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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. The topic of election dispute resolution 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 national elections in the various member States. 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 election commissions, committees, councils, boards – as well as the other competent bodies (courts, parliaments etc.) on the resolution of electoral disputes is governed mostly by electoral legislation. The secretariat of the Venice Commission has been able to collect electoral laws of 59 member States of the Venice Commission out of 62, for which the legislation was available in English or French – sometimes in Spanish.<sup>6</sup> The report focuses on the electoral legislation of these 59 member States and therefore does not refer to other pieces of legislation which may also cover complaints and appeals' procedures, e.g. general administrative or procedural laws or codes. However, it should be emphasised that the electoral legislation of the member States vary in scope and may not be exhaustive as to the legal remedies available regarding electoral disputes. Therefore, the comparative overview in this report should be read with the reservation that it does not cover legal remedies beyond electoral legislation in the narrow sense. [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>7</sup>] The references to electoral opinions focus on the opinions adopted since 2014. The report refers on a regular basis to electoral opinions adopted by the Venice Commission and the OSCE/ODIHR in order to illustrate the problematic elements observed in election dispute resolution systems of various Venice Commission's member States and aimed at reinforcing the substance of the present report.

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<sup>1</sup> See in this respect the 2017 Compilation of Venice Commission opinions and reports concerning election dispute resolution and the opinions quoted.

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

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

<sup>4</sup> The 16<sup>th</sup> European Conference of Electoral Management Bodies which took place in Bratislava, Slovak Republic, on 27-28 June 2019, was precisely organised in the context of this report.

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

4. *The present report was approved by the Council for Democratic Elections at its XXX meeting (Venice, XXX) and adopted 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 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, broadly understood. This includes mainly the following phases: voter and candidate registration (de-registration or refusal of registration as well); the official period of the 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 (voting, closing and counting operations); results (their tabulation, transmission, issuance).

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 election dispute resolution systems – is therefore a crucial element of an effective and functional electoral governance as well as to ensure confidence in electoral processes. 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 missions' reports, especially reports from the Parliamentary Assembly of the Council of Europe<sup>8</sup> and of the OSCE/ODIHR.<sup>9</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>10</sup>

8. As the Venice Commission noted in the Report on electoral law and electoral administration in Europe,<sup>11</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, confusing or too complex. 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>12</sup> Furthermore, members of relevant bodies, in particular members of election commissions, are not always sufficiently trained on election complaints and appeals' rules.

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<sup>8</sup> All Parliamentary Assembly's election observation reports are available [here](#).

<sup>9</sup> All OSCE/ODIHR election observation reports are available [here](#).

<sup>10</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>11</sup> See 2006 Report on Electoral Law and Electoral Administration in Europe – Synthesis study on recurrent challenges and problematic issues, para. 169.

<sup>12</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.

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

10. The report will be divided as follows.

11. First, 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**. At international level, election dispute resolution systems are 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 more precisely the reach of such standards.

12. Among the issues at stake concerning election dispute resolution, there are 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 or more rarely other types of bodies or institutions. 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 election dispute resolution systems also implies dealing with the type of complaints that can be filed by complainants. Indeed, complainants must be entitled to file complaints if they consider their electoral rights, freedoms and interests violated or that inactions and inadequate enforcement of the state's obligations would have infringed their electoral rights. In this respect, situations vary greatly depending on the countries since election dispute resolution systems potentially concern almost all steps of an electoral process. **Part V** of the report will develop the situations observed in the various electoral laws concerning the **grounds for complaints and decisions, actions or inactions open to challenge**.

14. The analysis of the actors of the electoral process who are or should be entitled to file complaints (also called standing), namely citizens, candidates, political parties, non-governmental organisations etc., is also essential for assessing the effectiveness of election dispute resolution systems. **Part VI** of the report will deal with this issue of **the persons entitled to complain**.

15. The Code of good practice in electoral matters,<sup>13</sup> the Venice Commission's reference document in the electoral field, 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.

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<sup>13</sup> 2002 Code of good practice in electoral matters: Guidelines and Explanatory Report. More details on the document are available under Part III, Section D.

16. **Part VIII** of the report will deal with **other procedural issues**, in particular regarding the right to a fair trial and the effectiveness of election dispute resolution systems, the transparency of such a system, the reasoning of decisions on complaints and appeals as well as the right to submit evidence and the burden of proof.

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 bodies, courts or other relevant bodies 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. Universal Declaration of Human Rights

18. The Universal Declaration of Human Rights<sup>14</sup> of the United Nations proclaims in its Article 21.3 that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

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

19. 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.”

20. 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”.<sup>15</sup>

21. 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>16</sup>

#### C. European Convention on Human Rights

22. Article 3 of Additional Protocol 1 of the European Convention on Human Rights<sup>17</sup> on the right to free elections does not mention ways to complain about supposed violations during electoral processes. Nevertheless, the case-law of the European Court of Human Rights has recognised the procedural aspect of the right to free elections, implying the protection of citizens with regard to the effectiveness of the system of appeal. It emphasised that “a

<sup>14</sup> The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

<sup>15</sup> United Nations, 1966 International Covenant on Civil and Political Rights.

<sup>16</sup> United Nations, General Comment No. 25 of 1996, in particular paragraph 20.

<sup>17</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950.

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>18</sup>

23. Article 6 §1 of the European Convention on Human Rights provides the right to a fair and public hearing in disputes concerning “civil rights and obligations” or “criminal charge”, but does not apply to electoral disputes.<sup>19</sup> Instead, guidelines for the grounds providing a right to lodge complaints and appeals in electoral disputes can be found in the case-law of the European Court of Human Rights based on Article 3 of Protocol No. 1. The Court bases its judgments *inter alia* on the Code of good practice in electoral matters.<sup>20</sup>

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

24. 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, in particular concerning the admissibility of appeals. Additionally, the law has to define clearly the powers and responsibilities of the relevant bodies and appeal bodies so as to avoid risks of conflicts of jurisdiction (whether positive or negative) and neither the appellants nor the authorities should be able to choose the appeal body. 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.

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

25. 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 relevant as well, as they call on OSCE participating States to grant to everyone “effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity” and to “provide for judicial review of such regulations and decisions.”

### **IV. Competent bodies**

26. Among the issues at stake concerning election dispute resolution systems, there is the question of the bodies competent to adjudicate electoral disputes. Such bodies can be electoral management bodies, constitutional, general, administrative or specialised courts, or

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<sup>18</sup> See for example *Namat Aliyev v. Azerbaijan*, 8 April 2010, para. 81.

<sup>19</sup> See *Pierre-Bloch v. France*, 21 October 1997, para. 51, 61. However, Article 6 §1 of the European Convention on Human Rights may be applicable to election-related cases pertaining to alleged violations of other rights and freedoms than electoral rights. See in this respect *Shapovalov v. Ukraine*, 31 October 2012, para. 45, 46, 48, 49.

<sup>20</sup> See e.g. *Davydov and others v. Russia*, 30 May 2017, para. 287; *Riza and others v. Bulgaria*, 13 October 2015, para. 177.

<sup>21</sup> See para. 92-102 in the Explanatory Report of the Code for more elements.

<sup>22</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.

<sup>23</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991.

other types of bodies, which will be developed below. In this respect, election observers and international organisations raised in particular the following concerns: 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 the bodies competent to 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.

