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**REPORT**  
**ON ELECTORAL LAW AND ELECTORAL ADMINISTRATION**  
**IN EUROPE**

**Synthesis study on recurrent challenges  
and problematic issues**

**by**

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**Taken note of by the Council of Democratic Elections  
at its 69<sup>th</sup> online meeting (7 October 2020)  
and the Venice Commission  
at its 124<sup>th</sup> online Plenary Session  
(8-9 October 2020)**

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## I. Introduction

1. In 2006, the Council for Democratic Elections (at its 17th meeting, Venice, 8-9 June 2006) and the Venice Commission (at its 67th plenary session, Venice, 9-10 June 2006) adopted the “Report on Electoral Law and Electoral Administration in Europe. Synthesis study on recurrent challenges and problematic issues” on the basis of a contribution by Michael Krennerich (Expert, Germany) ([CDL-AD\(2006\)018](#)). In the meantime, important developments have taken place in the Council of Europe (CoE) member states. While remarkable progress has been made in some countries, there are signs of regress in others. Some electoral provisions and practices are still or have become cause for concern. Thus, it appears necessary to update the report.
2. The main objective of the present study is to identify both improvements as well as remaining and new challenges in the electoral legislation and the electoral administration in Europe against the background of international standards and good practices in electoral matters. As the original report, the study refers to elections only, particularly for presidencies and national parliaments (lower chambers). Problems of referendums have not been considered. The study follows the same structure as the original report. However, it draws special attention to new developments.
3. The report focuses on electoral standards and practices *before* the breaking out of the COVID-19 pandemic. A number of national elections and subnational elections scheduled for 2020 have already been postponed in Europe. Some of these have since taken place, for example the elections in Serbia, Northern Macedonia, and Poland. If state authorities decide to move forward with elections amid the pandemic crisis, special adjustments to the entire administration of elections are required to mitigate the risks to both public health and democratic elections. Not only voting and counting procedures on election day are affected, but also recruitment and training of electoral staff, voter education, registration of voters and candidates, campaigning and post-electoral activities.
4. In order to write the report, the author systematically screened the electoral processes in CoE member states, taking into account opinions, reports and studies of the Council of Europe and the OSCE/ODIHR as well as academic literature from electoral experts. The country examples that are mentioned in the report have primarily illustrative character. Thus, the report does not aim to denounce grievances in selected countries. By highlighting examples of good practice and mentioning shortcomings, however, it aims to support efforts to bring elections in CoE member states closer in line with CoE commitments and other international standards for democratic elections.
5. The report is based on (see Appendix II):
  - the “Code of Good Practice in Electoral Matters” (CDL-AD(2002)023rev 2-cor),
  - opinions, recommendations and reports of the Venice Commission,
  - documents of the Parliamentary Assembly, the Congress of Local and Regional Authorities, and the Committee of Ministers of the Council of Europe,
  - reports and handbooks by the OSCE/ODIHR,
  - further publications.
6. This report was taken note of by the Council of Democratic Elections at its 69th online meeting (7 October 2020) and the Venice Commission at its 124th online Plenary Session (8-9 October 2020).

## II. General remarks

7. Since the quality of the elections differs considerably among CoE member states, it is difficult to make general statements on the recurrent problems of elections in Europe.
8. In most CoE member states, the electoral laws provide an adequate basis for democratic elections, and the electoral administration enjoys a high level of public confidence. However, even when elections are conducted professionally and in accordance with international standards, there is sometimes room for improvement.
9. Unfortunately, there are a several countries in which both the electoral legislation and the electoral administration face serious problems. According to international electoral observation missions, in a few cases, recent elections even fell short of democratic standards. Thus, further efforts are necessary to bring elections in all CoE member states in line with international standards and to build trust in the electoral process.
10. The context within which an election is being held has a great impact on the elections. Particularly, basic civil and political rights must be guaranteed to allow genuine electoral competition. Thus, it has to be ensured that any restrictions of civil and political rights have a basis in law, are imposed with a legitimate aim and only when necessary in a democratic society, and comply strictly with the principle of proportionality. This is particularly important for those countries (e.g. Azerbaijan, the Russian Federation, and Turkey) where constitutionally guaranteed fundamental freedoms have been legally and politically restricted before, during and after elections. Moreover, holding elections under the restrictive legal framework of a state of emergency is detrimental to a democratic environment to elections.
11. A context marked by violent conflicts and challenges to the countries' territorial integrity, does not create an enabling environment for democratic elections. In Ukraine, for instance, elections could not be organised in certain parts of the country due to the war in eastern Ukraine and the annexation of the Crimean Peninsula of Ukraine by the Russian Federation. Moreover, these conflicts resulted in a large number of internally displaced person (IDPs), making considerable efforts necessary to ensure that IDPs were able to exercise their voting rights. Such measures had to be taken also in other CoE member states involved in longstanding conflicts (e.g. Azerbaijan, Cyprus, Georgia).
12. In some countries (e.g. Albania, Serbia) elections are held in the context of a deep political division between the main contenders, resulting in a low public confidence in the electoral process. In such cases, there is a dire need to build trust in the elections. Conducting elections in line with international standards is an indispensable condition for restoring confidence in the electoral process. The failure to do so may result in calling the elections into question or even in the electoral boycott by (some) opposition parties (as was the case in elections in Azerbaijan).
13. Improvements to the electoral laws are due to constant national and international efforts to improve both electoral legislation and the election administration in accordance with international standards. While many recommendations of the Venice Commission and OSCE/ODIHR have been taken into account, some long-standing recommendations on electoral laws and administration have yet to be addressed in some CoE member states.

## III. Electoral laws

### *Harmonising electoral laws*

14. Elections are regulated by constitutions, electoral laws and election-related laws such as party laws, media laws etc. As for the electoral laws, it is recommended to incorporate the main aspects of the electoral legislation into one single election code, adopted in an open and inclusive manner. Whilst some countries have adopted a unified election code applicable to all types of elections, it should be noted that such a unified code governing all types of elections is not

applicable to all countries, particularly not to federal states with different electoral systems for subnational elections.

15. Whether unified or not, however, it should be avoided that the electoral legislation for the same election is fragmented. Even when the legal framework governing elections provides an adequate basis for the conducting of democratic elections, electoral legislation has become increasingly complex and fragmented, and difficult to use in a number of countries (such as, for instance, Italy and the UK). However, electoral laws should be precise, clear and easily understandable for electoral officials, candidates and voters alike. Further reforms should be careful not only to add more and more provisions to the electoral law(s), but also to simplify electoral regulations and to bring them together in a single, consistent legal framework.
16. In this regard, it is also necessary to ensure that there are no inconsistencies between electoral law(s) and election-related provisions of other laws regarding, for example, political parties, mass media, referendums, local self-government, or civil and penal codes. A holistic approach is necessary to harmonise election and election-related laws and to adopt legislation to a changing digital environment.

### ***Closing regulatory gaps***

17. Regulatory gaps in the electoral legislation undermine legal certainty. Even voluminous and detailed electoral legislation may lack clarity on several issues, such as, for instance, media and campaign regulations, dispute procedures, election observation, or the regulation of new electoral technologies. In fact, electoral observers consistently find out that certain areas of the electoral process are left under-regulated or poorly regulated in a number of countries. Even in long-established democracies, such gaps occur where the electoral law has not adapted to new developments. Thus, it should be examined whether the electoral legislation needs to be revised and modernised, also in democracies that are rich in tradition (like, for instance, the UK).

### ***Stability in electoral legislation***

18. The Code of Good Practice in Electoral Matters highlights that the stability of the law is crucial to the credibility of the electoral process. Therefore, it should be avoided that fundamental elements of electoral law – like the composition of election commissions, the electoral system and the drawing of constituency boundaries – are changed frequently or just before elections. According to the Venice Commission, changes to fundamental aspects of the election system should not take effect less than one year prior to an election (see CDL-AD(2002)023 rev2-cor, part II.2.d and Expl. Report, paras 63-65).
19. Whereas in many countries the electoral framework is stable and necessary amendments are adopted well ahead of the next election, in some other states significant changes to the election legislation occur frequently and late. In a number of countries (e.g. Italy, North Macedonia, Poland, Turkey) important electoral reforms were adopted only a few months prior to recent elections in a hasty and non-inclusive way, without providing an opportunity for meaningful public debate and consultations with stakeholders.
20. It should be stressed that, even if they implement international recommendations, late amendments to the electoral legislation limit the time needed for electoral preparations, including training and voter education, and make it difficult to apply the electoral legislation properly and uniformly. Voters and electoral contestants may also have difficulties adopting “last-minute” amendments. Furthermore, late changes to the electoral rules may be detrimental to a thorough and inclusive legislative process. They may even be perceived as politically biased, thus, undermining confidence in the elections.

### ***Translating electoral laws***

21. In order to make electoral laws and election materials accessible for all citizens, it is important that these public documents are published in all officially recognised and protected minority languages (CDL-AD(2002)023 rev2-cor, part I.3.1.b).

#### **IV. The electoral administration**

22. In most established Western European democracies where the administrative authorities have a long-standing tradition of impartiality, elections are organised by a special branch of the executive government, the function often vested in the Ministry of the Interior. This is acceptable insofar as in those countries the respective government of the day normally does not intervene in the electoral management process.
23. Not in all states, however, can the impartiality of the electoral administration vis-à-vis the government be taken for granted. Thus, electoral commissions which are independent from the government are increasingly viewed as the basis of impartial electoral administration in emerging and new democracies throughout the world. This is why the Code of Good Practice in Electoral Matters made strong demands for independent electoral commissions, particularly for new democracies (CDL-AD(2002)023rev2-cor, part. II. 3.1). In fact, most CoE member states that have introduced liberal democracies in the 1990s follow an independent model of electoral management and have established formally independent electoral management bodies.
24. However, legal guarantees of independence do not always safeguard impartial and independent election administration. The independent status must be accompanied by budgetary independence and the necessary competences to administer the electoral process effectively. Even in countries where the electoral commissions administered the elections adequately, understaffed administration and a limited budget may present structural problems, like, for example, in Bosnia and Herzegovina.
25. As agencies responsible for governing elections, electoral management bodies must develop expertise in cybersecurity practices. With the increasing use of digital technologies in electoral processes, many of them need technical assistance to protect against cybercrimes, as defined in the CoE Convention on Cybercrime (2001), such as illegal access to computer systems, illegal interception or data and system interference, threatening the confidentiality, integrity and availability of election computers and data. In fact, there have been (foreign) cyberattacks on critical electoral infrastructure in a number of countries, such as Ukraine.

#### ***Composition of electoral commissions***

26. The composition of election commissions is one of the most controversial aspects of electoral legislation in many emerging or new democracies throughout the world. Even with formally independent electoral management bodies, the commissions' composition may strongly favour the government or pro-governmental forces. Thus, the commissions' composition should be guided by the principles of maximum impartiality and independence from politically motivated manipulation.
27. Even if the law formally provides equitable opportunities for parliamentary parties to be represented at all levels of the election administration, political independence cannot be taken for granted. In Azerbaijan, for instance, members of all election commissions are formally nominated in three equal shares by the parliamentary majority, the parliamentary minority and independent Members of Parliament. Since actually all of them are pro-government, as shown by voting patterns, the formula for nominating commissioners does not in practice guarantee impartiality and political independence.
28. Moreover, if the political environment ahead of elections is polarised and antagonistic, even a real balance between pro-government and opposition parties in the composition of electoral commissions may run the risk of an over-politicisation of the commissions' work. This is a longstanding problem, for example, in Albania where the commissions's membership has been used by parties for political manoeuvring at the cost of the impartiality of the electoral administration. Here, if pro-government and opposition parties can agree it may be helpful if at least some of the commission members are appointed by non-political institutions that are perceived as being neutral. This may contribute to a de-politicisation of the commissions' work.
29. Such a de-politicisation may also be necessary to improve professionalism of the electoral administration. In a number of CoE member states, members of electoral commissions have

repeatedly made decisions along political lines at the expense of the impartiality and clarity of electoral instructions.

30. Efforts should be made to promote gender-balanced representation at all levels of election administration, particularly in decision-making positions. Whilst in a number of countries women were greatly underrepresented in electoral commissions, some states (e.g. Ukraine in 2019 presidential elections, according to ODIHR) have stood out as a positive example of women being well-represented at all levels of the election administration. Furthermore, the involvement of persons with disabilities as members or advisers of electoral management bodies should be considered.

#### ***Mode of operation***

31. As for the activities of electoral commissions, the rules of procedure must be clear. Commissions' activities and decisions must be transparent, inclusive and consensus-oriented, but at the same time, the effectiveness of the electoral administration should not be hampered by endless debates or even dead-lock situations. Transparency, inclusiveness and effectiveness of the commissions' work may still be improved in a number of CoE member states.

#### ***Capacity building and training***

32. It is important that members of election commissions (at all levels) have the necessary skills to administer elections. In order to address this problem, training courses for members of electoral commissions are strongly recommended by the Venice Commission. "Members of electoral commissions have to receive standardised training at all levels of the election administration. Such training should also be made available to the members of commissions appointed by political parties" (CDL-AD(2002)023rev2-cor, Expl. Report, para 84). This is especially important after changes to electoral regulations or the introduction of new electoral technologies. Furthermore, election administration staff at all levels need training in order to support electoral participation by persons with disabilities.
33. Training programmes for electoral officials are, in the meantime, common in CoE member states. However, the programmes are not always mandatory (e.g. Italy) and vary with regard to intensity, quality, and scope. In some countries, standard training was not provided to all members of election commissions before the most recent elections (e.g. Italy, Turkey). One positive aspect worth mentioning is that, in many CoE member states, electoral commissioners are increasingly trained in special procedures for providing assistance to voters with disabilities at different stages of the electoral cycle.

#### ***Voter education***

34. Voter education is an important part of the election process. It refers to basic information on elections (e.g. date and type of elections) and explanations of electoral procedures (voter registration, voting system, etc.), and usually also addresses the voters' motivation and preparedness to participate fully in the elections. Comprehensive voter education measures are particularly important to reach out to first-time voters, persons with disabilities, internally displaced persons and national minorities.
35. Voter education materials should be available in national minorities' languages. The availability of voter education materials exclusively in the Bulgarian language, for instance, is contrary to international standards.
36. Electoral observer reports indicate the need for improving voter education in a number of CoE member states, particularly in those with a high number of invalid votes in past elections (e.g. Bosnia and Herzegovina). Election administration bodies usually bear the main responsibility for educating voters. However, this may be done with the help of political parties, non-governmental organisations, and the media.
37. Electoral reforms and the introduction of new technologies in the electoral process should always be accompanied by comprehensive voter education. Moreover, to improve the knowledge and awareness of voters about disinformation and propaganda on social media and online platforms,

public authorities should promote digital and media literacy programs for the electorate, especially for young voters.

## V. The right to vote

38. Universal suffrage means in principle that all human beings have the right to vote. It is important that the right to vote is not unreasonably restricted, particularly not on the basis of gender, "race", ethnic origin, religion or any other ground of discrimination. However, the right to vote is not an absolute right. It may be subject to a number of reasonable conditions, the most usual being age and citizenship.

### **Voting age**

39. According to the Code of Good Practice in Electoral Matters, the right to vote must be subject to a minimum age. In most CoE member states, citizens aged 18 or older are entitled to vote in national elections. However, Austria (2007) and Malta (2018) successfully lowered the minimum age to 16 years for national elections. In Greece, the voting age was recently reduced to 17 years.

40. Furthermore, a few CoE member states have lowered the voting age for subnational elections. In Germany, for instance, a minimum voting age of 16 years has been introduced for municipal elections in nine (of 16) federal states, since 1996. Additionally, four federal states allow citizens of 16 years or older to vote in provincial elections, there. The Scottish Parliament reduced the voting age to 16 years for both Scottish Parliament elections and Scottish local government elections in 2015. In Wales, 16 and 17 year olds will be entitled to vote for the first time at the Senedd Elections in 2021.

41. In the meantime, lowering the voting age to 16 is being discussed in many other CoE member states. It is worth continuing the discussion and considering a lowered voting age as a possible way to enhance the participation of young people in the democratic process.

42. In any case, the minimum voting age should be the same for all citizens. Distinctions based on marital status constitute discrimination between them. In Hungary, however, married citizens of 16 years or older are allowed to vote, while the minimum voting age for all other citizens is 18 years. Such a distinction falls short of international obligations.

### **Voting rights and citizenship**

43. The Universal Declaration of Human Rights stipulates that everyone has the right to take part in the government of *his (or her) country*, directly or through freely chosen representatives (UDHR, Art. 21 (1)). The International Covenant of Civil and Political Rights (ICCPR) explicitly refers only to citizens' right to vote and to be elected (Art. 25). The same is true with regard to further international and regional human rights instruments. As for universal suffrage, thus, a nationality requirement may be applied (CDL-AD(2002)023rev2-cor, part I 1.1 b).

44. In fact, the vast majority of states worldwide allow only their own citizens to vote in national elections. Due to historical and political reasons, however, there are a few exceptions to the rule. In the United Kingdom, for instance, Irish citizens and Commonwealth citizens (with an indefinite leave to remain in the UK) are eligible to register to vote if they reside on the territory of the UK. In return, British citizens permanently residing in the Ireland (or in some Commonwealth states in the Caribbean) are eligible to vote in parliamentary elections, there. Only in a few countries outside Europe are non-citizens generally allowed to vote after a certain number of years of permanent residency, ranging from one year in New Zealand to 15 years in Uruguay. In Luxembourg, a proposal to grant the right to vote in national elections to non-citizens who have been permanent residents for more than 10 years was rejected in a referendum in 2015.

45. Whilst a citizenship requirement is common for national elections, however, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of lawful and habitual residence (CDL-AD(2002)023rev2-cor, part I.1.1b). Albeit only ratified by a few states, the CoE



Convention on the Participation of Foreigners in Public Life at Local Level (1992) stipulates that each party shall grant to every foreign resident the right to vote and to stand for election in local authority elections, provided, inter alia, that he or she has been a lawful and habitual resident in the state concerned for the five years preceding the elections. (See also the report CG35(2018)17 of the Congress of Local and Regional Authorities).

