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Holding referendums at local level

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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Summary

Referendums have increasingly been used as a tool of direct democratic involvement for resolving issues which are of fundamental importance for peoples' lives. In this context, referendums can become a point of controversy due to the potentially divisive nature of their questions and the problems that may occur over the respective referendum campaign.

Although national referendums have nowadays attracted much attention, it is in fact the local referendums that are most widespread in the Council of Europe member States. Yet, local referendums are essential for sounding out the citizens' will on concrete issues that directly affect their everyday lives.

Bearing this in mind, effective guidelines are needed for member States to use local referendums responsibly in the framework which is in line with Council of Europe standards, most notably the European Charter of Local Self-government, as well as with the international standards and best practices.

1 L: Chamber of Local Authorities / R: Chamber of Regions
 EPP/CCE: European People's Party Group in the Congress
 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
 ILDG: Independent Liberal and Democratic Group
 ECR: European Conservatives and Reformists Group
 NR: Members not belonging to a political group of the Congress

RESOLUTION 472 (2021)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. the European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);

b. the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144, 1992);

c. Recommendation 1704 (2005) of the Parliamentary Assembly of the Council of Europe on Referendums: towards good practices in Europe;

d. Resolution 2251 (2019) of the Parliamentary Assembly of the Council of Europe on Europe on Updating guidelines to ensure fair referendums in Council of Europe member States;

e. the Venice Commission Code of Good Practice in Electoral Matters (2002);

f. the Venice Commission's Revised Guidelines on the Holding of Referendums (2020);

g. the Priorities of the Congress for 2017-2020 and also the new priorities for 2021-2026 which put a great emphasis on promoting an increased and active participation of citizens in local and regional life in order to improve local democracy in the Council of Europe member States;

h. UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels.

2. The Congress points out that:

a. referendums have increasingly been used as a tool of direct democratic involvement for resolving issues which are of fundamental importance for peoples' lives. In this context, referendums can become a point of controversy due to the potentially divisive nature of their questions and the problems that may occur over the respective referendum campaign;

b. although national referendums have nowadays attracted much attention, it is in fact the local referendums that are most widespread in the Council of Europe member States. Yet, local referendums are essential for sounding out the citizens' will on concrete issues that directly affect their everyday lives;

c. bearing this in mind, effective guidelines are needed for member States to use local referendums responsibly in the framework which is in line with Council of Europe standards, most notably the European Charter of Local Self-Government, as well as with the international standards and best practices.

3. In light of the foregoing, the Congress invites local and regional authorities in Council of Europe member States:

a. when holding referendums in their respective areas of responsibility, to observe the guidelines and good practices as contained in the explanatory memorandum, in order to counter some of the negative tendencies;

b. to implement existing guidelines and good practices regarding the holding of referendums, in particular as defined by the Venice Commission in the Code of Good Practice in Electoral Matters and in the Revised Guidelines on the Holding of Referendums, when applicable to the local level;

c. to make more use of citizens' assemblies and similar deliberative democracy tools to accompany the holding of local referendums in order to alleviate tensions and enhance citizens' informed decisions.

² Debated and adopted by the Congress on 16 June 2021, 2nd sitting (see Document CG(2021)40-11), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

4. The Congress commits itself to taking into consideration guidelines included in the explanatory memorandum as well as other relevant standards when observing local referendums in the member States.

RECOMMENDATION 459 (2021)³

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. the European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);

b. the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144, 1992);

c. Recommendation 1704 (2005) of the Parliamentary Assembly of the Council of Europe on Referendums: towards good practices in Europe;

d. Resolution 2251 (2019) of the Parliamentary Assembly of the Council of Europe on Europe on Updating guidelines to ensure fair referendums in Council of Europe member States;

e. the Venice Commission Code of Good Practice in Electoral Matters (2002);

f. The Venice Commission's Revised Guidelines on the Holding of Referendums (2020);

g. the Priorities of the Congress for 2017-2020 and also the new priorities for 2021-2026 which put a great emphasis on promoting an increased and active participation of citizens in local and regional life in order to improve local democracy in the Council of Europe member States;

h. UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels.

2. The Congress points out that:

a. referendums have increasingly been used as a tool of direct democratic involvement for resolving issues which are of fundamental importance for peoples' lives. In this context, referendums can become a point of controversy due to the potentially divisive nature of their questions and the problems that may occur over the respective referendum campaign;

b. although national referendums have nowadays attracted much attention, it is in fact the local referendums that are most widespread in the Council of Europe member States. Yet, local referendums are essential for sounding out the citizens' will on concrete issues that directly affect their everyday lives;

c. bearing this in mind, effective guidelines are needed for member States to use local referendums responsibly in the framework which is in line with Council of Europe standards, most notably the European Charter of Local Self-government, as well as with the international standards and best practices.

3. In light of the foregoing and against the background of principles and standards anchored in the European electoral heritage, the Congress invites the Committee of Minister to call on member States to:

a. implement existing guidelines and good practices regarding the holding of referendums, in particular as defined by the Venice Commission in the Code of Good Practice in Electoral Matters and in the Revised Guidelines on the Holding of Referendums, at the national level and, when applicable, also to the local level;

b. make more use of citizens' assemblies and similar deliberative democracy tools to accompany the holding of local referendums in order to alleviate tensions and enhance citizens' informed decisions;

³ Debated and adopted by the Congress on 16 June 2021, 2nd sitting (see Document CG(2021)40-11), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

c. by analogy with the provisions on participation in local elections as contained in the Convention on the Participation of Foreigners in Public Life at Local Level, to grant the right to vote in local referendums to foreigners who have been residing legally in their country for a period of five years.

4. The Congress commits itself to taking into consideration guidelines included in the explanatory memorandum as well as other relevant standards when observing local referendums in the member States.

EXPLANATORY MEMORANDUM⁴

A. INTRODUCTION

1. Over the past few decades, a growing importance of instruments of direct democracy, most significantly referendums, has developed across Europe and worldwide referring to all levels of government. In particular, referendums at local level gained relevance as many reforms of local governance have been discussed and practiced.⁵ They are increasingly used for resolving issues which are of fundamental importance for peoples' everyday lives.⁶

2. The Council of Europe took this development into account. Its Venice Commission approached this issue in the 2007 Code of Good Practice on Referendums, which provides useful guidelines, though focusing primarily on the national level.⁷ This Code has been subject to a debate in the Parliamentary Assembly of the Council of Europe (PACE) in January 2019⁸ and the newly Revised Guidelines on the Holding of Referendums were adopted by the Venice Commission at its 124th online Plenary Session on 8 October 2020.⁹ Still, there is generally little attention paid to the local level.¹⁰ Bearing this in mind, effective guidelines are needed for member States to use local referendums responsibly in line with the Council of Europe standards including the European Charter of Local Self-Government (hereafter "the Charter") as well as with international standards and best practices.

3. The present Congress report aims at filling this gap, with a specific focus on the local level, which does not exclude drawing from applicable international standards and best practices with regards to elections and national/regional referendums. Besides the work of the Venice Commission, existing standards and best practices have been reflected in election/referendum observation reports of the Congress and OSCE/ODIHR¹¹ as well as in the Congress monitoring reports regarding the implementation of the Charter. Although referendums appear in these documents relatively scarcely, valuable input as regards current problems may be drawn from them too, since the recurring issues in the conduct of national, regional and local referendums are often similar (although not always the same).

4. We witness a general trend of raising popularity of referendums in recent decades.¹² The factors triggering this trend include the expansion of municipality infrastructure and welfare services as well as the accompanying questions of their most efficient and close-to-population realisation. In parallel, the size of municipal units has increased, which has often led to conflicts about municipal mergers.

5. At the same time, many forms of extending political participation and of activating civil society groups have been explored. The broader concepts of participation have sometimes also included increased citizen influence by way of direct elections of mayors and, in turn, the possible recall of elected local politicians as well as direct democracy in the form of initiatives and referendums.

4 Prepared with the contribution of Congress expert Prof. Dr. Christina BINDER, "Bundeswehr University Munich", Germany.

5 Since the 1980s, these new tendencies all across Europe have been reinforced by activities of the Council of Europe through the adoption and implementation of the 1985 European Charter of Local Self-government which refers to "assemblies of citizens, referendums or any other form of direct citizen participation". In 1993, the Standing Conference of Local and Regional Authorities of Europe, predecessor of the Congress, adopted a resolution on local referendums and this was further elaborated by a recommendation to member States in 1996. (Rec (96)2). These instruments defined basic instruments and features of local referendums, identified main areas of regulation and suggested that a legal framework should be laid down for referendums and popular initiatives at the local level.

6 It is indeed local referendums in municipalities and regions that are held more frequently and are more widespread in the Council of Europe member States than national referendums.

<https://www.routledgehandbooks.com/doi/10.4324/9780203713181-4>.

7 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008rev-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008rev-cor-e).

8 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25231&lang=en>.

9 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)031-e).

10 The general lack of interest and lack of research on local referendums was already recognised at the 10th Conference of European Ministers responsible for Local Government in 1993 and the situation has not changed much since then.

<https://rm.coe.int/native/09000016804afe4f>.

11 Note the close cooperation between Council of Europe PACE (national elections) and Congress (local and regional elections) delegations with the missions of OSCE/ODIHR.

12 See also Council of Europe, Local referendum. Report prepared by the Steering Committee on Local and Regional Authorities (CDLR) for the 10th Conference of European Ministers responsible for Local Government, The Hague 15–16 September 1993. 1st ed. Strasbourg: Council of Europe Press, 1993. The document acknowledges that local referendums may encourage citizens' interest and participation in the running of public affairs and therewith usefully complement representative democracy procedures at local level. Local referendums may also foster the participation of foreigners in public life at local level in line with Art 4 of Convention on the Participation of Foreigners in Public Life at Local Level.

