

Democratic elections

Local Voting rights

for the integration of migrants
and IDPs

Congress of Local and Regional Authorities
of the Council of Europe

The Congress



Le Congrès

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Democratic Elections

Local voting rights
for the integration of migrants and IDPs

Congress of Local and Regional Authorities
of the Council of Europe

French edition:

Le droit de vote au niveau local, élément de l'intégration durable des migrants et des personnes déplacées dans les communes et régions d'Europe

Ukrainian edition:

Вибірчі права на місцевому рівні як елемент успішної довгострокової інтеграції мігрантів та внутрішньо переміщених осіб (ВПО) у муніципалітетах та регіонах Європи

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Report

Voting rights at local level, as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions

Explanatory Memorandum

CG35(2018)17final
7 November 2018

Monitoring Committee
Rapporteur: Jos WIENEN, Netherlands (L, EPP/CCE)

Summary

In the context of mass migration in the area of the Council of Europe for political, humanitarian and socio-economic reasons as well as due to military conflicts, an increasing number of people have settled (or have been re-settled) in countries/regions other than their country/ region of origin. Since voting encourages migrants and Internally Displaced Persons (IDPs) to actively participate in the life of their community, voting rights, at the local level, may be seen as a natural starting point for successful long-term integration.

The present preliminary draft report examines the international standards with regard to voting rights of IDPs and non-citizens, outlines the major challenges to the implementation of such rights and describes the diversity of approaches chosen by Council of Europe member States in this respect.

EXPLANATORY MEMORANDUM¹

A. Introduction

1. As a consequence of various political, humanitarian and economic circumstances, an increasing number of people have settled or have been re-settled, with varying degrees of duration, in regions or countries other than their homes in the area of the Council of Europe.² Effective integration policies for those people who will remain on the Council of Europe member States' territories or in the places of their actual residence or displacement was highlighted in the Congress priorities for 2017-2020³ and in the 2017 Report by the Secretary General of the Council of Europe.⁴

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

2 See International Organisation for Migration (IOM), World Migration Report 2018, 2017, available at:

https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf.

3 Council of Europe Congress of Local and Regional Authorities, Priorities 2017-2020, 2016, available at: <https://rm.coe.int/priorities-of-the-congres-2017-2020-a4-web-prems-017617-gbr-/168072fecb>.

Specific Congress' recommendations have also touched upon this issue in the past years, such as Congress' Recommendation (369) 2015, available at: <https://rm.coe.int/168071b10a> as well as Congress' Recommendation (386) 2016, available at:

<https://rm.coe.int/168071a283>.

4 See Report by the Secretary General of the Council of Europe, State of Democracy, Human Rights and the Rule of Law in Europe, 2017,

2. The present report specifically focuses on the right to vote⁵ of migrants and internally displaced persons (IDPs) with a particular emphasis on local elections. It also makes certain reference to the voting rights of refugees. The categories of persons – foreigners (refugees, migrants), IDPs – discussed in the report vary significantly as to their situation and legal status. According to international human rights instruments and most national legislation, foreigners and IDPs constitute two distinct categories especially in relation to citizenship and face different challenges in relation to voting rights.

3. However, consideration for voting rights of foreigners and IDPs responds to the rising relevance of political participation as an element of their successful integration in Europe's municipalities and regions. Voting rights, in particular at local and regional level, are a natural starting point for a successful long-term integration as voting encourages foreigners and IDPs to actively participate in the life of their community

available at: <https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-populism-how-strong/168070568f>.

⁵ In addition to (passive) voting rights, also the right to stand for elections will be dealt with in the Report for the sake of completeness. This notwithstanding, in the following, the study will mostly refer to “voting rights” for reasons of simplicity.

where they are directly exposed to local politics. The existence of a “genuine link”, through predominant relations (permanent residence, central point of life interests etc.), between foreigners, IDPs and the place where they cast a ballot at local level, is of critical importance in respect of their voting rights. Local elections are thus considered the most important level of participation as foreigners and IDPs tend to have the most direct links to the local community.

4. Foreigners’ and IDPs’ legal and practical situation differs, though. Foreigners, by definition, do not have the citizenship of their state of residence and are therefore generally not covered by the right to political participation in major international human rights instruments. Even though most foreigners are disenfranchised because of their legal status as non-citizens, a trend is emerging among European states towards enfranchisement of long-term foreign residents, at least in local elections. Their enfranchisement is usually conditional to residency requirements, which guarantee a long-term perspective as well as established and close links to the country or constituency of residence. The category of IDPs refers to persons forcibly displaced *within* the state of their nationality, who are within the scope of the

right to political participation.⁶ Even though international standards and good practices provide useful guidance as regards voting rights of IDPs in local elections, IDPs frequently face obstacles of a legal or practical nature that prevent the practical exercise of their right to vote. In particular, stringent residence requirements associated with burdensome administrative procedures for permanent residence registration are a critical issue for IDPs.

B. Categories, definitions and international standards with regard to political participation

5. The categories of persons – foreigners/non-citizens (refugees, migrants) and IDPs – discussed in this report vary significantly as to their situation and legal status.

1. Foreigners/non-citizens (migrants and refugees/asylum seekers)

6. Foreigners are the broadest category of persons who may be further divided into other groups in

6 See Forced Migration Online, What is forced migration?, 2012, available at: <http://www.forcedmigration.org/about/whatisfm>; UNESCO, Migrant/Migration, 2017, available at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/>.

accordance with their specific status, such as foreign residents, migrant workers, refugees or asylum seekers.⁷ While definitions vary, the present study follows the definition of foreigners adopted in the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level referring to foreigners who *lawfully* reside in a country.⁸ Persons who lack legal residence in a country are thus excluded. On this basis, it is estimated that at the end of 2015 there were approximately 80 million foreign nationals living in Council of Europe member States.⁹

7. Migrants have generally left their home-countries voluntarily in order to improve their material or social conditions as well as the prospect for

7 See eg. the broad definition of the *United Nations Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live* which defines a foreigner as “any individual who is not a national of a State in which he or she is present.”

http://www.un.org/ga/search/view_doc.asp?symbol=a/res/40/144.

8 Art. 2 of the Convention on the Participation of Foreigners in Public Life at Local Level.

9 The number combines figures for Europe (including Russia) - being persons born in Europe but residing in another European state (40 million) and those born in other regions who are staying in Europe as migrants, refugees or asylum seekers (35 million) - and figures for Turkey, Georgia, Armenia and Azerbaijan (5 million). World Migration Report 2018 of the IOM, available at:

https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf

themselves or their family.¹⁰ This mostly comprises the so-called “migrant workers” who are characterised by the occupational character of their stay. Although no precise data is available, the share of voluntary migrants among all foreigners residing in Council of Europe member States was estimated in 2016 over 70 million.¹¹

8. Another category of foreigners are refugees¹² and asylum seekers. Especially since 2014, some

10 Migrants are distinguished between long-term migrants (stay in the country for at least one year) and short-term migrants (stay in the country no longer than one year but at least three months) according to the *United Nations Recommendations on Statistics of International Migration*.

