<sup>146</sup> Albania, Armenia, Austria, Bosnia and Herzegovina, Denmark, Estonia, Finland, Georgia, Kazakhstan, Republic of Korea, Lithuania, Malta, Mexico, Republic of Moldova, North Macedonia, Norway, Portugal, Slovenia, Spain.

<sup>147</sup> Croatia, Estonia, Finland, Ireland, Malta, Monaco, Morocco, Poland, Russian Federation, Serbia, Slovak Republic.

resolution, as regularly underlined by opinions on electoral legislation as well as by election observation reports.

102. In most electoral laws, courts are competent to decide on electoral disputes, at least in last instance, in line with international standards. The Venice Commission reiterates its recommendation that electoral legislation provide for judicial bodies to be the final authority to decide on electoral disputes while avoiding at the same time risks of conflicts of jurisdictions. The composition of the body deciding on complaints and appeals, except concerning voters' registration or disputes related to election day, should preferably be a collegial one.

103. Concerning the grounds for complaints and the decisions, actions, inactions open to challenge, the majority of Venice Commission's member States provide with provisions ensuring voters, candidates and political parties the right to file complaints for violations of the law in the essential stages of the electoral process, such as registration of voters and candidates, electoral campaign, voting operations and election results. Nevertheless, there remains room for improvement: the Venice Commission recommends that grounds for complaints and appeals should not be limited to violations of electoral rights and interests due to the State's decisions and actions but also include inactions and inadequate enforcement, as well as violations of electoral law by private actors.

104. Concerning standing, most of the Venice Commission's member States enable, in their legislation, voters, candidates and political parties to file electoral complaints, in line with international standards, but only few go beyond and provide such rights to other categories of persons. Extending standing could be envisaged to reinforce procedures with regard to the settlement of electoral disputes and increase trust in electoral processes as a whole, and if necessary safeguards are in place to prevent the misuse of the complaints system.

105. The variety of situations with regard to time-limits among the Venice Commission's member States prevents drawing trends. The Venice Commission reiterates its recommendation that national legal frameworks stipulate short periods for filing complaints and prompt decisions by competent bodies, due to the urgency of the election dispute resolution.

106. Other procedural issues to be considered involve ensuring the right to a fair trial in electoral matters and the effectiveness of the appeal system, which includes the necessity of providing legal guarantees regarding evidence and the possibility of hearing parties contesting a decision in the electoral field. The emphasis must also be put on the transparency of the system of election dispute resolution, by ensuring procedures devoid of formalism. The importance of reasoned and substantive decisions must be underlined, despite the requirement of making the procedures of examination of electoral complaints and appeals short.

107. The legislation of a number of Venice Commission's member States does not address the issue of the decision-making power of the body authorised to examine a complaint or appeal and to resolve an electoral dispute; the Venice Commission recommends in particular the reinforcement of the legislation regarding the cases of partial or full cancellation of election results.

108. On the basis on these considerations, the Venice Commission is ready to draft guidelines aimed at reinforcing election dispute resolution mechanisms in the legislation of its member States.