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The situation of independent candidates and the opposition in local and regional elections

Monitoring Committee

Rapporteur:¹ Vladimir PREBILIC, Slovenia (L, SOC/G/PD)

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Summary

The situation of independent candidates has long received only little attention. Still, their important contribution to political pluralism makes independent candidates a relevant matter of concern. Although certain proportionate measures to limit the number of political contestants, including independent candidates, are considered compatible with international standards to prevent extreme fragmentation of the electoral landscape, domestic legislations should avoid overly burdensome requirements in order to ensure the right of individual citizens to seek public office without discrimination. Overly strict restrictions on participation of independent candidates not only inherently reduce political pluralism, they can also be easily manipulated to silence opposition candidates vis-à-vis those in power. This is of particular relevance at the local and regional level where independents often represent an important alternative to established parties through their close links to grassroots issues.

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 482 (2022)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 International Covenant on Civil and Political Rights (ICCPR 1966) and the ICCPR General Comment No. 25 (1996);

c. the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (OSCE Copenhagen Document 1990);

d. Recommendation 375 (2015) of the Congress of Local and Regional Authorities on Criteria for standing in local and regional elections adopted on 26 March 2015;

e. Recommendation 455 (2021) of the Congress of Local and Regional Authorities on Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020) adopted on 17 June 2021;

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

g. the Venice Commission and OSCE/ODIHR Joint Guidelines on Political Party Regulation (2020);

h. the Priorities of the Congress for 2021-2026: Priority 6. b. Democratic societies: quality of representative democracy and citizen participation: The quality of democratic governance for the benefit of the citizen must be improved;

i. 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. with the overall nature of party politics changing, a number of European countries experience a rise of independent candidates running in local and regional elections. This trend has been accelerated by social media contributing to more candidate-centred campaigns, in particular during local and regional elections where independents have better chances to compete with political parties. The reduced importance of party machineries in campaigns coupled with an increasing personalisation of politics have placed independent candidates on a more equal footing with party candidates. As a result, independents become important game changers, destabilising existing patterns of political competition and boosting electoral turnout by filling gaps in representation;

b. this trend is conducive to political pluralism at the local and regional level, allowing a variety of political actors to seek and obtain elected mandates and promote a diversity of political viewpoints. In this sense, independents represent an important alternative to political parties by being a significant element of the political identity of territorial communities. The role of independent candidates is also vital in view of increasing disenchantment with party politics and lacking internal democracy within political parties. The proximity to local issues and lesser importance of ideological lines make independent candidates relevant political actors. Independents are an invaluable element of local and regional electoral races, contributing to genuine political pluralism on the grassroots level;

c. against this background, many Council of Europe Member States have adopted regulatory frameworks and electoral rules that provide for more possibilities for independents, especially in local and regional elections where the grassroots demand is strongest. This is in line with international standards which provide a framework for electoral participation of independent candidates. Yet, with increasing importance, independent candidates also face obstacles to their participation due to administrative or legal impediments affecting registration, campaigning, or access to the media. In some

2. Debated and adopted by the Congress on 23 March 2022, 2nd sitting (see Document CG(2022)42-13, explanatory memorandum), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

member States, the worsening situation of independents is part of the overall trend of shrinking space for political opposition as such. However, in accordance with international electoral standards, all candidates should be able to stand in elections according to the same conditions, without pressure and discrimination.

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

a. address the issue that independent candidates as well as candidates from the opposition in general often face undue impediments to their participation in local and regional elections at different stages of the electoral process, before elections, on election day and in the post-election period;

b. promote electoral participation by independent candidates in local and regional elections on equal basis with candidates from political parties, without undue obstacles and discrimination, in line with existing international standards and best practices, in particular as defined by the Paragraph 7.5 of the 1990 OSCE Copenhagen Document and the Venice Commission Code of Good Practice in Electoral Matters;

c. explore ways of fostering political pluralism during local and regional elections by promoting participation of independent candidates and by facilitating participation of candidates representing opposition views in general; more specifically:

i. facilitate candidate registration of independent candidates where this competence lies with local and regional authorities;

ii. contribute to creating equal conditions for campaigning in the interest of a fair competition between independents and party candidates;

iii. ensure that the freedom of assembly is respected with regard to all contestants in elections.

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

RECOMMENDATION 476 (2022)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 International Covenant on Civil and Political Rights (ICCPR 1966) and the ICCPR General Comment No. 25 (1996);

c. the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (OSCE Copenhagen Document 1990);

d. Recommendation 375 (2015) of the Congress of Local and Regional Authorities on Criteria for standing in local and regional elections adopted on 26 March 2015;

e. Recommendation 455 (2021) of the Congress of Local and Regional Authorities on Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020) adopted on 17 June 2021;

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

g. the Venice Commission and OSCE/ODIHR Joint Guidelines on Political Party Regulation (2020);

h. the Priorities of the Congress for 2021-2026: Priority 6. b. Democratic societies: quality of representative democracy and citizen participation: The quality of democratic governance for the benefit of the citizen must be improved;

i. 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. with the overall nature of party politics changing, a number of European countries experience a rise of independent candidates running in local and regional elections. This trend has been accelerated by social media contributing to more candidate-centred campaigns, in particular during local and regional elections where independents have better chances to compete with political parties. The reduced importance of party machineries in campaigns coupled with an increasing personalisation of politics have placed independent candidates on a more equal footing with party candidates. As a result, independents become important game changers, destabilising existing patterns of political competition and boosting electoral turnout by filling gaps in representation;

b. this trend is conducive to political pluralism at the local and regional level, allowing a variety of political actors to seek and obtain elected mandates and promote a diversity of political viewpoints. In this sense, independents represent an important alternative to political parties by being a significant element of the political identity of territorial communities. The role of independent candidates is also vital in view of increasing disenchantment with party politics and lacking internal democracy within political parties. The proximity to local issues and lesser importance of ideological lines make independent candidates relevant political actors. Independents are an invaluable element of local and regional electoral races, contributing to genuine political pluralism on the grassroots level;

c. against this background, many Council of Europe Member States have adopted regulatory frameworks and electoral rules that provide for more possibilities for independents, especially in local and regional elections where the grassroots demand is strongest. This is in line with international standards which provide a framework for electoral participation of independent candidates. Yet, with increasing importance, independent candidates also face obstacles to their participation due to administrative or legal impediments affecting registration, campaigning, or access to the media. In some

³ Debated and adopted by the Congress on 23 March 2022, 2nd sitting (see Document CG(2022)42-13, explanatory memorandum), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

member States, the worsening situation of independents is part of the overall trend of shrinking space for political opposition as such. However, in accordance with international electoral standards, all candidates should be able to stand in elections according to the same conditions, without pressure and discrimination.

3. In light of the foregoing, the Congress invites the Committee of Ministers to call on member States to:

a. address the issue that independent candidates as well as candidates from the opposition in general often face undue impediments to their participation in local and regional elections at different stages of the electoral process, before elections, on election day and in the post-election period;

b. create conditions for independent candidates to run in local and regional elections on an equal basis with candidates from political parties, without undue obstacles and discrimination, by bringing the regulatory frameworks and electoral rules in line with existing international standards and best practices, in particular as defined by the Paragraph 7.5 of the 1990 OSCE Copenhagen Document and the Venice Commission Code of Good Practice in Electoral Matters;

c. explore ways of fostering political pluralism during local and regional elections by promoting participation of independent candidates and by facilitating participation of candidates representing opposition views in general.

4. The Congress calls on the Committee of Ministers, the Parliamentary Assembly and other relevant institutions of the Council of Europe to take account of this recommendation and of the accompanying explanatory memorandum in their activities relating to member States.

EXPLANATORY MEMORANDUM⁴

1. INTRODUCTION

1. Independent candidates (also non-party or self-nominated candidates) are in the majority of Council of Europe member States rather a marginal political force in the national electoral races. However, on the local and regional level, independent candidates are a key element of the identity of grassroots communities, increasingly representing an important alternative to running in elections. The role of independent candidates is also vital in view of increasing disenchantment with party politics and lack of internal political party democracy. Due to the decentralised and localised nature of local and regional electoral contests, independents have better chances to compete with political party candidates with campaign machinery behind them. The proximity to local issues and lesser importance of ideological and party lines make independent candidates relevant political actors. Independents are an invaluable element of local and regional electoral races, contributing to genuine political pluralism on the grassroots level.