11 Data provided in UNHCR, *The World in Numbers, 2017* and in IOM, *World Migration Report 2018, 2017*.

12 Art. 1A(2) of the 1951 Convention relating to the Status of Refugees as modified by the 1967 Protocol define a refugee as a person who “owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”; Convention relating to the Status of Refugees, UNGA Res. 429 (V), 1954, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>; Protocol relating to the Status of Refugees, UNGA Res. 2198 (XXI), 1967, available at:

Council of Europe member States have been facing increasing numbers of these persons. The refugee “crisis” peaked in 2015 when more than 1.2 million people arrived in Europe and applied for asylum in EU member states which was more than double that of the previous year.¹³ As a result, by the end of 2016, almost 7 million refugees and asylum seekers were registered in the countries of the Council of Europe.¹⁴ Recognised refugees enjoy a specific status under the United Nations 1951 Refugee Convention (as modified by the 1967 Protocol). Asylum seekers have requested refugee status but his or her claim has not yet been officially reviewed by the host state.¹⁵ If an asylum seeker fails to acquire refugee status, he or she may

<http://www.ohchr.org/Documents/ProfessionalInterest/protocolrefugees.pdf>.

13 Eurostat, Asylum Statistics, 2017, available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics;

See also European Stability Initiative, The Refugee Crisis Throughout Statistics, 2017, available at:

<http://www.esiweb.org/pdf/ESI%20-%20The%20refugee%20crisis%20through%20statistics%20-%2030%20Jan%202017.pdf>.

14, As of 2016, the countries with the largest population of refugees and asylum seekers included Turkey (3.1 million), Germany (1.3 million), France (370,000), Sweden (300,000) and Italy (250,000).

UNHCR, The World in Numbers, 2017

15 While procedures are pending, asylum seekers are granted certain rights and enjoy some minimal standards of protection, most importantly the principle of non-refoulement.

eventually be repatriated as any other foreigner in irregular situation, unless he or she is granted temporary stay in the country in accordance with national legislation.¹⁶ Given this somehow insecure status, asylum seekers will not be given further consideration in this report.

9. With regard to international standards, foreigners are generally not within the scope of the right to political participation, as such standards, in particular the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), explicitly refer to “citizens”. The Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority — which is of specific relevance to local elections — also applies, in principle, only to the “nationals” of a State. Thus, only few guarantees may be derived from international instruments as regards foreigners’ right to vote.

10. At the same time, some instruments take into account the general trend towards the enfranchisement of foreigners, at least in the local context. The Additional Protocol to the European

16 For instance, the United Kingdom may grant refused asylum seekers humanitarian protection (usually for 5 years) or discretionary leave to remain.

Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority states that “the law shall also recognise the right of other persons to so participate where the party (...) so decides or where this accords with the party’s international legal obligations”. It refers to a further expansion of participatory guarantees in case a state’s domestic legislation or international obligations so require and might be understood as an incentive for states to implement such guarantees also vis-à-vis foreigners.

11. The enfranchisement of foreigners, at least in the local context, is a major provision of the Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level. The Convention directly obliges states to “grant the right to vote and to stand for election in local authority elections” to foreign residents provided that they lawfully and habitually reside in the respective country for at least 5 years preceding the elections – giving also the possibility to shorten such a period of residency.

12. Relevant soft law documents refer to the enfranchisement of foreigners in countries other than their own, at least in local elections. The Venice Commission Code of Good Practice in Electoral Matters – while recognising citizenship as reference point – observes that “it would be

advisable for foreigners to be allowed to vote in local elections after a certain period of residence”. Likewise, the Parliamentary Assembly of the Council of Europe supports the enfranchisement of foreigners to vote and stand in local elections after at least three years of lawful residence.¹⁷

13. With regard to specific case of migrant workers, the 1990 International Convention for the Protection of all Migrant Workers and of their Families (ICRMW) contains certain references to their political rights.¹⁸ It establishes that “States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers [...] in decisions concerning the life and administration of local communities” and that: “migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights”. The ICRMW recommends facilitating the political participation (as a possibility besides consultation) of migrant workers without containing any obligation to guarantee the right to vote for migrant workers.

¹⁷ PACE Recommendation 1500 (2001)

¹⁸ The ICRMW has been ratified only by relatively few States so far; with only 51 States Parties and only few from the Council of Europe area. Ratification status, <http://indicators.ohchr.org>.

14. As regards recognised refugees, the 1951 Refugee Convention (and the 1967 Protocol) does not incorporate political rights of refugees in their countries of refuge. However, its Article 34 may be understood as implicitly pushing states in this direction by stating that “the Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees”. This also includes, as specified by the UN Commentary on the Refugee Convention, the refugee’s integration into the economic, social and cultural life of his country of refuge. Since enfranchisement (at least) in local elections is a crucial tool for integration, Article 34 seems to at least induce states to confer voting rights in local elections, especially in case of long-term residency. Still, the Refugee Convention does not provide for any obligation — unless a refugee becomes a full-fledged citizen of the host State.

2. Internally displaced persons (IDPs)

15. Internally Displaced Persons are defined by the United Nations Guiding Principles on Internal Displacement as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed

an internationally recognised state border”.¹⁹ IDPs are thus generally citizens of that state within which they were forcibly displaced either by human-induced actions or by natural disasters. In the area of the Council of Europe, there were around 3 million IDPs at the end of 2016 - most of them have been forcibly displaced due to conflict and violence.²⁰ Among Council of Europe member states, the majority of IDPs are concentrated in Ukraine (1.7 million); Azerbaijan (600,000); Georgia (200,000) and the Western Balkan states (Serbia, 160,000; Bosnia and Herzegovina 100,000).

16. In general, the situation of IDPs differs from that of the foreigners/ non-citizens since IDPs are usually citizens of a state and thus within the scope of the right to political participation as provided for in international treaties. IDPs are generally protected by Article 25 of the United Nations International Covenant on Civil and Political Rights (ICCPR), Article 21 of the Universal Declaration of Human Rights as well as the European Convention on Human Rights. The European Court of Human

19 OCHA, United Nation Guiding Principles on Internal Displacement, 1998, available at:

<http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

20 UNHCR, The World in Numbers, 2017, available at:

http://popstats.unhcr.org/en/overview#_ga=2.36270947.211978652.3.1514544975-1053877117.1509452136.

Rights (ECTHR) has applied the Convention to IDPs in states such as Russia, Turkey, as well as in Balkan and South Caucasian States, without having, so far, specifically dealt with their voting rights.²¹

17. The principle of universal suffrage, as contained in Article 25 ICCPR, guarantees the right to political participation to all citizens and thus also to IDPs. While residency requirements are in principle a permissible restriction to this right, they must be reasonable. The criterion of reasonableness is arguably not complied with, when residence requirements in domestic laws prevent the political participation of IDPs, especially after forcible displacement.

18. Although the case law of the European Court of Human Rights has generally left a broad – though not unlimited – margin of appreciation to states with regard to possible residence requirements and length of residence, the situation seems different in case of IDPs, given their vulnerability. Also, the Venice Commission Code of Good Practice in Electoral Matters contains rather detailed

21 See Recommendation 2126(2018) and Resolution 2214(2018) of the Parliamentary Assembly of the Council of Europe on “Humanitarian needs and rights of internally displaced persons in Europe.”

restrictions to residence requirements. On this basis, it seems safe to presume that residence requirements in domestic laws which entail the disenfranchisement of IDPs would constitute a violation of the right to political participation, as incorporated in universal and regional human rights instruments.