## A. International standards

27. International standards and in particular the Code of good practice in electoral matters do not recommend a specific model of body competent either in first instance or in appeal, provided that the conflict of jurisdiction is avoided whatever the step of an electoral process challenged. International standards and more specifically the Code of good practice in electoral matters<sup>26</sup> recommend that the appeal body in electoral matters should be either an election 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 and whatever the system of adjudication of electoral disputes stipulated in the domestic law, 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. Such a dual mechanism is possible if the law clearly distinguishes the body competent based on the type of step, procedure, decision, action or inaction challenged, and provides an effective mechanism to prevent a simultaneous use of both judicial and non-judicial avenues. This crucial aspect is relevant for the complaints in first instance and is therefore developed below under Section B of Part IV.

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<sup>24</sup> See 2006 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 2013 Joint Opinion on Draft Amendments to Legislation on the Election of People’s Deputies of Ukraine, 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.” *[If the quotation is to be kept, reference should be made to the OSCE/ODIHR report directly. I would however prefer to delete this reference, which points out just one country.]*

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

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

<sup>28</sup> Code of good practice in electoral matters, Guideline II. 3.3. c. Regarding opinions, see for example 2011 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, para. 111. See also 2019 Amicus curiae brief for the European court of Human Rights in the case of Mugemangango v. Belgium on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats.

<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 2014 Joint Opinion on the draft Election Law of the Kyrgyz Republic, para. 120.

See also 2011 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, para. 111.

<sup>30</sup> See 2006 Report on Electoral Law and Electoral Administration in Europe, para. 170.



28. 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 electoral disputes. In many democracies in Western Europe (like France, Germany, Italy, or the United Kingdom), election appeals are heard by ordinary administrative and judicial bodies operating under special procedures. In contrast, in Central and Eastern Europe (as well as in other regions of the world, beyond Europe), the responsibility for deciding on electoral 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 adjudicating electoral 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**

29. At domestic level, a number of electoral laws provide a possibility to file a complaint against decisions adopted, actions committed and inactions by election commissions or any other electoral management body issuing an administrative decision, as well as by other persons, groups or institutions – candidates, political parties, mass media, public authorities and officials. In this respect, electoral laws have to explicitly stipulate the single possible option of competent body in first instance regarding complaints filed.

30. For a number of the steps of an electoral process that can be challenged, an election commission will be the competent body. On the contrary, a number of steps of an electoral process will imply a complaint before a court or, more rarely, before another body – a parliament or an independent body. In some cases, other bodies can indeed be competent to deal with specific steps of an electoral process, in particular the announcement of election results.

31. In 48 countries, the first instance competent for electoral complaints is the higher or authorised election commission, at least for a number of steps that can potentially be challenged.<sup>32</sup> In 36 countries, a court is the relevant body regarding challenges of decisions of the central election commission of the country, or equivalent body.<sup>33</sup>

32. On the contrary, there are 11 countries where there is no complaint procedure through election commissions and where all electoral disputes are consequently dealt with by higher tribunals, the parliament or a specific independent body, issuing final decisions.<sup>34</sup> Then a distinction has to be made between countries (nine of them) where the relevant court is the

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<sup>31</sup> See *ibid.*, para. 168. See also 2010 Joint opinion on the electoral legislation of Norway, para. 40-41, where the main systems are explained.

<sup>32</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium (Council of burgomasters and lay judges), Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Lithuania, Malta, Mexico, Republic of Moldova, Montenegro, Morocco, North Macedonia, Peru, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, United States. Regarding opinions, see for instance 2010 Opinion on the draft election code of the Verkhovna Rada of Ukraine, para. 15.

<sup>33</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Lithuania, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, North Macedonia, Peru, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Tunisia, Ukraine.

<sup>34</sup> Algeria, Denmark, France, Ireland, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Slovakia, United Kingdom.

sole instance to deal with electoral disputes within their jurisdiction<sup>35</sup> and the countries (only two of them) where electoral disputes are dealt with by the parliament.<sup>36</sup>

33. In two countries, a 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.

34. As indicated earlier, in various countries, the competent body is explicitly defined in the law based on the step that is challenged.

35. **Voter registration and voter lists' corrections** – In 35 countries, election commissions,<sup>38</sup> in 19 countries *ad hoc* committees or municipalities' councils or equivalent elected bodies<sup>39</sup> and in five countries a court<sup>40</sup> are competent when it regards corrections on the voter list or absence of registration.

36. **Candidate registration** – In xxx countries, election commissions,<sup>41</sup> in xxx countries *ad hoc* committees or municipalities' councils or equivalent elected bodies<sup>42</sup> and in xxx countries a court<sup>43</sup> are competent when it regards refusal of registration of candidates.

[37. **Campaign financing** – In xxx countries, election commissions,<sup>44</sup> in xxx countries national audit offices or equivalent bodies<sup>45</sup> and in xxx countries a court<sup>46</sup> are competent when it regards the supervision and consequently the validation, correction or rejection of campaigns' accounts.]

<sup>35</sup> Algeria (Constitutional Council), France (Constitutional Council), Ireland (High Court – 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), Monaco (Supreme Court), The Netherlands (Council of State), Slovakia (district court or Supreme Court depending on the issue contested), United Kingdom (High Court).

<sup>36</sup> Denmark and Norway. In Denmark, the appeals are discussed in the Folketing. In Norway, the Storting decides on the appeals concerning the right to vote or the right to cast a vote (as well as for complaints on election results; see in this respect the paragraphs dealing with the issue of cancellation of election results, para. 39). 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 shall forward its decisions on the appeal cases to the Storting.

<sup>37</sup> Italy and Monaco.

<sup>38</sup> Algeria, Azerbaijan, Bosnia and Herzegovina, Bulgaria (only for list of persons who have declared they would vote abroad), Canada (Chief Electoral Officer), Chile (Servicio Electoral), Croatia, Georgia, Hungary, Italy, Kazakhstan, Republic of Korea (*Gu/Si/Gun* Election Commission), Kyrgyzstan, Lithuania, Luxembourg, Malta, Mexico (Instituto Nacional Electoral), Republic of Moldova (Precinct Electoral Bureaus), Morocco, North Macedonia, Norway, Peru (*Oficina Nacional de Procesos Electorales*), Portugal (electoral registration commission), Romania, Russia, San Marino, Serbia, Spain, Switzerland, Turkey, Ukraine, United States of America.

<sup>39</sup> Albania, Andorra (local council), Austria, Belgium, Costa Rica, Denmark, Estonia (rural municipality or city secretary), Finland, France, Germany, Iceland, Latvia, Liechtenstein, Monaco (The electoral roll review board), Netherlands, Poland, Slovakia, Slovenia, United Kingdom.

<sup>40</sup> In Armenia, Brazil, Kosovo, Czech Republic and Tunisia, only judicial bodies are competent to consider applications for corrections on voter lists.

<sup>41</sup> xxx, Andorra, Austria (Federal Electoral Board, i.e. the federal election administration).

<sup>42</sup> xxx.

<sup>43</sup> xxx, Mexico, Ukraine.

<sup>44</sup> xxx, Mexico.

<sup>45</sup> xxx, Estonia (Political Party Finance Supervision Committee).

<sup>46</sup> xxx.

38. **Media coverage** – In xxx countries, election commissions,<sup>47</sup> in xxx countries audio-visual councils or equivalent bodies<sup>48</sup> and in xxx countries a court<sup>49</sup> are competent when it regards complaints on media coverage during the electoral campaign.