2. Against this background, many countries in the Council of Europe have in recent decades adopted regulatory frameworks and electoral rules that provide for more possibilities for independents to run in elections, especially on local and regional level where the grassroots demand is strongest. Moreover, the general environment for independent politics has improved with the development of new media and online campaigning which is by nature more candidate centred. However, with increasing importance, independent candidates also often face significant obstacles to their electoral participation on par with candidates from political parties. These may be administrative or legal obstacles affecting registration, campaigning, or access to the media.

3. International standards and best practices provide a framework for the participation of independent candidates in elections as one of the elements ensuring pluralistic elections and political pluralism in general. In accordance with international electoral standards, all candidates should be able to stand in elections according to the same conditions, without pressure and discrimination, regardless of their party affiliation or if they run as independents. They should be subject to equal regulations, before, during and after elections and be duly confirmed in office when receiving enough votes.

4. In general terms, the right of individuals to stand in elections and to be elected for office (passive suffrage), individually or as representatives of political parties or organisations, is universally recognised and established by major international human rights treaties/instruments both on universal as well as on regional levels, most notably in the Article 25 of the United Nations International Covenant on Civil and Political Rights (ICCPR), which is also relevant for elections on local level (ICCPR General Comment 25 para 6). In Europe, similar guarantees are provided by Article 3 of Protocol 1 to the European Convention on Human Rights (ECHR), though not applicable to local elections, and in the Paragraph 7.5 of the 1990 OSCE Copenhagen Document which is politically binding on its signatories.⁵ For elections on the local level specifically, this right is guaranteed by Article 1 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

5. The definition of independent candidates used in this report denotes to candidates whose nomination is not subject to appointment or endorsement by a political party. Independent candidates are individuals not affiliated with a political party. Independent candidates are not included in the electoral list of any political party, and the information provided on the ballot does not link them to any party in any manner. However, it needs to be recognised that independence is a circumstantial and often temporary choice made by individuals who wish to compete for political office. As a result, independent candidates constitute a highly diverse category of politicians. In some countries,

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

⁵ The OSCE Copenhagen Document specifically requires the participating States to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination.” (Copenhagen Document, para. 7.5) This commitment prohibits discrimination in the exercise of the right to stand for public office, between candidates who are affiliated to political parties and candidates who are not. Independent candidates should therefore be permitted to run for elections according to the same conditions applicable to candidates nominated by political parties. In particular, regulations regarding ballot access and fees, as well as candidacy restrictions for parties should not discriminate against independent candidates or establish unjustified privileges for parties, for example being at such a high level that they are achievable only by parties and not by independent candidates. Where political parties are provided with state support, such as the provision of public media airtime or campaign finance, there should also be a system of support for independent candidates to ensure that they are awarded equitable treatment in the allocation of state resources.

independent candidates form their own lists, electoral alliances, and non-partisan associations, a practice which is especially widespread at the local level.⁶ In other countries, party lists include individuals who are not party members and claim to be independents. Finally, once elected in office, independent candidates do not necessarily become independent representatives and instead often join party groups within elected bodies. Nominal independence does not imply a substantive absence of partisan ties. This report deals with a specific situation of independent candidates running on their own or on an independent list together with other independents in countries where this is possible.

6. The present report approaches this topic from various angles. Following the introduction, it explores current trends with regards to the position of independent candidates, as well as their importance for ensuring political pluralism essential for local and regional democracy. Part three summarises obstacles that independents face during elections in the Council of Europe member States. Part four discusses international standards on participation of independent candidates in elections and addresses concrete phases of the electoral process. Part five provides an overview of different systems in the CoE states regarding the position of independent candidates in elections, in particular concerning ballot access rules, electoral systems and the role of new media. Finally, part six provides an excursus on the position of opposition candidates with regards to selected issues relevant in local and regional elections. Part seven concludes with the main findings of this report concerning the role of independents.

2. CURRENT TRENDS AND THE ROLE OF INDEPENDENT CANDIDATES

7. Independent candidates used to be traditionally a marginal political force in European politics overshadowed by established political parties and their candidates backed by powerful party machineries. However, with the overall nature of party politics changing, in many countries the rise of independents became one of the defining features of modern politics. The decline in partisanship, or at least the decline of traditional political parties⁷ and the rise of anti-party sentiments and populist movements is evident in numerous CoE states.⁸ The political parties are losing their status as "superior vehicles for representation" and may no longer be regarded by candidates as the best instruments for the attainment of their political goals.⁹ In this context, there is a growing interest in independent candidatures coinciding with an increasing emphasis on political candidates as individuals in general.

8. The rise of independent candidates is a recurring feature of many elections across a range of countries. Non-party candidates challenge parties in both local and regional, as well as in national elections in a number of established democracies, and frequently perform well in new or emerging democracies. Despite the significant barriers that they face, independent candidates obtain elected seats and, in some cases, even enter the executive or hold considerable sway over government politics. Even when their electoral impact in terms of seats won may be limited, independents are potentially important "game changers," destabilising existing patterns of political competition, forcing major parties to change their strategies, and boosting turnout by filling gaps in representation.¹⁰

9. This trend has been further accelerated by an increasing role played by the social media used for political purposes which have become intrinsic elements of political campaigns in many countries. As a political tool, the internet has a number of advantages over traditional media, including low cost, accessibility, ease of use, speed, wide reach and interconnectedness. The rise of modern information and communication technologies (ICTs) contributes to the personalisation of politics and increasingly candidate-centred campaigns. In this regard independent candidates have benefited from technological changes driving the personalisation of politics. In addition, the features of online campaign make the internet a particularly valuable resource for independent candidates who often have limited campaign

6 E.g. the SNK Union of Independents in the Czech Republic - a registered movement founded in 2000 in order to help non-affiliated town mayors to take part in regional assembly elections.

7 F. Berglund and others, 'Party identification and party choice', In J. Thomassen (ed.), *The European Voter*, Oxford: Oxford University Press, 2005, pp. 106-124.

8 T. Poguntke, 'Anti-party sentiment. Conceptual thoughts and empirical evidence: Explorations into a minefield', *European Journal of Political Research*, 29(3), 1996, pp. 319-344; E. Belanger, 'Antipartyism and third-party vote choice: a comparison of Canada Britain and Australia', *Comparative Political Studies*, 37(9), 2004, pp. 1054-1078.

9 N. Bolleyer, L. Weeks, 'The puzzle of non-party actors in party democracy: independents in Ireland. *Comparative European Politics*', 7(3), 2009, pp. 299-324.

10 L. Weeks, 'Rage Against the Machine: Who is the Independent Voter?', *Irish Political Studies*, 26 (1), 2011, pp. 19-43; L. Weeks, 'We Don't Like (to) Party. A Typology of Independents in Irish Political Life, 1922-2007', *Irish Political Studies*, 24 (1), 2009, pp. 1-27; P. Ehin, M. Solvak, 'Party voters gone astray: explaining independent candidate success in the 2009 European elections in Estonia', *Journal of Elections, Public Opinion & Parties*, 2019, 22(3), 269 -291.

funds, minimal organisational and administrative support, and limited access to traditional media such as the printed press and television.¹¹

10. The reduced importance of party machines in political campaigns of the information era places independent candidates on a more equal footing with party candidates. Notably, the internet allows political candidates to reach large audiences at very low cost and without recourse to an administrative apparatus. This applies even more so to the young cohort of voters who are an important target group for independent candidates because they have weaker partisan attachments than older voters, are not habituated to voting for a specific party, and have higher rates of political apathy and disenchantment. These features make them particularly responsive to mobilisation by independent politicians.