46. In fact, there is a growing trend to grant the right to vote in local elections to long-standing foreign residents. Under EU law, all EU citizens living in another EU country are already entitled to vote in local and European Parliament elections in that country. Even non-EU foreigners with permanent residency are allowed to vote in local and/or regional elections in many CoE member states (e.g. Sweden, Denmark, Iceland, Finland, the Netherlands, Ireland as well as, nowadays, Belgium, Estonia and Luxembourg). However, a number of CoE member states have not yet followed the general recommendation.
47. As long as there is a nationality requirement for participating in national or even subnational elections, it depends on the possibilities for foreigners to acquire citizenship of the country of their residence – and on their willingness to apply for it. According to the European Convention on Nationality (1997), each ratifying state party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, states shall not provide for a period of residence exceeding ten years before the lodging of an application.
48. While each state determines under its own law who are its nationals, the nationality requirement sometimes causes undue problems. For instance, states may withhold citizenship from persons who have been settled in their territories for generations. In some post-soviet states, such as Estonia and Latvia, a considerable number of persons, most of Russian background, have not automatically acquired citizenship and, as a result, are not allowed to vote and stand for elections. Although major efforts have been made to naturalise those persons in the meantime, in both countries more than a few residents with undetermined citizenship are still disenfranchised in national elections.
49. Under the European Convention on Nationality persons holding dual nationality must have the same electoral rights as other nationals. The electoral law in Portugal stands out as a positive example. It expressly stipulates that Portuguese citizens who also hold a citizenship of another state do not lose their eligibility to vote because of that fact.

#### ***Residence requirement and out-of-country voting***

50. According to the European Court of Human Rights (and the former European Commission on Human Rights), a residence requirement is not an arbitrary restriction of the right to vote and is therefore not incompatible with Art. 3 of Protocol No. 1 of the ECHR. Correspondingly, the Code of Good Practice in Electoral Matters stipulates that a residence requirement may be imposed (CDL-AD(2002)023rev2-cor, part I 1.1c).
51. At the same time, the Code of the Good Practice in Electoral Matters states that the requisite period of residence should not exceed six months, and solely for local or regional elections (if it does not aim to protect national minorities). In Montenegro, however, the Constitution and the electoral law restricts the right to vote in national elections only to those citizens who have resided in the country for two years prior to elections (whilst the Constitution does not specify when this residence must take place, the electoral law refers to the 24 months preceding the elections). The requirement has been criticised by OSCE/ODIHR and the Venice Commission for not being in line with international standards.
52. According to the Code of Good Practice in Electoral Matters, the right to vote may be accorded also to citizens residing abroad. There are good reasons to do so (see CDL-AD (2011) 022), and, in fact, most CoE member states have since introduced legal provisions for out-of-country voting. Recent examples include Hungary (2014), Romania (2015) and Greece (2019). In a few European countries that allow external voting, voting rights are removed from those citizens who live abroad for a long period of time, namely, in the UK after more than 15 years and in Germany after more than 25 years (with some exceptions). In some other countries, citizens no longer

registered as residents are still included in electoral rolls for a certain period of time (for instance, ten years in Sweden). Thereafter, they must actively register from abroad.

53. While it is within the scope of the state's own sovereignty to decide whether to grant the right to vote to citizens residing abroad, the introduction of out-of-country voting might be considered, if not yet present. In some CoE member states, voting by citizens residing outside the country is still either prohibited or restricted to a very limited category of persons (e.g. Armenia, Malta, Ireland), or only to those "temporarily" abroad (e.g. Denmark, Liechtenstein, North Macedonia, Serbia).
54. If out-of-country voting is allowed, limited organisational capacities for voting outside the country, combined with excessive administrative requirements for voter registration, may hamper citizens abroad from casting their vote. In Ukraine, for instance, only around 2% of citizens living abroad participated in the 2019 presidential elections. Some CoE member states still have to develop the organisational capacity needed for general out-of-country voting.
55. On the other hand, citizens should be required to register to vote abroad, or should be automatically registered. If voters are allowed to vote abroad without pre-registration and, at the same time, are included on in-country voter lists, such an arrangement creates the risk for multiple voting. This was cause of concern, for instance, in the Bulgarian 2017 elections. Where online registration for voting abroad is possible, like in Spain, special security measures have to be taken to protect data (transmission).

#### ***Voting rights for members of military forces***

56. In a few countries outside Europe, members of military (and/or police) forces are not entitled to vote. Among the CoE member states, Turkey does not allow conscripts and military cadets to vote. At first sight, this might be seen as a measure to prevent a politicisation of military forces and to protect free and secret voting, which might easily be affected in the case of military staff. However, such a ban disenfranchises a substantial number of citizens, amounting to an inappropriate restriction to the right to vote. Accordingly, both the Venice Commission and PACE stressed that the need for democratic control over the military should not be used as an excuse to automatically deprive military servicemen of their voting rights (see PACE Res. 1459 (2005), para 9).

#### ***Voting rights and legal capacity***

57. The blanket denial of voting rights of disabled persons under guardianship or trusteeship is against international standards. While the ECHR found that the loss of voting rights on account of placement under guardianship could pursue a legitimate aim (namely to ensure that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs), it concluded that a blanket and indiscriminate removal of voting rights, without an individualised judicial evaluation, could not be considered proportionate to the aim pursued (*Alajos Kiss v. Hungary*, No. 28832/2006, 20 August 2010).
58. The Committee on the Right of Persons with Disabilities (CRPD), however, goes a step further. The CRPD considers that any exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability (often linked with the loss of legal capacity) constitutes discrimination on the basis of disability, including a restriction pursuant to an individualized assessment. Having found the assessment of individuals' capacity to be discriminatory in nature, the CRPD maintains that this measure cannot be deemed to be legitimate. It repeatedly recommended the adoption of legislative measures to ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life, on an equal basis with others (see e.g. CRPD/C/10/D/4/2011, 2013; CRPD/C/GC/6, 2018).
59. In a number of CoE member states, however, citizens have no voting rights, if declared legally incapacitated (by a court decision) on the grounds of intellectual or mental disability (e.g. Albania, Andorra, Armenia, Bosnia and Herzegovina, Bulgaria, Georgia, Greece, Lithuania, Poland, Romania, Serbia, and Ukraine). Electoral observation reports of OSCE/ODIHR and PACE

repeatedly stressed that deprivation of the right to vote on the basis of intellectual or mental disability is inconsistent with international obligations and standards.

60. Even recent reforms may not go far enough: While in the Republic of Moldova the Constitutional Court declared the blanket denial of voting rights of persons declared incompetent by a court unconstitutional (2018), a court can still deprive a person of the right to vote on the basis of mental disability. In Denmark, newly adopted provisions (2018) allow for the reinstatement of voting rights for some individuals under guardianship. However, the legislation still includes provisions that deprive persons considered to be fully incapacitated from their voting rights, according to ODIHR.
61. Positively, there are no restrictions based on mental and/or legal incapacity in an increasing number of CoE member states. Examples include Austria, Croatia, Latvia, the Netherlands, the Ireland, Sweden, the United Kingdom and, following recent reforms, Slovakia, Spain and Germany.

### **Voting rights for prisoners**

62. In cases concerning the UK, Russia, Turkey and Bulgaria, the ECtHR has repeatedly ruled that the blanket prohibition of voting rights for prisoners is in violation of the ECHR. However, blanket voting bans are still applied to prisoners (following criminal offences) in a number of CoE member states (e.g. Bulgaria, Estonia, Hungary, Russia, and Turkey). After the UK had not been willing to implement ECtHR decisions for many years, the blanket removal of voting rights of prisoners serving a custodial sentence was repealed there in 2018.
63. While most CoE member states do not provide for a complete ban on voting while in prison, some of them disenfranchise citizens who have been sentenced for certain crimes or to a certain period of detention. Article 3 of Protocol No. 1 of the Convention, which enshrines the individual's capacity to influence the composition of the legislature, does not exclude the possibility of restrictions on electoral rights being imposed on an individual who has, for example, seriously abused a public position or whose conduct has threatened to undermine the rule of law or democratic foundations (see *Frodl v. Austria*, 20201/04, 8 April 2010, § 26). According to the ECtHR, however, even such provisions must be taken by a judge, taking into account the specific circumstances of the case, and there must be a link between the offence committed and issues relating to elections and democratic institutions (see *Frodl v. Austria*, [20201/04](#), 8 April 2010). These criteria aim at establishing disenfranchisement as an exception, even for convicted prisoners. Additionally, in 2015 the European Court of Justice decided that EU member states can ban prisoners' voting rights (only) as long as the decision to do so takes into account the nature and gravity of the criminal offence committed and the duration of the penalty (*Thierry Delvigne v. Commune de Lesparre Médoc and Préfet de la Gironde*, C-650/13, 6 October 2015).
64. Particularly, pre-trial detainees should not be excluded from exercising their right. While apart from in Belarus, pre-trial detainees are usually allowed to vote in European states, in practice, they are not always able to exercise their voting rights due to the lack of voting facilities in prison. Moreover, voting procedures for detainees are limited in some cases. In France and Netherlands, for instance, proxy voting is the only form of voting available for prisoners and voters in pre-trial detention.
65. Furthermore, in some CoE member states, voting rights may not be automatically restored upon release from prison (e.g. Belgium, Luxembourg, Poland, and Turkey). In Luxembourg, for example, a prison sentence of more than ten years automatically entails a lifelong disenfranchisement, while an imprisonment between five and ten years generally leads to disenfranchisement from 10 to 20 years, with a lifelong disenfranchisement possible.
66. In contrast to the above-mentioned countries, a number of CoE member states stand out as examples where no restrictions to vote are imposed on convicted citizens, regardless of the nature of the crime or the duration of the sentence. Examples include Croatia, the Czech Republic, Denmark, Finland, Iceland, Ireland, Latvia, Lithuania, North Macedonia, Norway, Serbia, Slovenia, Spain, Sweden and Switzerland. In Germany, courts can ban citizens who committed certain crimes from voting, but hardly ever do so.

67. Although the present report focusses on national elections, it should be noted that in a few CoE member states, prisoners may be entitled to vote in national elections, but not in local elections on the grounds that they are allegedly not affected by local politics or do not belong to the local community (e.g. Czech Republic, Latvia). Such a restriction should be re-considered.

## **VI. Voter registration**

68. The proper establishment and maintenance of electoral registers is vital in implementing and guaranteeing universal suffrage. In practice, it is a pre-condition for enabling voters to use their right to vote. Voter registration, however, is one of the most complex and difficult parts of electoral administration. Typical problems are that voter registers are incomplete (i.e. do not including all eligible voters) and inaccurate (i.e. they contain false data, names of deceased persons, etc.).

69. Electoral observers still express concern over the inaccuracy of voter lists in some CoE member states. In Albania, for instance, the total number of registered voters in the 2017 elections was much higher than population census figures. The difference could most likely be explained by the fact that many Albanians who have left the country still appeared in the voter registers (while out-of-country voting was not possible).

70. Presumably, the electoral registers in Albania and some other countries also include a number of deceased citizens. However, systematically removing voters aged 100 or more from the electoral registers, as it is done in Albania, does not represent a solution, but is contrary to international standards. Also automatically excluding voters from the register if their identification documents have expired, would not be in line with international standards. Fortunately, the revised legislation of North Macedonia no longer contains such a provision.

71. It must be admitted, however, that both establishing and maintaining accurate voter registers are especially difficult in (post-)conflict situations with a large number of internally displaced persons (IDPs). Nevertheless, the UN Guiding Principles of Internal Displacement (1998) stipulates that IDPs shall not be denied the right to vote (Principle 22). Accordingly, the Committee of Ministers recommended that CoE member states should take appropriate legal and practical measures to enable IDPs to effectively exercise their right to vote in national, regional or local elections (CM/Rec(2006)6, para 9). While major efforts have been made to allow IDPs to vote in (post-)conflict states, there are still a large number of IDPs who are not included in voter registers, e.g. in Ukraine.

### ***Models of voter registration***

72. There are several methods of producing voting registers. In most CoE member states, voters lists are taken directly from national, regional and/or local population databases that are used for administrative purposes. This means that voter registration is passive, except for people residing abroad who must usually actively register (if they are allowed to vote). Among CoE member states, only in Cyprus, the Ireland and the United Kingdom are voters not included automatically on the registers, but at their own request (active voter registration). According to the Code of Good Practice in Electoral Matters, both methods are acceptable (Explanatory Report, I.1.2, par. 7).

73. According to the Code of Good Practice in Electoral Matters, however, there must be permanent electoral registers. In fact, permanent registers are standard in CoE member states, with the exception of Bulgaria and Latvia. Furthermore, in the majority of CoE member states, there are centralised voter registers for national elections which allow for cross-checking of nationwide data and for improving data quality. Several countries, for instance Ukraine (2010), Serbia (2012) and, recently, Austria (2018), followed the recommendation to create a national voter register.

74. However, in some CoE member states, such as, for instance the Czech Republic, there is no centralised voter register, and voter lists are managed entirely at the local level. Without a national voter register, however, it can be difficult to prevent multiple entries of the same voters in the voter lists across communities. Where no other mechanisms are in place to provide

nationwide cross-checking of data (like, for instance, in France), the responsibility to maintain accurate voter lists lies completely with local authorities.

### **Public review of voter registers**

75. According to the Code of Good Practice in Electoral Matters, the electoral registers must be published. Indeed, in many CoE member states voter lists are made available for public scrutiny, for example by posting them at polling stations, making them available in municipality offices and/or publishing them on websites. Transparency and public scrutiny may enhance the accuracy of voter lists. Just how important this is, is revealed, for instance, by the fact that the voter registers in Armenia included addresses where, according to international observers, an exaggerated number of voters were registered.
76. In order to protect citizens' private data, however, some countries have introduced restrictions concerning the public access to voter lists. In the Czech Republic, Hungary and Serbia, for instance, the laws prohibit the public display of personal data and/or do not provide for public scrutiny of the voter lists. Voters are only allowed to verify their own personal data, there. Apart from checking their own records, in Germany, the inspection of other voter's data must be justified on very specific grounds. Following a reform in 2001, the electoral register is no longer publicly accessible for everyone to inspect.
77. Even with such restrictions, however, it is essential for democratic elections that voters, at the very least, are allowed to verify their own records on the voter register and to request corrections, inclusions and/or deletions of their data, if necessary. Positively, there are special awareness campaigns prior to elections to encourage voters to verify their data in some countries, such as, for instance, in Andorra. Furthermore, it is of utmost important that complaints regarding the voter registers can be submitted to the responsible public authorities and/or be appealed to courts. Even though the details of the procedures and the time limits vary considerably, complaints can be lodged in all CoE member states. In general, voters were given wide opportunities to verify and request corrections of their own data and, in a number of cases, query the data of other voters. In the Ireland (with a system of active voter registration), citizens can check online if they are registered to vote.
78. There is some further discussion, however, as to whether copies of voter lists should be available for electoral contenders (in their respective constituencies). This is possible, *inter alia*, in the Ireland, Monaco, Spain and, as concerns the basic data held by the civil registry, even in Germany. In the case of presidential elections in North Macedonia, however, there were concerns over misuse of voters' personal data by political parties to track and pressure voters.

### **Supplementary voter lists and registration on voting day**

79. Supplementary voter lists can enable persons to vote who have changed their address or reached the statutory voting age since the final register was published (CDL-AD(2002)023rev2-cor, part I.1.2.vi). Whilst increasing the inclusiveness of elections, however, supplementary lists may be extensively used for compensating for the inaccuracy of regular voter registration. This is problematic insofar as the use of supplementary lists increases the risk of multiple voting and of voting in the wrong districts. It should only be tolerated if sufficient safeguards against multiple voting are established.
80. As a general rule, election day registration should be avoided, if possible, and should not take place at the polling station. Although inclusive, it is at odds with international standards. Not surprisingly, voter registration at polling stations was criticised by electoral observers in the case of elections in Azerbaijan, Belarus and Russia, but it was also possible, for instance, in national elections of the Czech Republic.

## VII. The right to stand for election

81. As with right to vote, the right to stand for elections is universal and must not be unreasonably restricted. However, stricter requirements may be imposed on eligibility to stand for election than is the case for the eligibility to vote, “as the holding of a public office is at stake and it may be legitimate to debar persons whose activities in such an office would violate a greater public interest” (CDL-AD(2002)023rev2-cor, Expl. report, para 6d).

### ***Minimum age to stand for elections***

82. According to the Code of Good Practice in Electoral Matters, the right to stand for election should preferably be acquired at the same age as the right to vote (CDL-AD(2002)023rev2-cor, part I.1.1a.iii). However, in a number of CoE member states, the right to vote is granted to citizens who have reached 18 years of age while only voters aged 21 years or older are eligible to stand for parliamentary elections. Examples include Bulgaria, Cyprus, the Czech Republic, Estonia, Georgia, Ireland, Latvia, Poland, the Russian Federation, San Marino, Slovakia and Ukraine. The minimum age for the right to stand for elections is even set at 23 years in Romania and at 25 years in Armenia, Italy, Lithuania, and Monaco. The gap is widest in Greece, being 17 years for the right to vote (in coming elections) and 25 years for the right to stand for elections to Parliament.

83. While the Code of Good Practices in Electoral Matters allows a minimum age of up to 25 years for parliamentary candidates, lowering the minimum age might be re-considered in order to enhance parliamentary representation of young people and to align requirements for active and passive voting rights. Recently, in Turkey the minimum age was lowered from 25 to 18 years before the 2018 elections. In Austria and Malta, where only the active voting age was lowered from 18 to 16, however, there seems to be no need to reduce the minimum age for being elected to Parliament, as long as it corresponds to the age of majority.

84. The minimum age necessary to stand as a candidate in presidential elections usually lies between 35 and 40 in the CoE member states. This is in line with the Code of Good Practice in Electoral Matters which allows for specific qualifying ages for certain offices, such as senators (not considered here) and heads of state. France and Finland stand out as exception where the minimum age for president is 18.

### ***Citizenship requirements to stand for elections***

85. All CoE member states’ legislation lays down a nationality requirement for the right to stand for national elections. However, in some countries only citizens by birth are eligible to stand for presidential elections (e.g. Finland, Lithuania). Granting also longstanding naturalised citizens passive voting rights in presidential elections might be considered.