39. **Voting and counting/tabulation procedures** – In xxx countries, election commissions,<sup>50</sup> in xxx countries *ad hoc* committees or municipalities' councils or equivalent elected bodies<sup>51</sup> and in xxx countries a court<sup>52</sup> are competent when it regards complaints on voting procedures – during early voting if any or on election day – including counting and tabulation procedures.

40. **Election results** – The issue of election results and the possibility to challenge them is developed in Part IX – B of the present report.

### C. Competent bodies on appeal – Second or third instance

41. 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>53</sup> Regarding the bodies competent, the possibility of a dual option in first instance, based on the type of step challenged, cannot be envisaged anymore in second instance – i.e. in appeal. Indeed, the standards require a court to deal with an electoral complaint on appeal and as final instance (second or third instance according to the countries). If the body designated by the law for the settlement of electoral disputes in first instance is an election commission (i.e. a higher election commission), the electoral legislation must therefore provide the right to appeal to a court 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>54</sup>

42. In 33 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>55</sup> However, in 13 countries, such disputes are decided by ordinary courts.<sup>56</sup> Special electoral courts are set up in a smaller number of countries, five referenced in total.<sup>57</sup> In nine member States, courts are not involved in the decision-making of electoral disputes,<sup>58</sup> contrary to the recommendations of the Code of good practice in electoral matters.

43. Among the countries where the final instances competent to judge on electoral disputes are constitutional courts or equivalent bodies, nine countries have systems with three levels

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<sup>47</sup> xxx.

<sup>48</sup> xxx.

<sup>49</sup> xxx, Mexico, Ukraine.

<sup>50</sup> xxx, Mexico, Ukraine.

<sup>51</sup> xxx.

<sup>52</sup> xxx, Ukraine.

<sup>53</sup> Code of good practice in electoral matters, Guideline II 3.3. a.

<sup>54</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. Regarding opinions, see for instance 2010 Joint opinion on the electoral legislation of Norway, para. 18-24.

<sup>55</sup> Andorra, Algeria, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Republic of Korea, Kosovo, Liechtenstein, Lithuania, Malta, Montenegro, Morocco, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, Russian Federation, United Kingdom, Ukraine.

<sup>56</sup> Belgium, Georgia, Italy, Kazakhstan, Kyrgyzstan, Latvia, Republic of Moldova, Monaco, North Macedonia, Poland, Ukraine, Tunisia, United States.

<sup>57</sup> Albania, Brazil, Chile, Costa Rica, Mexico.

<sup>58</sup> Denmark, Iceland, Luxembourg, Netherlands, Peru, San Marino, Sweden, Turkey.

See also 2009 Report on the cancellation of election results, para. 31 et seq.

of settlement of electoral disputes.<sup>59</sup> In these countries, election commissions are competent in first instance, the second instance is a local court and a final appeal is possible to the supreme or constitutional court of the country, or the equivalent body. In Portugal, the Constitutional Court is the relevant body deciding both in first and second instance, the plenary composition of the Court deciding on appeal.

**44. Voter registration and voter lists' corrections** – In xxx countries, the competent body in appeal dealing with complaints on voter registrations and voter lists is a court,<sup>60</sup> as recommended by international standards. On the contrary, there are xxx countries where a court is not the final instance.<sup>61</sup>

**45. Candidate registration** – In xxx countries, the competent body in appeal dealing with complaints on registration or refusal of registration of candidates or lists of candidates is a court,<sup>62</sup> as recommended by international standards. On the contrary, there are xxx countries where a court is not the final instance.<sup>63</sup>

[**46. Campaign financing** – In xxx countries, the competent body in appeal dealing the supervision and consequently the validation, correction of rejection of campaigns' accounts is a court,<sup>64</sup> as recommended by international standards. On the contrary, there are xxx countries where a court is not the final instance.<sup>65</sup>]

**47. Media coverage** – In xxx countries, the competent body in appeal dealing with complaints on media coverage is a court,<sup>66</sup> as recommended by international standards. On the contrary, there are xxx countries where a court is not the final instance.<sup>67</sup>

**48. Voting and counting/tabulation procedures** – In xxx countries, the competent body in appeal dealing with complaints on voting procedures – during early voting, if any, or on election day, including counting and tabulation procedures – is a court,<sup>68</sup> as recommended by international standards. On the contrary, there are xxx countries where a court is not the final instance.<sup>69</sup>

**49. Election results** – Regarding the sensitive issue of election results, most of the countries provide in the law that the possibility to partially or fully invalidate election results – and sometimes correct election results. This possibility should be assigned to the highest (administrative) electoral body – including the central election authority of the country<sup>70</sup> – and its decision should be reviewable by the highest body of the judiciary or the Constitutional

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<sup>59</sup> Andorra, Armenia, Azerbaijan, Hungary, Kyrgyzstan, Malta, Mexico (in some cases, Mexico is a three-level-of-settlement system, particularly regarding local elections of legislators and municipal authorities), Morocco, Tunisia (the Administrative Court of Appeal is the first relevant appeal body, the High Administrative Court being the ultimate deciding jurisdiction on electoral disputes), Ukraine (In Ukraine, this can be either a two-level or a three-level settlement of electoral disputes, depending on which body is competent at the beginning of the dispute's process – an election commission or a court).

<sup>60</sup> xxx, Andorra (Administrative Chamber of the Superior Court of Justice), Mexico.

<sup>61</sup> xxx.

<sup>62</sup> xxx, Mexico, Ukraine.

<sup>63</sup> xxx.

<sup>64</sup> xxx, Mexico, Ukraine.

<sup>65</sup> xxx.

<sup>66</sup> xxx, Mexico, Ukraine.

<sup>67</sup> xxx.

<sup>68</sup> xxx, Mexico, Ukraine.

<sup>69</sup> xxx.

<sup>70</sup> Azerbaijan, Kazakhstan, Kosovo, Norway, Netherlands, Peru, San Marino, Sweden, Turkey.

Court – or an equivalent body, in particular specialised electoral courts. In 33 countries, the Constitutional Court or an equivalent body is the body competent to review election results.<sup>71</sup>

50. On the contrary, there are other countries where the competent body to review the decision about the confirmation or cancellation of election results is a court but not the highest judicial body.<sup>72</sup> There are also few cases where the decision to partially or fully invalidate election results is assigned to the parliament.<sup>73</sup> Among these countries, several of them do not allow a judicial appeal on the parliament's decision to validate election results.<sup>74</sup> In this respect, the European Court of Human Rights underlines in its case-law 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>75</sup>

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

51. 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 voter registration or disputes related to election day, where a decision by a single judge is common; this can be explained by the necessity to issue a very quick decision. Apart from such cases, the composition of the body deciding on complaints and appeals in electoral matters should preferably be a collegiate one.<sup>76</sup> 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>77</sup>

<sup>71</sup> Albania (reviewing eligibility of the members of parliament), Algeria, Andorra, Armenia (appeals against the decisions of the CEC and complaints related to election results), Austria (cases related to numerical calculations), Bosnia and Herzegovina, Bulgaria, Brazil, Canada, Costa Rica, Chile, Croatia (shared with the State electoral commission), the Czech Republic, Estonia (shared with the electoral commission), Finland, France, Germany, Hungary, Ireland, Republic of Korea, Liechtenstein, Malta, Mexico, Montenegro, Morocco, Poland, Portugal, Romania, Slovak Republic (cases related to election results), Serbia, Spain, Ukraine, United Kingdom.