11. Effectively, the overall trend of increased participation of independent candidates results in more political pluralism which is positive for every democracy. This implies the ability of individuals to seek, obtain and promote a variety of political viewpoints. Political pluralism on local level requires existence of a variety of political actors within the locality and genuine competition amongst them during elections. This means the existence of both political parties, i.e. candidates running on party lists, as well as candidates that run independently. Political pluralism lies at the heart of modern democracies. Notably, political pluralism is critical to ensuring democratic governance providing citizens with a genuine choice between candidates in elections.¹² This seems particularly important in local and regional elections, where individual candidates rather than parties matter due to their proximity to local issues and to local populations. Independent candidates play an irreplaceable role in ensuring political pluralism, all the more on local level where party lines are often blurred and concrete ideologies are put aside when practical local issues are at stake.¹³

12. However, independent candidates also face significant obstacles. As the Secretary General of the Council of Europe has noticed in a recent report, political pluralism in some Council of Europe member States has been shrinking over the past years; a development which was accentuated by the COVID pandemic.¹⁴ The overall trend of shrinking space for political opposition in such areas as standing in elections, freedom of expression and freedom of assembly has indeed affected the position of independent candidates in local and regional elections who are by nature an opposition force to the central governments. Among other issues, the report points out with concern the situation of suppressing political pluralism which forms part of 'effective political democracy' governed by 'the rule of law', citing judgements of the European Court in cases against the Russian Federation concerning Aleksey Navalny.¹⁵ This concerns continued arrests and interferences with fundamental rights of independent candidates and their supporters in the run-up to the 2019 Moscow City Duma elections as noted with concern by the CoE Committee of Ministers in September 2020.¹⁶

11 C. Delany, 'Online politics 101', 2011, available at: <http://www.epolitics.com/onlinepolitics101.pdf>.

12 Paragraph 7.5 of the 1990 OSCE Copenhagen Document.

13 This stands in contrast to the situation on national level where elections are in most countries centred around political parties. This is justified by the need to prevent excessive and dysfunctional fragmentation of candidatures and thereby strengthen the expression of the opinion of the people in the choice of the legislature. In this regard, the European Court of Human Rights argued that certain restrictions aimed at limiting participation of independent candidates in national elections are admissible, e.g. nomination signatures or financial deposit, as they meet the legislature's legitimate concern to ensure the political stability of the country and of the government which would be responsible for leading it after the elections. Additionally, measures to limit, to a certain extent, the number of political actors contesting an election may be considered compatible with international standards when they aim at aiding the administration of elections (see below in Part 4). However, this reasoning, as indicated, does not seem to hold on local level. This fact has recently resonated with more and more independents active in local politics and wider public supporting independent candidatures.

14 Report by the Secretary General of the Council of Europe, 'State of Democracy, Human Rights and the Rule of Law: A democratic renewal for Europe', 2021.

15 ECtHR, *Navalnyy v Russia*, 15 November 2018; ECtHR, *Navalnyy v Russia*, 9 April 2019. During the 2019 Moscow City Duma election Navalny supported independent candidates, most of whom were not allowed to participate in the elections, which led to mass street protests. In July 2019, Navalny was arrested, first for ten days, and then, almost immediately, for 30 days. On the evening of 28 July, he was hospitalized with severe damage to his eyes and skin. At the hospital, he was diagnosed with an "allergy," although this diagnosis was disputed by Anastasia Vasilieva, an ophthalmologist who previously treated Navalny after a chemical attack by an alleged protester in 2017. Vasilieva questioned the diagnosis and suggested the possibility that Navalny's condition was the result of "the damaging effects of undetermined chemicals". On 29 July 2019, Navalny was discharged from hospital and taken back to prison, despite the objections of his personal physician who questioned the hospital's motives. Supporters of Navalny and journalists near the hospital were attacked by the police and many were detained.

16 Report by the Secretary General of the Council of Europe, 'State of Democracy, Human Rights and the Rule of Law: A democratic renewal for Europe', 2021, p. 54.

3. OBSTACLES FACED BY INDEPENDENT CANDIDATES

13. Despite their importance in strengthening political pluralism on local and regional level, independent candidates often face various obstacles to their participation in elections. These obstacles both formal and informal, stem from their disadvantaged position vis-à-vis the political party candidates who traditionally enjoy easier access to registration, campaigning as well as during other phases of the electoral process (be it due to lower legal/administrative requirements or the political party machinery behind them that facilitates their political participation). Obstacles relate to all phases of the electoral process.

14. In some countries, independents are not legally allowed to register and stand in elections or are excluded from certain parts of the electoral race. For instance, independent candidates were not allowed to run for legal reasons in the 2020 local elections in Ukraine, where independents could not stand for mayor or councillor in municipalities with more than 10,000 voters. Although informally it has been argued that this restriction is intended to prevent excessive fragmentation of political forces on local level, the fact that independents have been deprived of their right has been widely criticised by international election observers, the Congress delegation to local elections in Ukraine included. Limitations on independent candidatures were found as discouraging grassroots political activity.¹⁷

15. Where independents can legally stand in local and regional elections, various impediments may prevent them (as a whole group or as targeted individuals) from doing so. Alternatively, independent candidates can be significantly disadvantaged as a result of the existing obstacles, formal as informal, vis-a-vis candidates running with political parties to the extent that they are technically excluded from the race. For instance, during regional elections in Russia independent candidates were effectively excluded from elections due to “administrative pressure” of the authorities during the pre-election registration/nomination process. Almost everywhere in Russia independent candidates that sought to register failed to collect required percentage of nomination signatures to support their candidature. Importantly, the signatures (between 5 and 10% depending on the region) were to be collected from among local councillors in the given region, so-called municipal filter. As a result, independent candidates fared badly with 61.9% denied registration in 2015, 63% in 2016 and 53% in 2017. This was due to the existing municipal filter and the administrative pressure exerted by the ruling party on local councillors to prevent them from providing supporting signatures to independents.¹⁸

16. An example from national elections in Bulgaria shows that regulations for collection of signatures may be discriminatory, notably, as was the case according to the Bulgarian election code, with regard to the fact that while political parties and coalitions of parties could compete in parliamentary elections based on applications supported by 7,000 signatures of voters residing anywhere in the country, independent candidates in parliamentary elections had to collect signatures of 3 per cent of voters residing in the respective constituencies only (but no more than 5,000 signatures). This was found by the Venice Commission as constituting a comparatively high barrier for independent candidacies.¹⁹

17. In North Macedonia, independent candidates are required to support a nomination with signatures from 100 to 1,000 voters depending on the number of voters in the municipality, which is equivalent to 0.2 to 4.8 per cent of eligible voters residing in the respective municipality. In 18 municipalities the required number of signatures exceeded in the 2017 local elections two percent and in nine it was above three per cent of all registered voters. In two municipalities, it reached 4.8 per cent of registered voters. According to the OSCE/ODIHR, this impinged on the equality of citizens’ ability to stand for

17 Congress, ‘Ukraine: Fair elections is a prerequisite for the functioning of democratic institutions’, available at: <https://www.coe.int/en/web/congress/-/ukraine-fair-elections-is-a-prerequisite-for-the-functioning-of-democratic-institutions>.

18 C. Ross, ‘Regional elections in Russia: instruments of authoritarian legitimacy or instability?’, *Nature*, 2018, available at: <https://www.nature.com/articles/s41599-018-0137-1>; EPDE, ‘Russian regional elections: Independent candidates face discrimination through the “Municipal Filter”’, 2017, available at: <https://www.epde.org/en/news/details/Russian-regional-elections-Independent-candidates-discriminated.html>; Congress, ‘Russia: independent and opposition candidates should be guaranteed equal access to electoral rights in local elections’, available at: <https://www.coe.int/en/web/congress/-/russia-independent-and-opposition-candidates-should-be-guaranteed-equal-access-to-electoral-rights-in-local-elections?inheritRedirect=true>.