19. Moreover, any measures taken in relation to the voting rights of IDPs have to be assessed against the principle of non-discrimination, as incorporated in most international human rights instruments. In fact, IDP populations typically include vulnerable groups (women, racial minorities, persons with disabilities, children) that come under the protection of other human rights treaties. These treaties put an emphasis on special measures to provide for *de facto* equal participation.²² The European Court of Human Rights found that the margin of appreciation afforded to states cannot have the effect of prohibiting certain individuals or groups from participating in the political life of the country, thus out-ruled restrictions that impair the very essence of the right to free elections and/or are discriminatory. This is of special relevance to IDPs who are members of minorities such as Roma and are – for legal or for practical reasons – disenfranchised.

22 IFES, „Internally Displaced Persons and Electoral Participation: A Brief Overview“, September 2016.

20. The emphasis on the necessary effective exercise of political rights requires states to put practical facilities in place to enable IDPs to vote. In fact, Article 25 ICCPR refers to the “right and the opportunity” and thus places emphasis on practical realisation of rights.²³ The UN Human Rights Committee established, in general terms, that “positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively”, which may be of direct application to IDPs.

21. The voting rights of IDPs are also intrinsically linked to the question of voter registration which is the condition for the exercise of voting rights.²⁴

23 See also UN HRC Gen Com, para 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right.”

24 The situation of IDPs is usually highly complex, since they have to choose between being registered in their constituency of origin or current constituency. Therefore, it is important that IDPs are able to choose and change their constituencies. Respectively, UN HRC Gen Com, para 11, states: “If residence requirement apply to registration, they must be reasonable, and should not be imposed in a way as to exclude the homeless from the right to vote.” It may be argued respectively that IDPs are in some way homeless, and therefore should not be disenfranchised by residency requirements.”

Since IDPs are generally not included in voters' lists at places of their temporary residence, active registration may be necessary, as an effective measure to ensure that all persons entitled to vote are able to exercise that right. However, given the vulnerable position of IDPs, risks of fraud and manipulation should not be underestimated. The Venice Commission Code of Good Practice in Electoral Matters generally recommends that voters' registers are permanent, regularly updated, and publicly available. Voters must have the opportunity to check their registration and request corrections. Specific efforts to update voters' lists may be required in areas of (temporary) residence of IDPs.

22. In order to avoid disenfranchisement and to facilitate the right to return, IDPs may be allowed to vote in their former places of residence, provided that security, legality and transparency of elections can be assured in accordance with international standards and best practices²⁵ Relevant measures for absentee voting might be required, in line with

25 The Venice Commission Code of Good Practice in Electoral Matters provides that "the freedom of movement of citizens within the country, together with their right to return at any time, is one of the fundamental rights necessary for truly democratic elections. If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence".

standards regarding in-person absentee voting, postal, electronic and proxy voting. The Code of Good Practice in Electoral Matters establishes that postal voting should be safe and reliable, excluding the possibility of fraud and intimidation and that electronic voting must be safe and voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage. Strict rules must apply to proxy voting, especially with regard to the number of proxies a single voter may hold.

23. In case IDPs are deprived of their political rights, they must be granted access to an effective system of contestation, including complaint and appeal procedures, in the respect of relevant fair trial standards. All electoral dispute resolution mechanisms (EDR) must be accessible with due consideration of the IDPs' frequently reduced finances, ability to travel to home constituencies and language challenges.

24. Even though no legally binding international instruments explicitly refer to the situation of IDPs, relevant non-binding instruments (soft law) are applicable. The UN Inter-Agency Standing Committee's Guidelines on Human Rights and Natural Disasters and the UN Guiding Principles on Internal Displacement respectively establish that IDPs "shall enjoy in full equality, the same rights and

freedoms under international and domestic law as do other persons in their country” and that they “shall not be discriminated against as a result of their displacement in the enjoyment of the right to vote and to participate in governmental and public affairs; including the right to have access to the means necessary to exercise this right”. Such instruments imply a positive obligation to put in place all relevant measures for IDPs to enjoy their voting rights and provide a generic protection against overly stringent residence requirements.

25. Along similar lines, standards of the Council of Europe require member states to “grant electoral rights to all their citizens (nationals), without imposing residency requirements.”²⁶ , “to take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature”²⁷ and “ to ensure that IDPs can exercise their right to participate in public affairs at all levels, including their right to vote or stand for election, which may require special measures such as IDP voter registration drives, or absentee ballots”.²⁸

26 2005 Resolution of the Parliamentary Assembly (PACE)

27 Council of Europe Committee of Ministers – Decision dated 2006

28 Parliamentary Assembly to the Committee of Ministers in 2009

26. Moreover, the OSCE 1990 Copenhagen Document provides that participating states undertake to “respect the rights of their citizens to take part in the governing of their country [...] freely chosen by them through fair electoral processes”. Regarding particularly the voting rights of IDPs, the OSCE Ministerial Council underscored in 2000 that “it should be a matter of special scrutiny whether IDPs can freely exercise their right to vote” and in 2004 recommended that the participating states “[e]nsure special attention to the voting rights of IDPs in the OSCE’s election observation work, monitoring IDPs’ ability to vote and promoting reforms to ensure the full exercise of their right to political participation”.

C. General reflections on voting rights of foreigners and IDPs

27. A number of considerations speak for the participation of foreigners/IDPs, especially in local elections, in the places of their — even temporary — residence. They relate to considerations of universal suffrage and political participation; the quality of democracy; and considerations of an inclusive society and integration.

1. The principle of universal suffrage and political participation

28. Elections based on universal, equal and non-discriminatory suffrage, as incorporated in major human rights instruments, are essential for modern democracies as they represent the only mechanism for appointing legitimate governments.²⁹ However, the principle of universal suffrage may be subject to restrictions relating, inter alia, to nationality and residence requirements.³⁰

29. On this basis, the right to political participation as incorporated in international instruments is usually only conferred on citizens and foreigners are, generally, not within the scope of the relevant guarantees. Still, in times of globalisation and increasing work migration with more and more foreigners/non-citizens living on a long-term basis in other countries than their own, this exclusion

29 Art. 21 UDHR; Art. 25 ICCPR; etc.

30 Art. 21 UDHR; Art 25(b) ICCPR; Paragraph 7.3., OSCE Copenhagen Document, available at:

<http://www.osce.org/odihr/elections/14304?download=true>;

European Commission on Democracy through Law of the Council of Europe (Venice Commission), Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report, Opinion No. 190/2002, II.2, available at:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-AD(2002)023rev-e).

appears less and less justified.³¹ There are important arguments that speak in favour of their enfranchisement, at least at the local and regional level.

30. Voting rights are also of relevance for IDPs who stay within their state but in areas other than their homes. Since IDPs are usually citizens of their States, they are within the scope of relevant international guarantees. Nonetheless, legal (residency requirements in domestic laws) as well as practical obstacles may be an impediment for IDPs' effective participation in (particularly local) elections.

2. Quality of democracy

31. The enfranchisement of foreigners and IDPs needs to be also examined from the perspective of the relations of these groups with the community where the elections take place. In general, if foreigners and IDPs are long-term residents, they may be assumed to have become members of the political community through their contribution to the

31 See Council of Europe PACE, Recommendation 1500, Participation of immigrants and foreign residents in political life in the Council of Europe member states, 2001, available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16876&lang=en>.

economic life and prosperity, to their family links with locals as well as their participation in the social and cultural life at their place of residence.³² As members of the community, long-term residing foreigners and IDPs have legitimate expectation of a full participation in the management of public affairs. In fact, foreigners and IDPs are directly exposed and affected by political decisions taken by local authorities on an everyday basis, often without having been able to participate.