86. Under the European Convention on Nationality (signed by 29 and ratified by 21 states, as of May 2020), citizens with multiple nationalities shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party. Moreover, the ECtHR found that banning dual nationals from being elected to parliament constitutes a inappropriate means of ensuring the loyalty of Members of Parliament to the state, thus, violating Article 3 of Protocol No. 1 of the ECHR (*Tănase v. the Republic of Moldova*, [GC], 7/08, 27 April 2010). However, citizens with dual citizenship are currently not allowed to stand for parliamentary elections, for example, in Armenia, Azerbaijan, Bulgaria, Malta and Lithuania. In Azerbaijan, Georgia and Ukraine, a person with dual nationality cannot be elected president.

87. Following the same arguments as for granting non-citizens the right to vote in local elections, it is recommended accordingly that the right to stand for local elections shall be granted to long-standing lawful residents. This would be in line with the CoE Convention on the Participation of Foreigners in Public Life at Local Level (1992).

### ***Residency requirements to stand for elections***

88. A residence requirement is not an arbitrary restriction of the right to be elected. However, it should not limit the right to stand for elections to only those citizens who have resided in a country, region or constituency for an extensively long period of time.
89. In some cases, however, residence requirements appear unreasonably restrictive and at odds with international standards. In Lithuania, presidential candidates must have resided in the country for at least the last three years before elections. In Georgia a minimum of five years is required, including the last three years prior to election day. In some other CoE member states residence requirements are even stricter. For example, in Azerbaijan, the Czech Republic, the Republic of Moldova, Ukraine and until recently in the Russian Federation, only citizens with (permanent) residence for ten years, could run for president, sometimes specified as the last ten years prior to elections or as ten of the last 15 years. The amendments of 2020 to the Russian Constitution even stipulates that a presidential candidate must have lived to the electoral legislation in the country for at least 25 years and may not have ever held foreign citizenship.

### ***Restrictions based on ethnicity (and residency)***

90. The constitution of Bosnia and Herzegovina distinguishes between “constituent peoples” (persons who declare affiliation with Bosniacs, Croats and Serbs) and “others” (members of ethnic minorities and persons who do not declare affiliation with any particular group because of intermarriage, mixed parenthood or other reasons). Only persons declaring affiliation with a “constituent people” are entitled to run for the House of Peoples (the upper chamber of the State parliament) and the presidency (the collective Head of State). According to the ECtHR, this provision violates the European Convention on Human Rights, particularly its protocols 1 and 12 (*Sejdić and Finci v. Bosnia and Herzegovina* [GC], [27996/06](#) and [34836/06](#), 22 December 2009).
91. Furthermore, even for “constituent people” of the Bosnia and Herzegovina, their right to stand for presidential elections might be unreasonably restricted by residency-based limitations. For instance, a Serb registered in the Federation of Bosnia and Herzegovina or a Bosniak or Croat registered in Republika Srpska cannot stand for presidency of the state. Thus, the ECtHR recommended that the law should be amended to remove ethnicity and residency-based limitations (*Pilav v. Bosnia and Herzegovina*, 41939/07, 9 September 2016).
92. Despite the binding judgements of the ECtHR, the discriminatory nature of the constitutional framework has not been addressed to date. Repeatedly, OSCE/ODIHR and PACE electoral observation missions expressed their concern that the authorities of Bosnia and Herzegovina had failed to amend the legal framework to remove ethnicity and residency-based discrimination with regard to the right to stand for elections to the presidency (and the House of Peoples).

### ***Military service as requirement to stand for elections***

93. Ineligibility of male citizens who have not completed compulsory military service, like in Turkey, is at odds with international standards and discriminatory by nature.

### ***Educational requirements to stand for elections***

94. Education requirements constitute undue restrictions on the right to stand for office and run contrary to international obligations and good practice. However, citizens who have not graduated from primary school are not eligible to stand for parliamentary elections in Turkey. Presidential candidates are required to have a higher education in Turkey and a university degree in Azerbaijan.

### ***Mental disabilities and the right to be elected***

95. Following the same arguments as for not restricting the right to vote, persons with intellectual or mental disabilities should not indiscriminately be prohibited to be a candidate if they fulfil the conditions, just like any other citizen. However, in many CoE member states there are blanket denials of both active and passive voting rights of disabled persons under guardianship or trusteeship (see above).

***Ban on the right to be elected for convicted criminals***

96. While there is a wide-ranging debate on prisoners' right to vote, the right of convicted persons to be elected is much less discussed. Of course, as long as convicted individuals maintain in prison and cannot exercise electoral mandates, the question is of little practical significance. However, in many cases the exclusion of the right to stand as a candidate remains in force after the prison sentence has been completed, or during a conditional sentence.
97. Currently, in a number of CoE member states those individuals serving a prison sentence, with an active criminal record, and/or deprived of the right to hold public positions by a (final) court decision cannot stand for elections. While each state has a wide discretion as to how it regulates the ban on voting rights for convicted persons, here again, some aspects are important: Is it an indiscriminate denial of the right to stand for elections, or does it depend on the nature of the crime and the duration of the penalty? Is the right restored upon release from prison, or does it remain in force for a much longer period of time? Particularly, blanket denials, bans on the grounds of minor offences as well as extremely long bans on the right to be elected after completed sentence may be a cause of concern (see CDL-AD(2015)036cor).
98. According to OSCE/ODIHR electoral observation reports, for example, in Turkey grounds for ineligibility for Parliament include criminal convictions for a broad range of crimes, including minor offences, even if pardoned. As for presidential elections, there are even lifetime bans for convicts. Whilst in the Russian Federation lifetime bans on candidacy rights have been removed, citizens with non-expunged criminal records are not eligible to stand there as candidates. While this is also the practice in several other states, in the Russian Federation the right to stand is also denied to individuals with expunged records for grave or especially grave offences, for an additional period of 10 and 15 years, respectively. Particularly restrictions on citizens with an expunged criminal record are at odds with the principle of proportionality and are contrary to international standards.
99. While it might be legitimate to restrict (temporarily) the right to stand for election for individuals on the grounds of severe and clearly defined crimes, it should be emphasised that bans on the right to be elected have been systematically used against political dissidents in several countries such as Azerbaijan, Turkey and Russia. The Committee of Ministers, for instance, has repeatedly urged Azerbaijan to release political prisoners, to revoke their convictions and to delete their criminal records. In contradiction of judgements of the ECtHR and repeated requests from the CoE, a number of potential candidates have been prevented from standing for elections, there (see also PACE Doc. 15090, para 36).

***Restrictions in order to protect the democratic order***

100. According to the ECHR, the democratic state order may be protected against individuals who are not ethically qualified to become representatives of a democratic state at a political or administrative level. In order to determine whether restrictions on passive electoral rights are proportionate, however, it is necessary to assess very carefully whether the person poses a real threat to the democratic order, the national security or the state's integrity.
101. The electoral law of Latvia (still) stipulates that persons are not to be included in the lists of candidates and are not eligible to be elected to the Saeima if they, inter alia, belong or have belonged to the salaried staff of the state security, intelligence or counterintelligence services of the USSR, the Latvian SSR or another country, as well as those who have been active members of the Communist Party of the Soviet Union (the Communist Party of Latvia), the International Front of the Working People of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees.
102. While in 2006; in the *Ždanoka v. Latvia* case ([GC], No. 58278/00, 16 March 2006) the ECtHR ruled that the restriction on former communist party members is in line with the Latvian constitution and the ECHR, it held that the parliament, by periodically examining the political situation in the state and the necessity and merits of the restrictions, should decide to establish a time-limit on these restrictions since such limitations on passive electoral rights may exist only



for a specific period. Having assessed individual restriction decisions of the Central Electoral Commission on several occasions, the Constitutional Court still considered the norm as conforming with the constitution in June 2018. Nevertheless, it would be worth re-considering whether Latvia's democratic regime has become sufficiently stable in the last two decades, making such restrictions no longer necessary.

***Terms and term-limits of elected presidents***

103. While the term of elected Members of Parliament (lower chamber) is usually four or five years, in most presidential and semi-presidential systems, presidents are elected for a five-year or a six-year term. Particularly in the case of directly elected presidents in whose hands extensive powers are concentrated, longer terms may be critically questioned. It is no coincidence that worldwide most countries with seven-year terms for powerful elected presidents are autocratically governed. Whereas the Irish democracy with a president who is vested only with limited powers clearly does not fall into this category, examples of such electoral autocracies include Azerbaijan, Cameroon, Congo (Brazzaville) as well as Rwanda. This is even more problematic if there are no limitations on being re-elected.
104. Term limits usually apply to the Head of State/President of the Republic, while they are quite uncommon for members of parliaments (with the exception, for instance, of Costa Rica and until 2014 Mexico). Given the risk of abuse of power by incumbents who seek to prolong their tenure, in the vast majority of presidential or semi-presidential systems worldwide the constitution sets limits on the president's re-election: either an absolute ban, or a maximum period of two terms, or of two consecutive terms. If such term limits are removed, it must be critically assessed whether such constitutional reforms prepare the ground for establishing or prolonging autocratic rule.
105. In fact, in some Latin American countries, most obvious in Venezuela (under Hugo Chávez) and Nicaragua (under Daniel Ortega), autocratic rulers managed to stay in power by abolishing any limits on re-election. In sub-Saharan Africa, where more than 30 countries had introduced term limits in the course of the introduction of multi-party elections in the 1990s, a number of elected autocratic rulers abolished the prohibition to be re-elected after two terms, or simply ignored it. Examples include Burundi, Chad, Congo (Brazzaville), Ruanda as well as Uganda. In Egypt, the constitutional amendments of 2019 allow President Abdel Fattah el-Sisi, who has already been elected twice as president, to remain in power until 2030, if elected. In Central Asia, there are, for example, no bans on term limits for presidents in Tajikistan and Turkmenistan (abolished in 2016), and the constitutional maximum of two elected terms was ignored by the longstanding former president Islam Karimov in Uzbekistan (in office from 1990 to 2016).
106. As the examples show, abolishing or ignoring any limits on presidential re-election often represents a step back in terms of democratic achievement or a means of stabilising authoritarian power. Thus, the Venice Commission adopted a critical view of the removal of limitations, for instance, in Belarus (2004) and Azerbaijan (2009) and welcomed the introduction of term limits in Kyrgyzstan (2010). It is recommended that the Venice Commission likewise adopt a critical view of the constitutional amendments of 2020 in the Russian Federation. They allow the current president Vladimir Putin, who has been elected in 2000 and 2004 as well as in 2012 and 2018, to seek another two terms and run again in 2024 and 2030.
107. As the Venice Commission noted, the undesirability of unlimited terms for the president is recognised in new and old democracies. Term limits are particularly important in countries where democratic structures have not yet been established or consolidated. If, nevertheless, democratic governments aim to alter or remove presidential term limits, such a decision should be subject to thorough public scrutiny and debate and should fully respect the relevant constitutional and legal procedures. Furthermore, such amendments (if enacted) should have effect only for future holders of the office, not for the incumbent (see CDL-AD(2018)010).

## VIII. The registration of election subjects

### ***Recognition of political parties***

108. A political party is a free association of persons, one of the aims of which is to express the political will of citizens including through participation in public affairs and the presentation of candidates to democratic elections (CDL-AD(2010)024, para 26). The Venice Commission have already adopted a number of opinions and reports on issues concerning political parties (see the compilation CDL-PI(2016)003). They serve as helpful sources of references for regulating, *inter alia*, the establishment and registration of political parties. To avoid repetition, at this point, only a few selected requirements regarding the registration and membership of political parties are highlighted.
109. At the outset, it should be noted that registration as a necessary step for recognition of an association as a political party, for a party's participation in general elections or for public financing of a party can be considered as legitimate, as long as no excessive requirements are imposed. At the same time, the registration requirements for the recognition of an association as a political party are often not the same as those for the party's participation in elections. Nevertheless, they should be mentioned in this report since the legal framework for a party's recognition may be conducive or obstructive to political parties' electoral participation.
110. Regulations concerning the establishment of political parties should be carefully considered to ensure they do not infringe the right of free association in political parties and the principle of political pluralism. In Bulgaria, for instance, the law forbids the creation of political parties along "ethnic, racial or religious lines", which is contrary at least to European standards and practices.
111. In light of the right of free association in political parties, furthermore, registration requirements concerning a minimal number of party members could be problematic. Some Venice Commission's opinions have even expressed doubts as to the necessity to establish minimum membership for political parties. In a number of CoE member states, however, a certain (sometimes burdensome) number of members are needed for an organisation to be registered as a political party, ranging from only 50 (e.g. Bulgaria), 100 (e.g. Croatia), 200 (e.g. Latvia) and 300 members (e.g. Georgia) to 1,000 (e.g. Azerbaijan, Czech Republic, Estonia), 2,000 (e.g. Lithuania), 3,000 (e.g. Albania) or 4,000 members (Republic of Moldova), and up to 10,000 members in Serbia (with the exception of national minority parties which need 1,000) or 40,000 members in the Russian Federation.
112. Also, the requirement of a national coverage for political parties might represent a serious restriction incompatible with the right to free association. According to the Venice Commission, thus, geographic distribution of party members should not be a requirement for political party formation. Nor should a political party based only on a regional or local level be prohibited (CDL-AD(2010)024, para 81). However, in some CoE member states (e.g. Republic of Moldova, Russian Federation) territorial requirements exist together with minimal membership requirements. According to the Federal Law on Political Parties of the Russian Federation, for instance, political parties need at least 40,000 members to be registered, whereby, in more than half of the subjects of the Russian Federation, a political party must have a regional branch of at least 400 members. Each other regional branch shall consist of not lesser than 150 members.
113. While restrictions on political activities of foreign citizens and stateless persons are possible under international law, a general exclusion of foreign citizens and stateless persons from membership in political parties might not be justified as non-citizens should be permitted to participate in the political life of their country of residence, at least at local level. However, the party laws sometimes only refer to a political party as a union of citizens of the respective country (e.g. Armenia, Serbia) or, additionally, allow only EU-citizens with permanent residence to be member of a political party (e.g. Estonia, Republic of Moldova). Such a restriction might be re-considered. Where permanent residents without the country's citizenship are allowed to join a political party, legislation may limit them to not exceed 50% of total membership of that party (e.g. Germany, Latvia) in order to avoid undue foreign influence.

### ***Prohibitions of political parties***

114. Prohibitions are more far-reaching than the non-registration of political parties. They not only refer to parties' legal recognition, but also to their existence. In some European states, there are no rules on the prohibition of parties. In other states, there are such rules, but these are strictly interpreted, and are only to be used with extreme restraint. In fact, there is common democratic legacy that political parties are not prohibited and dissolved, except in very exceptional cases.
115. Nevertheless, since the 1990s (successful or unsuccessful) party ban proceedings have taken place in a number of CoE member states such as Latvia, Lithuania, the Republic of Moldova, Ukraine, Croatia, France, Spain, Belgium, Slovenia, Romania, Slovakia, the Czech Republic, Germany and, most frequently, Turkey. With the exception of Turkey, however, bans on parties were related only to a few small extremist parties, mostly on the grounds of anti-democratic ideologies, promoting violence, supporting terrorist organisations, or threatening the democratic order or national unity.
116. The ECtHR in its case-law has established that any restrictions and eventual prohibition and measures to dissolve political parties must fulfil the following requirements: 1) The measures must be exceptional, justified only in extreme cases of advocating the use of violence and endangering the democratic political order or citizen's fundamental rights. 2) The measure must be proportionate to the aim pursued, being a last resort, and less radical measures should be taken, if possible. 3.) The measure must not be used arbitrarily and meet judicial guarantees of fair and due process. Taking into consideration the fundamental role of political parties in the functioning of a pluralist democracy, these principles are also reflected in Council of Europe resolutions and reports (see the texts quoted in the Venice Commission compilation, CDL-PI(2016)003).
117. In light of the view that the banning of a political party is an exceptional measure only legitimate if the existence of this party really threatens the democratic order of a country, the German Constitutional Court pronounced an interesting judgement, recently. It held that in order to prohibit a political party, it is not sufficient that its aims are directed against the free democratic basic order. Instead, the party must "seek" to undermine or abolish the free democratic basic order by active behaviour and systematic action that appears at least possible to be successful. (The use of force or creating an "atmosphere of fear" in regionally restricted areas indicate such a threat). In conclusion, the German Constitutional Court shares the view that the prohibition of a political party does not constitute a prohibition of merely views or ideology, but of threatening action (BVerfG, Judgment of the Second Senate of 17 January 2017 - 2 BvB 1/13).

### ***Registration of candidates and parties to elections***

118. Before running for elections, usually individuals and/or parties have to prove a minimum level of support by citizens. To be registered, they must often be supported by a certain number of elected representatives or voters. Alternatively, they must sometimes pay a fee or a refundable deposit for candidate registration in order to demonstrate the seriousness of the nominations. Whereas in some countries (such as, for example, Greece, Ireland, Malta, and the UK) there are only low conditions for nominating candidates, elsewhere restrictive requirements for candidate registration may have limiting effects on exercising the right to stand for election.

### ***Submission of signatures***

119. The obligation to collect a specific number of supporting signatures for candidacies is quite common. In some countries (e.g. Germany, Russian Federation) parliamentary parties can submit nominations without supporting signatures, but non-parliamentary parties or independent candidates are required to collect signatures of supporters. Elsewhere, all potential candidates or candidate lists are required to submit a certain number of signatures of voters.
120. In any case, it is generally agreed that signature requirements should not be too high. The Code of Good Practice in Electoral Matters stipulates that a maximum of 1% signature requirement in relation to the electorate of the national or constituency level where elections are held should not be exceeded (CDL-AD(2002)023rev2.cor, part I. 1.3 ii). In several elections, the required number of signatures was relatively high, sometimes even surpassing the

recommended maximum of 1%. In Montenegro, for instance, political parties and citizens' groups nominating presidential candidates had to collect supporting signatures from at least 1.5% of the registered voters.