Regarding opinions and reports, see for instance 2009 Report on the cancellation of election results, para. 39-41.

<sup>72</sup> Georgia, Italy, Luxembourg, Latvia, Republic of Moldova (where the Constitutional Court is authorised to certify the results of Parliamentary Elections, and to confirm the legality of mandates of the elected deputies), Monaco, North Macedonia, Russian Federation (the electoral law mentions "a court" as the competent body to review invalidation of electoral results), Tunisia, the United States.

<sup>73</sup> Belgium, Denmark, Iceland, Switzerland (shared with the Supreme Federal Tribunal), partially Lithuania, Slovenia, Norway.

<sup>74</sup> Belgium, Denmark, Iceland, Italy, Luxembourg, the Netherlands and Norway.

<sup>75</sup> As for the European Court of Human Rights on this issue, see *Grosaru v. Romania*, 2 March 2010, and *Paunović and Milivojević v. Serbia*, 24 May 2016. 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. See also 2019 *Amicus curiae* brief for the European Court of Human Rights in the case of *Mugemangango v. Belgium* on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, para. 27, 50.

<sup>76</sup> See for instance 2010 Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, para. 65.

<sup>77</sup> See 2003 Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia, para. 50; 2010 Opinion on the draft election code of the Verkhovna Rada of Ukraine, para. 15; 2013 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, para. 98; 2013 Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine (CDL-AD(2013)026), para. 66; 2012 Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation, para. 41-42, 114-115; 2018 Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) of the Republic of Moldova, para. 53; 2018 Joint opinion on the draft election code of Uzbekistan, para. 13.

52. 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>78</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, actions or inactions open to challenge**

### **A. International standards**

53. Regarding the existing standards, 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.”<sup>79</sup> Violations of the applicable rules in all these fields should be grounds for complaints and appeals.

54. The wording makes it clear that the list 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 Code of good practice in electoral matters recommends that all violations of electoral law or irregularities in its exercise be in principle considered as sufficient grounds for complaints and appeals, covering a wide range of appealable decisions, actions or inactions corresponding to pre-election, election-day and post-election phases of an electoral process.

55. This notion covers numerous different situations; overall, it potentially concerns almost all steps of an electoral 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 other relevant electoral stakeholder, impacting the electoral process; complaints on e-day procedures; and complaints on the results (their tabulation, transmission, issuance).

56. It follows from the European Court of Human Rights case-law that the right to effective examination of electoral complaints deriving from Article 3 of Protocol No. 1 requires a broad definition of the grounds for election-related complaints.<sup>80</sup> In this respect, the European Court of Human Rights has recognised that the right of individual voters to appeal against the result “may be subject to reasonable limitations in the domestic legal order.”<sup>81</sup> However, while the right to appeal against election results may be subject *inter alia* to procedural limitations, these

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<sup>78</sup> See for example 2010 Joint opinion on the electoral legislation of Norway, para. 38.

<sup>79</sup> Guideline II 3.3.d.

<sup>80</sup> *Uspaskich v. Lithuania*, 20 December 2016, para. 93. See also *Gahramanli and others v. Azerbaijan*, 8 October 2015, para. 69.

<sup>81</sup> *Davydov and others v. Russia*, 30 May 2017, 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.”

results should nonetheless be appealable. Similarly, General Comment No. 25 to the International Covenant on Civil and Political Rights suggests that election results, including the counting process, should be appealable.

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

57. In principle, any breach of electoral law affects the exercise of electoral rights, freedoms, and interests of electoral stakeholders directly or indirectly, or possibly affects the outcome of elections. Thus, such a breach should constitute a ground for complaint. All the 59 countries analysed provide in their legislation the possibility to file a complaint before the competent body for violation of the law during the pre-electoral phase of an electoral process. Similarly, all the 59 countries analysed explicitly offer the possibility to file a complaint regarding voter registration,<sup>82</sup> 43 regarding candidate registration,<sup>83</sup> 29 regarding media coverage during the electoral campaign.<sup>84</sup>

58. All countries analysed regulate explicitly complaints against **election results**. Additionally, a number of electoral laws explicitly regulate the possibility to complain on **election-day operations**. This concerns more particularly the possibility to challenge the operations or the decisions, actions or inactions, taken by election commissions regarding **voting** (48 countries),<sup>85</sup> **counting and tabulation** (42 countries),<sup>86</sup> and **transmission** (11 countries)<sup>87</sup> of election results. 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 or thanks to the domestic case-law.

59. The present report dealt earlier with the issue of election results from the perspective of the competency of bodies entitled to adjudicate complaints on election results.<sup>88</sup> Regarding the grounds for complaining on election results, 40 countries allow to challenge final election results based on potential violations of electoral legislation that may have had impact on the results.<sup>89</sup>

<sup>82</sup> See for more detail para. 30 of the present report.

<sup>83</sup> Albania, Andorra, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Czech Republic, France, Estonia, Georgia, Germany, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Kosovo, Latvia, Liechtenstein, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Morocco, Montenegro, Netherlands, North Macedonia, Norway, Peru, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey.

<sup>84</sup> Albania, Andorra, Bulgaria, Brazil, Canada, Chile, Costa Rica, Croatia, Denmark, France, Georgia, Hungary, Italy, Kazakhstan, Kosovo, Republic of Korea, Republic of Moldova, North Macedonia, Mexico, Norway, Poland, Romania, Russian Federation, Serbia, Spain, Tunisia, Turkey, Ukraine, United Kingdom.

<sup>85</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Costa Rica, Croatia, Czech Republic, Estonia, Finland (for early voting), France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, Netherlands, North Macedonia, Norway, Poland, Portugal, Russian Federation, Serbia, Slovenia, Switzerland, Tunisia, Turkey, Ukraine.

<sup>86</sup> Albania, Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Croatia, Denmark, Estonia, Georgia, Hungary, Ireland, Italy, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Mexico, Republic of Moldova, Montenegro, Morocco, North Macedonia, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovenia, Spain, Tunisia, Turkey, Ukraine, United Kingdom.

<sup>87</sup> Austria, Azerbaijan, Brazil, Chile, Luxembourg, Montenegro, Norway, Serbia, Russian Federation, Turkey, Ukraine.

<sup>88</sup> Paragraphs 38-40 of the report.

<sup>89</sup> Algeria, Andorra, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Finland (no appeal for presidential elections), France, Georgia, Germany, Hungary, Iceland (presidential elections only), Ireland, Italy, Kazakhstan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Morocco, Netherlands, Poland, Portugal, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States.

60. However, 19 countries only allow to challenge preliminary results.<sup>90</sup> In these countries, complaints against election results must therefore be filed and resolved before the validation and announcement of the final results.<sup>91</sup>

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

61. Election dispute resolution systems are primarily remedies to the state's failure to comply with electoral law. While the decisions, actions or inactions open to challenge are those of state authorities, the question is whether grounds for complaint should be limited to the violation of electoral rights by decisions, actions or inactions of election authorities, other electoral stakeholders – candidates, political parties, non-governmental organisations observing elections, media broadcasters or internet providers,<sup>92</sup> or extended to the consequences of the behaviour of private subjects, e.g. individual election observers. As electoral rights can be affected by private persons or groups, grounds for complaints might also include inactions and inadequate behaviour by private persons or groups as previously described.