6. As a largely separate category, instruments of deliberative participation, such as citizen assemblies, have been widely discussed and in some countries also implemented at the local level. Apparently, direct democracy has been recognized as valuable for individual citizens' participation and as a tool for supporting local democracy in general.¹³ Local communities and municipalities provide an important arena of civic participation and facilitate the political life for citizens and long-term residents with easier access compared to national or regional politics. Participation of non-citizen residents in local referendums has been suggested as a means fostering their long-term integration.¹⁴

7. Against this background, the instrument of a (local) referendum provides additional opportunities for political decision-making and thereby supports the principle of political equality, contributing to a more open political power structure. A basic feature of these procedures of direct participation is transparency of political decision-making, access to information, and to a better understanding of the issues, values and interests involved in a specific policy decision. This may also enhance a higher level of informed citizens and a better deliberative quality of public debates and campaigns. Civil society and single-issue groups have also gained from initiative and referendum instruments, as they provide more institutional channels for non-party groups. At a more general level, direct democracy as an institution is expected to provide strong instruments of political control and thereby support the accountability and responsiveness of political elites.¹⁵ Specifically at the local level, referendums can give citizens an opportunity to decide practical issues of local importance, which affect their everyday lives and cut through political divides.

B. General Framework applicable to (local) referendums

1. Relevant international and regional instruments

8. Neither universal nor regional human rights instruments establish explicit standards for (local) referendums. However, referendums are covered by general provisions protecting the right to political participation as entrenched e.g. in the International Covenant on Civil and Political Rights (CCPR): CCPR Article 25(a) explicitly refers to the direct dimension of political participation by establishing the right of every citizen: "To take part in the conduct of public affairs, directly or through freely chosen representatives".¹⁶ This was confirmed, e.g., in *Gillot v. France*, where the Human Rights Committee (HRC) accepted that a complaint concerning self-determination in referendums in New Caledonia organised as part of a self-determination process fell within the scope of Article 25.¹⁷ On the regional level of Europe, conversely, (local) referendums as a rule do not fall within the scope of Article 3 of Protocol No 1 to the European Convention on Human Rights (ECHR):¹⁸ since the provision explicitly refers to elections and the "choice of the legislature".¹⁹

¹³ Schiller, 2017, pp 60-62, available at:

<https://www.taylorfrancis.com/books/e/9780203713181/chapters/10.4324/9780203713181-4>.

¹⁴ Local referendums may also foster the participation of foreigners in public life at local level in line with Art 4 of the Convention on the Participation of Foreigners in Public Life at Local Level. Ibid; see also Recommendation R(96)2 on referendums and popular initiatives, 1996, [https://localgovernment.gov.mt/en/DLG/Legislation/Documents/Legislation/R\(96\)2.pdf](https://localgovernment.gov.mt/en/DLG/Legislation/Documents/Legislation/R(96)2.pdf).

¹⁵ Schiller, 2017, pp 62, 77.

¹⁶ Emphasis added. Thus, the direct dimension of the right to political participation as foreseen in Art25 CCPR may be an alternative to the representative element and can be realised through different channels of direct democratic involvement, including referendums. para 6 CCPR GC 25, 1996.

¹⁷ http://www.worldcourts.com/hrc/eng/decisions/2002.07.15_Gillot_v_France.htm.

¹⁸ This is borne out by the case law of the ECtHR. In practical terms, the Court has ruled on the question of referendums only once in the case of *Moohan and Gillon v. the United Kingdom* where convicted prisoners had complained of being unable to vote in the Scottish independence referendum held in 2014. In this case, the Court found that Art 3 of Protocol No. 1 was inapplicable to such a consultation and dismissed the applications as inadmissible, mainly on grounds that the Scottish independence referendum was not "an election concerning the choice of the legislature". <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-175572%22%7D>. Note also that the Convention organs have earlier emphasised on a number of occasions that Art3 of Protocol No. 1 is limited to elections concerning the choice of the legislature and does not apply to referendums (see *X. v. the United Kingdom*, no. 7096/75, Commission decision of 3 October 1975, Decisions and Reports (DR) 3, p. 165; *Bader v. Germany*, no. 26633/95, Commission decision of 15 May 1996, unreported; *Castelli and Others v. Italy*, nos. 35790/97 and 38438/97, Commission decision of 14 September 1998, DR 94, p. 102; *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI; and *Borghini v. Italy* (dec.), no. 54767/00, ECHR 2002-V; *McLean and Cole v. the United Kingdom* (dec.), nos. 12626/13 and 2522/12, 11 June 2013). Note, however, that the ECtHR has left a door open – taking account of different electoral systems existing across CoE States, paras. 33 and 38 of *Cumhuriyet Halk Partisi v. Turkey*, para 40 of *Moohan and Gillon v. the United Kingdom*.

¹⁹ See *Mathieu-Mohin and Clerfayt v. Belgium* (ECtHR, Jdg. of 2 March 1987, Series A, vol. 113).

9. Still, also general human rights guarantees provide guidance for (local) referendums such as Article 2 (CCPR), the prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status and the right to equality (Art 26 CCPR). Further standards may be derived from specific instruments, e.g. as regards the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Art 7 – for women); the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Art 5 – non-discrimination but also positive measures; of relevance for minorities of all kinds) and the Convention on the Rights of Persons with Disabilities (CRPD) (Art 29 – proactive removal of obstacles to facilitate the participation of persons with disabilities throughout the entire election process; see also the specific case of persons with mental disabilities).²⁰

10. Likewise, other rights and freedoms are of relevance and set preconditions for referendums. Most fundamentally, democratic referendums are not possible without respect for human rights as established in international human rights instruments, in particular the freedoms of expression (*including that of the press*) (Art 19 CCPR, Art 10 ECHR), assembly and association (Art 21 and 22 CCPR; Art 11 ECHR) including the freedom to set up political parties; as well as freedom of movement inside the country (Art 12.1 CCPR; Art 2 Prot 4 ECHR).²¹ Indeed, citizens must have an opportunity to exert influence through public debate and dialogue with their representatives or through their capacity to organise themselves in order to fully realise their right to meaningfully participate in a referendum.²²

11. As regards the local level, the European Charter of Local Self-Government explicitly refers to the right of citizens to participate in local referendums (Art 3.2, 5). More particularly, Article 3.2 of the Charter states that local referendums as a form of direct participation can be used for the realisation of the right of citizens to participate in the conduct of public affairs at local level where it is permitted by statute.²³ Moreover, Article 5 of the treaty ensures that any changes to the boundaries of local authorities are not made without prior consultation of the local communities concerned, possibly by a referendum where permitted by statute.²⁴ The 2009 Additional Protocol to the Charter (entry into force on 1 June 2012, ETS 207)²⁵, refers in Article 2 as regards the measures to exercise the right to participation in local government/enable participation in local government to “procedures for involving people which may include consultative processes, local referendums and petitions...”.

12. The question of referendums and their relevance was taken up and further concretised in a variety of “soft-law” instruments. Above all, the *UN General Comment No 25* acknowledges referendums as one of the forms of direct political participation and provides an enumeration of situations where the holding of (local) referendums is advisable, *inter alia* when it comes to making decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with the government.²⁶ This has also been addressed by the Council of Europe, namely by the *PACE Recommendation 1704 (2005)*, entitled “Referendums: towards good practices in Europe”, recognising the growing importance of referendums across Europe and recommending their use as a means to reinforce European democracies.²⁷ The need for more detailed provisions for referendums was subsequently reflected by the Venice Commission in the *2007 Code of Good Practice on Referendums* – which was updated by the *Revised Guidelines on the Holding of Referendums in 2020*.²⁸ The revised Code addresses some of the crucial issues in holding referendums from the perspective of international standards and domestic practices in Council of Europe States. Specifically

20 See the case of *Zsolt Bujdosó and five others v. Hungary* (Committee on the Rights of Persons with Disabilities, Comm. No. 4/2011(2013) in which a violation of the CRPD was found. See also *Purohit and Moore v. the Gambia* (Afr. Comm., Comm. No. 241/01(2003)) and *Alajos Kiss v. Hungary* (ECtHR, Jdg. of 20 May 2010). See also UN Human Rights Committee, Concluding Observations on Belize, 2013.

21 Para 12 of CCPR GC 25. See also State of Democracy, Human Rights and the Rule of Law: Populism - How strong are Europe's checks and balances?, Report by the Secretary General of the Council of Europe, 2017, <https://edoc.coe.int/en/overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html>.

22 Para 8 of CCPR GC 25. Restrictions on these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality. Venice Commission, 2020, II.2.

23 <https://rm.coe.int/168007a088>.

24 Ibid. Whilst both provisions of the Charter envisage that domestic legislation allows for local referendums, absence of such legislation cannot be considered a violation of the Charter as other (representative) forms of consultation are admissible. Explanatory Report to the European Charter of Local Self-Government, pp 4, 6, <https://rm.coe.int/16800ca437>.

25 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, 2009, ETS 207, 19 ratifications, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207>.

26 General Comment No.25 of CCPR, para. 6.

27 PACE Recommendation 1704 (2005) Referendums: towards good practices in Europe.

28 [Venice Commission, Revised Guidelines on the Holding of Referendums, 8 October 2020 \(CDL-AD \(2020\)031](#).

of relevance for the local level are the Council of Europe Resolution on local referendums incorporated in the Local Referendums Report adopted by the 10th Conference of European Ministers responsible for Local Government (1993)²⁹ and the Council of Europe Committee of Ministers' Recommendation on Referendums and Popular Initiatives at Local Level (Recommendation 96(2)(1996)).³⁰ Finally, the 2001 Recommendation No 19 of the Committee of Ministers calls on Council of Europe member States to consider introducing local referendums as one of the measures to encourage and reinforce citizens' participation in local public life.³¹

2. Basic electoral principles: the right to universal, equal, free and secret suffrage

13. Basic electoral principles are generally applicable also to (local) referendums. Most importantly, the CCPR Article 25(b) guarantees citizens "To vote (...) at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors". The four elements/principles mentioned therein – universal, equal, free and secret suffrage – are also founding parts/principles of Europe's electoral heritage.³² They are the building blocks for and frame the conduct of (local) referendums.³³

It has been found problematic in election observation reports that the legal framework did not provide for sufficient guarantees for the conduct of genuinely democratic referendums. In particular, insufficient guarantees have been noted with regards to the full participation of all stakeholders and equal opportunities and conditions for proponents and opponents in all aspects of the referendum process.