32. What is more, foreigners and IDPs often have special demands given their specific situation which is different from the rest of the community. Both are, for different reasons, in a situation of specific vulnerability, which makes a particularly strong case in favour of their inclusion.

33. An additional argument can be made for those who work and pay taxes, such as migrant workers and IDPs in employment: social justice may require them to be included in the decision-making process, notably regarding allocation of financial resources and further resource allocation.

34. More generally, excluding a sizeable group of long-term residents from the decision-making

32 See Preamble of the Convention on the Participation of Foreigners in Public Life at Local Level.

process on matters that directly affect them has repercussions on the legitimacy and accountability of governments.³³ Ultimately, the exclusion of significant portions of the population from electoral processes may result in the lacking acceptance of the election results, which is especially problematic in divided or post-conflict societies undergoing political transformation. Exclusive elections undermine newly built democratic institutions and, in the long run, have a negative impact on the sustainability of democracy, reconciliation and peace-building processes.

3. Inclusive society and integration: the particular case of local elections

35. From a long-term perspective, the political participation of foreigners and IDPs plays a significant role in the successful integration of these groups into societies and the political communities of their residence. Generally, voting rights emphasise the particularly close relation between a person and the community where they reside,

33 See B. Lacy, *Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation*, 2004, p. 4, available at: http://www.ifes.org/sites/default/files/08_04_hybl_brettlacy.pdf. In fact, in technical terms, changes in registration locations may affect the size of constituencies and therefore regular delimitation reviews (well in advance of an election) may be of extra importance.

therefore strengthening a community's vitality and viability.³⁴ Still, IDPs opportunities for political participation in current constituencies of residency should be balanced with opportunities in constituencies of origin.

36. In terms of integration, voting rights at the local and regional level give foreigners and IDPs an incentive to learn more about and internalise the norms and practices of democracy. The extent to which their every-day lives are affected by political decisions taken at the local level is usually more direct and immediate than at the national level.

37. Foreigners may be exposed to specific challenges related to housing (e.g. prices and accessibility of municipality owned apartments), education (e.g. specific language needs in schools), local amenities (e.g. health services), public transport (e.g. local connection to work), as well as their cultural and sports activities. The reason to grant foreign residents the voting rights is to enable them to influence decisions that local authorities take in these aspects of their every-day lives. Especially IDPs and refugees may face challenges due to their forcible displacement and be in need of humanitarian assistance, access to water and

34 See Preamble of the Convention on the Participation of Foreigners in Public Life at Local Level

sanitation, basic shelter and adequate housing, social protection etc. – issues that are mainly dealt with at local level.³⁵

38. Furthermore, voting rights of foreigners and IDPs may provide incentives for local political leaders to reach out to foreigners and IDPs. Ideally, through expanding voting rights to these groups, political programmes become more inclusive by also covering the (particular) needs of foreigners and IDPs, especially since they have the same duties as citizens at the local level, e.g. as regards the payment of local fees and charges.

39. Since a high number of refugees and migrants is a challenge for cities and regions, the Congress recognised the need to improve the quality of local and regional democracy through enhanced participation at the local level, in compliance with European treaties.³⁶ Furthermore, Congress' Recommendation 369 (2015)³⁷ invites Council of Europe member states to ratify both the Additional

35 See for example E. Williams (eds.), *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, 2008, available at: <http://www.unhcr.org/50f955599.pdf>.

36 Such as the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority.

37 Congress' Recommendation (369) 2015 on Electoral lists and voters residing de facto abroad

Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority and the Convention on the Participation of Foreigners in Public Life at Local Level, thus recognising voting rights of foreigners and IDPs in local elections as crucial for their successful integration in Europe's communities.

D. Voting rights of foreigners and IDPs as raised in election observation reports

40. The Congress as well as OSCE/ODIHR have regularly examined the question of enfranchisement of foreigners, IDPs and to a lesser extent, of refugees, in their election observation reports.³⁸

1. Foreigners/non-citizens

41. Both the Congress and OSCE/ODIHR pointed to the desirable enfranchisement of long-term foreign residents, recently in the 2013 municipal elections in "The former Yugoslav Republic of

³⁸ Note respectively that OSCE/ODIHR primarily observes national elections and, thus, there are fewer references to local elections and participation by IDPs. This implies that the subsequent examples are drawn from a limited pool of reports and countries.

Macedonia³⁹ and the 2015 local elections in Albania.⁴⁰ In this context, several election reports refer to “an emerging trend to grant voting rights for local elections to long-term residents who are not citizens.”⁴¹

42. When non-citizens were not allowed to vote in local elections, as, for example, during the 2015 local elections in Ukraine,⁴² their disenfranchisement was criticised as being against good electoral practice, especially when large numbers of persons were disenfranchised for lack of citizenship and thus left without political representation.⁴³

39 Congress of Local and Regional Authorities, Municipal elections in “The former Yugoslav Republic of Macedonia” (24 March 2013), 31 October 2013, para. 46.

40 OSCE/ODIHR Election Observation Mission Final Report, Local Elections, Republic of Albania, 21 June 2015, p. 26.

41 More recently, in the OSCE/ODIHR Needs Assessment Mission Report, Presidential Election, Republic of Austria, 24 April 2016 and OSCE/ODIHR Needs Assessment Mission Report, Parliamentary Elections, Principality of Andorra, 1 March 2015.

42 OSCE/ODIHR Election Observation Mission Final Report, Local Elections, Ukraine, 25 October and 15 November 2015

43 OSCE/ODIHR Limited Election Observation Mission Final Report, Parliamentary Elections, Republic of Latvia, 2 October 2010, p. 1; See also Congress, Report on the situation of Local and Regional Democracy in Latvia Part II, 1998, para. 5.

43. Conversely, reports generally commended when non-citizens or persons with undetermined citizenship were allowed to vote in local elections, for example by OSCE/ODIHR in relation to the 2007 Estonian parliamentary elections.⁴⁴ The Congress, along similar lines, welcomed the fact that “foreign residents have been entitled to vote in municipal elections, subject to certain conditions [...] Although the right to vote has not resolved all the social and other problems of integration that foreign residents may experience, it is nevertheless a positive step in the right direction and has, in particular, increased political parties' awareness of the need to establish the necessary machinery to improve the integration of these groups.”⁴⁵

44. Election observation reports clearly indicate that non-citizens who reside in a community for a certain period of time should be allowed to vote at least in local – and even better in regional – elections. This is considered particularly warranted in cases where large numbers of non-citizens are disenfranchised.

44 OSCE/ODIHR Election Assessment Mission Final Report, Parliamentary Elections, Republic of Estonia, 4 March 2007, p. 5.

45 Congress of Local and Regional Authorities, Report on Local and Regional Democracy in The Netherlands Part II, 1998, paras. 48-49.

2. IDPs

45. With regard to voting rights of IDPs, election reports of international observers are rather explicit, with numerous references and outspoken wording. Different sub-categories can be distinguished as to how the voting rights of IDPs are addressed: sometimes IDPs are not allowed to vote at all; most frequently, however, practical problems impede the exercise of their voting rights.