62. As a minimum, grounds for appeal should not be limited to violations of electoral rights, freedoms and interests due to the state's decisions and actions but should also include inactions and inadequate enforcement of public and private electoral stakeholders. While procedural limitations to the exercise of the complaints and appeals' system may be permitted, the standards leave little room for limitations on the appeal grounds themselves as long as they concern the exercise of the right to vote and to stand for election, as well as all aspects of the election process flowing from these rights. That is why electoral laws and other laws should provide for a full range of complaints and appeals on all types of errors, irregularities or violations of the law that may arise in the whole course of an electoral process, falling under the positive and negative obligations of the state to hold free elections.

## **VI. Persons entitled to file complaints – Standing**

63. Effectiveness of election dispute resolution systems also rely on the capacity of the stakeholders who are or should be entitled to file complaints on any irregularity or inaccuracy in the course of an electoral process, or on some of them depending on the possibilities granted by law, to file electoral complaints.

### **A. International standards**

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

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<sup>90</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Costa Rica, Croatia, Estonia, Kosovo, Kyrgyzstan, Mexico, Republic of Moldova, Montenegro, North Macedonia, Norway, Peru, Romania, San Marino, Tunisia, Turkey.

<sup>91</sup> Turkey is a special case in this respect. The election results are 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 results.

<sup>92</sup> Costa Rica, Kosovo, North Macedonia, Republic of Moldova, Ukraine. *What the legislation of these countries includes is not explicit.* 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."



65. 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>93</sup> The Explanatory Report of the Code 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>94</sup> which should be interpreted as the possibility for other categories of persons involved in electoral processes to file electoral complaints as well. The European Court of Human Rights also accepts reasonable quorum requirements.<sup>95</sup>

## **B. Domestic situations**

66. Persons entitled to appeal can be: citizens – i.e. voters, registered or not –, candidates, political parties or coalitions – registered or not –, election commissioners – including representatives of political parties seating in election commissions –, non-partisan election observers and non-governmental organisations. Domestic legislation provides most of the time with such possibilities, but situations vary a lot depending on the countries concerned.

67. 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 on voter registers, but cannot complain on 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.

68. **Decisions taken by election commissions** – Only four countries provide explicitly the possibility for election commissioners to contest a decision of an election commission,<sup>96</sup> 35 countries for representatives of political parties,<sup>97</sup> 14 for non-partisan election observers<sup>98</sup> and nine for non-governmental organisations.<sup>99</sup>

69. **Voter registration and voter lists’ corrections** – In xxx countries, voters are competent to complain on errors on voter lists or on their absence from the list, including concerning errors regarding other voters.<sup>100</sup> In xxx countries, xxx are also competent to complain on this step of the electoral process.<sup>101</sup>

70. **Candidate registration** – In xxx countries, citizens are competent to complain on refusal of their registration.<sup>102</sup> In xxx countries, xxx are also competent to complain on this step of the electoral process.<sup>103</sup>

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<sup>93</sup> Code of good practice in electoral matters, Guideline II 3.3. f.

<sup>94</sup> Code of good practice in electoral matters, Explanatory Report, para. 99.

<sup>95</sup> Cf. in particular X. v. Germany, Decision 7 May 1979.

<sup>96</sup> Armenia, Azerbaijan, Bulgaria, Georgia.

<sup>97</sup> Algeria, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Czech Republic, Estonia, France, Germany, Kazakhstan, Republic of Korea, Kosovo, Latvia, Lithuania, Mexico, Republic of Moldova, Montenegro, North Macedonia, Poland, Portugal, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey.

<sup>98</sup> Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Georgia, Germany, Hungary, Kyrgyzstan, Lithuania, Mexico, Russia, Turkey, Ukraine (in Ukraine, this right is granted to both categories of partisan and non-partisan election observers).

<sup>99</sup> Bosnia and Herzegovina, Chile, Georgia, Germany, Hungary, Kyrgyzstan, Mexico, Russia, Switzerland.

<sup>100</sup> xxx, Mexico.

<sup>101</sup> xxx, Mexico.

<sup>102</sup> xxx, Mexico, Ukraine.

<sup>103</sup> xxx, Ukraine.

[71. **Campaign financing** – In xxx countries, candidates are competent to complain on correction of rejection of their campaigns' accounts.<sup>104</sup> In xxx countries, xxx are also competent to complain on this step of the electoral process.<sup>105</sup>]

72. **Media coverage** – In xxx countries, candidates are competent to complain on a potential unequal media coverage during the electoral campaign.<sup>106</sup> In xxx countries, xxx are also competent to complain on this step of the electoral process.<sup>107</sup>

73. **Voting and counting/tabulation procedures** – In xxx countries, voters are competent to complain on potential irregularities during the voting – during early voting, if any, or on election day, including concerning counting and tabulation procedures.<sup>108</sup> In xxx countries, xxx are also competent to complain on these steps of the electoral process.<sup>109</sup>

74. **Election results** – In xxx countries, candidates are competent to complain on the validity of election results.<sup>110</sup> In xxx countries, voters are also competent to complain on results.<sup>111</sup>

75. 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 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, and provided that safeguards are in place to prevent frivolous complaints aimed at blocking the relevant bodies from accomplishing their duties.

## VII. Time limits

76. While international standards recommend short time limits for lodging and deciding on electoral disputes, 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 systems is therefore an indispensable aspect to consider in the present report.

77. It is therefore important to analyse both the time limits for lodging complaints – and later on for lodging appeals, if required – and the time limits for adjudicating complaints and appeals.

### A. International standards

78. 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)” while stating

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<sup>104</sup> xxx, Ukraine.

<sup>105</sup> xxx, Mexico, Ukraine.

<sup>106</sup> xxx, Ukraine.

<sup>107</sup> xxx, Mexico, Ukraine.

<sup>108</sup> xxx, Ukraine.

<sup>109</sup> xxx, Mexico, Ukraine.

<sup>110</sup> xxx, Mexico, Ukraine.

<sup>111</sup> xxx, Ukraine.

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>112</sup>

79. 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.

80. 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>113</sup> Regarding the time limits for lodging a complaint as well as an appeal, there is a general trend towards a reduction in the period during which electoral appeals can be initiated.<sup>114</sup>

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

81. Regarding time limits for lodging complaints and appeals, the categories of persons entitled to file electoral complaints, as said earlier primarily the voters and the candidates, should act quickly in order to avoid disruption of the on-going electoral process. At the same time, it remains problematic in a number of countries to ensure transparency and clarity of the procedure for filing electoral complaints. Due to these imperfections in the law, and sometime a lack of willingness from the authorities and/or the bodies in charge to adjudicate those complaints to facilitate such complaints, the voters or the candidates waste a precious time to understand the procedure, find the correct form to fill in or to redirect a complaint which would not have been submitted to the right body, and sometimes exceed the required deadline due to unclear or complex procedures.

82. Concerning the time limits for lodging complaints in first instance, 36 member States<sup>115</sup> provide time limits in line with the recommendations of the Code of good practice in electoral matters, meaning three to five days and sometimes less than three days. On the contrary, 23 member States<sup>116</sup> provide for longer periods, meaning more than five days.

83. Concerning the time limits for lodging appeals, 35 member States<sup>117</sup> provide for short time limits (from three to five days and sometimes less than three days) whereas 20 member States<sup>118</sup> provide for longer periods (i.e. more than five days).