14. The principle of universal suffrage is a core principle governing (local) referendums. It may be subject to certain conditions such as age, nationality or residence. Still, these restrictions must be reasonable and should, in accordance with the 2020 Venice Commission Revised Guidelines on the Holding of Referendums, not be more onerous than for voting in elections.³⁴ First, a minimum age limit to exercise the right to vote in referendums is generally accepted although the right to vote must be acquired, at the latest, at the age of majority.³⁵

15. Also, nationality and residence requirements may apply to referendums. Respectively, in view of the relation between habitants and local politics, residency is a more relevant criterion as regards participation in local referendums than in national referendums. According to the Venice Commission, a length of residency requirement for nationals – which, in any case, should not exceed 6 months³⁶ – may only be imposed for local (and regional) referendums. At the same time, foreigners, further going than for national referendums, should be allowed to vote in local referendums after a certain period of residence (of maximal five years or, for citizens from other EU member States, immediately).³⁷ Recommendation 1704 (2005) of the Parliamentary Assembly of the Council of Europe calls on States to "*grant the right to vote in local referendums to foreigners who have been residing legally in their country for a period of five years, by analogy with the provisions on participation in local elections contained in the Convention on the Participation of Foreigners in Public Life at Local Level*".³⁸

29 Council of Europe, Local referendum. Report prepared by the Steering Committee on Local Authorities (CDLR) for the 10th Conference of European Ministers responsible for Local Government, The Hague 15–16 September 1993. 1st ed. Strasbourg: Council of Europe Press, 1993.

30 [https://localgovernment.gov.mt/en/DLG/Legislation/Documents/Legislation/R\(96\)2.pdf](https://localgovernment.gov.mt/en/DLG/Legislation/Documents/Legislation/R(96)2.pdf).

31 <https://rm.coe.int/16804f513c>.

32 In a solemn declaration dated 13 May 2004, the Committee of Ministers recognised "the importance of the Venice Commission, Code of Good Practice in Electoral Matters, 2002, which reflects the principles of Europe's electoral heritage, as a reference document for the Council of Europe in this area, and as a basis for possible further development of the legal framework of democratic elections in European countries". (CM(2004)83 final).

33 Note that as regards local referendums in particular, Rec(96) distinguishes between decision making and consultatory referendums. While the principles on decision making referendums should in principle follow the principles for elections (universal, equal, free & secret), the rules for consultatory referendums can be less strict.

34 Venice Commission, 2020, I.1.1.

35 CCPR General Comment 25, 1996; Venice Commission, 2020, I.1.1.

36 Venice Commission, 2020, I.11.c.

37 Venice Commission, 2020, I.11.b.; see also Art 6 of the Convention on the Participation of Foreigners in Public Life at Local Level where a period of maximum 5 years of residence preceding the elections (referendums) is provided as a condition for foreign residents to participate in the vote.

38 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17329>. See also the Congress' report on Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions which recognises the role that active political participation of foreigners and IDPs plays in their integration at local level and encourages CoE states to adopt adequate measures in order to facilitate voting rights of these persons in elections. <https://rm.coe.int/voting-rights-at-local-level-as-an-element-of-successful-long-term-int/16808e49f4>.

16. As in elections, individuals may be deprived of the right to vote in (local) referendums only under limited cumulative conditions: deprivation must be provided for by law, be proportional; based on grounds of mental incapacity imposed by a court decision or on grounds of criminal conviction for a serious offence.³⁹

17. The principle of equal suffrage requires that each voter has one vote and that each vote should carry more or less the same weight. Should the electoral system provide voters with more than one vote (for example in case of alternative voting), each voter has the same number of votes.⁴⁰ The drawing of electoral boundaries within a municipality or region and the method of allocating votes should not distort the distribution of voters or discriminate against any group.⁴¹ This being said, a different calculation of votes in case of national minorities does not, in principle, run counter equal suffrage, especially where the referendum is conducted on issues of specific interest for the national minority. In any case, the proportionality criterion must be respected.⁴²

18. Besides equal voting rights, voters need to be guaranteed an equal opportunity to participate in the conduct of the referendum. Most importantly, this requires a neutral attitude by administrative authorities, particularly as regards the referendum campaign in areas such as media coverage, especially by the publicly owned media (equal access to public radio and television broadcasts for supporters and opponents and equal coverage in the media), advertising by campaign posters, rallies etc., and the exercise of the right to assembly in the public space.⁴³ At local level, this may particularly apply to the allocation of public space (municipal buildings etc.) on an equal footing. The requirement of equal opportunity also sets standards for campaign and referendum finance; as well as, more generally, for the public subsidies of proponents and opponents.

19. Closely related to equal suffrage is the principle of free suffrage. The principle of free suffrage comprises, on the one hand, the freedom of voters to form an opinion. This implies that authorities must provide sufficient information to enable voters to arrive at an informed opinion on the referendum proposals.⁴⁴ It also requires that (local) administrative authorities observe their duty of neutrality in establishing an environment where voters can form their opinion freely and outrules the (extensive) use of public/administrative resources by the authorities for campaigning purposes.⁴⁵ However, in referendums, the duty of neutrality is not as extensive as in case of regular elections: unlike in regular elections, in (local) referendums, authorities may intervene in the campaign and convey their viewpoint in the debate in support of or against a referendum proposal; they may take actively part in the campaign.⁴⁶

20. The element of secret suffrage aims at ensuring for the voter an environment in which s/he can make her or his own choice. Voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. For voters, secrecy of voting is not only a right but also a duty, non-compliance must be punishable by the disqualification of any ballot paper whose content is disclosed. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited. The list of persons actually voting should not be published.⁴⁷ Any violation of secret suffrage should be sanctioned.⁴⁸

39 See respectively also [Venice Commission, 2020](#), I.11.d. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote. Ibid.

40 Note that there is a possible exception: votes of voters who are members of national minorities may count more if the referendum is conducted on issues of specific interest for the national minority. Ibid, pp 7-8. Still, voters must not find themselves obliged to reveal their membership of a national minority.

41 Para 21 of CCPR GC 25, 1996.

42 [Venice Commission, 2020, I.2.3.a.](#)

43 See also [Venice Commission, 2020](#), I.2.2.

44 [Venice Commission, 2020](#), I.3.1.

45 Ibid, I.3.2. This issue is further elaborated in the Congress report on Administrative resources and fair elections, involving a set of recommendations and good practices, https://www.coe.int/en/web/congress/local-and-regional-governance/-/asset_publisher/1MiK9r1zNOTy/content/new-practical-guide-administrative-resources-and-fair-elections-?inheritRedirect=false.

46 [Venice Commission, 2020](#), I.3.1.b. Particular duties of reserve may apply to the persons belonging to the public authority responsible for the organisation or supervision of the referendum.

47 On access to lists of those who have voted see the Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Publication of Lists of Voters Having Participated in Elections (CDL-AD(2016)028).

48 [Venice Commission, 2020](#), I.4.

21. Overall, the abovementioned principles apply equally to local referendums. They inform the different phases of the referendum process, including the legal framework, the organisation/administration of the referendum and other phases of the process.

3. Standards for different aspects of the referendum process

3.1. Legal framework and the rule of law

22. Compliance with rule of law requirements are an essential precondition for the conduct of referendums. Accordingly, the means by which individual citizens exercise the right to participate in referendums should be provided for in the constitution and other laws.⁴⁹ Apart from rules on technical matters and detail (which may be included in regulations of the executive), rules of referendum law should have at least the rank of statute and not be adopted *ad hoc* for a specific referendum.⁵⁰

The legal framework for referendums often suffers from a lack of harmonisation of the referendum law with the general electoral law which may result in gaps and inconsistencies in the regulation of different areas such as the campaign conduct and campaign finance specific to referendums (see below in B.3.4.).

23. Also, a certain stability of the legal framework is needed. The fundamental aspects of referendum law – including inter alia, the composition of the impartial body organising the referendum; electoral registers, the procedural and substantive validity of the text put to the referendum; effects of the referendum and so on⁵¹ should not be open to amendment to be applied during the year following their enactment.⁵² The adoption of legislation on referendums should take place by broad consensus after extensive/inclusive public consultations with all stakeholders.

On this note, election observation reports on national referendums have criticised insufficient safeguards in legislations for preventing the enforcement of legislative changes to the referendum law within one year after the adoption of such a law.⁵³ Another shortcoming noted in election observation reports has been the absence of an impartial body mandated to review any proposed referendum question and to ensure the clarity and legality of the question in a timely manner.

3.2. Organisation and administration of the referendum

24. In terms of referendum administration, an impartial body should be tasked with the organisation and supervision of the referendum. This can be the central election commission or another impartial authority.⁵⁴

25. This body should have the following powers: to check the validity of any proposed referendum question and approve its final wording; to provide for official information (including when voting on a specifically worded proposal, the legal text submitted to referendum); to make official public statements in real time relating to violations or major infringements of the relevant rules; to supervise the conduct of the campaign, take all necessary measures to ensure that it is properly held; to enforce its decisions and to sanction possible breaches; as well as prior to the vote, and in order to avoid having to declare a vote completely invalid, to correct faulty drafting.⁵⁵

26. In case an impartial body distinct from the central electoral commission is in charge of organising and supervising referendums, it needs not imperatively be a permanent body in countries with few referendums, but legislation should define its composition *in abstractu*.⁵⁶ Indeed, the commission/impartial body should incorporate at least one member of the judiciary or another independent legal expert. It may include a representative of the Ministry of the Interior/a ministry

⁴⁹ [Ibid.](#), II.3.