46. The fact that IDPs were not allowed to vote at all in local elections was criticised as being against good electoral practice, as it can be seen, *inter alia*, in the Congress and the OSCE/ODIHR reports on the 2015 Ukraine local elections as well as in the Congress report on the 2002 local elections in Southern Serbia.⁴⁶

47. More frequently even, election observation reports found that IDPs, while allowed to vote, faced practical obstacles which prevented their full and informed participation. The lack of relevant voters' education is a major issue in this respect.

46 OSCE/ODIHR Election Observation Mission Final Report, Local Elections, Ukraine, 25 October and 15 November 2015, p. 12: See also Congress, Report on the local elections in Southern Serbia (28 July 2002), 2000

48. Other practical problems are related to irregularities and incorrect voters' lists well as to the election administration in general. In relation to the 2005 Azerbaijani parliamentary elections, OSCE/ODIHR observers pointed to the challenges posed to the election administration by out-dated lists due to the generally high mobility among the IDP population.⁴⁷ Missing data were also reported in relation to IDP registration in the 2014 general elections in Bosnia and Herzegovina⁴⁸ as well as, to a lesser degree, in relation to the 2000 Georgian Presidential elections.⁴⁹

49. The problem of possible electoral fraud was raised by the Congress in the context of supplementary voters' lists for IDPs in the 2002 Georgian local elections.⁵⁰ Instances of pressure on IDPs to support the governing party candidates were noted by OSCE/ODIHR during the 2003

47 OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, Republic of Azerbaijan, 6 November 2005, pp. 9, 22.

48 OSCE/ODIHR Election Observation Mission Final Report, Bosnia and Herzegovina, 12 October 2014, pp. 10-11.

49 OSCE/ODIHR Election Observation Mission Final Report, Presidential Elections, Republic of Georgia, 9 April 2000, pp. 11-12, 20.

50 Congress, Report on local elections in Georgia (2 June 2002)

Azerbaijani Presidential elections and the 2010 Azerbaijani Parliamentary elections.⁵¹

50. In its most recent information report on the municipal elections held in Georgia in October 2017, the Congress welcomed the measures taken to further enfranchise IDPs such as enabling IDPs to be included in voters' lists at their current place of residence, notifying and giving the opportunity to register to voters with terminated or no official IDP status and lifting a requirement for IDP cards to be used for voting purposes.⁵²

3. Refugees

51. As regards refugees, international observers are less outspoken and reports, both from the Congress and OSCE/ODIHR, are cautious about this issue.⁵³ Both organisations assessed the question in a rather descriptive way, notably in

51 OSCE/ODIHR Election Observation Mission Final Report, Presidential Election, Republic of Azerbaijan, 15 October 2003;

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections Republic of Azerbaijan, 7 November 2010

52 Congress of Local and Regional Authorities, Congress Information report on the municipal elections in Georgia (21 October 2017)

53 The reason that no clear guidance can be derived from election observation missions' findings is that as refugees do not come under the ICCPR and relevant OSCE commitments – referring to “citizens” – and provide the framework for observation.

relation to the 2006 Azerbaijan's re-run of local by-elections. Other reports pointed in particular to the practical problems following the implementation of refugees' voting rights, as described by the Congress' report on the 1996 local elections in Armenia.

52. Accordingly, no clear guidance can be derived from the election observation missions' findings. Among the reasons to explain the cautious wording is the weaker international legal framework as regards the voting rights of refugees as well as the frequently difficult situation on the ground. Moreover, the large number of refugees in the Council of Europe area is a relatively recent development, having come apparent in the context of the 2015 refugee "crisis". This question might thus need some time to be taken up in future election observation reports.

E. Major challenges with regard to voting rights of foreigners and IDPs

53. As becomes clear, *inter alia*, from the election reports outlined above, foreigners and IDPs face different challenges in relation to voting rights.

1. **Foreigners**

54. The uniting feature of all categories of foreigners — migrants and refugees — is the fact that they are non-citizens. Such status is decisive for the exercise of their voting rights in (local) elections in the country of their residence since foreigners are frequently excluded from voting rights. This issue will thus not be detailed further here.

2. **IDPs⁵⁴**

55. IDPs face numerous obstacles as highlighted in various reports by international observers. The major practical obstacles are linked to the lack of documentation, restrictive residency requirements, the lack of adequate and timely information and to physical access to polling stations.

a. *Lack of documentation*

56. IDPs frequently struggle with a lack of documentation certifying citizenship, residency and other conditions to prove their eligibility as voters. Internal displacement often results in the loss, damage, destruction or confiscation of personal

54 This part of the Report is based on Section 2.2 of A. Drnovsky, Master's thesis entitled *Electoral Participation of Internally Displaced Persons (IDPs): A Case Study of Ukraine*, 2017.

identity documentation (or their official copies), which is generally required for exercising voting rights. IDPs are hence unable to give evidence of their eligibility as voters at registration centres or polling stations, which generally leads to their disenfranchisement.⁵⁵

57. Even though replacement documentation such as IDP certificates or regular ID cards may be obtainable, it is often difficult for IDPs to overcome administrative obstacles and other barriers which may even require them to travel to different – and potentially far or unsafe — areas to request necessary documentation. While IDPs in Bosnia and Herzegovina had to undergo a complicated and administratively burdensome process of identity verification, IDPs in Azerbaijan had to travel long

55 See more in W. Kälin et al. (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, 2010, pp. 337-362, 518-519, available at: https://www.brookings.edu/wp-content/uploads/2016/06/0119_internal_displacement_complete.pdf. Respectively, given the situation of specific vulnerability and the difficulties IDPs can face with documentation, *temporary* special measures in regards to documentation such as can be beneficial to enable enfranchisement. Still, the integrity of the electoral process (minimizing the risk of fraud) always has to be given due consideration.

distances from various parts of the country to the capital city in order to obtain their IDP cards.⁵⁶

58. Access to documentation can also become a matter of discrimination. In this regard, Roma IDPs are often particularly vulnerable to disenfranchisement due to the lack of proper documentation even before the displacement.

b. Restrictive residency requirements

59. Overly restrictive residency requirements for IDPs are another frequent obstacle to the realisation of their political rights. Since most IDPs are displaced and outside the electoral constituency of their residence, they cannot comply with the general rule that voters are registered in the constituency of their permanent residence. First of all, it may be illegal to change permanent residence and voting constituency without authorisation from the national authorities. This was the case in Azerbaijan where IDPs could not register as voters

56 J. Grace/J. Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practice*, 2003, pp. 33-36, available at: https://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Financial.pdf; IDMC, *Azerbaijan: IDP living conditions improve, but peace deal remains elusive A profile of the internal displacement situation*, 2007, p. 104, available at: <http://www.refworld.org/pdfid/460bd4512.pdf>.

in their actual places of residence even after two decades of displacement.⁵⁷

60. Even if the change of residence is permissible, it may carry significant administrative or financial burdens which prevent IDPs from actually changing their residence. In Armenia, only owners of a property or immediate relatives to the owner could register temporary or permanent residence and non-immediate family members could do so only upon written notice by the owner, notarised by a lawyer. Without registered residency, IDPs were not permitted to vote in the area of their actual residence.⁵⁸

61. In other contexts, change of residency can result in unreasonable consequences such as losing the IDP status and associated rights and benefits related to their vulnerable situation.⁵⁹

57 OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, Republic of Azerbaijan 5 November 2000 & 7 January 2001, p. 8.