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<sup>112</sup> Code of good practice in electoral matters, Guideline II 3.3. g.

<sup>113</sup> International Foundation for Electoral System, Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections, 2011, para. 50.

<sup>114</sup> Ace Project, Electoral Dispute Resolution, 2012.

<sup>115</sup> Albania, Algeria, Andorra (48 hours), Azerbaijan, Bosnia and Herzegovina (24/48 hours), Brazil, Costa Rica, Croatia (48 hours), Denmark, Estonia, Georgia (two days), Hungary, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Morocco, North Macedonia (48 hours), Peru, Portugal (two days), Romania, San Marino, Serbia (two days), Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>116</sup> Armenia, Austria, Belgium, Bulgaria, Canada, Chile, Czech Republic, France (except for the presidential election: 48 hours), Finland, Germany, Iceland, Italy, Ireland, Kazakhstan, Republic of Korea, Netherlands, Norway, Poland, Russia, Slovakia, Sweden, United Kingdom, United States.

<sup>117</sup> Albania, Algeria, Andorra (48 hours), Azerbaijan, Bosnia and Herzegovina (48 hours), Brazil, Bulgaria, Costa Rica, Croatia (48 hours), Denmark, Estonia, Georgia (two days), Hungary, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Mexico, Montenegro, Republic of Moldova, North Macedonia (48 hours), Monaco, Peru, Portugal (two days), Romania, Serbia (two days), San Marino, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>118</sup> Armenia, Austria, Belgium, Canada, Chile, Czech Republic, France, Finland, Germany, Ireland, Italy, Kazakhstan, Republic of Korea, Morocco, Poland, Slovakia, Russia, Sweden, United Kingdom, United States.

84. **Candidate registration** – In xxx countries,<sup>119</sup> the time limits concerning complaints filed on refusal of candidate registration are short (from three to five days and sometimes less than three days) whereas xxx countries<sup>120</sup> provide for longer periods (i.e. more than five days).

85. **Election results** – In xxx countries,<sup>121</sup> the time limits concerning complaints filed against election results are short (from three to five days and sometimes less than three days) whereas xxx countries<sup>122</sup> provide for longer periods (i.e. more than five days).

#### Other issues?

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

86. The competent bodies, mainly either election commissions or courts, should also have short deadlines (three to five days as well) for adjudicating electoral complaints and appeals, for the same reason that voters, candidates, political parties and other potential complainants have short deadlines for filing complaints, i.e. the necessity to ensure continuous and smooth electoral processes. However, administrative or jurisdictional electoral judges also face challenges to fulfil their duties in time either due to complaints not filed in line with the required procedure, or because they do not have enough time to issue reflected decisions.

87. Concerning the time limits for adjudicating complaints in first instance, 33 member States<sup>123</sup> provide short deadlines, as recommended by the Code of good practice in electoral matters, from three to five days at first instance. On the contrary, 26 member States<sup>124</sup> provide for longer periods (i.e. more than five days).

88. Concerning the time limits for adjudicating complaints on appeal, 25 member States<sup>125</sup> provide short deadlines (from three to five days and sometimes less than three days). On the contrary, 30 member States<sup>126</sup> provide for longer periods (i.e. more than five days).

89. **Candidate registration** – In xxx countries,<sup>127</sup> the time limits concerning the adjudication of complaints filed on refusal of candidate registration are short (from three to five days and sometimes less than three days) whereas xxx countries<sup>128</sup> provide for longer periods (i.e. more than five days).

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<sup>119</sup> xxx, Mexico.

<sup>120</sup> xxx.

<sup>121</sup> xxx, Mexico.

<sup>122</sup> xxx.

<sup>123</sup> Algeria, Andorra (48 hours), Armenia, Azerbaijan, Bosnia and Herzegovina (48 hours), Brazil, Costa Rica, Croatia (48 hours), Czech Republic, Denmark, Estonia, Georgia (two days), Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Lithuania, Luxembourg, Mexico, Republic of Moldova, Monaco, Montenegro, North Macedonia (48 hours), Peru, Portugal (48 hours), Romania, Serbia, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine.

<sup>124</sup> Albania, Austria, Belgium, Bulgaria, Canada (no time-limit), Chile, Estonia, France (no time-limit except for presidential elections), Finland, Germany (no time-limit), Italy, Republic of Korea, Kosovo, Latvia, Liechtenstein (no time-limit), Malta (no time-limit), Morocco, Netherlands, Norway, Poland, Russia, San Marino, Slovakia, Sweden (no time-limit), United Kingdom, United States.

<sup>125</sup> Algeria (expect presidential election – 10 days), Andorra (48 hours), Armenia (expect appeal to the Constitutional Court), Azerbaijan, Bosnia and Herzegovina, Brazil, Costa Rica, Croatia (48 hours), Georgia (2 days – except for the Constitutional Court), Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Lithuania, Republic of Moldova, Montenegro, North Macedonia, Peru, Portugal (48 hours), Romania, Serbia, Slovenia, Spain, Turkey, Ukraine.

<sup>126</sup> Albania, Austria, Belgium, Bulgaria, Canada (no time-limit), Chile (expect for presidential elections: one day), Czech Republic, Denmark, Estonia, France, Finland, Germany (no time-limit), Ireland, Italy, Republic of Korea, Latvia, Liechtenstein (no time-limit), Malta (no time-limit), Mexico, Monaco, Morocco, Poland, Russia, Slovakia, San Marino, Sweden (no time-limit), Switzerland (no time-limit), Tunisia, United Kingdom, United States.

<sup>127</sup> xxx.

<sup>128</sup> xxx.

90. **Election results** – In xxx countries,<sup>129</sup> the time limits concerning the adjudication of complaints filed against election results are short (from three to five days and sometimes less than three days) whereas xxx countries<sup>130</sup> provide for longer periods (i.e. more than five days).

**Other issues?** In Mexico, there are no explicit provisions regarding the time limits to adjudicate most complaints and appeals. The average time is between 5 and 15 days, but it changes according to different factors.

91. Overall, in most countries, time limits for introducing and deciding on electoral complaints are within the period set by the Code of good practice in electoral matters, i.e. three to five days. It is 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>131</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>132</sup>

92. In summary, it is difficult to determine a positive or negative trend among Venice Commission's member States regarding time limits for filing or adjudicating complaints, taking into account that the Code of good practice in electoral matters envisages expanded periods to guarantee the exercise of the rights of defence and to a reflected decision.<sup>133</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 electoral process.<sup>134</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 realistic<sup>135</sup> 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>129</sup> xxx.

<sup>130</sup> xxx.

<sup>131</sup> For example, see 2009 Report on the cancellation of election results, para. 57 et seq.

See also 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine .See also 2017 Joint opinion on amendments to the electoral code of Bulgaria, para. 14.

<sup>132</sup> See for example 2009 Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008, para. 71.

2009 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, para. 81.

2010 Joint Opinion on the Election Code of Georgia as amended through March 2010 , para. 71.

2011 Joint opinion on the election code of Bulgaria, para. 59.

2018 Joint opinion on the draft election code of Uzbekistan, para. 50.

<sup>133</sup> Code of good practice in electoral matters, Guideline II. 3.3. g.

<sup>134</sup> See for instance 2012 Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation, para. 108.