⁵⁰ [Ibid.](#), II.3.a.

⁵¹ [Venice Commission, 2020, II.3.b.](#)

⁵² [Ibid.](#)

⁵³ OSCE/ODIHR, Final Report, Constitutional Referendum in Turkey, 16 April 2017, pp 6-7.

⁵⁴ Unless there is a longstanding tradition of administrative authorities' impartiality in electoral matters, independent commissions must be set up at all levels, from the national to the polling station level. [Venice Commission, 2020, II.4.1.a.](#)

⁵⁵ [Ibid.](#), II.4.1.b.

⁵⁶ [Ibid.](#), II.4.1.c.

responsible for the portfolio related to the administration of elections (e.g. the Minister in charge of local government) and representatives of national minorities (if applicable where there are national minorities).⁵⁷

27. Political parties or supporters and opponents of the proposal put to the vote must be able to observe the work of the impartial body. They do not necessarily need to be represented therein: Membership of supporters and opponents may be limited to lower level commissions, which are not permanent. Equality between political parties may be construed strictly or on a proportional basis according to their representation in the municipal/district council.⁵⁸

28. The bodies appointing members of central election commissions must not be free to dismiss them at will. Members of commissions must receive standard training. It is desirable that commissions take decisions by a qualified majority or by consensus.⁵⁹

Various election observation reports on national referendums have recommended that referendums be administered by a permanent election commission in order to ensure stability and consistency in the administration of electoral processes.⁶⁰ Further, election observation missions have found a lack of a balanced representation of the proponents and opponents of proposed amendments in the referendum administration and lacking possibilities for non-political party stakeholders to submit nominations for members of the referendum administration.⁶¹ Finally, there is often room for a better training of administration officers.

3.3. Voter registration/voter lists

29. Comprehensive electoral (voter) registers are essential to realise the principle of universal suffrage, and to comply with the required inclusiveness and non-discrimination during referendums. Respectively, the composition of voter lists must be completed before the referendum.⁶² Electoral registers/voter lists must be permanent or refer to a register that is regularly updated; at least before every referendum. When voters are not registered automatically, the period for active registration must be relatively long.⁶³ Electoral/voter registers must be public and there should be a judicial – or an administrative procedure subject to judicial control –, according to which a non-registered voter can register; preferably not by a decision of a polling station committee on election day.⁶⁴ The procedure should allow for remedies within a reasonable timeframe and voters should also be able to correct incorrect entries in the register.

3.4. Referendum campaign, media and funding

30. The principles of equal and free suffrage require that campaigning be possible on an equal level playing field for supporters and opponents of the referendum proposal. It is based on the respect for fundamental freedoms (most importantly of assembly and expression) during the campaign and also refers to the media coverage of the campaign and to campaign finance.

The environment for referendum campaigns often becomes subject of criticism in election observation reports for under-regulation of certain areas of campaigning. In general terms, the legal framework for the conduct of referendum campaigns is not always regulated by referendum-specific laws which may result in gaps in legislation, such as the lack of clear safeguards and rules for campaigning, including the participation of public and state officials.

⁵⁷ Ibid, II.4.1.d.

⁵⁸ Ibid, II.4.1.e.

⁵⁹ Ibid, II.4.1.f.

⁶⁰ OSCE/ODIHR, Final Report, Referendum in North Macedonia, 30 September 2018, p 7.

⁶¹ OSCE/ODIHR, Final Report, Constitutional Referendum in Turkey, 16 April 2017, p 8.

⁶² [Venice Commission, 2020](#), I.1.2.b.

⁶³ [Ibid](#).

⁶⁴ Provision may be made for a supplementary register as a means of giving the vote to persons who have moved or reached statutory voting age since the final publication of the register. [Venice Commission, 2020](#), I.1.2.f.

31. Respectively, the (local) referendum campaign/proposals of supporters as of opponents must be dealt with on the basis of respect for fundamental freedoms and in compliance with the principle of equality.⁶⁵ Indeed, there needs to be a level playing field between the supporters and opponents of the voted proposal as concerns the coverage by (public) media and in news broadcasts, as well as public subsidies/campaign finance and other forms of backing. Also, the same conditions for advertising in radio and television should apply to proponents and opponents.⁶⁶

32. Overall, the rules governing campaigning are often less stringent in respect of local referendums, which may be justified by more limited stakes as compared to national referendums. For example, States impose fewer regulations on conduct of the media during the campaign period for local referendums than for the national ones.⁶⁷

As regards the media, it has been observed on multiple occasions that the media environment for referendums had various deficiencies, such as the lack of primary legislation for the conduct of referendums providing general principles on the media coverage of the referendum campaign, most commonly resulting in unequal access for supporters and opponents of the referendum proposal to the public and private media during the campaign period. Another shortcoming noted involved a lack of fair media coverage ensuring voter education prior to the referendum. On other occasions, existing legislation has been praised for establishing a state media supervisory body, regulating the broadcast media coverage and requiring the broadcasters to provide the opportunity to any contender, under equal terms in compliance with the election regulations. Importantly, the legislation should clearly stipulate the primary institution for this task. Further, it has been assessed positively that recommendatory guidelines were introduced to set up basic electronic media coverage of the referendum campaign.

33. In terms of funding, and in particular as regards the financing of the referendum campaign, a level playing field must be ensured as regards the public subsidies for the actors involved in campaigning, if applicable.⁶⁸ The principle of equality of opportunity applies to public funding/support/media coverage. Again, to live up to equality in terms of funding can be based on either strict or proportional “equality”.⁶⁹ In any case, adequate funding should be provided to both sides – supporters and opponents; at a minimum to those who represent a minimum percentage of the electorate.

The framework for referendum campaign finance often suffers from insufficient regulation, especially as regards clear rules on the use of public funding, as well as requirements for disclosure, auditing and sanctions. Also, the absence of requirements for interim financial reports published prior to referendum day has been criticised in election observation reports. In particular, it has been recommended that authorities establish periodic, timely and transparent reporting of the referendum campaign income and expenditures, and require the timely publication of the reports. In addition, it has been recommended that the effectiveness of oversight be enhanced by introducing campaign spending limits, and requiring the establishment of dedicated bank accounts for campaign-related transactions.

34. Overall, the general rules on the funding of political parties and the referendum campaign must be applied to both public and private funding, including the rules on limitations of donations and spending.⁷⁰ There may be a maximum amount on individual donations or for all donations. Limitations may also be imposed on spending, especially on advertising. Campaign funding must be transparent and should

⁶⁵ See also the principle of equality mentioned above. Note that, to ensure the equal level playing field as regards the campaign, media coverage and funding, two approaches are possible; either strict or proportional equality; i.e. either allocation on the basis of a strictly equal footing independent from the level of support or in proportion to the support received for each option. The latter may be assessed in different ways. If the referendum is supported by different parties, account can be taken of the number of parties backing an option or of their results in previous elections. Otherwise, it could be done on the basis of signatures received.

⁶⁶ Additionally, legal provisions complying with the freedom of expression should ensure that there is a minimum equal access to private media for all participants in the referendum regarding the (local) referendum campaign; [Venice Commission](#), 2020, I.2.2.e.

⁶⁷ In France, provision is made for campaigning on television channels or radio stations only in the case of institutional referendums, and then only on local public channels and stations; in such cases, both sides must be given fair coverage.

⁶⁸ Note that relatively few States regulate the funding of referendum campaigns at local level. In Malta, public funds can be used for information purposes, but not for campaigning. In many cases, administrative costs are not borne by the central government, but by the local authority organising the vote (Croatia, Poland and North Macedonia).

⁶⁹ [Venice Commission](#), 2020, I.2.2.d.i.

⁷⁰ See also CCPR, GC 25 para 19: Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

become public at least prior to the referendum. An impartial body should control campaign financing. Also, there should be (effective) sanctions in case of violations.

35. The misuse of public/administrative resources by the authorities for campaign purposes must be prohibited in order to guarantee the equality of opportunity and to enable all voters to freely form an opinion.⁷¹

3.5. Voter information and education

36. Voter information is key to ensure an informed participation in the referendum. Authorities or, ideally, an impartial body must provide balanced information which is made available to voters sufficiently far in advance.⁷² This includes the text submitted to the referendum and an explanatory report or balanced campaign material from both sides (proponents and opponents).⁷³ Information is to be provided directly to voters in all official languages (e.g. through mail). If there are minorities, information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.⁷⁴ The information provided must be objective; e.g. in form of information leaflets with balanced content available to voters. In terms of transparency in campaign messaging, the origin of the message should be provided (as well as of the funding).

37. Effective sanctions must be imposed in case of breaches of public authorities' duty of neutrality.

As regards voter education prior to referendums, deficiencies have been found with regards to the failure of authorities to provide impartial or balanced information on proposed amendments and their potential impact ahead of the referendum day in order to enhance voters' ability to make an informed choice. On a similar note, there has been criticism on lacking provisions for civil society and professional associations permitting them to conduct civic education activities on referendum proposals.

38. The (local) authorities have the responsibility for providing adequate information to the local community as regards the issues at stake and procedural matters.⁷⁵ It is desirable that any proposals put to a public vote should likewise be subject to a detailed parliamentary scrutiny (on the local level, this should be a detailed scrutiny by the municipal council).