19 Joint Opinion of the Venice Commission and OSCE/ODIHR on the Election Code of Bulgaria, CDL-AD(2011)013, 2011, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)013-e); Venice Commission, ‘Code of Good Practice in Electoral Matters’ 2002, I 1.3 ii.: “The law should not require collection of the signatures of more than 1% of voters in the constituency concerned”.

election and went against good practice, which recommends that supporting signatures should not exceed one per cent of registered voters.²⁰

18. In other countries, the unequal treatment and sometimes repression that independents face may be more subtle but can be as damaging to political pluralism as more explicit forms of discrimination. Even when independent candidates are allowed to run and have a de facto chance to get elected, they may still face many administrative obstacles and structural disadvantages diminishing their competitiveness against party candidates. As a result, many may get discouraged from running. For example, before/during the 2019 local elections in the Republic of Moldova, the administratively cumbersome procedures of collecting an unduly high number of supporting signatures from voters (one voter could only support one candidate) curtailed the chances of independents to run and get elected. No such requirement was made upon political party candidates. While party candidates could start campaigning at the official date of their registration, independents could only start collecting support signatures on that same day, thus delaying the start of their campaign activities which negatively affected the equality of campaign opportunities.²¹

19. Campaign finance is another issue that affects the conditions for campaigning of independents. Unlike most political parties, the financial capacities of independent candidates are often meagre, sometimes due to lacking state support (public campaign financing, public funds) which then puts party candidates at advantage. While political party candidates (especially of established parties) usually benefit from some sort of public campaign financing based, for example, on previous electoral gains, independent candidates are often excluded. In some cases, public funds are provided only to parties currently holding mandates such as in Albania where only candidates from political parties are entitled to receive public funds, while independent candidates have to rely only on private funds.²²

20. Finally, independent candidates may be disadvantaged on the Election Day as regards their place on the ballot as was the case during 2017 local elections in North Macedonia where, contrary to the Electoral Code, the two lotteries were held by the electoral administration bodies on candidate order on the ballot; one for parties and coalitions, and the other for groups of voters. It discriminated against independent candidates, as they were placed at the bottom of the ballots.²³

21. In sum, independent candidates may face various impediments to their electoral participation. This is not necessarily their direct exclusion from electoral races but also (even minor) obstacles of administrative nature or practical/structural disadvantages they face while competing with candidates from political parties. This affects the level of political pluralism and, by extension, the quality of elections and of democracy per se. Moreover, this is also in contradiction to international electoral standards ensuring free and fair elections.

4. INTERNATIONAL STANDARDS ON ELECTORAL PARTICIPATION OF INDEPENDENT CANDIDATES

4.1 General framework

22. Independent candidates benefit from general international standards on electoral participation. Genuine electoral competition among political parties and candidates is a founding principle for democratic elections.²⁴ Passive suffrage is essential for fulfilling this principle. The right of individuals to stand in elections and to be elected for office (passive suffrage), individually or as representatives of

²⁰ OSCE/ODIHR, Final Report, The Former Yugoslav Republic of Macedonia Municipal Elections 15 October and 29 October 2017, p. 10.

²¹ Congress, Local elections in the Republic of Moldova (20 October 2019).

²² OSCE/ODIHR, Final Report, Republic of Albania Local Elections 30 June 2019, p. 14.

²³ OSCE/ODIHR, The Former Yugoslav Republic of Macedonia Municipal Elections 15 October and 29 October 2017, p. 11.

²⁴ A major function of political parties is the presentation of candidates for elections. Parties choose candidates to be representatives of party ideals. However, candidacy is also an expression of an individual's right to be elected and, as such, the legal regulations on candidates must ensure a citizen's individual right to stand for election. The individual ability to stand in elections, including as independent candidate, may be affected by three sets of rules: 1) those imposed by the state for registration as a candidate; 2) those imposed internally by the party for selecting candidates; and 3) admissible restrictions on eligibility rights, such as age, residency or citizenship requirements. While the first set must not unduly limit the right of free expression and association for parties, it is good practice that the second set also respects the need to ensure that candidates are chosen with the support of the party at large. But state interference should be limited to transparency requirements and ensuring some kind of input from party members. Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, Second edition (2020), paras. 180-181.

political parties or organisations, is universally recognised and established by major international human rights treaties/instruments both on universal as well as on regional levels, most notably in Article 25 of the ICCPR, which is also relevant for elections on local level (GC 25 para 6). In Europe, similar guarantees are provided by Article 3 of Protocol 1 to the ECHR, right to free elections, though not applicable to local elections, and in the Paragraph 7.5 of the 1990 OSCE Copenhagen Document which is politically binding on its signatories. For elections at the local level specifically, this right is guaranteed by Article 1 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

23. As regards case law of the European Court of Human Rights, the right of independent candidates to run in elections appeared in several cases the Court has dealt with. While these concerned national elections where the argument of avoiding fragmentation is stronger, the Court seemed to be reluctant to establish violations and left states a wide margin of appreciation of how to approach the issue of independent candidates. Concerning alleged violation of Article 3 of Protocol No 1, the Court dealt with the case of *Oran v. Turkey* wherein the applicant, who stood for parliamentary elections in 2007, complained that the legal limitations imposed on him, as an “independent candidate”, had constituted violations of his right to free elections. Still, the ECtHR did not find a violation. Further, in the case of *Timurhan v. Turkey*, the applicant complained, in her capacity as a voter, that the same law had restricted her to voting for a political party and had prevented her from learning the names of the individual candidates or vote for an independent candidate. In particular, the case(s) concerned the inability for Turkish voters living abroad to vote for independent non-party candidates in polling stations set up in customs posts. In its ruling, the Court emphasised the role played by political parties, the only bodies which could come to power and have the capacity to influence the whole national regime. Furthermore, according to the Court, the limitation also pursued two further legitimate aims: enhancing democratic pluralism while preventing the excessive and dysfunctional fragmentation of candidatures, thereby strengthening the expression of the opinion of the people in the choice of the legislature. Consequently, the Court found no violation of Article 3 of Protocol No. 1, ruling that the restriction met the legislature’s legitimate concern to ensure the political stability of the country and of the government which would be responsible for leading it after the elections.

24. Thus, overall, a balance needs to be struck between ensuring political pluralism on the one hand, while preventing the excessive and dysfunctional fragmentation of candidatures on the other. In practical terms, political pluralism is ensured through realisation of various rights and freedoms, such as the protection of opinions and the freedom to express them, namely within the meaning of Article 10 of the European Convention on Human Rights. It is also one of the objectives of the freedoms of assembly and association enshrined in Article 11. That applies all the more in relation to the right to free elections in accordance with Article 3 of Protocol No.1 of ECHR. As evidenced by ECtHR judgments as well as the Copenhagen Document and other OSCE commitments, pluralism is necessary to ensure effective democratic governance and provide citizens with a genuine opportunity to choose how they will be governed. Effectively, the degree of political pluralism is considered one of the key elements of the quality of representative democracy in general terms, as well as of democratic process on the local and regional level.²⁵

4.2. Limitations and restrictions

25. In general, the principle of universal and non-discriminatory participation in elections, as provided in these instruments mentioned above includes the right to stand of independent candidates. This also puts limits on possible restrictions of their rights. Any restrictions which are applied to individuals wishing to stand for office are subject to stringent requirements, and must be due to such conditions as age, nationality,²⁶ residence, criminal record etc. Any further requirement for candidacy must be explicitly mentioned in the Constitution or in the law and sufficiently justified by constitutional principles that permit

²⁵ Therefore, it is widely recognised that legislation regulating political actors should aim to facilitate a pluralistic political environment and promote pluralism as a means of guaranteeing participation by all persons and groups, including independents, in public life, which should also allow for the expression of opposition viewpoints and for democratic transitions of power. Legislation which overly restricts the number of election contestants does not only reduce the free function of political pluralism, but can be also easily manipulated to silence parties or candidates who express opposition opinions unpopular to those in power. See, ECtHR, *Refah Partisi (the Welfare Party) and Others v Turkey*, 13 February 2003, para. 89; ECtHR, *Socialist Party and Others v Turkey*, 25 May 1998, para. 41; ECtHR, *Freedom and Democracy Party (ÖZDEP) v Turkey*, 8 December 1999, para. 37. All stating that there can be no democracy without pluralism.