<sup>135</sup> As underlined by the 2006 Report on the Participation of Political Parties in Europe, para. 40. 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 due to the organisation of different elections, which may be held in different contexts. The Report however refrained from drawing general conclusions on deadlines.

## VIII. Other procedural issues

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

93. 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>136</sup> From the “effective examination” requirement as established in the case-law of the Court, 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.

94. Additionally, the European Court of Human Rights has noted in its case-law that the right to an effective examination of complaints extends to “an arguable claim concerning election irregularities” both relating to individual rights and state’s positive obligations to hold free and fair elections.<sup>137</sup> According to the Court, states have to undertake an effective examination of the applicants’ claims.<sup>138</sup>

95. 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>139</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>140</sup> The guiding principles of election dispute resolution are therefore not different from general principles of good administration<sup>141</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.

96. Whereas provisions governing election dispute resolution systems proper to election administrations’ decisions, actions, and inactions are stated in electoral laws and other relevant laws, general administrative procedure rules contained in other pieces of legislation may also be applicable concerning the burden of proof, the right to submit evidence or other procedural guarantees in the context of electoral processes. In some countries, the disputes related to voter registration are solved in a procedure provided for the complaints concerning the civil register in general.<sup>142</sup> Thus, the applicable procedure might not be found in electoral legislation. Similarly, the appeal procedure before a court – either administrative or constitutional court (or an equivalent body) – is usually not necessarily stipulated in electoral laws, but often in acts on courts’ procedures.

97. In order to guarantee full electoral rights, election dispute resolution systems should avoid obstacles to lodge complaints and appeals.<sup>143</sup> The procedure should not be too complex and rigid, eliminating the possibility to submit an application which would deserve to be considered into substance. As indicated by the Code of good practice in electoral matters, “[t]he procedure

<sup>136</sup> *Namat Aliyev v. Azerbaijan*, 8 April 2010, para. 81.

<sup>137</sup> *Ibid.*, para. 88.

<sup>138</sup> *Gahramanli and others v. Azerbaijan*, 8 October 2015, para. 73-74.

<sup>139</sup> Code of good practice in electoral matters, II 3.3.

See among the opinions issued for example 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova, para. 111. See above Part VI.

<sup>140</sup> Code of good practice in electoral matters, II 3.3.

See among the opinions 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova, para. 111.

<sup>141</sup> See for example 2011 Stocktaking on the notions of “good governance” and “good administration”, para. 65.

<sup>142</sup> Cf. Part IV. B. for more developments regarding voter lists.

<sup>143</sup> See for instance 2009 Joint Opinion on the Election Code of Georgia as revised up to July 2008, para. 109.

must be simple and devoid of formalism, in particular concerning the admissibility of appeals."<sup>144</sup> The legislation should clearly provide consequences for the situation where the application contains 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. Moreover, in case the application is not submitted to the competent body, the applicant should be advised about the correct procedure to redirect his/her complaint, or, if need be, the application could be forwarded to the competent body by the body which has wrongly received the complaint. A margin of appreciation might be given to the institutions.

98. Applicants must be permitted to familiarise themselves with the materials related to their complaints and appeals.<sup>145</sup> Where they complain to an election commission, they must be informed of the time and the 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 voter registration or the 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 and legally complex and requiring an investigation of factual circumstances, a written form might be suitable. In most countries, a written form for the complaint is necessary.<sup>146</sup> In some countries, an oral complaint is possible.<sup>147</sup>

99. 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 avoid manifestly unfounded complaints and appeals. In five member States, electoral laws explicitly state the possibility to submit applications without a representative.<sup>148</sup>

100. Not many countries define in their electoral laws and other laws the persons having the right to be heard in election dispute resolution systems in addition to the applicant.<sup>149</sup> Laws on courts' procedures might provide for additional parties or stakeholders having the right to be heard, in addition to applicants and bodies whose decisions or inactions are challenged.

101. 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>150</sup> An oral hearing is a means to provide the parties to justify the relevance of their requests in a speedy manner as well as to ask questions to the other parties in order to point out the substance of the dispute. In some cases, an oral hearing is necessary to hear the witnesses in a speedy manner, giving the parties a chance to ask questions to the witnesses. The aims of the transparency – trust in the electoral

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<sup>144</sup> Code of good practice in electoral matters, Guideline II. 3.3. b.

<sup>145</sup> See for example 2010 Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009, para. 68.

<sup>146</sup> Albania, Algeria, Andorra (voter and candidate registration), Armenia, Bosnia and Herzegovina, Estonia (except for notice concerning deficiency in electoral management, which may not lead to an appeal to the court), France, Germany, Republic of Korea, Mexico, Netherlands, Norway (for the complaints concerning voter lists), Poland, Slovakia, Spain, Switzerland, Ukraine. In Bosnia and Herzegovina, the complaint has to be submitted in a form prescribed by the Central Election Commission. (SK: I believe it is the same requirement in North Macedonia.)

<sup>147</sup> Austria, Chile, Latvia, Monaco, Turkey. In Austria, complaints concerning voter registration and issuing of voting cards may be submitted orally with the duty of the competent body to protocol the applications.

<sup>148</sup> Algeria, Andorra (cases concerning candidate registration), Azerbaijan, Estonia, Latvia, Mexico.

<sup>149</sup> Andorra, Azerbaijan, Czech Republic, Ireland, Mexico, Ukraine. In Andorra, candidates concerning disputes related to candidate registration and the Attorney-General's Office take part in the proceedings. In Azerbaijan, the law explicitly provides that the electoral management body whose decision is contested, takes part in the proceedings. In Mexico, Article 13 of the Law on electoral dispute resolution procedures refers to all persons entitled to file complaints and appeals, such as political parties, citizens, candidates and political non-governmental organisations. In Russia, candidates or parties concerned have the right to attend the process. In Ukraine, all parties are to be notified about a date and time of examination of a complaint. However, a failure to attend a session of an election commission does not prevent examination of the case. The same applies to proceeding at courts.

<sup>150</sup> Code of good practice in electoral matters, Guideline II 3.3. h.

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>151</sup> 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>152</sup>

102. 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 (and, as already said, a judicial appeal must be possible).

## **B. Transparency of election dispute resolution systems**

103. For all electoral processes, the principles of openness and transparency are generally stated in domestic electoral laws as well as in other laws. The specific mechanisms to guarantee the transparency of election dispute resolution systems among election commissions is guaranteed by the working methods of election administrations, such as sessions open to public, the duty to publish sessions' protocols on the web, streaming of the sessions etc.

104. More precisely, each act of the election administration should be formally published, broadly available for information to election stakeholders and appealable to a court.<sup>153</sup> Publicity can be ensured through public media and by immediate publication on the Internet. All decisions of election commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.<sup>154</sup> Complaints and appeals' procedures should also be transparent thanks to the accessibility of a number of sources, such as, depending on the countries: the publication of complaints, responses and decisions, for instance through a freely accessible database on the Internet of complaints and appeals filed, which should not only contain the information on the issues challenged, but as far as possible, also an access to the documents submitted by the parties, as well as the resolutions and protocols of the hearings.<sup>155</sup> Transparency provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrence to future misconduct.<sup>156</sup>

105. 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>157</sup> The principle of transparency was addressed in several opinions of the Venice Commission. It requires a written decision by the competent body as well as a reasoning of the decision;<sup>158</sup> decisions

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<sup>151</sup> See for example 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine, para. 43.

<sup>152</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.