39. Another (or complementary) mechanism for ensuring that proper scrutiny takes place in the early stages of the referendum process can be a form of citizen deliberation through so-called "citizen assemblies" held prior to referendums. Importantly, citizen assemblies are foreseen by Article 3(2) of the 1985 European Charter of Local Self-Government. A citizens' assembly is composed entirely of members of the community who are meeting over a certain period of time to learn about the issues, deliberate in depth among themselves, and reach conclusions. Their recommendations are then used in drafting the proposals put to voters in the referendum. Citizen assemblies have various advantages. They give politicians a much deeper understanding of informed public opinion and help to frame the debate during the referendum campaign that follows. By bringing solid evidence and reasoned arguments to the fore, and by placing ordinary citizens at the heart of the discussion, citizen assemblies may reduce polarisation on contentious topics that are often voted at referendums. Citizen assemblies ensure that voters are involved throughout the whole process.⁷⁶

71 Venice Commission, 2020, I.3.1.b. Prohibitions on campaigning by the authorities are in place in Armenia, Portugal and Russia where these regulations apply to all referendums. In Austria, authorities are allowed to campaign but cannot disseminate non-objective or disproportionate mass information. In Hungary, the authorities can be involved in campaigning.

72 Venice Commission, 2020, I.3.1.e.

73 More particularly, the referendum process should not be reduced only to the act of voting on the referendum day but should include also the preceding phase of delineating options the voters will have when taking the final decision at the poll.

74 CCPR GC 25, 1996.

75 R(96), para I, 3. E.g. in France, Poland and Switzerland, the authorities have an obligation to supply objective information during the campaign period.

76 Council of Europe PACE, Up-dating guidelines to ensure fair referendums in Council of Europe member States, 2019, pp 10-11.

3.6. Date of the referendum

40. The absolute minimum period between calling a referendum and polling day should be four weeks. A considerably longer period of preparation is desirable, however, particularly if the topic has not already been subject to widespread public discussion. The campaign period for referendums must not be shorter than for regular elections.⁷⁷ The law should likewise provide for a maximum period between the submission of signatures for a referendum or a popular initiative and the vote. It is suitable not to hold elections and referendums on the same day if the referendum is about the institution facing election.⁷⁸

3.7. Referendum day: voting and counting procedures

41. General voting procedures must be readily understandable by citizens. Voters should always have the possibility to vote in a polling station but other means of voting (postal voting, electronic voting, mobile ballot boxes, proxy voting) should also be acceptable under certain conditions.⁷⁹ For local referendums, they should follow the voting arrangements for local elections.⁸⁰ In any case, the general principles of universal, equal, free, secret and direct suffrage must be upheld on the referendum day and acts such as pressure on voters, vote-buying, family voting and other practices contravening the general principles of democratic elections must not be allowed and made punishable by law.⁸¹

42. As a rule, postal voting should be allowed only where the postal service is safe and reliable. Postal voting may be confined to people who are in hospital or imprisoned or to persons with reduced mobility; fraud and intimidation must not be possible.⁸²

43. Electronic voting should be in conformity with the Committee of Ministers' Recommendation Rec(2017)5 on standards for e-voting.⁸³ In particular, it should be used only if it is safe, reliable, efficient, technically robust, open to independent verification and easily accessible to voters; the system must be transparent; unless channels of remote electronic voting are universally accessible, they shall be only an additional and optional means of voting.⁸⁴

44. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited. Mobile ballot boxes should only be allowed under strict conditions that avoid fraud.⁸⁵

45. Counting should preferably take place in polling stations. Counting must be transparent. Observers, representatives of the proposal's supporters and opponents and the media must be allowed to be present. These persons must also have access to the records. Results must be transmitted to the higher level of election administration in an open manner. Electoral fraud must be punished with effective sanctions.⁸⁶

46. Finally, freedom of voters to express their wishes also implies the right to an accurate establishment of the result by the body responsible for organising the referendum in a transparent manner, including the formal publication thereof in the official gazette.⁸⁷

3.8. Observation of the referendum

47. Both domestic and international observers should be given the widest possible opportunity to observe referendums. Observation must not be confined to referendum day itself but must include the assessment of the question put to the referendum, the referendum campaign and, where appropriate, the voter registration and the signature collection period. It must make it possible to determine whether

77 Venice Commission, 2020, III.9.a.

78 Ibid, III.9.b-c.

79 See Venice Commission, 2002, I.3.2.

80 See (R(96) 2, 4 voting conditions: "the ballot should be organised having regard to the rules governing voting arrangements for local elections, subject to any specific provisions applying."

81 Venice Commission, 2020, I.3.2.xv.

82 Venice Commission, 2020, I.3.2.iii.

83 See https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680726f6f; the new Recommendation follows the previous Recommendation (2004)11 ([https://www.coe.int/t/dgap/goodgovernance/Activities/Key-Texts/Recommendations/00Rec\(2004\)11_rec_adopted_en.asp](https://www.coe.int/t/dgap/goodgovernance/Activities/Key-Texts/Recommendations/00Rec(2004)11_rec_adopted_en.asp)).

84 Venice Commission, 2020, I.3.2.iv.

85 Ibid, I.3.2.v.

86 Ibid, I.3.2.xii-xv.

87 Ibid, I.3.2.b.iii.

irregularities occurred before, during or after the vote.⁸⁸ In particular, it must always be possible during vote counting.⁸⁹

The observation of referendums has been mentioned in election observation reports in relation to the lack of explicit legal provisions ensuring the presence of domestic (both citizen and partisan) and international observers during all stages of the referendum process, in line with international standards and best practices. Mention has also been made regarding the need for more progress in the training of domestic observers as a general matter.

3.9. Judicial remedies for referendums

48. An effective system of complaints and appeals/judicial remedies must be established. The relevant body in referendum matters should be impartial and independent, endowed with the necessary powers to cognition and decision to afford an effective remedy, established by law and bound to apply the law, with limited discretion. In any case, a final appeal to a court of law is the preferred option. The procedure must be simple and devoid of formalism, notably for the admissibility of complaints and appeals.⁹⁰ The procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). The law must specifically designate the competent body in each case.⁹¹

49. In general, the rules governing judicial review are in most States less developed in the case of local referendums as compared to the rules for national referendums. Still, also the rules for local referendums need to be sufficiently detailed.⁹²

The complaints and appeals mechanism for referendums has been criticised in election observation reports for insufficient guarantees of effective remedy, in particular for the lack of legal standing for bringing complaints against the referendum process. This included insufficient timelines for the submission and review of challenges to referendum results, preventing complainants from preparing applications and ensuring timely remedy.

50. The review/appeal body must be competent to deal with all aspects of the referendum, in particular with: a) the franchise and electoral registers; b) the completion of popular initiatives and requests for referendums from a section of the electorate; c) the procedural and, where applicable, substantive validity of texts submitted to a referendum;⁹³ d) campaign financing issues; e) respect for free suffrage; as well as with f) the results of the ballot.⁹⁴

51. In terms of legal consequences, where the review body is a higher electoral commission, it must be able to rectify or set aside decisions taken by lower electoral commissions *ex officio*.⁹⁵ The appeal body must also have authority to annul the referendum where irregularities may have affected the outcome. It must be possible to annul the entire referendum or merely the results for one polling station or constituency. In the event of annulment of the overall result, a new referendum must be called.⁹⁶

52. All voters must be entitled to appeal. Still, a reasonable quorum may be imposed for appeals by voters against the results of a referendum. Time-limits for lodging and deciding appeals must be short. The applicants' right to a hearing must be protected.⁹⁷

⁸⁸ As regards rights, observers should be able to go everywhere where operations connected with the referendum are taking place (for example, vote counting and verification). The places where observers are not entitled to be present should be clearly specified by law, and the reasons for such exclusion should be clearly stated. Observation should cover respect by the authorities of their duty of neutrality. Venice Commission, 2020, II.4.2.

⁸⁹ Ibid, II.4.2.b.

⁹⁰ Venice Commission, 2020, II.4.3.a-b.

⁹¹ Ibid, II.4.3.c.

⁹² As stated in R(96)2, I.7: "Detailed procedures for lodging requests and, if necessary, for appeals should be laid down in regulations. Requests once accepted should be submitted to popular ballot within a reasonable time-limit ...".

⁹³ The review of the validity of texts should take place before the vote; domestic law determines whether such review is obligatory or optional.

⁹⁴ Venice Commission, 2020, II.4.3.d.

⁹⁵ Ibid, II.4.3.i.

⁹⁶ Ibid, II.4.3.e.

⁹⁷ Ibid, II.4.3.g-h.

C. Selected issues⁹⁸

1. Generalities – Legal basis for (local) referendums

53. The rules for (local) referendums depend on the organisation and structure of a particular state. The embeddedness of (local) referendums may vary accordingly. It can take place either in the constitution⁹⁹ or in statutory laws¹⁰⁰ of the state at central level. In federal and regional States, if national law allows for local referendums, the rules governing such referendums are often laid down at the level of the entities.¹⁰¹ Specific rules for local referendums may also be adopted solely at local level.¹⁰² Apart from rules on technical matters, the rules governing local referendums should have at least the rank of statute.¹⁰³

54. Several rules govern referendums and the question(s) posed to the electorate. First, the referendum texts must comply with all superior laws (principle of hierarchy of norms).¹⁰⁴ In particular, referendums cannot be held if the domestic legal framework (Constitution or a statute in conformity with the Constitution) does not provide for them. Of particular importance for local referendums is that they are on subject matters in the competence of local authorities.¹⁰⁵ Indeed, legislation in most States allows for the holding of local referendums on legal acts falling within the remit of local (or regional) authorities.¹⁰⁶ Among the most common subjects of local referendums are changes to the boundaries of municipalities.¹⁰⁷

2. Initiation of the referendum

55. In principle, (local) referendums can be initiated in three different ways: there are mandatory referendums; referendums called by an authority; and referendums at the request of part of the electorate.¹⁰⁸

56. Mandatory referendums (for certain subject matters) must be organised when the legal system provides for them.¹⁰⁹ For the local level, they are generally provided for in national legislation when changes of geographic boundaries of local communities are concerned, as foreseen by Article 5 of the European Charter on Local Self-Government.¹¹⁰

57. As regards referendums called by an authority, these are mostly called by the legislative bodies (i.e. Parliament; at local level, the municipal/local councils); less common alternatives are referendums called by the Executive (President, Cabinet; or, at local level, the mayor) or a minority of members of parliament or of councillors in the municipal/local council.¹¹¹

98 This part is based on the 2020 Venice Commission Revised guidelines on the holding of referendums, the 2002 Venice Commission Code of Good Practice and the 2005 Venice Commission study on Referendums in Europe - An analysis of the legal rules in European States. The country examples are based on the replies of Council of Europe States to the questionnaire on local and regional referendums by the Venice Commission, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2005\)034add2-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)034add2-e).