121. It is worth highlighting a special provision that aims to overcome the underrepresentation of female candidates in single-member constituencies (see the chapter on women's representation below). In the parliamentary elections of 2019 in the Republic of Moldova, where a mixed member proportional system was applied (see the chapter on electoral systems below), male candidates needed to collect between 500 and 1,000 supporting signatures in single member constituencies, but women only between 250 and 500.
122. In some cases, there is a controversial debate as to whether voters should be allowed to sign the nomination papers of more than one candidate. Endorsing a candidate's or party's efforts to stand for election, however, is not the same as voting for that candidate or party. It rather strengthens the pluralistic nature of elections. Thus, it is in line with international good practices that a voter can sign in support of more than one candidate. Otherwise, political pluralism might be limited and voters' privacy might be affected, as authorities would have the possibility to check their political affiliation (which might have a dissuasive and intimidating effect on voters).
123. Thus, OSCE/ODIHR and the Venice Commission have repeatedly recommended removing the provision restricting citizens to being able to sign the nomination papers of only one candidate, for instance, in Bulgaria, Denmark, Republic of Moldova, Montenegro and Serbia. The same provision exists, for instance, in Belgium and Norway. In Azerbaijan, inconsistently, voters could not support more than one candidate to run in the presidential elections (of 2018), while they were allowed to do so in the parliamentary elections (of 2020).
124. With signature requirements, the checking of signatures is necessary. The process is not only time consuming, but also open to abuse. This is especially true if, by law, only a (small) sample of the signatures is checked at random (e.g. Albania, Czech Republic, and the Russian Federation). This is why the Code of Good Practice in Electoral Matters recommends that the checking process must in principle cover all signatures (CDL-AD(2002)023rev2-cor, part. I. 1.3 iii). Only once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked.
125. Moreover, it is important that minor formal errors do not automatically result in the signature lists being declared invalid. Provisions should be made to allow for the correction of any formal or minor errors in the nomination and registration process. As for the 2019 parliamentary elections in the Republic of Moldova, for instance, ODIHR electoral observers criticised that the law did not allow for the re-submission of signatures to correct errors, even if the period of candidate registration was still open. Over 10% of the total of candidate applications in single-member constituencies were rejected due to various signature irregularities, there. Also in the presidential elections of 2018 in Azerbaijan, the law did not foresee the possibility of nominees to address shortcomings. On the other hand, there must be safeguards against fraudulent methods of collecting signatures. In several countries, there were allegations of forged and suspicious signatures for supporting candidates.
126. Finally, it should be noted that, for instance, in Denmark, after a reform in 2014 the law governing party endorsement allows the digital collection of signatures for new parties wishing to run for parliamentary elections. In the meantime, the Danish party endorsement system supports both paper-based as well as e-mail endorsements. However, the respective party is required to initiate the process by sending the e-mail address of a prospective endorser to the ministry responsible. After restoring the address for a "period of reflection" of seven days, the ministry sends an invitation e-mail to the potential endorser with a link to finalise the endorsement. Each voter can only endorse one party. It should be clear that special security measures have to be taken to establish such an additional channel for collecting signatures.

### ***Registration fees and deposits***

127. Alternatively, or additionally, there are procedures whereby candidates or parties are obliged to pay a non-refundable fee (for instance parliamentary candidates in the Czech Republic) or a deposit which is only refunded if the respective candidate or party wins a minimum percentage of the vote (e.g. Estonia). According to the Code of Good Practices in Electoral Matters such procedures even appear to be more effective than collecting signatures. In fact, fees and deposit systems avoid several disadvantages of signature systems (i.e. the time-consuming process of signature collection, the non-secrecy of signatures and the need to check them). Furthermore, they are both easier and safer to handle in times of restrictions of movements, for instance, during a pandemic. However, there is one important drawback of fees and deposit systems. Compared to signature procedures, they make the qualification to stand for elections dependent on monetary resources, rather than on citizens' support. Where fee or deposit requirements are applied, thus, the amount of money and the number of votes needed for reimbursement should not be excessive (CDL-AD(2003)023rev2-cor, Expl. Report para 9). In general, however, the existing provisions in Europe seem reasonable.

### ***De-registration and withdrawal of candidates***

128. De-registration of candidates is a particular problem. While the initial registration of candidates may be positively assessed, the electoral authorities are often allowed to de-register candidates before the election, for example if they seriously violate the electoral law. It is important that the electoral legislation does not provide for overly broad grounds for de-registrations (such as, for instance, in Bosnia and Herzegovina), and that last-minute de-registration of candidates, particularly on minor technical grounds, are avoided. Above all, care should be taken that provisions allowing for de-registration of candidates are neither applied in an arbitrary fashion nor abused for political purposes.

129. Furthermore, the electoral legislation should provide clear deadlines for candidates to withdraw. Such a deadline should be synchronised with the deadline for the printing of candidate lists and ballot papers. Last-minute withdrawals, such as, for instance, in Hungary in 2018, should be avoided, particularly as they may cause serious confusion amongst the voters. In the 2017 election in Bulgaria, it was even possible that parties withdraw a candidate for their lists after election day, according to ODIHR. This is contrary to international standards.

130. No one should be obliged to stand as a candidate and to be elected. In Norway, however, a person who is entitled to vote (and who is not disqualified or exempt) is obliged to accept both nomination and election. While this provision is accepted as a tradition tied to civic duty and, in practice, largely obsolete, it should be re-considered.

## **IX. Party and campaign financing**

131. It is commonly accepted that an effective election campaign needs sufficient resources. Parties and candidates would not be able to convey their programmes to the electorate without financial means. Therefore, political funding is considered a necessary condition for elections in modern democracies. Nevertheless, it should be clear that money may also lead to corruption and to undue political influence in the electoral process. Thus, to prevent corruption and undue political influence it is important that party and election legislation contain clear and comprehensive regulations on party and campaign finances.

132. Admittedly, regulating party and campaign finances is a difficult task. There is a wide variety of regulations in operation throughout Europe and other world regions. Regulations may refer to party funding as a whole and/or to electoral campaigns. Laws may provide for public or private funding, or for both. There are systems with contribution and expenditure limits, and others without them. There may be bans on certain types of contributions, as well as on certain types of expenditure. Moreover, electoral and party laws differ considerably with regard to the disclosure of party and campaign funds as well as with regard to public access to the disclosed information.

**Public funding**

133. The allocation of public funding in a clear, objective and fair manner aims to ensure that all political contenders have sufficient resources to reach out to voters and, thus, contributes to the levelling of the playing field for candidates and parties. At the same time, it is an essential tool in the fight against corruption, and reduces the dependency of political parties on wealthy groups or individuals. In almost all European states, political parties receive direct public funding, either on a regular basis or, additionally, related to electoral campaigns. Exceptions to the rule are Belarus, starting with the 2016 parliamentary elections, as well as Azerbaijan, Italy, Malta, Monaco and Switzerland. In Ukraine, regular public funding for political parties was only recently introduced in 2015.
134. Criteria for being eligible to receive public funds are usually the representation in parliament or a certain share of seats and/or votes in previous elections (seldom in coming ones). If public funding is provided after an election based on the final results, pre-election disbursement of funds best ensures the ability of (new) parties to compete on equal conditions (CDL-AD(2010)024, para 183). Where a minimum threshold (e.g. of seats or votes) is required for funding, it should not be unreasonably high in order to enhance political pluralism and include smaller parties. While in CoE member states usually all parliamentary parties are qualified for public funding (as demanded by the Code of Good Practice in Electoral Matters, Expl. Report para 111), financing is also extended to non-parliamentary parties if they have proved a minimum level of support.
135. As for the distribution of public funding, “strict” or “proportional” equality should be applied (CDL-AD(2002)023rev2-cor, I.2.3 and Expl. Report para 111). In practice, it is rather uncommon that all public funding is distributed in equal shares to all those political parties participating in elections. If strict equality is applied, it is usually not related to all competing parties, nor to the total amount of public funding. In most cases, the total (or large parts) of public funding is distributed proportionally to seats and/or votes received by parties in previous elections or expressed on the basis of the current election results.
136. If public funding is provided, however, it must also be ensured that political parties do not become over-dependent on state funding. In the case of Serbia, for instance, it was recommended that the large amounts of public funds made available to political parties be reconsidered (CDL-AD(2014)034, para 29). Preferably, public funds should not be the only source of income of political parties competing in elections. Thus, a good balance of public and private funding should be found.

**Private funding**

137. According to the “Guidelines and Report on the Financing of Political Parties” (CDL-INF(2001)8), donations from foreign states or enterprises (but not from nationals living abroad) must be prohibited. Correspondingly, the CoE’s Committee of Ministers in its Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns (Rec(2003)4) provides that states should limit, prohibit or otherwise regulate donations from foreign donors.
138. Due to different reasons rooted in the political and constitutional experiences of the respective countries, the majority of CoE member states prohibit or substantially limit foreign donations to political parties (and, to a lesser extent, to candidates) (see CDL-AD(2006)014). Such prohibitions may be considered necessary in a democratic society to ensure, inter alia, the fairness and integrity of electoral competition and the responsiveness of elected representatives to the national electorate. In the light of political cooperation at the European level, however, a less restrictive approach might be considered, at least within Europe.
139. Contrary to the above-mentioned guidelines, several CoE member states do not impose any restrictions on foreign contributions (e.g. Austria, Belgium, Denmark, Italy, Luxembourg, the Netherlands, San Marino, Sweden). Irrespective of the specific reasons for not doing so, the lack of restrictions might be not seen as problematic as long as there is no necessity to prevent undue foreign influence on political parties and electoral campaigns. Counterexamples include some

Central and Eastern European countries where the processes of nation building and/or democratisation in the 1990s were accompanied by concerns of undue foreign influence on the national political development, justifying prohibitions.

140. Other limitations may also be envisaged. Bans or (amount) limits on anonymous donations to political parties aim to prevent a situation that, free from public scrutiny, anonymous donors wield undue influence on party and electoral competition. In most CoE member states, there are in fact bans or (amount) limits on anonymous donations to political parties and, to a lesser extent, to candidates. Exceptions include, for instance, Denmark, Liechtenstein, Monaco, and Switzerland.
141. Furthermore, the legislation in a number of countries provides for a ban or limitations on corporate donations to political parties (and to candidates). Parties and candidates may not be allowed to receive donations from legal persons (e.g. Belgium, Estonia, Lithuania, Latvia, Luxembourg, Poland, Slovenia) or corporate interests (e.g. France). Moreover, in the majority of the CoE member states there are bans or limitations on donations on (semi-)public corporations to political parties (and candidates).
142. While in several States (e.g. Austria, Denmark, the Netherlands, and Norway) limits to private contributions do not exist, they may be imposed to prevent distortion of political competition in favour of wealthy interest and, if necessary, to combat corruption and undue political influence. Such limitations have been shown to be effective in minimising the possibility of corruption or the purchasing of political influence (CDL-AD(2010)024, para 175). Thus, it has to be welcomed that in the majority of CoE member states, there are limits on contributions for legal and/or natural persons to political parties (and candidates). However, the limits on private funding should not be too high to be effective, as OSCE/ODIHR and the Venice Commission make clear in the case of Serbia (CDL-AD(2014)034, para 28).
143. In order to ensure equality of opportunities for electoral contestants, moreover, “electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of votes concerned” (CDL-INF(2001)8, para 8). In fact, there are limits on the amount of total or electoral expenses of parties and/or candidates in a number of European countries (e.g. Austria, Belgium, Bulgaria, Italy, Latvia, Lithuania, North Macedonia, Portugal, San Marino, Slovenia, and Spain). However, in more than half of CoE member states, there are no limits on the amount a party can spend. In order to prevent increasingly high levels of election spending and to ensure equality of opportunity, with respect for democratic participation and fundamental rights, including freedom of association and expression, it might be considered establishing by law reasonable limits to campaign expenditures, if not existent.
144. In order to ensure transparency and accountability of the electoral process, consideration could also be given to providing regulations for any campaigning by third parties. The term “third party” refers to individuals, associations and organisations not legally tied to any candidate or political party, which, in the course of an election, campaign in support of or in opposition to a candidate or a political party. While third-party involvement in itself may be seen as expression of citizens’ involvement in politics, with respect for democratic participation and fundamental rights, including freedom of association and expression it should be transparent and limited to prevent the circumvention of the rules on financing and in particular the prohibition of financing by legal persons. While in some CoE member states third parties are banned from (indirect) campaign spending or spending limit exists, in almost all cases third party activities are not appropriately regulated.

#### ***Reporting on party and campaign finances***

145. The Code of Good Practice in Electoral Matters places a strong emphasis on the transparency of the funding of political parties and electoral campaigns (CDL-AD(2002)023rev2-corr, Expl. Report paras 108-109). Thus, political parties should be required to keep records on party finances and, particularly, on all (direct and indirect) campaign-related contributions and expenditures, subject to control by specific public organs and available for public review. Many recommendations – by international observers or the Group of States against Corruption (GRECO) of the CoE – aim to improve accountability and transparency of party and campaign

financing (e.g. Armenia, Malta, Serbia, and Switzerland). In fact, legal gaps can be easily abused for circumvention of the principles of financial transparency and accountability, thus, impeding equal conditions for the campaign and facilitating corruption. At the same time, care should be taken to ensure that party and campaign financing provisions are not so complex that they impose a cumbersome burden on smaller parties and independent candidates.

## X. Electoral campaigns

146. As for electoral campaigning, the basic idea is that political parties and candidates should act on a “level playing field”. According to the Code of Good Practice in Electoral Matters, equality of opportunities should be ensured between different parties and candidates, at least as far as possible. It should prompt the state to be impartial towards parties and candidates and guarantee equal campaign opportunities for election contestants. All contending parties and candidates must have the freedom and possibilities to convey their programmes and aims to the voters throughout the country.
147. Thanks to national and international efforts, in a number of countries electoral law amendments have made significant improvements with regard to provisions that aim to ensure equal campaigns opportunities for election contestants. However, in several cases, electoral campaigns are under-regulated (e.g. Cyprus, North Macedonia) or even unregulated (e.g. Austria, Norway) in the electoral law. Even more important, however, are problems of implementation. Unfortunately, in some elections (e.g. in Azerbaijan) there was a lack of genuine competition, and voters were not provided with a meaningful choice due to a lack of real political debate.
148. It should be noted that restrictions that allow campaigning solely in the official language are contrary to international standards. However, the electoral law in Bulgaria restricts campaigning to the Bulgarian language only, which affects the ability of some contestants to communicate with the electorate (PACE, Doc. 14294). In contrast, candidates were able to use minority languages in campaign materials and while campaigning, for instance, in Ukraine.
149. The Committee on the Rights of Persons with Disabilities has emphasized the need to ensure that electoral campaigns are fully accessible to voters with disabilities and has recommended that states facilitate assistance for those persons to be electoral candidates (CRPD/C/SWE/CO/1). Much remains to be done here in order to provide persons with disabilities with the required support. In cooperation with disability organisation, efforts should be intensified to promote the involvement of persons with disabilities also at this stage of the electoral cycle.

### ***Misuse of state positions and public resources for campaign purposes***

150. “Today, one of the most important and recurrent challenges observed in Europe and beyond, is the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon in many European countries, including countries with a long-standing tradition of democratic elections” (CDL-AD(2016)04, para 4). As part of an established political culture, actually in many countries, incumbents and civil servants consider the practice of using administrative resources often as a normal part of an electoral process, and not as illegitimate action vis-à-vis opponents in elections (for local elections see also: CG31(2016)07, CG 32(2017)12).
151. In a number of recent elections, the line between state activities and political campaigning was even completely blurred with government facilities and public resources openly misused for campaign purposes. The overt misuse of incumbencies, state positions and public resources have been regularly addressed by international electoral observers in some recent elections, for example in Albania, Azerbaijan, Bosnia and Herzegovina, Georgia, Hungary, Republic of Moldova, Poland, Russia, Serbia, Turkey and Ukraine. Also the use of financial incentives (social assistance programmes, salary increases, bonuses etc.) as campaign tools was the subject of widespread criticism levelled against incumbents there.



152. The Venice Commission and ODIHR have established “Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes” (CDL-AD(2016)04). They include a number of measures to prevent the misuse of administrative resources and to prevent public authorities from taking unfair advantage of their positions, including by holding official public events for electoral campaigning purposes. Apart from a thorough legal framework, including effective prohibitions, remedies and sanctions, also non-legal mechanisms are recommended. They shall raise awareness and increase political efforts aimed at preventing the misuse of state positions and public resources during electoral processes.
153. As a matter of course, it is completely unacceptable that government officials exert pressure on public employees to attend campaign meetings of and to vote for the ruling party and their candidates, as routinely happens, for example, in Azerbaijan.

### ***Restrictions on political rights***

154. It cannot be emphasised enough that fundamental freedoms and political rights must be guaranteed to allow genuine democratic elections. While this is the case in most European countries, there are exceptions to the rule: Not only in Belarus, but also in some CoE member states freedoms of liberty, expression, association and assembly have not been sufficiently respected before, during and after elections.
155. As for the early parliamentary elections in Azerbaijan of 2020, for instance, the PACE observation mission stated that, despite a high number of candidates, the campaign was largely indiscernible as a result of a politically controlled environment. While the authorities officially claimed their political will to organise elections in a free and fair atmosphere, serious concerns were expressed regarding the respect of fundamental rights and freedoms there (PACE, Doc 15090). Also in the case of the presidential and parliamentary elections of 2018 in Turkey, to mention another example, “the curtailing of fundamental rights and freedoms introduced under the state of emergency, the high number of arrests of politicians and journalists, together with the ongoing security operations in the south-east of the country have limited the space for democratic debate and for the free expression of a plurality of views, which are essential to enable citizens to make an informed choice on polling day.” (PACE, Doc. 14608, para. 12).