²⁶ C.f. Convention on the Participation of Foreigners in Public Life at Local Level.

the limitation of fundamental rights of certain categories of citizens.²⁷ In any case, requirements for candidacy should be reasonable and applied in a non-discriminatory fashion. Unreasonable requirements may include excessive deposits, mandatory regional support or party representation, or an excessive number of support signatures, each of which could discourage legitimate candidacies. Thus, non-affiliation with political parties does not qualify as a reasonable restriction and citizens should not be required to be members of political parties in order to stand for office.²⁸

26. Certain persons may be deprived of the right to be elected, in line with international standards, but only after a cumulative fulfilment of certain conditions. Admissible provisions for depriving individuals of their right to passive suffrage must be provided for by law, must observe the proportionality principle (conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them), and must be based on mental incapacity or a criminal conviction for a serious offence. Finally, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.²⁹

27. As far as the principle of non-discrimination is concerned, it must be ensured that every person who has the right of suffrage is allowed to exercise this right free of discrimination and on the basis of equal treatment before the law. The application of this principle requires that a person who has the right to stand in elections be allowed to exercise his or her right to suffrage without distinction on the basis of “race”, colour, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equal treatment before the law, i.e. level playing field. No political party or candidate should have an unfair advantage over any other, or be subject to a disadvantage.³⁰

28. With regard to the principle of proportionality, candidates should not be disqualified from standing for election other than for the most serious reasons given the fundamental nature of the right to stand. They should be given an opportunity to correct any technical deficiencies on their applications for registration and should not be disqualified or refused registration solely on technical grounds. The right of judicial appeal must exist for the refusal of registration of a party or candidate, and appeals must be heard within a reasonable timeframe prior to the election.³¹

29. All these electoral standards and best practices on the right to stand provide essential guarantees and limit restrictions of standing for independent candidates.

4.3. Electoral system

30. The choice of electoral system is at discretion of states, as long as it meets the standards for democratic elections.³² However, special attention needs to be paid to the position of independent candidates within the system. For example, an electoral system based on proportional representation and lists of candidates is, generally, an acceptable electoral system. However, if there is no mechanism for the participation of independent candidates, this becomes problematic in view of international electoral standards. Independent candidates should be guaranteed the right to stand for office, including in systems based on proportional representation, and there should be a provision for independent candidates.³³ For instance, under a proportional representation system, the single transferable vote (STV) is a candidate-centred voting method where independent candidates are very common in elections, for example, in Ireland. Many times, an independent candidate will simply be treated as a

27 ICCPR General Comment No. 25, para 15.

28 ICCPR General Comment No. 25 provides in paragraphs 15 and 17: “Persons who are otherwise eligible to stand for election should not be excluded ... by reason of political affiliation”, and “The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.”

29 Venice Commission, ‘Code of Good Practice in Electoral Matters’ 2002, I.1.1.d. However, the conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them, as the holding of a public office is at stake and it may be legitimate to exclude persons whose activities in such an office would violate a greater public interest.

30 Paragraphs 5.9 and 7.3, 7.5, 7.6 of the OSCE 1990 Copenhagen Document outline this principle, guaranteeing non-discrimination and equal protection of the law in the exercise of suffrage rights.

31 OSCE/ODIHR, Election Observation Handbook Sixth edition, p. 57.

32 Venice Commission, ‘Code of Good Practice in Electoral Matters’ 2002, II.4.

33 Helsinki Final Act, paragraph 7.5.; ICCPR General Comment No. 25, paras. 15 and 17.

one-person party, presenting a list with only one name on it and will gain the seat if he or she receives enough votes in the election.³⁴

4.4. Candidate registration

31. Although the legal framework should not hamper electoral participation of independent candidates, it may require certain conditions to be met in order to register candidates and put them on the ballot for a particular election. A place on the ballot is usually granted when a political party or independent candidate meets one of the following requirements: (1) the payment of a monetary deposit (refundable if a party receives a predetermined percentage of votes); (2) the collection of a minimum number of signatures from registered voters;³⁵ or (3) the allocation of a mandate or obtaining of a minimum percentage of the votes in the previous election. These requirements may apply to each separate electoral contest and may apply anew to each electoral cycle. However, the simultaneous imposition of more than one of these requirements for ballot access should be considered as restrictive to political pluralism.³⁶

32. The system should not discriminate against new parties and candidates. While parties who won mandates or a minimum percentage of votes in the previous election may be automatically eligible to be placed on the ballot, there must also be fair, clear, and objective criteria for the inclusion of new parties and candidates.³⁷ Individual candidates should have an equal opportunity as those running as political party candidates to access the ballot. However, legislation commonly allows candidates of parties to be exempt from particular requirements for ballot access which have already been fulfilled by the party. For example, party candidates may be exempt from the collection of signatures to show support if the party has previously collected signatures to gain recognition as a party. In such cases independent candidates may still be required to fulfil the signature support requirement. Such systems are not necessarily discriminatory. However, legislation must clearly outline what exemptions are applicable and ensure that requirements placed upon independent candidates are not more restrictive than those previously fulfilled by the party.³⁸

33. In general, the legal framework should clearly set forth all details related to registration for a particular election, including the dates for the commencement and closure of the registration process, the time period during which requirements must be met and the process/means of verification of fulfilment of the requirements. The legal framework should provide for a uniform registration process that is the same for all candidates and political parties. Regardless of the procedures available for registration, registration should not be tied to irrelevant requirements unrelated to the issue of whether a political party or independent candidate has sufficient support to be placed on the ballot. The grounds for the rejection of a registration application should be based on objective criteria that are clearly stated in the legal framework. Provisions regarding candidate and party registration must be applied equally.³⁹

34. Deadlines for the approval or rejection of registration requests by the registering authority should be set in the law. The grounds for rejection must be clearly stated in the law and based on objective criteria. The law should allow for the correction of technical deficiencies within a reasonable amount of time after the rejection of an application. The law should provide for appeal to a court of law after final rejection of registration, should clearly specify the process by which appeals may be made, and should require an expedited court ruling to enable a candidate or party to be placed on the ballot where registration was improperly denied.⁴⁰

34 ACE Project, 'Independent Candidates and PR systems', available at: <https://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e05>

35 ECtHR, *Tahirov v Azerbaijan*, 11 September 2015. The Court accepted that a requirement for collecting supporting signatures for nomination as a candidate pursues the legitimate aim of reducing the number of fringe candidates.

36 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.1.3; OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, p. 38.

37 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, 2010, para. 145.

38 Ibid, para. 146.

39 OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, p. 38.

40 Ibid, p. 40; ECtHR, *Tahirov v. Azerbaijan*.

4.5. Signatures

35. Where the collection of signatures is a requirement for registration, the time period during which signatures are to be collected and the process by which these signatures are verified should be clearly set in law. A reasonable amount of time should be provided for the collection of signatures. In addition, special attention should be given to the manner of validating signatures.⁴¹ An invalid signature should not invalidate other signatures or the signature list as a whole. A candidate may be required to submit a fixed number or a fixed percentage of valid signatures. Where the law requires submission of a fixed percentage of signatures, it should be clear that the percentage is based on a readily identifiable number at a specified date, such as the number of registered voters in the constituency as announced by a specified election authority on a specified date. Regardless of whether a fixed number or percentage is stated in the law, the law should permit the submission of a total number of signatures above the threshold in the event that some signatures are determined to be invalid.⁴² However, the required number of signatures should not exceed one per cent of the total number of voters registered in the constituency.⁴³

36. The checking process must in principle cover all signatures submitted up to the point when the minimum number of verified signatures required for registration has been reached. However, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked and the political party or candidate should be registered.⁴⁴ In a country where the legal framework provides for the verification of signatures through statistical analysis of a sample of the signatures submitted, the law, as well as the protocol on registration or denial of registration, should specify the following: (a) the size of the sample to be drawn and checked; (b) the method by which the sample is to be drawn, which could involve the computer generation of random numbers; (c) the tests that are to be applied to determine whether a particular signature is valid; (d) a formula for determining the number of signatures in the sample that must be valid in order for the registration to be accepted; and (e) if necessary, the circumstances under which a further sample may be drawn.⁴⁵

37. The procedures for checking signatures must be written carefully to prevent abuses or discrimination against or in favour of a particular political party or candidate. Objective rules that are non-discriminatory must apply. The lists submitted for verification must be scrutinised in equal detail and by the same methodology. The law should require the completion of appropriate forms or protocols reflecting the steps taken in the process of verification should there be a legal challenge over a particular registration or denial of registration.⁴⁶ Validation of signatures must be completed by the start of the election campaign.⁴⁷

38. Provisions regarding the geographic regions where signatures are obtained should be carefully considered. An election law may require that a party obtain a certain number of signatures in every region of the country. Such a provision discriminates against parties that enjoy strong public support, but whose support is limited to a particular region. Such a provision can also discriminate against small parties and national minorities and would be incompatible with the right to free association.⁴⁸

39. Finally, it is problematic to require that voters sign only in support of one candidate or party. Signing to support the registration of a candidate or candidate list is not a substitute for voting for the candidate or candidate list. If such a requirement exists, a candidate who has collected the required number of signatures in good faith may be denied registration through no fault of his or her own, but because voters have signed more than one petition.⁴⁹

41 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.13.