99 Albania, Belgium, Bulgaria, France, Hungary, Italy, Poland, Portugal, Russia and Switzerland.

100 Armenia, Croatia, Estonia, Finland, Ireland, Malta, Russia, Sweden and North Macedonia.

101 Austria, Germany, Russia, Switzerland, Italy, Spain.

102 Croatia, Estonia, the Netherlands and North Macedonia. Local referendums may likewise be held only on the basis of special laws adopted in an *ad-hoc* manner as is the case in Denmark and Norway, for example.

103 Venice Commission, 2020, II.1.3.a.

104 Ibid, III.1.

105 See Recommendation R (96)2: "Referendums and popular initiatives should be organised by the local authorities only on questions which fall within their sphere of competence. Regulations, however, may enlarge the application of these instruments to other matters which affect essential local interests or exclude certain issues."

106 E.g. Albania, Armenia, Belgium, Bulgaria, Croatia, Finland, France, Hungary, Portugal, Russia, Sweden.

107 Changes to the boundaries of local (and regional) authorities are one of the most common subjects of local referendums, also in states where the final decision is a matter for national law such as in Albania, Croatia, Estonia, Hungary, the Netherlands and Russia. In Austria, municipal boundary changes can be the subject of a referendum in some *Länder*. By contrast, referendums on geographical boundary changes cannot be held in Belgium.

108 In principle, this applies to decision making as well as to consultative referendums.

109 Importantly, freedom of voters to express their wishes implies that the executive must organise referendums provided for by the legal order. Generally, there must be compliance with the procedural rules, in particular, referendums must be held within the time-limit prescribed by law.

110 For example, this applies to divisions of municipalities in the Czech Republic where a unit which wants to separate holds a referendum.

111 Referendums may be initiated by the municipal authority at local level in Belgium, the Czech Republic, Estonia, Finland, Ireland, Luxembourg and North Macedonia. In Hungary, a local referendum may be called by the municipal council itself, a quarter of its members or one of its committees, depending on the issue. Where the decision to hold a referendum is taken by the

58. Referendums at the request of part of the electorate: Partly, the initiation of the referendum depends on the electorate. Respectively, specific rules/standards apply as to the number/way and form of collection of signatures.¹¹² It is advisable to require a number of signatures which is sufficiently high to ensure that only questions which are of interest to a substantial part of the electorate will be put to referendum, thereby safeguarding the character of the referendum as complementary to representative democracy.¹¹³ On the other hand, the requirement of a sufficient number of proponents of a referendum should not be so high as to make the possibility of a referendum merely theoretical.¹¹⁴ Furthermore, this number should be proportional to the number of registered voters.¹¹⁵ The overall tendency seems to lean towards 10 percent or more.¹¹⁶

59. Respectively, everyone enjoying political rights is entitled to sign a popular initiative or request for a referendum. The time limit for collecting signatures (especially the first and the last day) must be clearly specified,¹¹⁷ as well as the number of signatures to be collected. As regards signature collection, at a minimum, everyone enjoying electoral rights must be entitled to collect signatures. The right may be extended to other categories of people.¹¹⁸

60. If authorisation is required in order to gather signatures, such authorisation may be refused only in specific cases provided for by law, on the basis of overriding public interest for public safety and in accordance with the principle of equality.¹¹⁹ Payment from private sources for the collection of signatures should, as a rule, be prohibited. All signatures must be checked until it has been established beyond doubt that the number of valid signatures has been collected or there are no more signatures to check.¹²⁰ Time frames for decisions on the admissibility of the request of a referendum are tight: according to Rec(96)2: "The competent authority should decide on the admissibility of the request for a referendum or popular initiative without delay."

3. Substantive and formal validity of the referendum

61. As regards permissibility, referendums must comply with the domestic legal system as a whole; in particular with the latter's procedural rules. Substantive limits on referendum (questions) are imposed by higher ranking law and international (human rights) law: referendums must not be contrary to international law, to the Council of Europe's statutory principles (democracy, human rights and the rule of law) or to Council of Europe's membership conditions. States may add further limitations.¹²¹ Indeed, while in general terms, national or federal authorities cannot intervene in local referendums, they can subject local referendums and texts adopted by referendums to judicial review as regards their compliance with higher-ranking legislation.¹²²

assembly, it may be called by part of the assembly or by an executive organ. In Bulgaria, a local referendum may be called by a quarter of the municipal councillors, the mayor of the municipality or the regional governor. In Portugal, members of the assembly or the local executive can initiate the referendum. The assembly takes the final decision which can be requested through an initiative by a specified number of citizens.

112 Venice Commission, 2020, III.3.

113 Note however the specific rules for recall: The number of signatures in support of the recall should be sufficiently high to prevent too frequent votes on the recall; Venice Commission, 2019, p 24. See below, the excursus on recall.

114 Venice Commission, 2020, III.3.c.

115 Ibid.

116 In States that allow local (or regional) referendums, a number of signatures of registered voters or population is usually required to hold the referendum. In general, the number is rather low in countries where legislation allows the local authority to decide whether or not to hold a referendum following such a request. This is the case in Estonia (1% of the population, but at least 5 signatures), whereas in Finland, it is 5% of registered voters. On the contrary, the number of required signatures is usually higher where the popular request for a referendum must be automatically followed by a vote. For example, signature of 30% of voters in the Czech Republic, 20% in North Macedonia, 10% in Malta and 5% in Armenia and Russia.

117 Where provision is made for referendums to be called at the initiative of part of the electorate, the time-limit for collecting signatures varies across the countries: thirty days in Armenia, one month in Hungary, forty-five days in Russia, sixty days in Poland, three months in Italy. On the contrary, some states apply no time-limit for consultative or abrogative referendums as is the case, for example, in Albania, the Czech Republic, Estonia, Finland, Luxembourg and Malta.

118 Venice Commission, 2020, III.3.d.

119 Ibid, III.3.e.

120 Ibid, III.3.g; In Albania, Malta, Poland and Russia, it is the Central Election Commission which checks signatures. In Hungary, it is the responsibility of the local or district election commission. In Italy, it is the local judicial authorities or special branches of local authorities. In the Czech Republic signatures are checked by the municipal council.

121 See Venice Commission, 2020, III.1.

122 As noted above, the rules governing judicial review are generally not as well-developed in the case of local (or regional) referendums as they are for national referendums. For example, automatic prior review of the question put to the vote may be performed by a judicial authority as is the case in Portugal where the Constitutional Court obligatorily rules on the constitutionality and lawfulness of the question put to the vote, in terms of both form and substance. However, in general, centralisation of judicial review is less frequent than for national referendums, with an exception of Malta which has only a few municipalities. Otherwise,

62. The question(s) submitted to the referendum should also comply with certain formal requirements: most particularly with the unity of form, content and of hierarchical level.

63. The legislation in many States remains silent on the specific form (i.e. whether a specifically worded draft, question of principle, generally worded proposal) of the acts that may be submitted to (local) referendums.¹²³ In any case, according to the Venice Commission, questions submitted to a referendum must respect unity of form, i.e. the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle.¹²⁴ Combining a specifically-worded draft with a generally-worded proposal or a question of principle would create confusion, preventing voters from knowing about the impact of their votes and thereby prejudicing their free suffrage.¹²⁵

64. Furthermore, questions submitted to a referendum must also respect a certain unity of content. In particular – and except in the case of total revision of a text (Constitution, law)¹²⁶ – there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voters. Voters must not be called to accept or refuse as a whole/simultaneously provisions/several questions without an intrinsic link,¹²⁷ since they may be in favour of one and against another. Where the revision of a text covers various separate aspects, several questions must therefore be put to the people.¹²⁸

65. Of somehow less imminent importance is the unity of hierarchical level: it requires that the same question must not simultaneously apply to legislation of different hierarchical levels, for example a constitutional revision and the associated implementing Act.¹²⁹

66. One of the central issues in the holding of (local) referendums is the way the referendum question is posed; its clarity and neutrality. The formulation is crucial: The question put to the vote must be clear and comprehensible; it must not be misleading; it must be unbiased; not suggest an answer; and not be too imprecise or too vague.¹³⁰ Voters must be informed of the effects of the referendum: i.e., Is it legally binding or consultative?; Does a positive outcome lead to the adoption or repeal of a measure or is it just one stage in a longer procedure? There is usually no limit on the number of questions which may be asked at the same time.¹³¹

67. Procedurally, an impartial body should be asked to give an opinion on the referendum question.¹³²

it may be a matter for the administrative courts (Belgium, Finland, Poland and France) or the ordinary courts (Armenia, Bulgaria, the Czech Republic, Hungary – the local or district court depending on whether the referendum is held at municipal or district level - and Russia, where federal courts have jurisdiction). In Croatia, the competent bodies are the State Election Commission and the Constitutional Court.