### ***Negative campaigning and hate speech***

156. Negative campaigning is a worrying trend of electoral campaigns worldwide. Also in a number of CoE member states, the campaign atmosphere has been lately dominated by political polarisation, defamation or denigration of political opponents and negative campaigning. Extreme examples recently include Georgia, Hungary, Poland and Serbia. Some political parties even used inflammatory and racist rhetoric, targeting ethnic, religious or other minorities in the respective country. Hate speech against political opponents and national minorities is especially grave and reprehensible.
157. “Dirty campaigns” and offensive language are, of course, not desirable, but it might be problematic to prohibit them by penal law. While in a number of CoE member states insult and/or defamation remain criminal offences, punishable with fines and/or imprisonment (e.g. Albania, Austria, Croatia, Germany, Greece, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Switzerland, and particularly broad, in Turkey), the UN Human Rights Committee states that defamation laws must be crafted with care to ensure that they do not serve to stifle freedom of expression. Care should be taken, inter alia, to avoid excessively punitive measures and penalties. Moreover: “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty” (CCPR/C/GC/34, para 47).
158. In fact, criminal prosecution for allegedly insulting or defaming politicians and state officials may undermine freedom of expression and can be easily abused for political purposes. Particularly in countries with a poor profile of freedom of expression and media, such provisions are often used to silence critics, while incumbents and the ruling party continue to defame

political opponents and journalists critical of the government. Thus, international observers frequently call for the repeal of provisions which criminalise insult, libel and/or slander in favour of civil remedies and non-pecuniary measures designed to restore harmed reputation. Following such recommendations, defamation was decriminalised in Romania in 2006.

159. In contrast, taking legal measures against hate speech is a human right obligation that arises from human right treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, Art. 4) and the International Covenant on Civil and Political Rights (ICCPR, Art. 20.2). In fact, in a number of CoE member states (e.g. the Czech Republic, Lithuania, Norway, Romania, Slovenia, and as “*Volksverhetzung*” in Germany) national laws prohibit hate speech and/or incitement to hate and violence. In times of usually hot electoral campaigns, however, even in the case of hate speech legal sanctions should be applied very cautiously and reluctantly, particularly against electoral contenders and their supporters. There are a number of less invasive – administrative, political and educational – measures available to address legally and morally reprehensible speech. For instance, electoral commissions may facilitate the development of codes of conduct for electoral contestants and/or the media. Much can also be gained by documenting hate speech in a systematic manner, and if electoral stakeholders make clear and unanimous statements against hate speech and intolerance (instead of reinforcing them). Just as important are educational campaigns. The “No Hate Speech Movement” led by the Council of Europe Youth Department, for example, is a youth campaign seeking to mobilise young people to combat hate speech and promote human rights online.
160. Curbing hate speech on social media and internet platforms is particularly challenging, not only from a technical point of view, but also from a human rights perspective. While states have a positive obligation to prevent undue interference with civil and political rights by third parties, undue online regulation can easily result in undermining freedom of expression on Internet. In particular, the blocking and erasing of illegal content on the Internet in order to combat hate crimes must be grounded on precise and narrow definitions of the offences, be necessary in a democratic society and strictly respect the proportionality principle. Furthermore, effective judicial review by independent and impartial courts must be guaranteed.

### ***The role of the media in election campaigns***

161. Despite the growing importance of the Internet and social media (see below), broadcasting and print media are still an important way for citizens to find out about elections and electoral choices. In most countries, television has remained the primary source of information. As a platform for the candidates to debate with one another and communicate their message to the electorate, thus, traditional mass media still plays an important role in the campaign period. The role is two-fold: Firstly, the media should grant candidates and parties direct access to the electorate by allowing political campaigning. Secondly, the media should inform the electorate by covering candidates, parties, and political issues relevant to elections in news, reports on campaigns and special information programmes.
162. While campaign coverage is sometimes regulated in detail by the electoral law (e.g. Albania, North Macedonia), in a number of countries the provisions of the electoral law concerning media during election campaigns are rather brief (or non-existent). Detailed provisions, though, are often found in media laws or in rules established by election management or media supervisory bodies. Thus, a comprehensive analysis of the media’s role in elections should not only refer to electoral laws, but also to other relevant regulations.
163. Usually, audio-visual media are subject to a higher degree of regulation than print media, while the conduct of social media during elections has so far often remained poorly or not regulated. In some countries, such as Austria, Finland and Sweden, the campaign coverage of even traditional media is largely self-regulated, but appears to function well, according to international observers.
164. Media monitoring is an effective tool to measure how electoral contestants are treated by the media (and how the media are treated by the politicians). The establishment of a neutral supervisory body to monitor and regulate the media and to deal with complaints about media

behaviour during the campaign can be an important step in implementing the law and promoting free, equal, and fair access to broadcasting. Such a body might be a permanent media regulatory body by the state, a monitoring unit within the election management body, a body specifically created to supervise the election campaign, and/or a self-regulatory media body. In some cases, however, the lack of equipment and trained staff seriously hampers the efficiency of media monitoring (e.g. Albania). Furthermore, there is a dire need to expand institutional capacities for monitoring also internet platforms and social media during electoral campaigns.

### ***Equal access to media for campaigning***

165. While country-specific regulations differ considerably, in almost all CoE member states public broadcasters are obliged to provide equal free airtime to electoral contestants, particularly on television (except, for instance, Austria, Sweden, and Switzerland). The allocation of free airtime is integral to ensuring all parties, including small ones, are able to present their programmes to the electorate at large. While the allocation of free airtime on state-owned media is not legally mandated through international law, it is strongly recommended that such a provision be included in relevant legislation as a critical means of ensuring an informed electorate (CDL-AD(2010)024, para. 147).
166. When made available on public broadcasts, free airtime should be allocated to all parties on a reasonable basis and consistent with the principle of equality. In order to ensure equal opportunity, laws and further regulations, thus, should provide equal treatment with regard to time and space (as well as with regard to the timing and location of such space). Equality may be strict (e.g. Georgia) or proportional (e.g. Germany), depending on whether political parties are treated with or without regard to their present strength in parliament or among the electorate (CDL-AD(2002)23rev2-cor, Expl. Report para 18). In Georgia, however, political parties not qualified for state funding and independent candidates were only entitled to an unspecified amount of free airtime in public media, according to ODIHR.
167. While it is commonly agreed that parties and candidates should have direct access to public broadcast media, there is some debate as to whether also private broadcasters can be obliged to include (free and/or paid) political campaigning by all electoral contestants. The Code of Good Practice in Electoral Matters emphasised that, in conformity with freedom of expression, legal provisions should be established to ensure that there is a minimum access to privately owned audiovisual media with regard to the election campaign and to advertising for all participants in elections (CDL-AD(2002)23rev2-cor, part I. 2.3c). In fact, private broadcasters are sometimes asked to meet such obligations. However, in several countries, legislation provides no or only general provisions concerning non-discrimination in the advertising practices of private media (e.g. Andorra).
168. Apart from free airtime, paid political advertising is another opportunity for the political parties and candidates to disseminate their message through the media. In a number of countries (e.g. Andorra, Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Malta, Norway, Portugal, Spain, Switzerland, and the UK), however, paid political advertising is prohibited on public and/or private television (and sometimes radio), but often (e.g. in France) allowed in print media in the period leading up to elections. Several other countries (e.g. Montenegro, Poland, Sweden, Turkey, and Ukraine) permit paid political advertising also on television during campaigns.
169. The Venice Commission is aware that there is no European consensus on how to regulate paid political advertising in broadcasting. Limits, thus, have to be seen against the legal and political background of each particular state. Considering the situation in Hungary, however, the Venice Commission suggested amending legislation in order to provide not only for free but also for paid political advertising in private broadcast media (CDL-AD(2015)015, para 97-103). However, if, in the opinion of judicial authorities, there is a body of evidence that national, regional, or local conditions make it financial spending limits difficult to enforce in practice, like in Ukraine, consideration might be given to prohibiting paid political advertising in broadcast media, while ensuring that free airtime for all electoral contestants is allocated effectively (CDL-AD(2015)025).

170. If paid campaign advertising is allowed in public and/or private media, access to it must be guaranteed on an equal basis to all electoral contestants by offering consistent and equivalent rates, and it should be clearly labelled, which is not always the case (e.g. Bulgaria, Ukraine). In Ukraine, for instance, it is not uncommon that media outlets publish political content in exchange for payment during election periods. Hidden political advertisements, being indistinguishable from editorial coverage, however, should be prohibited and prevented. Moreover, with respect for freedom of expression, limits to the quantity of paid airtime or, in the case of print media, of paid pages may be permitted to avoid political advertising being extensively used by parties and candidates with large amounts of resources.
171. Moreover, given the considerable amount of unregulated online campaigning and advertising on internet platforms and social media, CoE member states must urgently adapt their regulations for electoral campaigns and political advertising to the online environment (see below). Positively, some social media companies have voluntarily introduced measures to improve transparency for voters by marking paid political advertisements and enabling voters to know the source of paid advertisements (e.g. in Spain and the UK).

### **Media coverage**

172. Democratic elections depend largely on the ability and the willingness of the media to work in an impartial and professional manner during electoral campaigns. The failure of the media to provide impartial information about electoral campaigns and contestants is still one of the most frequent shortcomings arising during elections. In a number of CoE member states, contrary to the law and other regulations, the media provide neither quantitatively nor qualitatively for a balanced coverage of parties and candidates.
173. Equality of opportunity entails a neutral attitude by state authorities with regard to coverage by publicly owned or controlled media (see CM/Rec(2007)15). In most CoE member states, public broadcasters are legally obliged to provide objective, impartial and balanced coverage in their news and political programmes, particularly during election campaigns (see CDL-AD(2013)021, para 48). Whilst public broadcasters are often an important source of quality-based programmes, in several countries they show, however, a clear pro-governmental bias. In some countries, incumbents' and ruling parties' activities enjoy an extensive, uncritical and at times promotional coverage in public and government-affiliated private media (e.g. Hungary, Poland, Russia, Serbia, and Turkey).
174. Although private broadcasters are commercial enterprises, they should also abide by professional standards and ethics. In some CoE member states not only public broadcasters, but also private ones are required to provide balanced and unbiased coverage of electoral contestants. However, there are often serious concerns about the lack of editorial autonomy from political and business interests. In some cases, private media outlets are – politically and financially – strongly associated with political and economic elites (e.g. Armenia, Bosnia and Herzegovina, Ukraine). Furthermore, in some instances, the polarisation of major media outlets undermines the requirement to provide fair and impartial coverage of the campaign (e.g. Georgia).
175. It should be noted that private print media are generally entitled to a larger degree of partisanship than public print media and broadcasting media. Usually private print media are not bound to specific election regulations concerning the allocation of space among electoral contenders. However, journalists from private print media should adhere to professional standards and ethics, too (CD-AD(2009)31, para 58).

### **Restrictions on freedom of the media**

176. Free media are a *condicio sine qua non* for providing voters with diverse information concerning elections. Thus, it is important that freedoms of expression, media and information are constitutionally and legally guaranteed and not undermined in practice. In fact, in most CoE member states the media landscape is pluralistic, and the media act (relatively) free from undue restrictions.

177. However, there are some states in which the media's ability to operate freely is seriously restricted. In several countries, anti-terror and anti-extremist legislation and a restrictive regulatory framework seriously challenge the freedom of media and induce self-censorship (e.g. Azerbaijan, Russia, and Turkey). In the case of Azerbaijan, the Commissioner for Human Rights of the CoE remained "particularly concerned about the lack of pluralism in the country's media and arbitrary interferences with media freedom" (CommDH(2019)027, para 5).
178. Moreover, in several CoE member states, there is a hostile atmosphere towards the media in general and during electoral campaigns. Verbal and even physical attacks against journalists by politicians and/or certain groups in society, including incumbents and their allies, are a worrying trend in countries such as, for instance, Bosnia and Herzegovina, Latvia, Serbia, and Ukraine. Furthermore, in some cases, libel suits are frequently filed to "tame" critical journalism (e.g. Malta, Italy, and, most frequently, Turkey). An atmosphere of fear and self-censorship has resulted in the lack of critical reporting in several countries.

### ***Internet platforms and social media***

179. The internet and social media have fundamentally changed the nature of electoral campaigns. Voters have unprecedented access to information about elections and electoral contestants, and they are able to express their political views to a large online audience. Furthermore, voters can easily interact with candidates and become actively involved in online campaigns. Candidates and political parties are using internet platforms to present their agenda to the electorate and to mobilise political support at low cost. On a large scale, they can even deliver individualised "target" messages in order to attract voters (see CoE study DGI (2017)11). At the same time, however, the use of online media poses new challenges to uphold the principles of fair and clean electoral campaigns.
180. Established rules on electoral campaigning, for example with regard to the regulation of political advertising, are often not adapted to the largely unregulated Internet, opening the door for non-transparent activities from domestic and foreign actors. Responsible digital political advertising, thus, requires action from political contestants (to uphold ethical standards), social media platforms (to improve transparency of political advertising on their platforms) and public authorities (to adopt laws and regulations for political advertising to the online environment). The latter includes a clear definition of political advertising and obliges social media platforms to make political advertising information public (see, for example, Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age, 2020).
181. Creating and using accurate profiles of users for electoral campaigning and political advertising represent a high risk to the right to privacy and personal data protection. By applying sophisticated data-mining techniques, voters' personal data are collected and processed for electoral purposes usually without their consent and in the absence of legal entitlement. Furthermore, the use of personalised ads and messages, while the target users do not detect personalisation, may, intentionally or not, manipulate the voter's view. Thus, there is a need for further regulating and for a limitation of the creation and use of individualised profiles for electoral purposes.
182. Internet platforms and social media are increasingly used for "doxing" operations (i.e. hacking and leaking of non-public information), malinformation operations (i.e. online threats, targeted harassment and hate speech) as well as disinformation operations (i.e. spreading false or misleading information) which aim at harming electoral contestants and undermining the integrity and credibility of elections. Spreading mal- and disinformation and pushing polarised messages via online media may even severely aggravate divides and conflicts in society before, during and after elections. In a number of cases, organised cyber troops, consisting of government, military or political party teams, disseminate non-public or untrue information to manipulate public opinion before elections (CDL-AD(2019)016, para. 40).
183. PACE in its Resolution 2254 (2019) on media freedom as a condition for democratic elections called on member states to implement effective strategies to protect the electoral process from disinformation and undue propaganda through social media. It proposed measures such as developing specific regulatory frameworks for Internet content at election times, and the

establishing of a clear legal liability for the social media companies that publish illegal content harmful to candidates – while ensuring that sanctions do not lead to self-censorship of opponent opinions and critical views and by avoiding extreme measures such as the blocking of entire websites. PACE further called on organisations in the media sector to develop self-regulation frameworks with professional and ethical standards for their coverage of election campaigns, and on internet intermediaries to develop fact-checking tools and to co-operate with civil society and organisations of all political affiliations specialising in the verification of content.

184. At the national level, several states have recently adopted legislation to regulate online content. In Germany, for instance, the “Network Enforcement Act” (in effect since 2018) obliges internet intermediaries (such as Facebook, Instagram, Twitter or YouTube) to remove following complaint any illegal content designated as such in the criminal code (including insult and defamatory offences and sedition). While the German law is not specific to electoral campaigns and is restricted to criminal offences committed online, the French parliament, for instance, adopted a law to combat manipulation of information during electoral periods, which aims to identify and stop deliberate allegations of a false or misleading fact on an online platform in the three-month period before an election (CDL-AD(2019)16, paras 99-100).
185. It should be noted, however, that prohibitions of the dissemination of “false news” – in contrast, for instance, to the prohibition of hate speech – is usually incompatible with international standards for restrictions on freedom of expression (see also Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda of 2017, adopted by special rapporteurs and representatives on freedom of expression and/or the media of the United Nations, the OSCE, the Organization of American States and the African Commission on Human and Peoples’ Rights). Thus, alternative means need to be employed to encounter online disinformation, such as promoting media literacy programmes and developing tools for empowering users to identify (e.g. flagging, labelling, blacklisting) and counter (e.g. fact-checking, factual corrections) disinformation.

#### ***Silence periods and publication of opinion polls***

186. “The silence period, or so-called day of reflection, is a short period of time (usually a day) preceding the elections to allow voters to absorb and digest all the information received during the election campaign and to make a choice without pressure” (CDL-AD(2009)031, para 64). In practice, most CoE member states prohibit any electoral campaigning during this short period of time. However, in some countries, the electoral legislation does not foresee a campaign silence period, and campaigning on election day is not prohibited except in the media and/or inside or near polling stations (e.g. Czech Republic, Denmark, Georgia, the UK, and, for the first time, in the Republic of Moldova 2019). In some other states (e.g. Cyprus, Malta, Ukraine), campaign silence provisions are not always respected, particularly not on social networks. The shift of electoral campaigning to online platforms has made it more difficult to monitor the observance of such provisions. This is all the more difficult since many violations of election silence originate from websites operating outside a particular state’s jurisdiction.
187. Since election-related opinion polls may have a significant effect on the vote itself, the publication and broadcasting coverage of opinion polls results should be regulated, providing, for example that the source and other relevant information are included. Usually it is also forbidden to publish the results of opinion polls and projections immediately before and on election day (before the closure of the polling stations). Excessively long bans on the publication of opinion polls before elections, however, should be avoided. Prohibiting the publication of opinion polls during the last seven days before the 2018 presidential elections in Cyprus or even the last 14 days before the 2019 presidential elections in Slovakia, may be considered problematic with regard to voters’ freedom of information. On the other hand, it is difficult to control the publication of opinion polls and projections on the Internet and in social media shortly before or on election day, particularly if the polls are “faked”.

## **XI. Election observation**

188. Electoral observation plays an important role in ensuring transparency and building trust in elections, particularly when elections are held in a highly politicised environment. Thus, the guarantee of domestic and international observers' rights in the electoral law has been repeatedly demanded in cases where they are missing. Such provisions might also be adopted in many new or established democracies, such as Andorra, the Czech Republic, Germany, Lithuania, Portugal, San Marino, Sweden and Switzerland, which have no explicit (or only insufficient) regulations on international and domestic electoral observation in their electoral laws (even if they allow for observation).
189. According to the Code of Good Practice in Electoral Matters, it is best to make the observation process as broad as possible, including party observers, non partisan observers and international observers (CDL-AD(2002)023rev, Expl. Report para 87). However, sometimes electoral administration bodies approve only certain types or limited lists of observers, leading to an exclusion of others. In Austria, for instance, the Parliamentary Election Act allows for election observation by OSCE observers, but not by domestic citizen observers. Due to the lack of such a provision, the citizen election observation organisation "wahlbeobachtung.org" was denied accreditation in Austrian elections. In Hungary, no citizen election observation is permitted, either. In Greece, only party agents from a maximum of three parties per polling station are allowed to monitor voting and counting operations. In cases where more party observers were present, a lottery was organised in the 2019 parliamentary elections, which is odd by international standards.
190. In some countries, there is also a worrying policy of selectively inviting government-friendly international observers and of selectively accrediting government-friendly domestic observers with the aim to legitimise elections which fall short of democratic standards. There were concerns about the political affiliation or the lack of independence of some citizen observer groups, for instance in Azerbaijan.
191. Competent, credentialed, and independent domestic and international observers that operate in accordance with international election monitoring standards should be given the widest possible opportunity to observe the elections. Observation cannot be confined to voting and counting procedures on election day (like in the UK), but must include the whole electoral process. However, the observers' right to observe all stages of the electoral process is not always guaranteed by law or in practice. Furthermore, election observers need to adapt to new challenges related to the introduction of new technologies and the growing impact of digital media. Whilst media monitoring is a firm component of long-term electoral observation, it mainly focusses on broadcast and print media. There have so far been few guidelines and experiences how to best monitor electoral debates and campaigns on social media and online platforms.