42 OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, pp. 38-39.

43 Ibid, I.13.ii.

44 Ibid, I.13.iv.

45 OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, p. 39.

46 Ibid.

47 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.13.v.

48 OSCE/ODIHR, Guidelines on Political Party Regulation.

49 OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, p. 40.

4.6. Monetary deposit

40. Where monetary deposits are used as registration prerequisites, such deposits should be of a sufficient sum to discourage frivolous parties and candidates while, at the same time, not being so high as to prevent legitimate parties or candidates from obtaining access to the ballot. Moreover, excessive amounts of monetary deposit may be deemed discriminatory as they limit the right of citizens without adequate resources to stand for election as protected under human rights instruments. In addition, the deposit should be refundable if the candidate or party exceed a certain number or percentage of votes. The sum requested should reflect the economic realities of the country.⁵⁰ Although this practice may be considered more effective than collecting signatures, the threshold required for a refund should be reasonable.⁵¹

41. As with other regulations on political parties, deposits must be applied objectively to all parties. States are recommended to also provide for non-monetary methods for registration in elections, such as expression of minimum support through the collection of signatures (see above). Alternative non-monetary methods should be available just as registration should be determined based on a minimum level of support as opposed to financial status.⁵²

4.7. Campaigning

42. In general terms, all electoral participants must be permitted to conduct campaign activities in a fair and free atmosphere and be given equal opportunities in presenting their views and qualifications (level playing field).⁵³ The main activities include holding campaign rallies, displaying electoral materials and showing up in the media. The time frame for conducting campaign activities is in many countries determined for a strictly defined official campaign period which usually ends one day before the election when campaign silence begins. It is therefore important that validation of independent candidatures be completed by the start of the election campaign, since late validation places independent candidates at a disadvantage in the campaign.⁵⁴

4.8. Campaign finance

43. There are two main sources of campaign finance: private donations and public funds. In most states, a mixture of both exists side by side. Access to public funding, in particular, may pose a challenge for independent candidates. When public financing is provided, it is typically allocated to at least the parties represented in the current parliament. However, to ensure equality of opportunity and promote political pluralism, financing is also recommended to be provided to non-parliamentary parties, including independent candidates who demonstrate a minimum level of support.⁵⁵ In some states, public funding is allocated prior to an election, based on the results of the previous election or proof of a minimum level of support. Others provide payment after the election, based on the final results. Generally, a pre-election disbursement of funds, or at least of some percentage of financing, best ensures the ability of all actors, including independents, to compete on the basis of equal opportunity.⁵⁶ In general, it is in the interest of political pluralism to condition the provision of direct public financing on attaining a lower threshold of support than the electoral threshold for the allocation of mandates in the (previously) elected local or regional body.⁵⁷

4.9. Access to the media

44. Independent candidates have the right to communicate their platforms and their views freely. For this purpose, they should have access to the media to inform the electorate about their policies and

50 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.13.vi; OSCE/ODIHR, Guidelines for Reviewing a Legal Framework for Elections, p. 40.

51 Venice Commission, 'Code of Good Practice in Electoral Matters', Explanatory Memorandum, 2002, para 9.

52 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, 2010, para 143.

53 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.2.3.a.i.

54 Venice Commission, 'Code of Good Practice in Electoral Matters', Explanatory Memorandum, 2002, para 8.

55 Venice Commission, 'Code of Good Practice in Electoral Matters' 2002, I.2.3.a.iii; Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, 2010, para. 184.

56 Ibid, para 188.

57 OSCE/ODIHR, Handbook for the Observation of Campaign Finance, p. 32.

opinions on matters of public interest.⁵⁸ Candidates can be covered in a variety of formats and can have access to the media in a number of ways. It is crucial that they have an equal opportunity to inform voters about their policies and not face discrimination in getting media access.⁵⁹ Equality of opportunity must be guaranteed for parties and candidates alike. This implies a neutral attitude by state authorities, in particular with regard to coverage by the media, more specifically by the publicly owned media.⁶⁰ State authorities must observe their duty of neutrality with regards to the media.⁶¹

45. In order to ensure that all political actors competing in elections, including independents, are able to present their programmes to the electorate at large, public funding in the form of indirect support can be applicable, such as allocation of free airtime and print space in public media. In this regard, allocation of free airtime in the media is integral to ensuring the equality of opportunity. While the allocation of free airtime on state-owned media is not legally mandated through international law, it is strongly recommended that such a provision be included in relevant legislation as a critical means of ensuring an informed electorate. When made available, free airtime must be allocated to all parties and candidates on a reasonable basis and consistent with the principle of equal treatment before the law and non-discrimination.⁶² The principle of equal treatment before the law with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space.⁶³

46. Finally, while the fulfilment of party-registration requirements may constitute a pre-requisite for being granted free media access, such a system of allocation cannot be used to discriminate against new electoral groups or independent candidates. It is recognised, however, that specific rules regarding the methods of state sponsored allocation of free media time and space may benefit parties that have undergone the process of registration; states should seek to avoid this potentially discriminatory practice.⁶⁴

4.10. Election observation

47. Presence of partisan domestic observers, both party and non-party (ie. on behalf of independent candidates), should be permitted throughout the voting, counting, and certification processes, as well as during pre-election phases in order to ensure transparency of the overall electoral process.⁶⁵ Observers should have a right to express concerns if such arise, and to report problems to their respective parties or candidates they represent at any stage of the electoral process. While it is inherently easier for parties to exercise this right than independent candidates (given the pre-existence of party membership networks and communication tools), such a right should be explicitly made available to all political contestants equally in legislation.⁶⁶

5. DIFFERENT SYSTEMS IN COUNCIL OF EUROPE STATES AND THE POSITION OF INDEPENDENT CANDIDATES

48. While in Europe independent candidates are generally allowed to run in local and regional elections, systems and concrete legislative/administrative provisions directly regulating their electoral participation vary widely.

49. To begin with, different systems provide different forms of running as an independent candidate. As mentioned in the introduction, traditions in European countries vary and, depending on electoral system in use and other regulations, independents may (or may not) choose to run on their own or to run on a list of independent candidates. As will be described below, elections in majoritarian electoral systems, such as in the United Kingdom, generally allow for independents to run on their own without having to establish structures similar to political parties with a list of candidates.⁶⁷ The same applies to

58 Paragraph 7.8 of the 1990 OSCE Copenhagen Document commits participating States to ensure “that no legal or administrative obstacle stand on the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in electoral process”.

59 OSCE/ODIHR, Handbook on Media Monitoring for Election Observation Missions, p. 14.

60 Venice Commission, ‘Code of Good Practice in Electoral Matters’ 2002, I.2.3.a.ii.

61 Ibid, I.3.a.i.

62 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, 2010, para. 147.

63 Ibid, para. 149.

64 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, Second edition (2020), para 201.

65 Paragraph 8 of the OSCE Copenhagen Document.

66 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, 2010, para. 157.