<sup>153</sup> See for instance 2010 Report on figure based management of possible election fraud, para. 121.

<sup>154</sup> See for instance 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan, para. 43.

<sup>155</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>156</sup> See for instance 2013 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, para. 100.

<sup>157</sup> See for instance 2009 Joint Opinion on the Election Code of Georgia as revised up to July 2008, para. 109, 115; 2013 Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine, para. 66.

<sup>158</sup> See for instance 2004 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court), para. 43; 2011 Joint opinion on the election code of Bulgaria, para. 56.



should be made public;<sup>159</sup> and finally, written procedural rules concerning the review of complaints and appeals should exist.<sup>160</sup>

### **C. Reasoning of decisions on electoral complaints and appeals**

106. Reasoning of decisions on electoral complaints or appeals 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 election dispute resolution systems, especially relating to decisions made, actions committed or inactions on election day, i.e. concerning voting procedures, the resolutions cannot be reasoned 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.

107. 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>161</sup> All decisions of election commissions should be clear and reasoned so that aggrieved persons can judge whether to make a formal complaint.<sup>162</sup> The requirement that the decision be reasoned is stipulated in electoral legislation only in a few countries.<sup>163</sup> However, this does not prejudice the application of provisions to be found in general legislation on courts or administrative disputes.

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

108. 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>164</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>165</sup>

109. 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>166</sup>

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<sup>159</sup> See for instance 2009 Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine, para. 43.

<sup>160</sup> See for instance 2011 Joint opinion on the election code of Bulgaria, para. 56.

<sup>161</sup> See for example 2011 Joint opinion on the election code of Bulgaria , para. 56.

<sup>162</sup> See for instance 2004 Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan, para. 43.

<sup>163</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, Bosnia and Herzegovina and Ukraine. In Mexico, even though no electoral law explicitly requires reasoned decisions for electoral authorities, Article 16 of the Constitution provides that all decisions of all authorities that may affect rights must be reasoned.

<sup>164</sup> See for example 2006 Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia, para. 65.

<sup>165</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 2007 Joint Opinion on the 26 February 2007 Amendments to the Electoral Code of the Republic of Armenia, para. 33.

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

<sup>166</sup> Such is the situation in Andorra (disputes concerning voter registration), France, Bosnia and Herzegovina, Mexico (Article 15 of the Law on electoral dispute resolution procedures provides that the burden of proof lies on the part that asserts a fact), 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.

110. Another solution might be to oblige the competent body deciding on the complaint or appeal to collect the relevant evidence *ex officio*,<sup>167</sup> or in addition to the evidence provided by the applicant. However, it might be in reality problematic to exercise such power in practice due to the very limited time for adjudicating the complaint or the appeal.

## **IX. Decision-making power**

111. A successful election dispute resolution system relies on the effectiveness of the decision-making power of the competent body, either administrative bodies – electoral management bodies –, judicial bodies – ordinary courts or specialised courts – or other types of bodies – including parliaments.

### **A. International standards**

112. 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>168</sup>

113. Additionally, the OSCE/ODIHR publication *Resolving Election Disputes*<sup>169</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.

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

114. In order to safeguard and guarantee the integrity of electoral processes as a whole, any domestic legislation should grant appeal bodies with the power to cancel elections, partially or fully.<sup>170</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>171</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 lower interest in cycles of repeat elections, and possibly a lower turnout.

115. Indeed, considering the extreme effects of cancellation of election results, such a decision should only be concretised in extraordinary circumstances where evidence of

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<sup>167</sup> Such obligation is provided in the electoral laws of Armenia, Azerbaijan, Liechtenstein, Mexico and Ukraine.

<sup>168</sup> Code of good practice in electoral matters, Guidelines II 3.3. d. and e.

<sup>169</sup> Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, 2000, Section II. G.

<sup>170</sup> Ace Project, Electoral Dispute Resolution, 2012.

<sup>171</sup> Code of good practice in electoral matters, Guideline II 3.3. e.

illegality, dishonesty, unfairness, malfeasance or other misconduct is clearly established and where such improper behaviour has distorted election results.<sup>172</sup>

116. The transparency of election dispute resolution systems provides assurance to complainants and voters that electoral malfeasance has been corrected and serves as a potential deterrent to future misconduct.<sup>173</sup> A country where the electoral law allows for a tolerance level for fraud, based on a certain percentage of irregular votes,<sup>174</sup> or where the allocation of seats takes place before the results of the repeated elections are made public<sup>175</sup> does not follow international standards.

117. In a number of countries, electoral laws use rather general clauses concerning the cases of cancellation.<sup>176</sup> Some countries provide for a general invalidation mechanism<sup>177</sup> while some others for a partial one.<sup>178</sup> There are many cases where the competent authority can cancel results in one or more electoral constituencies.<sup>179</sup> In other cases, there are provisions that allow for the general invalidation of the elections.<sup>180</sup>

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

## X. Conclusions

119. 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 most of the domestic laws and their implementation regarding various aspects of election dispute resolution, as

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<sup>172</sup> International Foundation for Electoral System, Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections, 2011, para. 104.

<sup>173</sup> 2013 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, para. 100.

<sup>174</sup> 2005 Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan, para. 42-43.

2006 Opinion on the Law on Elections of People's Deputies of Ukraine, para. 84.

<sup>175</sup> 2010 Joint Opinion on the Draft Working Text amending the Election Code of Moldova, para. 70.

<sup>176</sup> Algeria, Andorra, Armenia, Belgium, Brazil, Bulgaria, Chile, Canada, Costa Rica, Denmark, Finland, Iceland, Italy, Malta, Mexico, Norway, Poland, Liechtenstein, Lithuania, Luxembourg, San Marino, Slovakia, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.

<sup>177</sup> Algeria, Andorra, Belgium, Canada, Costa Rica, Denmark, Finland, Iceland, Italy, Malta, Norway, Poland, Liechtenstein, Lithuania, Luxembourg, San Marino, Slovakia, Sweden, Switzerland, Turkey, Ukraine.

<sup>178</sup> Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Croatia, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Ireland, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Mexico, Republic of Moldova, Montenegro, Monaco, Morocco, Netherlands, North Macedonia, Peru, Portugal, Romania, Russia, Serbia, Slovenia, Spain, Tunisia, United Kingdom, United States.

<sup>179</sup> Albania, Armenia, Austria, Bosnia and Herzegovina, Denmark, Estonia, Finland, Georgia, Kazakhstan, Republic of Republic of Korea, Lithuania, Malta, Mexico, Republic of Moldova, North Macedonia, Norway, Portugal, Slovenia, Spain.

<sup>180</sup> Croatia, Estonia, Finland, Ireland, Malta, Mexico, Monaco, Morocco, Poland, Russian Federation, Serbia, Slovakia.

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

120. 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 voter registration or disputes related to election day, should preferably be a collegial one.

121. 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 steps 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 indeed 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.

122. Concerning the persons entitled to complain (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 regarding the settlement of electoral disputes and increase trust in electoral processes as a whole and, if necessary, safeguards must be in place to prevent the misuse of the complaints system.

123. The variety of situations concerning 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, inherent to the nature of electoral processes.

124. Other procedural issues 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 an election-related decision. The emphasis must also be put on the transparency of election dispute resolution systems, 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.

125. The legislation of a number of Venice Commission's member States does not address the issue of the decision-making power of the body entitled 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.

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

## **XI. Annex – Sources quoted in the report**

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