58 OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Election, Republic of Armenia, 30 May 1999, p. 13

⁵⁹ Respectively, IDPs could benefit from knowing that if they change their residency to their current location, they will be able to change it back again to their constituency of origin without undue obstacles and delays should they so wish. This enables IDPs to continue to have a choice and may encourage IDPs to participate electorally in their current constituencies (as such a decision is less politically defining).

According to former Georgian legislation, IDPs were to lose their status and associated benefits if they changed their permanent residence in order to be able to vote in local elections.⁶⁰

c. *Lack of adequate information*

62. A lack of adequate and timely information is another obstacle to the voting rights of IDPs, frequently caused by insufficient voters' education, which is an important tool to further IDPs' understanding of polling and registration procedures. In Russia, IDPs who had fled from Chechnya to the adjacent region of Ingushetia were repeatedly given contradictory information on voting procedures for IDPs in the context of the 2003 Referendum in Chechnya. While the electoral authorities announced that mobile boxes would be arranged for IDPs at their current locations, other officials publicly claimed that IDPs were able to vote only in the areas of their permanent residence in Chechnya. The ensuing confusion resulted in a very low electoral turnout among IDPs.⁶¹

60 OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, Republic of Georgia, 31 October and 14 November 1999, pp. 14, 16, 22.

61 OSCE/ODIHR Preliminary Statement, Chechen Republic Referendum, Russian Federation, 23 March 2003, 2003, p. 3.

63. IDP voters also need to have access to election campaigns to be able to make informed choices on equal terms with other voters. Moreover, IDPs may have higher levels of political disillusionment and more efforts may be needed to promote their engagement. Nonetheless, displacement makes it often difficult for IDPs to receive information through regular channels. IDPs are often isolated and their access to election campaigns remains limited, which frequently results in a lower voter turnout among IDPs.⁶²

64. Even if accurate and timely, access to information can be additionally hampered by language barriers or a low level of literacy. In Serbia, Roma IDPs lacked information provided in the Roma language which was one of the reasons for their extremely low electoral turnout in the 2003 Parliamentary elections.⁶³ Likewise, the Azerbaijani government failed to provide IDPs with information in Cyrillic alphabet. As a result, some IDPs had difficulties understanding information in the Latin alphabet which significantly limited their

62 See for example E. Mooney/B. Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, 2004, p. 40, available at: https://www.brookings.edu/wp-content/uploads/2016/06/20041105_osce.pdf.

63 OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Election, Republic of Serbia 28 December 2003, p. 12.

participation in the elections.⁶⁴ In brief, ensuring that IDPs have access not only to information on polling procedures but also campaign information, in a language they understand, is a critical condition for their full participation in elections.

d. Limited physical access to polling stations

65. IDPs' political participation can be also impeded by issues of physical access to polling stations on Election Day due to insecurity, disaster conditions, long distances etc. In such situations, governments often fail to adopt adequate measures supporting IDPs to overcome existing physical obstacles. For example, the security situation was a concern in the 1996 municipal election in Bosnia and Herzegovina during which some IDPs returned to their places of origin in order to vote and faced isolated attacks and intimidating behaviour.⁶⁵ Hence, some minimum conditions for IDPs to access polling procedures must be in place so that IDPs can exercise their right to vote freely and without the risk of physical

64 See IOM, Electoral Displacement in the Caucasus: Georgia and Azerbaijan, 2003, pp. 31-43, available at:

https://www.geneseo.edu/~iompress/Archive/Outputs/Electoral_Displacement_in_the_Caucasus1.pdf.

65 OSCE/ODIHR, Second Statement on Elections in Bosnia and Herzegovina on 14 September 1996.

harm or intimidation. In fact, alternative absentee arrangements – such as in person absentee voting in another location from the home constituency or postal ballots, can be made in cases where voting in person in a constituency of origin is problematic.⁶⁶

F. A comparative study of States' approaches

66. In the following, different approaches are compared in order to explore the current scope of voting rights of foreigners and IDPs in Council of Europe States, with special emphasis on local elections.

1. Electoral rights of foreigners in selected Council of Europe member States

67. At the domestic level, the most common and minimal requirement for eligibility is an official residence in the respective country implying that the person needs to be a lawful resident (and therewith excluding illegal migrants). Some Council of Europe member states grant foreign residents the right to

⁶⁶ See IFES: *“These measures increase the franchise but are more administratively complex for the election management body, requiring more lead time and financial resources, and increase the risk of fraud.”* (IFES, *“Internally Displaced Persons and Electoral Participation: A Brief Overview”*, September 2016, p 12).

participate in local elections, subject to the length of residence. In these cases, residency rather than citizenship is decisive for the conferral of voting rights — as well as, most of the time, the right to stand — in local elections.

68. Certain foreign residents are allowed to vote and stand in local elections without further requirements: EU member states grant the right to vote and to be elected in local elections to citizens of other EU countries on equal terms with their own citizens.⁶⁷ In addition, some EU members confer these rights in local elections to non-EU nationals, without fixed period of time of residency requirements. In Ireland, all foreign residents - are allowed to vote and to be elected in local elections, upon registration at an address in Ireland within a certain period before Election Day, as necessary for voter registration.⁶⁸ Likewise, in Slovenia, foreigners with permanent residence in the country are granted the right to vote and stand for office in local elections, no matter the length of their

67 EU, Treaty on European Union (Consolidated Version), Official Journal of the European Communities C 325/5, 1993, Art. 22, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF>; EU, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 2009, Art. 40, available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf;

68 Arts. 8(2), 10 Electoral Act of Ireland.

residence in Slovenia.⁶⁹ The Nordic Council countries (Finland, Denmark, Sweden, Norway and Iceland) allow citizens of the other Nordic Council member states to vote and run for office in local elections.⁷⁰ Finally, the United Kingdom grants citizens of Commonwealth countries, along with Irish citizens, the right to vote and stand as candidates in all elections on equal terms with British citizens.⁷¹

69. While few States enfranchise all foreigners regardless of the length of their residence in the

69 Art. 5 Local Elections Act of Slovenia

70 See for example EUDO Citizenship Observatory, Access to Electoral Rights Sweden, 2013, p. 5, available at:

http://cadmus.eui.eu/bitstream/handle/1814/29826/ER_2013_22-Sweden-FRACIT.pdf?sequence=1; Chapter 2, § 2-2(1)(2) Election Act of Norway; Art. 1(1)(ii)(iii) Local and Regional Government Elections Act of Denmark; Chapter 4, Section 2, Arts. 1-2 Local Government Act of Sweden. Note, however, that Iceland requires a 3 year duration of residency. See below.