123 In Armenia, France, Italy and Malta, only specifically worded drafts are allowed. By contrast, in the Czech Republic and Portugal provides for referendums only on questions of principle or generally worded proposals are allowed. In Belgium only questions of principle are allowed. In Ireland, generally worded texts are submitted to a vote. In Hungary and Switzerland (under cantonal law), all three options may coexist. In Bulgaria and Croatia, it must be simply possible to answer yes or no.

124 Venice Commission, 2020, III.2; A “yes” vote on a specifically-worded draft – at least in the case of a legally binding referendum – means a statute is enacted and the procedure comes to an end, subject to procedural aspects such as publication and promulgation. On the other hand, a “yes” vote on a question of principle or a generally-worded proposal is simply a stage, which will be followed by the drafting and subsequent enactment of a statute.

125 Venice Commission, 2020, III.2.

126 The revision of several chapters of a text at the same time is equivalent to a total revision.

127 Venice Commission, 2020, III.2.

128 However, total revision of a text, particularly a Constitution, naturally cannot relate solely to aspects that are closely linked. In this case, therefore, the requirement for unity of content does not apply. Venice Commission, 2020, III.2; According to R(96)2: A question submitted to a consultative (and the decision making) [local] referendum should take the form of a fully drafted proposal (single form) and may cover only one specific issue (single content). In Armenia, Bulgaria, Italy, Portugal, Switzerland, Hungary and Austria (in some Länder) parts of a question must not be contradictory, their relationship with one another must be clear and they must flow from one another or be linked by their content.

129 Venice Commission, 2020, III.2.

130 See also R(96): The wording of the referendum question must be sufficiently precise to avoid any ambiguity. In Albania, the question must be clear, complete and unequivocal, while in Armenia, the question must be straightforward, and in Hungary, devoid of ambiguity. In France, the formulation of the question must ensure conditions of fairness, clarity and absence of ambiguity.

131 Exceptions however exist. In Portugal, there cannot be more than three questions per ballot. Alternative options in one referendum are also allowed in Russia, as well as in Switzerland and Austria. However, in Armenia, no more than one question is allowed.

132 Note that, however, not all national legislative systems contain explicit provisions to this effect.

68. A further question relates to the desirability of a quorum and special majorities:¹³³ According to the Venice Commission, it is advisable not to provide for a turn-out quorum (threshold, minimum percentage) because it assimilates voters who abstain to those who vote no.¹³⁴

69. Likewise, it is not advisable to provide for an approval quorum (approval by a minimum percentage of registered voters), since the potential for a difficult political situation is risked when the draft is adopted by a simple majority below the necessary threshold.¹³⁵ An approval quorum or a specific majority requirement may however be acceptable for referendums on matters of fundamental (constitutional) significance.¹³⁶ In any case, quorum requirements are rather uncommon in local (and regional) referendums.¹³⁷

70. In order to minimise the risk of low turnout (without setting turnout thresholds), referendums should be preferably called only on subjects that are likely to attract significant public interest, provoking a high level of public engagement and participation. Also, (a minimum number of) signature requirements can go that way. For local referendums, popular participation and interest may be ensured through citizen assemblies.

71. If voters are to cast an informed vote, it will be essential for them to be informed of the effects of their votes; it must therefore be clearly specified whether referendums are legally binding or consultative.¹³⁸ In case of binding referendums, the procedure for follow up should be laid down in specific rules.¹³⁹ After a consultative referendum, the executive or legislature should at least recommend a course of action.¹⁴⁰

72. Most questions submitted to a referendum will preferably allow replies only by yes, no or a blank vote (binary question).¹⁴¹ Still, a vote on two or more alternatives is not excluded (so-called “multi-option referendum”).¹⁴² Indeed, it may be required if the legislative body (parliament, local council/assembly) is entitled to put forward a counter-proposal to a popular initiative, which will be put to the popular vote at the same time.¹⁴³ In these cases, the voting system should ensure that a text is accepted only if it obtains an absolute majority.¹⁴⁴

73. As regards the parallelism of procedures, the result of a legally binding referendum¹⁴⁵ must be respected by the authorities. When the referendum is legally binding, for a certain period of time (a few years at the most), a text that has been rejected in a referendum may not be adopted by a procedure

133 As mentioned below, similar rules may apply to recalls, Venice Commission, 2019, p 25.

134 Venice Commission, 2020, III.7; Rather, by requesting a minimum number of signatures/certain popular support for referendums initiated by the electorate ensures that there is a minimum interest in the matter (see below). Exceptions may apply to recalls in view of stable democracy. See Venice commission, 2019, p 25: “111. As a rule, recall thresholds must be sufficiently high to ensure that [it] is not up to a minority having lost the elections to remove a mayor from office. ...” See for details below the excursus on recall.

135 Venice Commission, 2020, III.7.; It may be so high as to make change excessively difficult. If a text is approved – even by a substantial margin – by a majority of voters without the quorum being reached, the political situation may become awkward, as the majority will feel that they have been deprived of victory without an adequate reason; the risk of the turn-out rate being falsified is the same as for a turn-out quorum.

136 Venice Commission, 2020, III.7; The requirement of a multiple majority (majority of voters taking part in the referendum plus the majority in a specified number of entities) is acceptable in federal and regional States in particular for constitutional revisions. Ibid.

137 There is no quorum requirement in Albania, Estonia, Finland, France, Georgia, Italy, Spain, Sweden, Switzerland. A quorum of participation of 50% of voters is required in Bulgaria, Croatia, the Czech Republic, Malta and Russia. In Poland, the quorum is 30%, and in Belgium 10 to 20%. In Portugal, referendums are legally binding only if the turnout is more than 50%. Other States provide for a quorum of approval. In Hungary, a referendum is valid if the same answer is given by 25% of registered voters. In Armenia, the approval of a text necessitates a third of registered voters. In Ireland, the rejection of a text requires a third of registered voters. In the Czech Republic, the separation or merger of municipalities requires the approval of 50% of registered voters. Note generally that approval quorums may (and probably should) be envisaged for the recall of mayors. (eg a minimum percentage of registered voters; or a requirement that the number of voters at least as high as those who voted for the mayor’s election. (Venice Commission, 2019, p 25).

138 Venice Commission, 2020, III.8.

139 Ibid, III.8.c.

140 Ibid, III.8.a. Likewise, the voters should be informed about the proposed follow-up to referendums on questions of principle or generally worded proposals.

141 Venice Commission, 2020, III.5.

142 If binary questions on each proposal are possible, it should be possible to vote “yes” or “no” to each of them; if several options are submitted to the vote simultaneously, voting for the status quo should be possible.

143 Venice Commission, 2020, III.5.

144 Ibid. If more than one option obtains a majority, the one with more votes could be applied, or a subsidiary question could be asked as to which one is to be applied, or (a) run-off(s) could be organised, or preferential alternative vote could be applied. Ibid.

145 What is said below does not apply to consultative referendums, which are not legally binding on the authorities.

without referendum.¹⁴⁶ During the same period of time, a provision that has been accepted in a referendum may not be revised by another method. It is acceptable to exclude any new request for referendum on the same issue during this period.¹⁴⁷

74. When a text is adopted by referendum at the request of a section of the electorate, it should be possible to organise a further referendum on the same issue at the request of a section of the electorate, after the expiry, where applicable, of a reasonable period of time.¹⁴⁸ When a text is adopted by referendum at the request of an authority other than Parliament/municipal council, it should be possible to revise it either by parliamentary means (voting in the municipal council) or by referendum, at the request of parliament/municipal council or a section of the electorate, after the expiry, where applicable, of the same period of time.¹⁴⁹

75. In some States, legislation provides that rules adopted by referendum at local level can be revised only by another referendum in order to ensure respect for the will of voters. However, such rules are less common on the local level than for national referendums.¹⁵⁰

76. In the case of popular initiatives or an authority other than the legislator/Parliament (mostly the executive), it is important for the people to be informed of the legislator's/Parliament's opinion. Indeed, the legislator/Parliament must be able to give a non-binding opinion on the text put to the vote.¹⁵¹ In the case of popular initiatives, it may be entitled to put forward a counter-proposal to the proposed text, which will be put to the popular vote at the same time. In order to prevent delaying tactics, a deadline must be set: if this deadline is not met, the text will be put to the popular vote without the opinion.¹⁵² In the case of local referendums, the local assembly/council shall take over the role played by parliament at the national level.

Excursus 1: Recall of mayors and local elected representatives

77. Recall is a popular vote that gives the power directly to voters to remove an elected official from office. It must be clearly distinguished from revocation¹⁵³ or destitution.¹⁵⁴ In Europe, recall has been rarely used in practice, but has drawn some renewed interest in recent years. European and other international treaties and standards do not explicitly prohibit or firmly authorise the recourse to recall.¹⁵⁵

78. Its existence depends on the constitutional tradition and openness of each country to such an instrument. There are few European countries that allow recall at regional level.¹⁵⁶ Somewhat more

146 Venice Commission, 2020, III.4.a.i. An optional referendum at the request of a section of the electorate is regarded as a referendum procedure: unless such a referendum is requested, a text rejected the first-time round may therefore be adopted without a popular vote. (Optional referendum is an instrument of direct democracy in Switzerland. It allows citizens to oppose laws voted by the federal parliament, cantonal and/or municipal decrees by legislative and/or executive bodies.). The revision of a rule of superior law that is contrary to the popular vote is not legally unacceptable but should be avoided during the above-mentioned period.

147 Venice Commission, 2020, III.4.a.v. Where the Constitution provides for a referendum on a total revision of a text (in practice, the Constitution itself) but not on partial revision, a partial revision of that text does not necessarily have to be put to a popular vote. Therefore, the above does not apply in the case of a referendum on partial revision of a text, where the previous referendum concerned a total revision.