## **XII. Election day**

### ***The polling stations***

192. With the exception of a few countries and exceptional circumstances (such as a pandemic), most voters still cast their vote in person at a regular polling station on election day. Evidently, there should be enough polling stations throughout the country in order to accommodate the number of assigned voters in an orderly way (which is sometimes not the case). Polling stations are preferably located in public places (like schools and other public buildings). They should be easy to find, accessible to all voters, and should be free of campaign materials. If possible, polling stations should not be set up in military units (as was the case, for instance, in Georgia, before the 2016 electoral amendments). Instead, members of the military should preferably cast their vote in polling stations close to their duty stations or at their places of residence, if possible.

193. Under the CRPD, state parties have a positive obligation to take the necessary measures to guarantee persons with disabilities the possibility to exercise their right to vote. Thus, state parties of the CRPD must ensure that the whole electoral process is accessible to all persons with disabilities (see CRPD/C/GC/6, 2018). Despite efforts made to increase accessibility to voters with physical disabilities, in a number of CoE member states' elections still a substantial proportion of polling stations has remained unsuitable for independent access by voters with disabilities and/or the layouts have not always been suitable for their requirements. Thus, the election management bodies and other relevant institutions should take further measures to improve the polling stations' accessibility and suitability in order to allow voters with disabilities to vote independently. If necessary, assisted voting should be provided, according to the law (see below).

### ***Persons present in polling stations***

194. The electoral laws or instructions given by electoral management bodies should clearly regulate which persons are authorised to be in the polling stations. Besides voters and the polling officials, authorised persons are usually candidates' and parties' observers/agents, citizen observers, international observers, and the media. Furthermore, there should be clear legal and administrative instructions on how to behave for those persons inside the polling station in order to prevent that even authorised persons unduly influence the voting and counting process.

195. Police and security forces should not routinely be inside (or in the immediate vicinity of) the polling station as this may have an intimidating effect on voters, especially in countries with a rather poor democratic tradition or in (post-)conflict situations. As a rule, the police should only be allowed to enter the polling station when requested to do so by the chairperson of the respective electoral commission so as to secure order. Furthermore, police and security forces should carefully avoid behaving in an intimidating manner towards voters, as was the case, for instance, during the 2018 presidential and parliamentary elections in Turkey. This underlines the importance of political commitment, clear instructions and appropriate training of electoral officials on the one hand, and police and security forces on the other.

### ***Voter identification***

196. The process of voter identification is of paramount importance for the overall integrity of the electoral process. Before voting, voters are required to prove their identity, usually through identity or specific voters' documents. It is important that the electoral legislation and instructions by the electoral management bodies clearly specify what kind of identity document is valid for the purpose of voter identification. Special care should be taken with regard to groups that may lack the necessary identity documents, such as, for example, IDPs or specific minority groups. Especially in those countries where "multiple voting" is a well-known problem, not effectively verifying voters' identities is considered to be a severe problem. A number of states in Latin America and Africa, thus, use biometric data (e.g. fingerprints, facial recognition, etc.) to ensure the unique identification of voters and prevent multiple voting. In contrast, CoE member states are quite reluctant to do so, in view of the risks for data protection, secrecy of the vote and "digital twins".

197. Following confirmation of the voter's identity, the next step is usually to check whether the voter has the right to vote at that particular polling station. Such a check is normally done by paper-based voter lists or by digital voter lists, such as e-poll books, local electronic voter registers and/or computers connected to nationwide electronic voter lists, like in Lithuania. However, the problem of voters coming to polling stations without their names being on the voter register, either because they went to the wrong polling station or because the voter lists were in a sorry state, was still reported in a few CoE member states. Given the poor quality of regular voter lists in some countries, supplementary lists might be necessary, but this is far from ideal.

### ***The ballot papers***

198. The traditional form of ballots are paper ballots. Usually single integral ballot papers (so-called "Australian ballots") are used which list all parties and candidates contesting in the constituency and have to be marked by the voters, according to the law. Following the



determination that a voter is entitled to vote at the polling station, the ballot papers should, as a rule, be immediately issued to the voter by an authorised polling official. It is strictly forbidden by law that voters receive more ballot papers than they are entitled to have. Not acceptable is the practice, still observed in some regions, that extra ballots are given to citizens after showing identity documents of their non-present relatives. In order to prevent an excessive amount of ballot papers being in circulation, the number of ballots printed and distributed should be adjusted to the needs of each election and polling station.

199. However, a few countries in Europe (France, Spain, Sweden) and elsewhere (e.g. Argentina, Panama) do not use a single, integral ballot paper, but separate ballot papers for each candidate or party in the constituency. In Sweden, for instance, voters can pick up as many ballots for different parties as they wish, usually from a table in the polling station, and proceed to the voting booth. There, voters place the ballot paper of their preferred party in an anonymous envelope (and discard unused ones), before placing the envelope in the ballot box. If only the preferred ballot paper (and not a whole set of ballot papers), however, is picked up outside the voting booth from a table in plain view of voters and election officials, the secrecy of the vote can be at risk. Alternatively, ballot papers may be laid out inside the voting booth, such as in Spain. Nevertheless, whereas it is allowed that ballot papers are printed by political parties and also distributed outside the polling station, a large number of ballot papers may circulate throughout the country. Thus, such a model is particularly not recommendable for emerging and new democracies because it makes it more difficult to avoid open voting and, thus, vote buying.
200. In order to safeguard the ballot, in most countries single integrated ballot papers bear an official stamp and/or the signature of an authorised polling official. According to the Code of Good Practice in Electoral Matters, the signing and stamping of ballot papers, however, should not take place at the point in which the ballot is presented to the voter because, theoretically, the stamp or signature might mark the ballot in such a way that the voter could be identified later during the count (CDL-AD(2002)023rev2-cor, Expl. Report para 34).
201. Even more important is that the ballots are not stamped by a polling official *after* the voter has made her or his choice. In order to ensure the secrecy of the vote, the Code of Good Practice in Electoral Matters clearly points out that the voter should collect her or his ballot paper and no one else should touch it from that point on (CDL-AD(2002)023rev2-cor, Expl. Report para 35). Thus, consideration should be given to removing the requirement for the polling officials to stamp the ballot a second time, after the voter has voted, as was practised in the 2017 parliamentary election in Bulgaria.
202. The ballot form depends largely on the electoral system, particularly on the number and type of votes the voter is entitled to have (personal vote, list vote, preferential vote, alternative vote, etc.). Still unusual for European democracies, however, is the possibility of casting a negative vote (“against all”). The “against all voting” option was used, for instance, in the Russian Federation until 2006, and it was introduced in Bulgaria in 2016. It gives voters the possibility of rejecting the entire field of candidates or parties. In this way, however, political and party apathy in society can be strengthened if the voters are able to simply reject candidates and parties instead of making the (often not easy) decision as to who is better (or best of the worst) candidate or party. As part of a long electoral tradition, however, in Spain and Latin America voters can cast a blank vote (*voto blanco*), if they are willing (or obliged) to participate in elections but do not wish to vote for any of the candidates or parties. Interestingly, the number of blank votes was very low in recent parliamentary elections in Spain.

### ***The voting, general remarks***

203. In most CoE member states, voting proceeds in an orderly manner and voters are aware of procedures. However, there are still some irregularities being observed in several cases. Unfortunately, “multiple voting” and “carousel voting” (i.e. transporting voters to different polling stations to cast a vote multiple times) as well as family voting, group voting and open voting are still common problems in a number of CoE member states. Moreover, there are still instances of ballot box stuffing observed in several countries (e.g. Azerbaijan, Russian Federation).

**Safeguards against “multiple voting”**

204. Polling officials must check whether the voter has already voted in the election. In principle, multiple voting can be avoided if the voters are properly identified and registered, and the voter lists are signed by the voter (and marked by the polling officials) when voters present themselves at the polling station and receive the ballot paper(s). However, in practice, there are instances in which voter lists were not signed by voters, or in which multiple similar signatures with the same handwriting were found on the voter lists. Stamping of identity documents or voter cards may also be used to indicate that voters have already voted. Stamping ballots or voting envelopes is an additional safeguard, and common practice in CoE member states, to ensure that additional ballots cannot be brought into a polling station.
205. A further method to diminish the risk of “multiple voting” is to mark the voter’s finger with indelible (visible or invisible) ink to indicate the she or he has voted. Though inking voters’ fingers is uncommon in Western European democracies, it is widely used in other regions of the world and in some CoE member states (e.g. Albania, Georgia). If applied, however, it must be ensured that both checking voters for traces of ink and inking voters after they have received a ballot paper are consistently applied. Unfortunately, this was not always the case, for instance in the 2017 parliamentary elections in Albania, according to electoral observers.
206. When a centralised electoral register is available (and reliable), an online verification of the identity of voters may also prevent multiple voting. In Lithuania, where since 2018 voters are allowed to cast their vote in any polling station in the country regardless of their place of residence, polling station officials use computers connected to the nationwide electronic voter lists to verify the eligibility of voters and to forestall multiple voting. Additionally, voters are required to sign paper voter lists in the event that the electronic system fails.

**The secrecy of the vote**

207. Democratic elections require that voters cast their votes in secret. Even if generally respected, the secrecy of the vote is sometimes not ensured due to overcrowding in polling stations, and the poor layout of the voting premises (voting booths, etc.). Apart from an appropriate size and location of polling stations, clear instructions to voters and polling station officials are necessary to avoid such technical problems.
208. In order to secure the vote’s secrecy, the voter should be alone in the voting booth. Only if the voter needs assistance are exceptions to be allowed by law (see “assisted voting” below). Not acceptable is so-called family voting, which was once common in the former Soviet Union and in Eastern Europe. Though it is nowadays prohibited by law, in practice, family voting or group voting is sometimes still tolerated. Electoral observers witnessed instances of family and group voting, *inter alia*, in Albania, Latvia, Lithuania, North Macedonia, Poland, and, to a large extent, in Kosovo.
209. The secrecy of the vote is not only a fundamental right, but also an obligation. In practice, however, there are still a number of instances of voters marking or folding their ballots outside of voting booths or showing their marked ballots (e.g. Hungary, Russian Federation, Ukraine). Such open voting should strictly be forbidden and not tolerated by electoral officials. Open voting unduly influences other voters and can indicate vote buying.
210. Vote buying, i.e. the distribution of goods or money to voters combined with the request to vote for a particular candidate or party, is strictly forbidden by law but rather difficult to prove. According to international observers, it is allegedly common practice in some countries before and on election day. Long-standing practices of vote-buying and “organised” voting were raised as issues of concern, *inter alia*, in Albania, Azerbaijan, Bulgaria, Republic of Moldova, and Ukraine.
211. In order to reduce the risk of vote buying, it is important to guarantee the secrecy of the vote and to halt open voting. Also taking pictures of marked ballots in the voting booth with a mobile phone can indicate vote buying and should be forbidden by law (such as, for instance, in Germany where, however, vote buying hardly occurs). Furthermore, it must be ensured (and observed) that voters do not leave the polling stations without depositing their ballots in the ballot

boxes because some voters may try to take blank but stamped ballots outside the polling station and give or sell them to other people. There have been instances where stamped or signed ballots were circulating outside polling stations on election day.

### ***Assistive voting tools and assisted voting***

212. As far as possible, voters with disabilities should be able to independently and secretly cast their vote without the need for the assistance of another person. In order to do so there are a number of assistive tools available that can, and should, be used, such as materials in sign or easy language, tactile or Braille ballot guides, or accessible electronic voting. To be used effectively, however, such assistive tools need to be available at polling stations, and both voters and electoral officials must be (or become) familiar with them.
213. If voters still need assistance from another person, such assistance should be provided preferably by a person of their choice, or, alternatively, by a polling official. Nowadays, it is common that electoral laws or regulations contain provisions on assisted voting for persons with physical, visual and/or intellectual disabilities. Such provisions often require, however, another person to be present in the voting booth with the voter, which can raise concerns regarding the secrecy of voting. Assisting persons must therefore be bound to secrecy with regard to the voting of persons whom they have assisted to vote.
214. If persons with disabilities are not able to access a polling station, alternative voting mechanisms may be used, i.e. accessible forms of remote voting (see below). However, alternative ways of voting should not relieve the electoral authorities of their responsibility to provide the best possible conditions for persons with disabilities to cast their votes in polling stations. It is important that persons with disabilities are able to fully participate in political and public life, just as any other voter.

### ***Absentee voting, general remarks***

215. It is quite uncommon that eligible voters are allowed to cast their ballot at any polling station in a country (and abroad) regardless of their place of residence, as is the case in Latvia and Lithuania. Usually, voters are required to cast their vote in a specified polling station near to their place of residence. In order not to disenfranchise those voters who are not able to vote in their respective polling station on election day, the electoral laws and electoral administrations usually provide for some form of absentee voting.
216. Eligible voters may be allowed to vote in person at special absentee polling stations or alternative places (in the constituency, in the country or abroad), or they may use alternative voting methods such as early voting, mobile voting, proxy voting, postal voting and/or online voting, if available. Since absentee voting procedures enhance electoral participation, they are, in principle, welcomed, but at the same time they are also prone to irregularities, particularly in countries with a poor democratic culture. Thus, with absentee voting, special care must be taken to ensure the secrecy of the vote and to prevent manipulation and fraud.

### ***Early voting***

217. A number of states allow voting in advance of election day. Early voting has a long tradition and is widely used, *inter alia*, in Iceland, Finland, Norway and Sweden where a substantial proportion of the ballots (around 19% in Iceland, 36% in Norway, 47% in Sweden and 51% in Finland) were advance votes in the last parliamentary elections of 2017, 2018 and 2019, respectively. Early voting usually takes place in designated advance polling stations, set up by municipalities (or foreign missions), but can also be conducted by mobile ballot boxes (see below). Whilst early voting enjoys a high level of public confidence and popularity in the above-mentioned Northern European democracies, it should be noted that it requires a considerable administrative effort and is still not conducted in the same controlled environment as in polling stations on election day. Furthermore, in Norway, for instance, advance voters using voting locations outside their constituency are restricted in their election options because they cannot cast preferential votes for candidates, but only a party vote (by using a universal ballot or the available constituency ballot). In Iceland, blank ballots without any information on the election

type or the candidate lists are used for early voting, and voting procedures differ considerably from voting on election day.

### ***Mobile voting***

218. In many countries special voting arrangements are made for voters in prisons, detention centres, hospitals or facilities for the elderly and/or for homebound voters. There might be arrangements for voting in advance, like in Iceland and Finland, or for voting on election day. In any case, strict safeguards should be applied if mobile ballot boxes are used. Whilst advance voting in Northern European democracies is usually conducted by at least two election officers, the Finnish Election Act, for instance, provides that in some cases the presence of one election officer is sufficient and that only one election official conducts each individual at-home vote. Particularly in countries with deep political divides, however, the attendance of several polling officials, preferably from different political groupings, is highly recommended for mobile voting. In some countries, mobile voting bears a high risk of fraud and its organisation has been rated rather poorly.

### ***Proxy voting***

219. In some CoE member states, voters are allowed to cast their ballot via proxy. For example, if due to illness, work, studies, military service, imprisonment, staying abroad or religious beliefs, voters in Belgium are unable to come at a polling station, they may appoint a proxy to vote on their behalf (on the basis of a written authorisation). Contrary to Belgium, however, no proof or justification is required to request a proxy vote in France (where proxy voting is the only form of absentee voting within the country) or in the Netherlands (where each proxy can vote on behalf of up to two persons). Although in all three countries proxy voting enjoys a high level of trust and popularity, a review of the rules and the widespread practice may be worth re-considering in order to enhance consistency with the principles of equality and secrecy of the ballot. In Finland, for instance, the Election Act explicitly prohibits voting by proxy. Furthermore, proxy voting is not suitable particularly for those countries where vote buying is a common problem.

### ***Postal voting***

220. Postal voting is generally permitted in a number of CoE member states (e.g. Austria, Germany, Spain, Switzerland) or for voters abroad only (e.g. Andorra, Belgium, Netherlands, Romania). While there are no official statistics, presumably Switzerland holds the world record with an estimated 90% of voters using postal voting in the federal elections. However, postal voting should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting (CDL(2002)023rev2-cor, part I.3.2.2.1). Whilst in Austria postal voting should generally be considered as being safe and unproblematic, among other problems, the incorrect handling of postal voting procedures led to the annulment and repeating of the 2016 presidential elections.

### ***Out-of-country voting***

221. In CoE member states which allow some degree of voting by citizens residing permanently or temporarily abroad, the modalities of voting differ: Most common are postal voting and/or voting in person at embassies and consulates. Additionally, or alternatively, proxy voting (e.g. Belgium, France, and the Netherlands) or online voting (e.g. Estonia) is allowed. In any case, safeguards must be implemented to ensure the integrity of the vote, and voting procedures should be available for all eligible voters.

222. While out-of-country voting is, in general, conducted satisfactorily and in line with international standards, there are still some shortcomings. To mention a few examples: Malfunctioning of postal voting of citizens voting abroad remained a source of dissatisfaction, for instance, in parliamentary elections in Spain. If citizens abroad can only vote in person, the limitation of the number of polling stations particularly in non-European Union countries may have a discriminatory effect, as was criticised in the case of Bulgaria.