71 Note that the UK allows EU-nationals in addition to vote and stand for elections to devolved Parliaments and Assemblies. Sections 1 and 2 Representation of the People Act; Section 11 Scotland Act; Section 12 Government of Wales Act; Section 4(1) The Northern Ireland Assembly (Elections) Order; Section 1(c) Elected Authorities (Northern Ireland) Act; Section 43(1)(a) Local Government Act; Section 45(4) Local Government Act of the United Kingdom; See also EUDO Citizenship Observatory: Access to Electoral Rights United Kingdom, pp. 9-14, 2013, available at:

http://cadmus.eui.eu/bitstream/handle/1814/29827/ER_2013_10-UK-FRACIT.pdf?sequence=1.

country, it is more common to require certain duration of (uninterrupted) residence prior to the election. Finland grants the right to vote and to be elected in local elections to all foreigners but non-EU and non-Nordic Council nationals are required to reside in the country for an uninterrupted period of two consecutive years prior to elections.⁷² In Denmark and Sweden, foreigners (non-EU and non-Nordic Council nationals) may vote and be elected in municipal and regional elections after three years of uninterrupted legal residence in the country.⁷³ While Iceland grants voting and eligibility rights in municipal and regional elections to nationals of the Nordic Council states after three years of residence, other foreigners receive the right to vote and to be elected after five years of permanent legal residence.⁷⁴ In Portugal, citizens of certain states are granted the right to vote under the general rule of reciprocity. The required duration of residence for voting rights and the right to stand for election depend on the respective reciprocal treaty.⁷⁵ Finally, Armenia allows foreigners to vote

72 § 27 Local Government Act of Finland.

73 Art. 1(1)(1-3) Local and Regional Government Elections Act of Denmark. Chapter 4, Section 2, Arts. 1-3 Local Government Act of Sweden.

74 Art. 2 Local Government Elections Act of Iceland.

75 Non-EU nationals granted voting rights in Portugal hold citizenship of some Latin American states, former Portuguese colonies, member states of the Community of Portuguese Language

and stand in local elections when they are registered as resident at least one year before an election.⁷⁶

70. Other States grant relatively broad voting and/or eligibility rights in local elections to all foreigners, after a certain period of residency and upon additional conditions. In Estonia, non-EU nationals may vote (but cannot stand) in municipal elections after five years of residing in the country on the basis of a long-term residence permit or the right to permanent residence.⁷⁷ Luxembourg grants the right to vote and to be elected in local elections to non-EU nationals after five years of residence in the country and six months of living in the respective municipality.⁷⁸ In Belgium, non-EU nationals are granted voting rights in local elections after five

Countries, Norway and Iceland. Citizens of most of these states have to have had legal residence in Portugal for at least five years prior to local elections. Citizens of Brazil and Cape Verde can vote after three years of residence. Additionally, Brazilian citizens who habitually resided in Portugal for three years and acquired the status of equality of political rights may vote in all elections. See EUDO Citizenship Observatory, Access to Electoral Rights Portugal (2013), p. 6, available at:

http://cadmus.eui.eu/bitstream/handle/1814/29822/ER_2013_08-PT-FRACIT.pdf?sequence=1

⁷⁶ Arts. 2(3), 3 Electoral Code of Armenia Amended as of 20 October 2016.

⁷⁷ § 5(1)(2) Local Government Elections Act of Estonia.

⁷⁸ Art. 9 Electoral Law of Luxembourg.

years of uninterrupted legal residence, active registration as voters, upon which they become subject to mandatory voting, and submission of a formal declaration, by which they swear to respect the country's laws, its Constitution and the European Convention on Human Rights.⁷⁹

71. As described, there are a variety of approaches to the enfranchisement of foreign citizens. Some countries grant the right to vote and stand in local elections to foreign residents on a general basis. It is more frequent, however, that the right to vote and stand in local elections is granted to foreign residents in specific (partly overlapping) settings.⁸⁰ Firstly, membership of the country to the same alliance or association of states is the model underlying the voting rights of EU citizens in other EU member states or the mutual enfranchisement of each other's citizens in the countries of the Nordic Council. The second criterion is reciprocity and this model rests on an agreement between two countries mutually granting their citizens the right to vote and/or stand in domestic elections. Thirdly,

79 Art. 8 Constitution of Belgium; Arts. 2-3 Loi visant à octroyer le droit de vote aux élections communales à des étrangers of Belgium

80 See H. Waldrauch, *Electoral rights for foreign nationals: a comparative overview of regulations in 36 countries*, 2003, available at https://openresearch-repository.anu.edu.au/bitstream/1885/41780/3/waldrauch_paper.pdf.

based on former colonial links, citizens of former colonial powers and former colonies can be granted voting rights as is the case in the United Kingdom where nationals of the Commonwealth countries and Ireland are allowed to vote in British elections. Lastly, some States grant foreigners voting rights on the basis of cultural proximity as demonstrated, for example, through historical links or the same language as in Portugal and Brazil.

72. With regard to refugees, no state grants voting rights specifically to refugees. Nonetheless, refugees are enfranchised in some countries on the basis of general rules governing foreigners' political rights and thus – somehow implicitly – enjoy voting rights upon their registration in the country (Ireland, UK if Commonwealth citizens) or after a certain period of residence (Nordic states). Alternatively, refugees gain full political rights once the process of their “naturalisation” is completed and they become full citizens of the state.

2. Political rights of IDPs in selected Council of Europe member States

73. The IDP population is mostly concentrated in a few Council of Europe member States, among which Ukraine, Bosnia and Herzegovina and Georgia will be examined for the purposes of this

study.⁸¹ These three countries gather the most significant IDP populations in their respective regions and illustrate voting rights of IDPs who find themselves in different types and stages of displacement.

74. While internal displacement is a relatively recent phenomenon in Ukraine, IDPs in Bosnia and Herzegovina as well as in Georgia have been displaced for years (or decades) due to the unresolved or protracted conflicts. Yet, the situation of IDPs in Bosnia and Herzegovina and Georgia

81 See IDMC, Global Report on Internal Displacement, 2017, available at: <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf> Most IDPs reside currently in Ukraine where roughly 1.7 million people have been displaced since 2014 when the conflict in the east of the country broke out and, to a lesser extent, due to the illegal annexation of Crimea. Azerbaijan registered as of 2016 an IDP population of around 600 000 people who were displaced mainly as a result of the conflict with Armenia over Nagorno-Karabakh in the 1990s. In Georgia, more than 200 000 people are still displaced due to the conflicts in and around the regions of Abkhazia and South Ossetia which broke out first in the early 1990s and then again during the Russia's invasion in 2008. In the region of Western Balkans, large parts of the IDP population have not yet returned to their homes after the wars following the disintegration of Yugoslavia in the 1990s. In 2016, Serbia reported over 200 000 IDPs displaced mainly in and from Kosovo, while Kosovo registers 17 000 IDPs displaced by the armed conflict between 1998 and 1999. Finally, in BiH there were almost 100 000 IDPs in 2016 displaced as a result of the wars in the first half of the 1990s.

differs: the situation of IDPs' voting rights in Bosnia and Herzegovina reflects a complex post-conflict political reality while Georgia provides an example of an IDP population affected by an on-going, although frozen, conflict. All these factors have implications on the particular situation of IDPs and the exercise of their voting rights.

a. Ukraine

75. In Ukraine, IDPs who fled the areas affected by foreign military intervention in the Eastern part of the country and, to a lesser extent, Crimea after illegal annexation by the Russian Federation, make up a population of almost 1.7 million.⁸² The large number of IDPs and their extremely vulnerable situation posed significant challenges to upholding their rights, *inter alia*, their voting rights in the 2014 parliamentary elections and the 2015 local elections. IDPs in Ukraine faced significant obstacles of legal as well as practical nature during parliamentary and local elections which hampered their effective exercise of voting rights, especially in

82 UNHCR, Operational Update: Ukraine 01-31 October 2017, available at:

<https://reliefweb.int/sites/reliefweb.int/files/resources/2017%2010%20UNHCR%20UKRAINE%20Operational%20Update%20FINAL%20EN.pdf>.

the absence of absentee voting in the aforementioned areas.⁸³

76. Especially in the local elections, IDPs were confronted with stringent residency requirements, as the address of their permanent residence had to correspond to their voting address within the respective electoral district. Therefore, IDPs displaced outside the electoral district of their permanent residence needed to register as permanent residents in the district where they were displaced. Only then IDPs were able to produce the certificate of permanent residency that was necessary for voters' registration in the district.⁸⁴

77. However, changing permanent residency in Ukraine is a very burdensome administrative process for IDPs (as well as for other internal migrants) which requires additional efforts on their part that are not required from other voters. Moreover, there was a common fear among IDPs that, due to legal uncertainty, renouncing permanent residence in

83 See OSCE/ODIHR Election Observation Mission Final Report, Ukraine Early Parliamentary Elections, 26 October 2014, p.13; CoE Congress, Observation of local elections in Ukraine (25 October 2015), 2016, paras 16, 26, 33.