148 Venice Commission, 2020, III.4.b.

149 Ibid, III.4.c.

150 Some States provide that the revision of texts submitted to mandatory referendum may be submitted to the same type of referendum, but this is less common than at national level. In Switzerland, Italy, North Macedonia and Armenia, any rule submitted to referendum can be revised only by the same procedure. In the Czech Republic, a decision adopted by referendum can be modified only by another referendum, after a period of 24 months. In Russia, a question submitted to referendum can be reopened only after two or five years. In Hungary, if a quarter of voters supported or opposed the proposal, the matter can be addressed only by a new referendum, after a period of one year. In Croatia, on the other hand, the prohibition on reversing a decision taken by referendum without holding a fresh referendum applies for just one year. By contrast, in Bulgaria, France, Poland and Spain it is permissible to address issues that have been the subject of a popular vote without holding a fresh referendum. It remains to be seen whether this is politically feasible. Lastly, the question of parallelism of procedures does not normally arise in respect of consultative referendums, even if such a referendum can be held on the same subject.

151 Venice Commission, 2020, III.6.

152 Ibid.

153 Revocation is the power of another body to withdraw the mandate; in principle the one it has conferred. It is a political instrument. See Venice Commission, Report on the Recall of Mayors and Local Elected Representatives, 2019, para 58.

154 Destitution implies the removal from a mandate as a result of proceedings brought against mandate holders on the grounds that they have committed an illegal or criminal act. Unlike recall, destitution is not a political measure. See Venice Commission, 2019, paras 86-89.

155 Venice Commission, 2019, p 27.

156 Switzerland (Uri, Bern, Solothurn, Schaffhausen, Thurgau, Ticino), Germany (Bavaria, Rheinland-Pfalz, Brandenburg, Berlin and Bremen), Russia, Croatia, Poland; Venice Commission, 2019, p 8.

common is the recall at the local level with a different degree of activation in practice across Council of Europe States. Recalls have been most frequently initiated against mayors.¹⁵⁷

79. Indeed, recall can play a role of the protective and preventive mechanism from corrupt and irresponsible holders of political power. Recall may (exceptionally) also be an instrument to settle conflicts between mayors and local councils, if both are directly elected and prove unable to co-operate.

80. However, there are important arguments against recall. The institution of recall may stand in contradiction to the representative democracy as it allows terminating the mandate of an elected official prior to regular elections¹⁵⁸, the very principle on which today's democracies are based. In addition, it does not allow politicians to implement their programme established for the duration of an entire term. The recall can thus constitute a further threat for the stability of representative democracy. It may be abused by political actors in the battle against their political competitors. Moreover, at the local level the danger of manipulation is even higher since the recall may be used at the central level to exert pressure on local authorities.¹⁵⁹

81. Therefore, if at all accepted, a clear differentiation between the position of a directly elected mayor and an individually elected member of a local council who is elected mayor by the council, needs to be made. While the principle of prohibition of the imperative mandate is relevant for individual members of local councils, as such it is not applicable to directly elected mayors who may under certain/limited conditions be recalled in a public vote.¹⁶⁰

82. The recall may only be acceptable as an exceptional tool; complementing mechanisms of representative democracy.¹⁶¹

Concluding remarks

- Recall should be permitted only in respect of mayors who are directly elected, individual recall of local council members should not be allowed;
- The provisions for recall should be prescribed by the Constitution or the national/regional laws and should be only complementing other mechanisms of representative democracy;
- A clear distinction must be made between the legal and political responsibility of elected mayors, and between the institutions of recall, revocation and destitution;
- Legislation should provide for adequate procedural safeguards, ensuring transparency, legitimacy and legality of the recall process.

Excursus 2: The use of new technologies – new forms of participation in decision-making

83. New voting technologies (NVT) may be defined as the use of information and communication technologies applied to the casting and counting of votes. NVT have been increasingly used in elections/referendums in recent years, including in Switzerland, Norway and Belgium where NVT were used or tested locally as a means of casting the ballot (e-voting), and Estonia where NVT have been in long-term use.¹⁶² As with traditional paper voting, NVT can be used in controlled environments, such as in polling stations, or remotely in uncontrolled environments, such as voting from a home computer. Most commonly, NVT involve the use of ballot scanning technology¹⁶³, direct recording electronic voting

157 Croatia, Germany, Romania, Poland, Russia, Slovakia, Switzerland, Ukraine, Spain, Moldova. Recall of mayors was abolished in Serbia and North Macedonia. Attempts to introduce recall have failed in Slovenia and in the UK; Venice Commission, 2019, p 10.

158 Known as the imperative mandate, opposite of the representative mandate.

159 Venice Commission, 2019.

160 Venice Commission, 2019, p 18f.

161 See Venice Commission, 2019, p 27. Constitutional provisions in most CoE States expressly prohibit imperative mandate for parliamentarians at national level. In a state based on representative democracy, the same principles should apply to all representatives, at national, regional and local level. Recall of elected representatives therefore appears at odds with the representation principle. On the contrary, such principles do not apply to the executive branch of government, at national as well as subnational level; Venice Commission, 2019, p 6.

162 Norway: <https://rm.coe.int/1680719c73>; Switzerland: <https://ieeexplore.ieee.org/document/7114482>.

163 A ballot paper is either marked by a voter himself or with assistance of a ballot marking device in a polling station and is then inserted into a scanning device and counted by electronically "reading" the voter's mark on the ballot. Such devices can be located in polling stations or counting centres, which are considered controlled environments.

systems¹⁶⁴, internet voting (e-voting)¹⁶⁵ and hybrid forms of NVT.¹⁶⁶ It is important to note that in some States, electronic voting is provided as an alternative voting channel available besides traditional paper voting or exclusively for citizens abroad.¹⁶⁷

84. There has been considerable discussion regarding potential advantages and challenges related to the use of NVT in elections/referendums. NVT have the potential to increase voter turnout; facilitate the participation of citizens abroad; lower election administration costs; facilitate the conduct of simultaneous polling procedures; reduce human error; improve the accuracy of counting; increase the speed of tabulation and publication of results; and potentially also increase access for voters with disabilities and voters who speak minority languages.

85. On the other hand, NVT also present potential challenges, such as the need to preserve the secrecy of the vote, while at the same time ensuring the integrity of the results. Another challenge is that NVT bring additional complexities to the electoral process, such as the need to amend legislation; to plan how NVT will be acquired, tested, evaluated, certified and secured; and to provide voter education and training of election officials; as well as concerns about the transparency and access for observers. If these challenges are not fully addressed, NVT may weaken public confidence in elections.¹⁶⁸

86. NVT systems are intended to fulfil the same functions as paper-based or mechanical systems and must, therefore, meet the same standards that apply to these systems. International standards and best practices define principles for democratic elections/referendums regardless of the technology used. In particular, the following of key principles must be observed when applying NVT.¹⁶⁹

Concluding remarks

- NVT have the potential to enhance the participation in referendums and facilitate their conduct, however NVT may also be conducive to fraud and consequently lower public confidence in the referendum process.
- The same principles apply to NVT as to paper-based voting in referendums and therefore same international standards must be respected, including secrecy, equality and universality of the vote, integrity of results, transparency, accountability and public confidence.

D. Conclusions

87. Direct democracy turns out to be more and more important, particularly, at local level. In line with the principle of subsidiarity, local referendums may be important tools to increase the interest/involvement of citizens and long-term residents in (local) politics. They may also help to get a better idea of their views and take on different matters. Likewise, direct participation at local/municipal level may provide input to authorities and complement the representative democracy at local level accordingly. Indeed, local referendums especially may increase citizens involvement in local politics and thus be a crucial tool specifically for the local level.

88. At the same time, there is an inherent risk of populism. (Local) referendums may be misused in particular by the executive as a tool of manipulation to achieve certain results. Likewise, if the interest in a particular referendum is limited, a small pressure group may gain disproportionate influence.

89. To counter these tendencies, clear guidelines/criteria have to be observed. In principle, these can be drawn from general electoral principles of universal, equal, free and secret suffrage. While these in principle correspond to the principles of political participation/elections more generally, also certain

¹⁶⁴ A voter's choice is recorded in the polling station, usually through touch-screen or push-button devices, and the votes are counted electronically. Similar to ballot scanners, they are also usually located in controlled environments.

¹⁶⁵ Internet voting can allow voters to vote anywhere, in an uncontrolled environment. Votes are stored and aggregated electronically in a centralized location.

¹⁶⁶ Combination of the controlled environment of the polling station with the centralized recording and counting of Internet voting. Voters must vote on a computer in a polling station and the votes are then transmitted electronically to a central server.

¹⁶⁷ OSCE/ODIHR, Handbook For the Observation of New Voting Technologies, 2013, pp 1, 5, available at: <https://www.osce.org/odihr/elections/68439?download=true>.

¹⁶⁸ Ibid, p 5.

¹⁶⁹ Venice Commission, 2002; See also Ibid, pp 8, 20-21; Council of Europe, Rec(2004)11 Recommendation of the Committee of Ministers to member States on legal, operational and technical standards for e-voting, 2004; Venice Commission, Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe, 2004.

referendum specific issues are to be observed; including the unity of content, form and hierarchy of the referendum question.

90. Importantly, there is a need of informed participation; voter information is thus crucial. It can be provided during the campaign: eg through balanced information by authorities. Likewise, balanced/minimum information should be provided in the media. According use can be made of information and communication technologies (cf 2001 Recom Com Ministers 19).

91. Additionally, citizens assemblies are an important tool to, on the one hand, enhance the information of the population; while, at the same time, increasing the ownership of the proposals put to popular vote (referendum proposals).

92. More broadly speaking, a supportive environment, stimulating civil society and public participation seems crucial; this in particular in relation to matters of local concern.

93. An according focus should be placed on vulnerable and under-privileged groups, e.g. women, young people as well minorities, to further and promote their participation.

94. Also, an increased focus should be placed on the observation of local referendums to accompany the process. The Congress may play an important role respectively.