67 The Electoral Commission, Local elections in England, available at: <https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/local-elections-england>

direct elections of mayors in countries where mayors are elected directly. On the contrary, in some countries, especially those with proportional representation systems, running as an independent for a local council may require (or may allow) registering a list of independent candidates. Slovenia is an example of a system where independents can choose. While independent candidates run on their own in the majoritarian system for direct election of mayors, those running for seats in municipal councils may either run individually on their own list or together with allied independents with whom they create a joint list of independent candidates in the proportional races.⁶⁸ Finally, with respect to diversity of regulations existing in CoE member states, it has to be acknowledged that in some countries no formal possibility exists for independents to run as such. This is the case for instance in Sweden where, however, establishing a political party as a vehicle to run in elections constitutes a simple administrative task which is not perceived as impairing independents' opportunity to run in elections.⁶⁹

50. As previous sections showed, the electoral participation of independent candidates is directly influenced by ballot access rules. In some countries, independents are required to collect a certain number of supporting signatures (which differs from country to country as well as the periods for collection of signatures are different), elsewhere independents have to pay a deposit of varying amounts of money which may then be refundable under different conditions. In certain countries, these requirements are specifically addressed to independent candidates, while in others this is a general rule applicable to all candidates regardless if they are party or non-party affiliated. Some systems pose similar requirements to party candidates and independents, others explicitly favour party lists. Thus, the electoral participation of independent candidates is influenced by the ease of ballot access, including other rules that affect the opportunity of independents compared to party candidates. It goes without saying that independent candidates are more likely to contest in elections when rules regarding registration, campaign finance, political advertising and media access are favourable or less discriminatory.

51. In some states, no requirements on party support or financial deposit are stipulated. In Luxembourg, independents standing in municipalities with less than 3,000 inhabitants have no obligation to submit supporting signatures or a deposit. In municipalities with more than 3,000, independent candidates must either have a support by 50 voters registered in the commune or be supported by an outgoing or incumbent communal councillor in the municipalities concerned.⁷⁰ In Finland, independent candidates may be nominated by constituency associations established by eligible voters. The establishment of a constituency association requires at least ten eligible voters who reside in the municipality in question. However, in municipalities with smaller populations, only three or five residents are required.⁷¹

52. In other countries, a deposit may be required, or it may be an alternative to the collection of signatures, such as in Ireland where independent candidates must supply either statutory declarations by 15 voters registered in the electoral area concerned, or lodge a deposit of 100 Euros.⁷² In Turkey, independent candidates have to pay a deposit which is equal to the salary of the most senior civil servant, which can be a large sum. The deposit is only returned if the candidate withdraws from the election or wins.⁷³

68 Law on Local Elections of Slovenia, Arts 13-18.

69 Valmyndigheten, Candidates standing for election, available at: <https://www.val.se/servicelankar/other-languages/english-engelska/parties-and-candidates/candidates-standing-for-election.html>; European Parliament, Criteria, conditions, and procedures for establishing a political party in the Member States of the European Union, 2012, available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462512/IPOL-AFCO_ET\(2012\)462512_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462512/IPOL-AFCO_ET(2012)462512_EN.pdf), pp. 41-42.

70 Le gouvernement du Grand-Duché de Luxembourg, 'Standing as a candidate in communal elections', available at: <https://guichet.public.lu/en/citoyens/citoyennete/elections/elections-communales/candidat-elections-communales.html>.

71 Info Finland, 'Elections and voting in Finland' available at: <https://www.infofinland.fi/en/information-about-finland/finnish-society/elections-in-finland>.

72 Citizens Information, 'Local elections - nomination of candidates', available at: https://www.citizensinformation.ie/en/government_in_ireland/elections_and_referenda/local_elections/nomination_of_candidate_s_in_local_authority_elections.html.

73 Congress, Local elections in Turkey and Mayoral re-run in Istanbul (31 March and 23 June 2019), p. 14.

53. On another level, structural conditions for running as an independent vary across Europe depending on the electoral system in use. While majoritarian systems tend to be generally more open to independents running on their own (e.g. in direct elections of mayors or in single-district constituencies)⁷⁴, proportional systems may technically create fundamental obstacles to single candidates running independently as it may be mandatory to register a list of multiple candidates for proportional races. However, both systems may contain elements hindering participation of independent candidates as well as facilitating it, indeed depending on the fact whether a candidate runs on his/her own or as part of a wider list of independent candidates where such practice is allowed.

54. In general, proportional systems are considered as more conducive to the electoral participation of small electoral actors than majoritarian systems as they are characterised by more proportional outcomes and lower effective thresholds.⁷⁵ Proportional systems provide for better representation of small parties and groups of candidates. As proportionality increases with district magnitude, small electoral actors tend to do particularly well in districts where a large number of seats are up for election (as opposed to majoritarian systems and low-magnitude districts).⁷⁶

55. Alternatively, the STV (Single Transferable Vote) form of the proportional system used in Irish local elections, wherein voters state their preferences for individual candidates in particular order, has proved useful in fostering participation of independent candidates on the local level.⁷⁷

56. Majoritarian systems with single-member districts provide for more candidate-centred politics which is generally beneficial for independent candidates. In such systems, people vote for individual candidates, not party lists, and political campaigns focus more on personalities, achievements and promises of individual politicians than to party platforms.⁷⁸ Majoritarian systems also provide for more personal links between the constituency and their elected representative. A candidate-centred political setting, arguably, levels the playing field for independent candidates who face significant organisational disadvantages when competing with party campaign machineries.⁷⁹

57. In particular, in countries with a majoritarian electoral system, independents tend to enjoy a more open access to running in elections in terms of mechanical effects of the electoral system on individual candidacies, such as in the United Kingdom (England) where all candidates submit nominations on an individual basis. The rules for candidates nominated by political parties are no different from other candidates in the procedures they must follow.⁸⁰ At the same time, though, relatively favouring mechanical effect of the electoral system accompanied by the absence of formal requirements may be counterbalanced by other negative effects, given for instance by a predominating position of major political parties, as is the case in the UK.⁸¹ The position of independents may be thus undermined.

58. Finally, the conditions for running in elections by independent candidates are influenced by the extent to which the society has embraced modern information and communication technologies. Per se, the development of the electronic media has led to a growing personalisation of politics and to more candidate-centred politics from which independent candidates largely benefit.⁸² The media's focus on personal images, combined with the incentives of candidates to use the media to promote their message, has led to increasingly candidate-oriented political campaigns and as a result, personalised political mandates. The changes brought by the rise of the internet are expected to be at least as pervasive as those resulting from the growth of television. Moreover, the move towards online campaigning has been accelerated during the COVID-19 pandemic.

74 A. Gendźwiłł, T. Żótkak, 'How single-member districts are reinforcing local independents and strengthening mayors: on the electoral reform in Polish local government', *Local Government Studies*, 2017, 43:1.

75 See R. Taagepera, M. Shugart, 'Seats and Votes'. Yale University Press, 1991; A. Lijphart, 'Patterns of democracy: government forms and performance in thirty-six countries', Yale University Press, 1999.

76 European Parliament, 'Study on Independent Candidates in National and European Elections', p. 14.

77 J. P. McBride, 'Positive aspects of PR-STV for the Irish political system', *Representation*, 34:1, 1996; C.f. L. Weeks, 'Crashing the party. Does STV help independents?', *Party Politics* 20.4, 2014.

78 European Parliament, 'Study on Independent Candidates in National and European Elections', p. 14.

79 See e.g. D. Brancati, 'Winning Alone: The Electoral Fate of Independent Candidates Worldwide', *The Journal of Politics*, 70(3), 2008, pp. 648–662.

80 The Electoral Commission, *Local elections in England*, available at: <https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/local-elections-england>.

81 E. Casalicchio, 'The UK's independent candidates fighting for political survival', *Politico*, 2019, available at: <https://www.politico.eu/article/the-uk-british-election-independent-candidates-fighting-for-political-survival/>.

82 I. McAllister, 'The personalization of politics', In Dalton, R.J. and Klingemann, H-D. (eds) *Oxford Handbook of Political Behavior*. Oxford: Oxford University Press, 2007.

6. EXCURSUS: SITUATION OF OPPOSITION CANDIDATES

59. The obstacles faced by independent candidates in local and regional elections are very often symptomatic of the broader phenomenon of shrinking space for the opposition in some of the Council of Europe states as pointed out by the CoE Secretary General. In this sense, the term opposition encompasses not only the major opposition party or parties, existing on national and by extension on local and regional levels, but also includes candidates from parties of local and regional importance which are oppositional in the sense of standing against parties of the national centre. Although not exhaustively, in the following lines, several such parallels will be drawn with regards to the situation of opposition candidates, seeking to identify similarities as well as differences in view of obstacles they are facing compared to the independent candidates.