### ***E-voting***

223. E-voting comprises the e-casting of the vote, both via electronic voting machines (EVM) in the “controlled environment” of a polling station or via the Internet (i-voting) in an “uncontrolled environment”, not supervised by election officials. Furthermore, e-voting includes e-counting. However, there is sometimes no e-casting, but only e-counting of ballot papers, for example, by using optical scanners which read and digitise the ballot papers, before they are automatically counted. While a number of countries outside Europe have introduced some form of e-voting, it is so far only practised in a few CoE member states in national elections.
224. Since the early 1990s, parts of Belgium have installed touchscreen voting machines in polling stations, with almost half of the electorate using them in the federal elections of 2019. As recommended by OSCE/ODIHR, they were equipped with voter-verified paper audit trails. Voters can, thus, check whether their votes have been recorded by the voting machine correctly before inserting the printout into an electronic ballot box which counts the votes. France has applied EVM in some municipalities, but, according to ODIHR, there is a moratorium on further expanding the use of the machines. Bulgaria has piloted EVM in a number of elections since 2014. However, since it was not possible to provide EVM for all polling stations (as ruled by the Supreme Administrative Court), no EVM at all were used in the 2017 parliamentary elections. In Germany, the pilot use of EVM was suspended on the basis of a Federal Constitutional Court decision in 2009, and the Netherlands returned to voting with ballot papers only in 2008. E-counting in national elections is applied, for instance, in the Russian Federation, where a considerable number of polling stations are equipped with ballot scanners.
225. Internet-voting (i-voting) offers an alternative to in-person voting in polling stations. Assumingly, worldwide it is most frequently used in Estonia, it having been available there to all voters and all types of elections since 2005. About 44% of the votes were cast online in the Estonian parliamentary elections of 2019. Until the beginning of 2019, i-voting was also offered in a number of cantons in Switzerland, but has been (temporarily) suspended as none of the applied i-voting systems fulfilled the legal requirements. In the same year, a popular initiative was started to collect signatures to put a moratorium on i-voting in Switzerland. In France, citizens abroad have been allowed to use remote i-voting in legislative elections (but not in the presidential vote) since 2012. For the 2017 legislative elections, however, online voting abroad was suspended because of concerns about cyber-attacks. Armenia allows only diplomatic and military staff posted abroad (and their families) to vote via the Internet.
226. Noting that some member states already use, or are considering using e-voting for a number of purposes (facilitating the participation in elections by offering additional voting channels, etc.), the Committee of Ministers of the CoE is conscious “that only those e-voting systems which are secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters will build public confidence, which is a prerequisite for holding e-elections” (CM/Rec (2017)5). The Committee’s Recommendation on standards for e-voting, along with the Explanatory Report and the Implementation Guidelines, are an important source of advice on how to respect the principles of universal, equal, free and secret suffrage when introducing an e-voting system.

### ***Vote counting and tabulation***

227. According to the Code of Good Practice in Electoral Matters, the votes should preferably be counted at the polling station immediately after polls close, rather than in special counting centres (CDL-AD(2002)023rev2-cor, Expl. Report para 45). This has the advantage of providing quick results for the polling station and avoids the security risks of transporting ballot boxes and electoral documents. In some countries, however, sealed ballot boxes are transported to special counting centres at the constituency level (e.g. Iceland) or national level (e.g. Malta). In the case of Iceland, the mixing of ballots from different polling stations before counting aims to ensure the secrecy of the vote, given the large number of polling stations with fewer than 100 registered voters.
228. It is of paramount importance that the vote count is conducted correctly. The correctness of the count depends on clear procedures, adequate staff training and their commitment to the

process. Though the overall process of vote counting is reasonably organised in most CoE member states, there are sometimes still technical and political problems. Even in some recent elections, mandatory procedures for counting have been disregarded or not strictly followed, and procedural shortcomings were noted in the counting and tabulation (e.g. Albania, Russian Federation, and Ukraine). In some cases, the deficiencies appeared to result from poor administration rather than attempts at manipulation. In other cases, however, there were also clear attempts at fraud, including ballot box stuffing and the falsification of results and protocols. As for the 2020 early parliamentary elections in Azerbaijan, the PACE electoral observation mission concluded that “despite some appearance of progress in the preparation for the elections, the widespread violations of counting procedures raised serious concerns about the results of the voting in general” (Doc 15090, para 7).

229. Close attention has to be paid to ensure that all figures are accurately recorded in election protocols and that results protocols are correctly completed and signed (after the count, not beforehand) by all authorised persons, according to the law. If digital counting and tabulation software is used, special care has to be taken that the systems are secure, reliable and open to independent verification and that they are applied without undue interference and in conformity with democratic electoral principles.
230. For the counting process to be open and transparent, it has to be carried out in the presence of observers and representatives of candidates, parties, and electoral alliances (in some countries, such as France and Spain, the vote count is completely open to the public). Authorised persons should be able to witness all aspects of the count, however, without interfering in it. In accordance with the Code of Good Practice in Electoral Matters, distributing results protocols to observers and party proxies and publicly posting the results outside the polling station are recommended (CDL-AD(2002)023rev2-cor, Expl. para 46). Not all electoral laws have included respective provisions yet (e.g. Greece, Montenegro, Slovakia). Even if provided for by law, observers and party proxies sometimes have problems obtaining copies of the electoral protocols.

### ***Transmission and announcement of provisional results***

231. The transmission of the results, nowadays mostly electronically, is a vital operation, the importance of which is often overlooked (CDL-AD(2002)023rev2-cor, Expl. para 51). Since they can be source of error and manipulation, the transmission of election results and the transfer of election documents from lower to higher electoral commissions deserve close attention. Special safeguards should be considered (security codes for transmission, accompanied and observed transport, re-checking of results based on original copies of election protocols, etc.).
232. Provisional election results can be published in different ways. In some countries, the incoming results from lower level to higher electoral commissions are publicly displayed as and when they come in. With this system of “piecemeal reporting”, first results can be quickly provided, but the initial results may differ considerably from the final outcome, as the results come in from different areas. Alternatively, provisional results may not be announced until all results, or a representative portion of them, have been reported from lower level to higher level electoral commissions. In such cases, the first published provisional results are close(r) to the final outcome. However, it should not take too long to publish first provisional results.
233. Thus, both inaccuracy and the delay of provisional results might negatively affect the level of confidence in the elections and can meet with opposition. Depending on the electoral system and the political context, a balance has to be found between the need for an early announcement and the need for a reliable consolidation of provisional results. In any case, it is desirable that reliable provisional results are not only published as fast as possible but are also as detailed as possible. Breaking down the results by polling stations and making the tabulation available to the public may contribute considerably towards the transparency of elections. In several countries, however, the publication of election results disaggregated by municipality and polling station is not required by law. Although counting and tabulation (in the national counting centre) are broadcast live on television, and national and district level official results are posted on the Electoral Commission’s website, this is the case in Malta. In Greece, for instance, no

disaggregated precinct electoral results from the 2019 parliamentary elections were published either.

### XIII. **Election appeals and accountability for electoral violations**

234. The management of complaints and appeals is an essential part of democratic elections. The Code of Good Practice in Electoral Matters underlines that irregularities in the election process must be open to challenge before an appeal body. Generally speaking, complaints and appeals may result in the partial or full invalidation of election results. They also may aim to correct problems and decisions even before the elections, especially in connection with the right to vote and voter registration, the right to stand for elections, the validity of candidatures, compliance with the rules governing the electoral campaign, access to the media, and party funding (CDL-AD(2002)023rev2-cor, Expl. Report para 92).
235. Complaint and appeals procedures must be open at least to voters and electoral contestants. A reasonable quorum may, however, be imposed for appeals by voters against the results of an election (CDL-AD(2002)023rev2-cor, Expl. Report para. 99). In some countries, however, the legal framework is unnecessarily restrictive, given that only contestants and their proxies, but not voters are able to file a claim (e.g. Armenia, Lithuania), or that complaints by voters are limited to their non-inclusion in voter lists (e.g. Georgia). Furthermore, in order to comply with international standards, the complaint and appeals procedures should clearly provide the following rights for voters and electoral contestants: The rights to file a complaint, to present evidence in support of the complaint, to a public and fair hearing on the complaint, to impartial and transparent proceedings dealing with the complaint, to an effective and speedy remedy, as well as to appeal to an appellate court if a remedy is denied (see for example CDL-AD(2004)027, para. 111). In practice, however, these rights are not always respected. At times, even credible complaints are left without any legal redress.
236. Due to different legal and political traditions, a variety of procedures are used in the resolution of election disputes. In many Western Europe states, election appeals are heard by ordinary administrative and judicial bodies operating in accordance with special procedures. In contrast, in most Central and Eastern European states the responsibility for deciding on election complaints and appeals is shared between (formally) independent electoral commissions and ordinary courts. In several countries, mostly outside Europe, standing special electoral courts are responsible for resolving election disputes. In the UK, ad hoc election courts are formed when a complaint is made. Although there is no single "best" method suitable for all countries, the procedure before electoral administrative bodies is usually more accessible for voters and faster than before courts. However, the electoral process should not be left under the complete and final authority of an administrative body. Particularly decisions on constitutionally guaranteed rights and the validity of elections (see below) should be subject to judicial review.
237. It is of paramount importance that appeal procedures should be clear, transparent, and easily understandable. However, in a number of cases, the procedures for dealing with complaints and appeals are complicated and not clearly defined. International observers' reports repeatedly characterise complaint and appeals procedures as complex, ambiguous, and confusing, leading to an inconsistent interpretation and application of the electoral law. In a number of countries, the lack of clearly defined procedures, *inter alia*, for campaign and media-related complaints and/or unclear responsibilities for the handling of electoral disputes has undermined the effectiveness of the respective complaint and appeal system (e.g. Albania, Czech Republic, Poland, Republic of Moldova, Serbia, and Slovakia). The rules and procedures are often not well understood by electoral subjects, and members of relevant bodies are not always sufficiently trained in how to handle election disputes.
238. Especially with dual complaint and appeal procedures, which involve electoral commissions and ordinary courts, the electoral law should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided. Neither the appellants nor the authorities should be able to choose the appeal body (see CDL-AD(2002)023rev2-cor, part

II.3.3.c., Expl. Report para. 97). Instead, the law should clearly state to which body the complaint is to be submitted and avoid the possibility of concurrent complaints procedures. Furthermore, it should be clear which bodies act as first instance fact-finding bodies and which act as appellate review bodies. Nevertheless, in a number of elections, unclear provisions or inappropriate handling created confusion over the jurisdiction of electoral commissions and courts to deal with election complaints and appeals. In such cases, efforts should be made to improve legislation and to increase the expertise of electoral management bodies and courts in election dispute resolution.

### ***Certification and annulment of election results***

239. In most CoE member states, the decisions on certifying the electoral results are taken by election management bodies and/or parliaments. While in some cases judicial bodies are involved in the certification process even without any complaints, in most countries judicial bodies are involved in the certification or cancellation of electoral results on the basis of complaints or appeals. The competent courts to review the complaints or appeals in matters concerning the certification of electoral results are often constitutional courts (see CDL-AD(2009)054). In France, the constitutional council is even the only instance for appeals against the validity of elections.

240. While in France any registered voter or candidate can request the constitutional council to annul the results in their respective constituency, in Austria or Bulgaria, for instance, only contesting political parties or candidates can challenge election results before courts, but not voters. In a few countries, there is no possibility for judicial review of decisions on complaints against the final election results by parliament (Belgium, Denmark, Netherlands) which is inconsistent with international good practices (even if the complaint and appeal system enjoys a high level of trust there). According to the constitution in Turkey, no appeal shall be made to any authority against the decisions of the Supreme Election Council. The Constitutional Court had rejected such appeals as falling outside its jurisdiction in the past (CDL-AD(2020)011, para 11).

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

### ***Accountability for electoral violations***

242. As a matter of principle, electoral violations should be investigated, and electoral violators should be held accountable by law. Thus, election (and party) legislation and/or framework legislation such as civil and penal codes should specify election-related offences (which can be committed by voters, candidates, parties, media, electoral and public officials, etc.) and the legal sanctions for such offences (e.g. forfeiture of contributions or public funding, suspension or disqualification for a candidate, fines or imprisonment). In order to promote transparency, it might be helpful to list election-related offences in the electoral law, such as, for instance, in Georgia.

243. In a number of elections, though widespread electoral violations were acknowledged to have taken place, there was a general failure to enforce the law. In some countries, there is still a “culture of impunity” for election-related offences. Of particular concern is the fact that election officials are seldom held legally or administratively accountable for electoral violations. Electoral observers have frequently demanded that election officials found guilty of irregularities should be held accountable and not be reappointed for future elections. The relevant authorities’ general failure to take measures against election violations undermined the credibility of, and public confidence in, elections of several countries. To increase confidence in elections and curtail any tolerance for election-related offences, prompt and effective measures by the authorities are



needed to investigate and prosecute electoral violations and publish updated information on electoral cases on a regular basis and once they are concluded.

### ***Replacement of elected candidates***

244. Candidates who were admitted to run in the elections must also have the effective right to carry out their mandate if elected. This is particularly true if there is no legal basis for (and final court decision on) denying the initial eligibility of candidates *after* the elections. The decisions of the Supreme Election Council in Turkey not to recognise elected candidates and to replace them with the second placed candidates (all belonging to another political party) in local elections of 2019, deprived citizens of their right to choose and were in clear contradiction with the expressed will of the people (CDL-AD(2020)011, para 22).

## **XIV. Converting votes into seats: electoral systems**

245. The conversion of votes to political mandates depends largely upon the electoral system. The Venice Commission has consistently expressed the view that the choice of an electoral system is a sovereign decision of a state. Accordingly, the Code of Good Practice in Electoral Matters is quite indifferent about the electoral system, as long as these systems are democratic in nature. While there is no such thing as the “best” electoral system that could be exported to all countries in the world, some elements of electoral systems are nevertheless worth discussing.

### ***Presidential electoral systems***

246. As far as direct presidential elections are concerned, the basic distinction is between plurality rule and majority runoff. Under plurality rule, the candidate with the most votes is elected. Under majority run-off, a majority of votes (that is more than 50%) is required for election in the first round. If no candidate secures a majority, then the (usually top two) candidates compete in a run-off election. Worldwide there is a clear tendency towards majority run-off systems in order to avoid the “plurality trap”, by which a candidate who is strongly opposed by a majority of voters can win the presidency. In accordance with the worldwide tendency, majority run-off is common in direct presidential elections in CoE member states. Only in a few countries, such as Azerbaijan, Bosnia and Herzegovina and Iceland, is the president elected by plurality. Significantly, in Iceland concerns have been expressed that, in the case of a large number of candidates, the president could be elected by only a minority of voters.

247. With majority run-off systems, to be elected in the first round a candidate must receive 50% of the valid votes or the total votes cast. In contrast to international practice, 50% of the *registered* voters are required, for instance, in Bulgaria and North Macedonia. Without an absolutely accurate voter register, however, such a requirement is problematic. Furthermore, it gives great political weight to the non-participation of registered voters.

248. The same is true with regard to minimum turnout requirements. In North Macedonia, the candidate with the majority of votes in the second round will only be elected if the turnout is over 40% of the registered voters. If not, the entire election process must be repeated. As the PACE electoral observation report states, there is a risk that the turnout requirement of 40% in the second round of the presidential election could trigger a succession of election cycles. This was exactly what happened in Serbia before the electoral reform of 2004. In 2002 and 2003, presidential elections in Serbia failed to meet the criterion that over 50% of all registered voters had to participate in the first and second round of the voting. Elections were declared invalid, and new elections had to be called several times.

### ***Parliamentary electoral systems***

249. As far as parliamentary elections in the CoE member states are concerned, a wide variety of electoral systems are used. As can be seen in Appendix I, there are only a few plurality and majority systems in use in Europe. Some countries employ proportional representation (PR) systems in a single nation-wide constituency. Much more common, however, are PR list systems in multi-member districts, sometimes with additional lists at the regional and/or national level. In

addition, there are a significant number of “mixed” electoral systems which combine plurality or majority election in single-member constituencies with PR list systems. None of these systems could be recommended as the “best model”. Each electoral system has advantages and disadvantages and must suit the specific needs and conditions of each country.

250. Technically, almost all of the parliamentary electoral systems applied in CoE member states are in line with democratic standards. However, there are some democratic objections to the use of electoral systems awarding bonus seats. Bonus seats are awarded to a party in addition to seats won by the normal procedure in use for allocating seats. Italy had a lot of experience with different electoral systems using “majority prizes” assigned to the largest parties or coalitions. Until 2019, Greece used a “reinforced” PR system, granting 50 additional “bonus seats” to the leading party. In San Marino where a PR system with preferential voting in a single nationwide constituency and a 5% threshold for seat allocation are applied, a “stability reward” still assures that the winning coalition receives at least 35 of 60 seats in the parliament (Grand and General Council). While the purpose of bonus systems is to strengthen the winning party to (make it easier to) secure an overall parliamentary majority and thereby to promote government stability, the awarding of bonus seats could be criticised for being inconsistent with the expression of popular preferences in direct elections. However, it must be admitted that many electoral systems inherently give larger parties a certain advantage.
251. Furthermore, under certain conditions, even democratic electoral systems may create additional difficulties for the conducting of elections in a given context. A number of them are already mentioned in the PACE report “Setting minimum standards for electoral systems in order to offer the basis for free and fair elections” (Doc 1527, 2020) that has taken into account a written contribution of the author of this report. Only a few aspects concerning electoral constituencies and electoral thresholds should therefore be highlighted here.
252. All electoral systems that provide for single-member constituencies or multi-member districts rely on the careful drawing of electoral boundaries. Issues of reapportionment and boundary readjustments are essential to ensure equality of the vote. In a number of CoE member states (e.g. Bosnia and Herzegovina, Bulgaria, Spain, and Turkey), however, there is an extremely uneven distribution of seats among constituencies based on the number of citizens or registered voters, making readjustments urgent.
253. In all electoral systems that provide for constituencies, there is an inherent danger that constituency boundaries are drawn in favour of particular parties or candidates. As for the delimitation process in Hungary, for instance, allegations of gerrymandering were widespread. As discussions in the United Kingdom show, even if independent and impartial Boundary Commissions are responsible for boundary reviews, boundary changes always have partisan effects that are hotly debated.
254. While single-member constituencies may be important to ensure a close relationship between voters and constituency representatives, they are prone to corruption, vote buying and fraud in countries where a democratic political culture is not sufficiently established. This is due to the fact that it is easier to manipulate elections at the constituency level than at the regional or national level. The majoritarian components of the mixed (parallel) electoral systems in some “new democracies” have been criticised as being potentially vulnerable to undue influence by local business people (with regard to Republic of Moldova see, for instance, CDL-AD(2017)012, para 14; CDL-AD(2018)008, para 21; PACE Doc. 14859, para 22).
255. As for PR systems at the national level, voting for citizens abroad is easy to manage since there is only a single nation-wide constituency. If electoral systems provide for single- or multi-member constituencies, however, it will be necessary to assign out-of-country voters to constituencies. Usually voters abroad are assigned to the constituency of their last place of residence (e.g. Germany) or they have their own out-of-country constituencies (e.g. Croatia, France, Italy, Portugal). In order to ensure the principle of equal suffrage, special attention must be paid to an even distribution of voters between in-country and out-of-country constituencies. This was, for instance, a problem in North Macedonia (CDL-AD(2016)032, para 18). Furthermore, if the electoral system allows people to vote for party lists and constituency

candidates, out-of-country voters (and absentee voters inside the country who cast their vote outside their constituency) may be restricted to voting for party lists only.