60. Similar to independents, candidates from opposition parties face various barriers to register and run in elections on local and regional level. Although in general candidate registration and in particular the ballot access rules are (nominally) party-neutral, the existing regulations can disadvantage candidates on various grounds. For instance, the Congress noted with concern that lack of clarity and inconsistencies in registration requirements, e.g. official party nomination, consent by candidates, autobiographies of candidates, and monetary deposits, prevented some candidates from running during the 2015 local elections in Ukraine.⁸³ The vagueness of the law specifically on the conditions of re-submission of incomplete registration files, including the definition of mistakes and inaccuracies, raised many issues as the submission of incomplete files was a wide-spread ground for refusing the registration of candidates, sometimes allegedly politically motivated.⁸⁴ Although the Central Election Commission (CEC) and courts overruled in some cases the decisions taken by territorial election commissions (TEC), these rulings were inconsistent and furthermore, some TECs repeatedly denied registration of certain candidates, despite decisions by the CEC and courts mandating approval of the candidates' application. The Congress delegation concluded that the restrictive interpretation and inconsistent implementation of candidates' registration rules hindered the right to stand for candidates on an equal basis in several instances, contrary to Council of Europe recommendations and other international obligations and standards.⁸⁵

61. The unlevel playing field during election campaign is yet another example of barriers that opposition candidates face, similarly to independents. For instance, the Congress has noticed on multiple election observation missions that misuse of administrative resources by incumbents is regrettably a commonplace practice which reduces the equality of opportunities for candidates. For example, during the campaign for 2017 local elections in Georgia, the Congress delegation noted credible allegations from various interlocutors about widespread misuse of administrative resources which seemed to be of specific importance at the local level. This included, in particular, the use of school and kindergarten teachers to mobilise support for the ruling party and to attend its campaign events, sometimes under pressure.⁸⁶ With regards to the media environment, adherence to the rules on equal access to the media for all candidates is often an issue. This was observed by a Congress delegation during the 2019 local elections in Moldova where the regulatory body responsible for the monitoring of media outlets' compliance with this rule was undermined by insufficient resources allocated to this activity as well as by an alleged bias in favour of the government. This resulted in selective actions of certain broadcasters, discriminating opposition candidates in terms of their media visibility.⁸⁷ Finally, excessively uneven campaign finance and a lack of clear rules on ensuring equality of resources used by electoral participants represent another challenge to the equality of opportunity for opposition candidates. This was the case in the 2016 local and provincial elections in Serbia where the Congress delegation found that government largely benefitted from lacking regulation of campaign financing and weak implementation of existing rules.⁸⁸ However, various degrees of under-regulation

83 Congress, Observation of local elections in Ukraine (25 October 2015), para. 37.

84 In particular, candidates of the Opposition Bloc to the regional Council of Kharkiv and for the Mayor of Sloviansk (Donetsk Oblast) were denied the right to be registered for procedural reasons. In a number of instances, including Mariupol, Cherkasy, Kherson, Kharkiv, Berdyansk and Kamianets-Podilsky, the decisions by TECs with respect to the registration of certain candidates and party lists appeared politically motivated and designed to exclude certain political forces from participating in the elections. *Ibid.*

85 *Ibid.*, paras 38-39.

86 Congress, Information report on the municipal elections in Georgia (21 October 2017), para. 36.

87 Congress, Local elections in the Republic of Moldova (20 October 2019), paras. 77-78.

88 Congress, Information report on the observation of local and provincial elections in Serbia (24 April 2016), paras. 31-35.

on campaign finance are commonplace across the Council of Europe states, including established democracies, as regularly pointed out by GRECO.⁸⁹

62. The election day procedures are indeed a fundamental part of the election process, especially with regards to mechanisms and safeguards aimed at fraud prevention. In this regard, the position of opposition candidates is sometimes undermined from the perspective of two major pillars ensuring free and fair elections, namely the election administration and election observers. One of the negative trends the Congress has observed regarding election administration concerns the under-representation of nominees of opposition parties in election administration bodies, as was the case in the 2018 cantonal elections in Bosnia and Herzegovina where polling station commissions (PSC) suffered from politicization. This was due to widespread trading and replacements of PSC positions among electoral contestants in order to gain undue influence.⁹⁰ Secondly, election observation by both civil and partisan observers is an additional safeguard which has in recent years been established as a norm. Regrettably, it is a worrisome trend in some countries that observation of elections becomes restricted. In the run up to the September 2021 local and regional elections in Russia, domestic election observers faced serious constraints due to Russia's Justice Ministry decision to add the election observation NGO Golos to its list of foreign agents, a label which undermines the organisation's credibility and deters volunteer observers. In a further blow, the Central Electoral Commission of Russia decided that only direct participants in the electoral process, such as candidates and election officials, would have access to round-the-clock streaming from 50,000 polling stations (a measure adopted against the backdrop of the COVID pandemic). Although the opposition party Yabloko contested the decision on the grounds that it violates electoral rights, the Supreme Court of Russia declined to consider its complaint, thus the opportunity of opposition parties to observe the polls was seriously hampered.⁹¹

63. Finally, in the post-election period, opposition candidates in some countries have faced threats or actual fulfilment of fundamental challenges to the exercise of their mandates after winning the elections. For example, during the local elections in Poland, pressure was exerted on several opposition candidates before the 2018 elections through court proceedings for corruption charges. Although the candidates were duly registered to run, they faced legal charges due to which the state authorities called into question their right to be re-elected despite the fact they had been allowed to run for office.⁹² Even graver situation occurred after the 2019 local elections in Turkey, where dozens of local elected Mayors and Councillors (mostly from the opposition party HDP) in more than fifty towns in the south-east of the country were placed after the won elections in pre-trial detention on grounds of accusations of terrorist links and were replaced with trustees appointed by the central authorities or with candidates from the ruling party that came in the local elections as second.⁹³ This has been on multiple occasions strongly criticised by the Congress,⁹⁴ Secretary General of the Council of Europe,⁹⁵ as well as by the Venice Commission which found that this practice violated international law.⁹⁶

7. CONCLUSIONS

64. Independent candidates have long received only little attention during elections. Still, their important contribution to political pluralism makes the situation of independent candidates a relevant matter of concern. This report finds that although certain proportionate measures to limit the number of political contestants, including independent candidates, are considered compatible with international standards, mainly to prevent the excessive or dysfunctional fragmentation of the electoral landscape, independents should be able to run and campaign on equal basis with candidates from political parties, without undue obstacles and discrimination. Domestic legislations should avoid overly burdensome requirements that would impinge on the right of individual citizens to seek public office without discrimination. Overly strict restrictions on participation of independent candidates not only inherently reduce political pluralism, but can also be easily manipulated to silence opposition candidates vis-à-vis

89 See for example Congress reports on local and regional elections in Finland, Netherlands and Denmark.

90 Congress, Report on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018), para. 26.

91 European Parliament, 'Russia's 2021 elections: Another step on the road to authoritarian rule', 2021, available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2021\)698018](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2021)698018).

92 Congress, Information report on the assessment of local government elections in Poland (21 October 2018), para. 29.

93 Congress, Local elections in Turkey and Mayoral re-run in Istanbul (31 March and 23 June 2019), paras. 74-80.

94 Most recently available at: <https://www.coe.int/en/web/congress/-/congress-president-deplores-yet-another-blow-to-local-self-government-in-turkey>.

95 Letter from the Secretary General of the Council of Europe to the President of the SEC, of 15 April 2019, available at: <https://rm.coe.int/image2019-04-16-171615-letter-addressed-to-mr-sadi-guven-president-of-/168093fe38>.

96 Venice Commission, 'Turkey, Opinion on the Replacement of Elected Candidates and Mayors', 2019.

those in power. This holds also true at the local and regional levels where independents often represent an important alternative to established national parties as they have close links to local issues. This makes independent candidates an invaluable element of local and regional electoral races, introducing genuine political pluralism into the political landscape. However, international standards are still somehow general and do mostly not refer to independent candidates specifically. Comparative review of domestic legislation and examples of national practices also provide a rather diverse picture. In conclusion, overall and pro futuro, further emphasis needs to be put to develop relevant best practices, building on existing standards but also adding onto and complementing them.