256. There is a controversial debate on legal thresholds of representation. It refers to the legally established minimum share of valid votes that parties must obtain in order to participate in the distribution of seats. The principal aim of such thresholds is to avoid party fragmentation and to enable stable governments by excluding minor parties when translating votes into seats. This is a legitimate aim. From the perspective of inclusiveness, however, high legal thresholds, especially at the national level, might be problematic. For instance, the national threshold of 10% valid votes cast in Turkey – which is the highest in all Council of Europe member states – has been widely criticised, also by PACE.
257. However, the former general recommendation of PACE to decrease legal thresholds that are higher than 3% needs further discussion. In Europe, thresholds of 5% are most common. Furthermore, the effects of the threshold depend not only on the percentage, but also on the level and stage of application. Moreover, in PR systems with small and medium-sized constituencies the “natural” thresholds are much higher than 3% at the constituency level. Open to discussion is also whether legal thresholds should differentiate between parties and electoral alliances, such as in Armenia, the Czech Republic, Italy, Republic of Moldova, Poland, Romania, and Slovakia. In Turkey, a recent amendment allows parties to form alliances to pass the 10% electoral threshold. Now, political parties within an alliance can win seats in parliament even if they fall below the 10%. In any case, it seems to be appropriate that legal thresholds are calculated on the basis of the valid votes cast (and not of the total votes cast).

#### ***Electoral Systems and gender-balanced representation***

258. Whilst considerable progress has been made in the last 25 years and a number of CoE member states have reached the “balanced-gender-representation” minimum of 40% (see Appendix II), the under-representation of women in many other national parliaments in Europe must still be considered as problematic from a democratic and human rights perspective. In order to promote democracy and human rights in its member states, thus, “one of the Council of Europe’s priorities in the field of equality between women and men is to ensure a more balanced participation of both sexes in political and public decision-making” (Rec(2003)3, Expl. memorandum, I C, 13).
259. There are a wide variety of socio-economic, cultural and political factors that can hamper or facilitate women’s access to parliament. Among the institutional factors of politics, both the electoral system and gender quotas can strongly influence women’s parliamentary representation. Compared with many structural and cultural obstacles of women’s representation, the electoral system can be changed more easily, and quota rules can be adopted, if politically wanted. Electoral reforms, thus, offer a viable option for increasing women’s representation (see CDL-AD(2009)029).
260. The electoral system may affect the structure of opportunities for women. As for the electoral system, there is some empirical evidence that women are generally better represented under PR list systems, than for example, in plurality or majority systems in single-member constituencies. Plurality or majority systems in single-member districts, which tend to work against women, however, are quite seldom in Europe. Combined electoral systems, particularly Mixed Member Proportional Systems, appear to be more conducive to women’s parliamentary representation than plurality or majority systems, but less favourable than PR systems which are applied exclusively in multi-member districts in one tier or at different levels. As for the technical elements of PR systems, larger constituencies make ticket-balancing (at least of large parties) more likely, while the effects of different party list and voting forms depends largely on further conditions (see for further details CDL-AD(2009)029).
261. Legal gender quotas are highly controversial in some countries and may even come into conflict with constitutional jurisdiction (e.g. Croatia). However, legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as being contrary to the principle of equal suffrage if they have a constitutional basis (CDL-AD(2002)023rev2-cor, part I.2.5). Given the profound under-representation of women, quotas

should be viewed as positive measures to compensate structural, cultural and political constraints on women's representation. Since legal quotas are mandatory by nature, they seem to be preferable to voluntary party quotas. However, voluntary quotas can, additionally or alternatively, also contribute to an increase of women's representation, particularly if they are applied by large parliamentary parties. In order to be effective, gender quotas should provide for at least 30% of women on party lists, while 40% or 50% is preferable. Electoral quotas are more (and sometimes only) effective if they provide for strict ranking rules or placement mandates. "Zipper systems", where every other candidate on the list must be a woman, can be considered the most effective method to ensure gender parity. To be respected, moreover, gender quotas require effective monitoring and enforcement mechanisms (see CDL-AD(2009)029).

262. Reserved seats for women are not considered as a viable and legitimate option in Europe.

263. Finally, it should be remembered that the electoral system and gender quotas are not the only factors that influence women's parliamentary representation. In order to increase effectively both the descriptive and substantial representation of women in politics, a much broader and more comprehensive approach is necessary than changing electoral legislation. Nevertheless, appropriate electoral reforms may facilitate such a process.

### ***Electoral system and representation of national minorities***

264. Sometimes there also strong demands for a better representation of national minorities in parliament. In such cases, the electoral systems may facilitate the minority representation, for example through the use of PR systems in nation-wide or in large multi-member constituencies (without a high threshold of representation). However, also PR list systems in small multi-member districts or even plurality/majority systems in single-member constituencies may ensure minority representation if the minorities are territorially concentrated. Delimitation of single-mandate constituencies in areas with high concentrations of minority communities may ensure their representation. Moreover, the candidacy and voting form may have an influence on minority representation. When lists are not closed, a voter's choice may take account of whether or not the candidates belong to national minorities. With closed lists, it depends on the parties if they put candidates of national minorities in prominent positions on the parties' lists. Furthermore, in some countries (e.g. Poland and Germany), there are "threshold exemptions" for candidates lists or parties representing national minorities. In any case, in countries with under-represented national minorities, revisions of the electoral system and the re-drawing of boundaries should not go ahead without proper consideration of national minorities' representation.

265. Alternatively, or additionally, there are sometimes provisions for reserved seats that are separately allocated to national minorities (e.g. in Albania, Bosnia and Herzegovina, Croatia, Montenegro, Slovenia, Romania). However, the notion of setting aside seats reserved for minorities is debatable. While reserved seats might be a short-term mechanism to secure the representation of minorities in a transitional period, in the long term the interests of the minorities and the country itself might be better served by representation through the "ordinary" electoral system. Furthermore, with reserved seats there is always the problem of deciding which minorities should be entitled to have such seats and who legitimately represents the respective minority in parliaments. Nevertheless, as positive measures taken to ensure minimum representation for minorities, reserved seats do not infringe the principle of equality. It may even be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists/candidates, as is the case in Slovenia. In contrast, voters from national minorities in Croatia must decide if they are to be registered in one of the ten territorial constituencies or, on the basis of self-declaration, in one of two special constituencies for national minorities. However, neither candidates nor electors must be required to indicate their affiliation with any national minority (CDL-AD(2002)023rev2-cor, part I.2.4).

## **XV. Conclusions**

266. For a democracy, universal, equal, direct, secret and free suffrage is an overriding right. In the member states of the Council of Europe, a tendency can be identified – reinforced by the ECHR, the Venice Commission and OSCE/ODIHR – to grant the right to vote in national elections to all citizens where possible, both legally and de facto. It should be highlighted that the remaining restrictions on the right to vote (prisoners, persons with mental disabilities and/or under guardianship etc.) are increasingly under discussion. Furthermore, effective voter registration is being fostered as well as a variety of absentee voting procedures, designed to ensure that those voters who cannot cast their vote(s) on election day at the polling station, in their constituency or state territory, are able to vote. This should be viewed positively in principle. However, it should be accompanied by measures to ensure the integrity of the elections.
267. While in most CoE member states elections are professionally conducted, in others there are still serious shortcomings and outstanding challenges mentioned in this report. Only a few of them should be highlighted in this conclusion:
268. Before the actual election day, political competition conditions can be distorted due to candidacy restrictions and if the opposition is hindered while candidates and parties loyal to the government are strongly favoured by the state and the media. Typical problems that arise in several CoE member states are the misuse of incumbency, state positions and public resources for electoral purposes, as well as the unbalanced coverage of parties and candidates in the media. In a few cases, there are also undue restrictions on political rights and freedom of the media.
269. Negative campaigning is a particularly worrying trend in respect of electoral campaigns in a number of CoE member states where the campaign atmosphere has been dominated by political polarisation, defamation of political opponents and even hate speech. It is a major challenge to resolutely tackle these excesses without compromising democratic rights such as freedom of expression as a result. Curbing defamation and hate speech on social media and Internet platforms is particularly challenging. The same applies to disinformation operations which aim at harming electoral contestants and undermining the integrity and credibility of elections.
270. The Internet and social media have fundamentally changed the nature of electoral campaigns. Established rules on electoral campaigning, for example with regard to the regulation of political advertising, are often not adapted to the digital environment, opening the door for non-transparent activities from domestic and foreign actors. Furthermore, creating and using accurate profiles of users for electoral campaigning and political advertising represent a significant risk to privacy and personal data protection. Responsible digital electoral campaigning and political advertising requires action from political contestants, social media platforms and public authorities.
271. On the election day itself, multiple voting, vote buying, ballot-box stuffing and incorrect vote counting and tabulation are some of the shortcomings which – to a greater or lesser extent – still occur in some CoE member states and must urgently be eliminated. This also entails anybody being able to lodge complaints and appeals in the case of electoral irregularities and that these are followed up effectively.
272. In view of the impending erosion of liberal democracies in some CoE member states, it is important that these – and many other problems mentioned in the report – be addressed and eliminated. Ultimately, only elections that meet democratic standards can lay claim to democratic legitimacy. It is important to stress that in democratic elections, it is not only the elected government that is legitimised, but also the opposition. It is precisely the full recognition of the opposition that is a characteristic of truly competitive elections.

## Appendix I: Tables

Parliamentary electoral systems in CoE member states (2020)			
Category	Electoral system (features)	Seat Allocation	Countries
Plurality systems	First-past-the-post	Plurality in SMC	Azerbaijan, United Kingdom
Majority systems	Majority Two-Round-System	Majority in SMC (2 <sup>nd</sup> round: plurality)	France
National PR	National PR (with national or regional lists)	Overall seat allocation according PR-formula at national level	Republic of Moldova, Montenegro, Netherlands, Serbia, Slovakia*
	National PR with national and regional lists and bonus seats	PR at national level; half of seats to open regional lists; bonus seats for majority or minority parties (2 <sup>nd</sup> round between two lists if no gov. majority)	Armenia*
	National PR with bonus seats (2 <sup>nd</sup> round: Majority in SMC)	PR-formula at national level; "stability reward" (2 <sup>nd</sup> round if no party/alliance obtains majority of seats)	San Marino**
Constituency PR	PR in MMD	PR-formula in (predominantly) MMD	Albania, Belgium*, Bulgaria*, Croatia*, Cyprus*, Czech Rep.*, Estonia*, Finland*, North Macedonia, Ireland***, Latvia*, Liechtenstein**, Luxembourg**, Malta***, Poland*, Portugal, Romania, Slovenia*, Spain, Switzerland**, Turkey
Multi-tier-PR systems	PR in MMD with additional or compensatory PR seats	PR-formula in MMD and additional or compensatory PR seats to ensure (better) proportionality	Austria*, Bosnia and Herzegovina, Denmark*, Estonia*, Iceland*, Norway*, Sweden*
	PR in MMD with bonus seats	PR-formula in (predominantly) MMD with "bonus seats" for largest party/alliance	Greece* (last time 2019), Italy
Combined ("Mixed") Systems	Parallel systems	Parallel calculation: Plurality or Two-Round-majority in SMC and PR-formula at national level	Georgia, Lithuania*, Ireland Moldova, Russia, Ukraine
		Parallel calculation: Plurality in MMD (block vote), PR-formula at national level	Andorra, Monaco**
	Mixed Member Proportional Systems	Combined allocation: plurality in SMC, but overall seat allocation according to PR list votes	Germany
		Combined allocation: Majority in SMC, compensatory seats at regional and/or national level	Hungary

Source: Krennerich 2020. PR = Proportional Representation; SMD = Single member constituencies; MMD = Multi-member districts; \*Open lists and preferential voting possible; \*\*free lists and cross voting possible; \*\*\*single transferable vote system.

Women representation in parliament and gender quotas (2020)					
Country (Year of election)	Women Share in % 2020 (1995)	Legal quota in %	Ranking rules	Party quotas*	Electoral system
Sweden (2018)	47,0 (40,4)	---	---	Yes	PR, open
Andorra (2019)	46,4 (3,6)	---	---	---	Parallel, closed
Finland (2019)	46,0 (33,5)	---	---	---	PR, open
Spain (2019)	40,0 (16,0)	40	2 of every 5th	Yes	PR, closed
Switzerland (2019)	41,5 (21,0)	---	---	Yes	PR, open
Norway (2017)	41,4 (39,4)	---	---	Yes	PR, open
Belgium (2019)	40,7 (12,0)	50	1 of top 2	---	PR, open
North Macedonia (2017)	40,0 (3,3)	40	1 of every 3rd	---	PR, closed
Portugal (2019)	40,0 (13,0)	33,3	1 of every 3rd	---	PR, closed
Denmark (2019)	39,7 (33,5)	---	---	---	PR, open
France (2017)	39,5 (6,4)	50 (48)	---	Yes	Majority
Austria (2019)	39,3 (26,8)	---	---	Yes	PR, open
Iceland (2017)	38,1 (25,4)	---	---	Yes	PR, open
Serbia (2016)	37,7	30	1 of every 3rd	---	PR, closed
Italy (2018)	35,7 (15,1)	40 (const.) 50 (lists)	1 of ever 2nd (list)	Yes	PR-bonus, closed
UK (2019)	33,9 (9,2)	---	---	Yes	Plurality
Monaco (2018)	33,3 (5,6)	---	---	---	Parallel (BV)
Netherlands (2017)	33,3 (32,7)	---	---	Yes	PR, closed
San Marino (2019)	31,7 (11,7)	33,3	---	---	PR-Bonus, closed
Germany (2017)	31,2 (26,3)	---	---	Yes	MMP, closed
Latvia (2018)	30,0 (15,0)	---	---	---	PR, open
Luxembourg (2018)	30,0 (20,0)	---	---	Yes	PR, free
Montenegro (2016)	29,6 (23,5)	30	1 of every 4th	---	PR, closed
Albania (2017)	29,5 (5,7)	30	1 of top 3	---	PR, closed
Estonia (2019)	28,7 (12,9)	---	---	---	PR, open
Poland (2019)	28,7 (13,0)	35	---	---	PR, open
Slovenia (2018)	27,8 (14,4)	35	---	Yes	PR, open
Bulgaria (2017)	26,7 (13,3)	---	---	---	PR, closed
Republic of Moldova (2019)	24,8 (4,8)	40	---	---	PR
Lithuania (2016)	24,1 (7,1)	---	---	Yes	Parallel, open
Armenia (2018)	23,5 (6,3)	20	every 5th, from 2nd on	---	Parallel, open
Czech Republic (2017)	22,5 (10,0)	---	---	Yes	PR, open
Romania (2016)	21,9 (4,1)	---	---	Yes	Parallel, closed
Bosnia & H. (2018)	21,4 (4,5)	40	1 of 2, 2 of 5, 3 of 8	---	PR, open
Ireland (2016)	20,9 (12,0)	30***	---	---	STV, free
Ukraine (2019)	20,8 (3,8)	---***	---	---	Parallel, closed****
Greece (2019)	20,7 (6,0)	33	---	Yes	PR, open
Slovakia (2016)	20,7 (14,7)	---	---	Yes	PR, open
Cyprus (2016)	19,6 (5,4)	---	---	Yes	PR, open
Croatia (2016)	19,2 (7,9)	40	---	Yes	PR, closed
Turkey (2018)	17,3 (2,4)	---	---	Yes	PR, closed
Azerbaijan (2015)	16,8 (12,1)	---	---	---	Plurality
Russia (2016)	15,8 (13,4)	---	---	---	Parallel, closed
Georgia (2016)	14,1 (6,9)	(20)*	---	---	Parallel
Malta (2017)	13,4 (1,5)	---	---	Yes	STV, free
Hungary (2018)	12,1 (11,4)	---	---	Yes	Parallel
Liechtenstein (2017)	12,0 (8,0)	---	---	---	PR, free

Sources: Krennerich 2020, on basis of IPU 2020 and Quota Project: [www.quotaproject.org](http://www.quotaproject.org) (9 March 2020). \*At least one parliamentary party voluntarily applies gender quota. \*\* No mandatory clause. Legalized incentives only. \*\*\* From next elections on: 40%. \*\*\*\* From next elections on: PR.

**Appendix II: Sources and references****1) Documents of the Council of Europe**

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#### **Further websites**

Administration and Cost of Elections (ACE) Project: [www.aceproject.org](http://www.aceproject.org).

Election Integrity Project: [www.ElectoralIntegrityProject.com](http://www.ElectoralIntegrityProject.com)

European Platform for Democratic Elections: [www.epde.org](http://www.epde.org)

IFES International Foundation for Electoral Systems: [www.ifes.org](http://www.ifes.org)

International IDEA (Institute for Democracy and Electoral Assistance): [www.idea.int](http://www.idea.int)

United Nations Human Rights Office of the High Commissioner: [www.ohchr.org](http://www.ohchr.org)

[wahlbeobachtung.org](http://wahlbeobachtung.org)

Wahlrecht.de: [www.wahlrecht.de](http://www.wahlrecht.de)

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