84 Art. 3 Law On Local Elections of Ukraine; Article 1.2 of the Central Election Commission Resolution 893; Art. 2 Law On Election of the People's Deputies of Ukraine; Art. 3(5) of the Central Election Commission Resolution 240.

the places of their origin may lead to the loss of their IDP status and related rights and social benefits.⁸⁵

78. An additional factor of IDP disenfranchisement in Ukraine is related to the inconsistent legal framework governing the elections, which was subject to frequent changes, often shortly before elections and without thorough public debate and transparency.⁸⁶ While the Law On Ensuring of Rights and Freedoms of IDPs ensures the participation of IDPs in elections at all levels by registering for voting in the area of their actual residence without changing their permanent address⁸⁷, provisions of the respective laws on parliamentary (first-past-the-post component) and local elections and subsequent resolutions of the Central Electoral Commission (CEC) deprived IDPs of their right to vote as they insisted on the stringent

85 OSCE/ODIHR Election Observation Mission Final Report, Early Parliamentary Elections, Ukraine, 26 October 2014, p. 13; Congress, Observation of local elections in Ukraine (25 October 2015), paras. 16, 26, 33; OSCE SMM, Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities, 2016, pp. 18-19, available at: <http://www.osce.org/ukraine-smm/261176?download=true>.

86 See European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017, p. 1, available at: <http://www.epde.org/en/news/details/challenges-and-prospects-of-electoral-reform-in-ukraine-epde-policy-paper-juni-2017.html>.

87 Art. 8 Law On Ensuring of Rights and Freedoms of Internally Displaced Persons of Ukraine.

residency requirements.⁸⁸ This situation was found discriminatory by the national Ombudsperson of Ukraine.⁸⁹ However, the electoral legislation of Ukraine has so far not been changed and the exercise of IDP voting rights continues to be extremely limited if not impossible.⁹⁰

79. Some IDPs tried to change their voter registration based on their temporary IDP certificates but their claims were denied by the Voter Register Maintenance Bodies. Some of these refusals were challenged in courts. Decisions of courts were however inconsistent; some courts recognised the IDP certificates as sufficient, while by other courts the claims were rejected.⁹¹ A decision of the Lviv administrative court of appeal whereby the temporary

88 Art. 3 Law On Local Elections of Ukraine; Article 1.2 of the Central Election Commission Resolution 893; Art. 2 Law On Election of the People's Deputies of Ukraine; Art. 3(5) of the Central Election Commission Resolution 240; OSCE/ODIHR Election Observation Mission Final Report, Ukraine Local Elections 25 October and 15 November 2015 (2016), p. 6; See D. Woroniecka-Krzyzanowska, /N. Palaguta, *Internally displaced persons and elections under military conflict in Ukraine*, 2016, pp. 33-41, available at <https://academic.oup.com/jrs/article-abstract/30/1/27/2890414>.

89 Valeria Lutkovska, Ukraine's Ombudsperson Calls on Parliament to Allow IDPs to Vote, 2015.

90 See European Platform for Democratic Elections, *Electoral Reform in Ukraine: Challenges and Prospects*, 2017.

91 OSCE/ODIHR Election Observation Mission Final Report, Local Elections, Ukraine, 25 October and 15 November 2015, p. 12.

IDP certificate has not been recognised as sufficient was reviewed by the Supreme Court of Ukraine. The Supreme Court ruled in this regard that IDPs cannot vote in local elections that are held in territories where they only reside temporarily. IDPs are thus denied the right to vote in local elections at their place of current residence unless they can prove permanent registration in the constituency.⁹² This decision has further cemented the practical and legal barriers to IDP voting rights in local elections in Ukraine.

b. Bosnia and Herzegovina

80. In Bosnia and Herzegovina (BiH), over two million people – one million IDPs and more than one million refugees — were displaced due to the conflict in Yugoslavia in the early 1990s. Ethnic cleansings that occurred during the conflict resulted in substantial changes in the ethnic composition of local communities with an impact on the results of elections. The General Framework Agreement for Peace in Bosnia and Herzegovina (“Dayton Agreement”) established a formula to grant IDPs voting rights (with the exception of the right to stand for elections) and such provision was maintained as a general rule throughout all types of subsequent

⁹² UNIAN Information Agency, IDPs shall not vote in local elections – Ukraine's Supreme Court, 2018, available at: <https://www.unian.info/>

elections.⁹³ According to the Dayton Agreement, IDPs could either vote in the municipality where they had resided prior to their displacement (personally or by absentee ballot) or in the municipality of their actual residence.⁹⁴

81. As of 2017, almost 100,000 people remain registered as IDPs in Bosnia and Herzegovina.⁹⁵ Although the arrangements for IDP voting in BiH were designed to enable elections in accordance with international standards and should enfranchise a maximum of IDPs, there were cases of abuse, especially during elections held in the aftermath of the conflict. In some places, IDPs were systematically pressured by authorities to register to vote in the

93 Article 19.8 Election Law of BiH; See E. Mooney/B. Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, 2004, pp. 19-24. To be precise, the Dayton Agreement did not specify the right to stand for elections, but did not prevent IDPs from doing so. The subsequent rules of the Election Commission then allowed IDPs to run as candidates.

94 Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Art. IV, Annex 3, available at: <http://www.ici-cij.org/files/case-related/91/13413.pdf>. In the specific context of the 1996 parliamentary elections, IDPs could vote in another municipality where they intended to reside in the future.

95 IDMC, Bosnia and Herzegovina, 2017, available at: <http://www.internal-displacement.org/countries/bosnia-and-herzegovina/>. Of these, only close to 20,000 of them are registered to vote for their pre-war municipality while all others are registered to vote for the municipality of their current residence.

areas of their actual residence in order to cement local ethnic settings. Voting in their former places of residence, IDPs faced intimidation and burdensome travel as the authorities failed to provide sufficient public transportation. Manipulations of absentee ballots as well as long lines and occasional riots were also reported at absentee polling stations.

82. While most of these issues were observed in the early electoral processes, one significant shortcoming persisted in the later elections. The system of voters' registration remained problematic and often contained inaccurate data due to the lack of cooperation between state authorities and the CEC. As a result, eligible IDP voters were repeatedly removed from voters' lists and accordingly disenfranchised.⁹⁶ Consequently, although the domestic legal framework in Bosnia and Herzegovina has proved to be conducive to IDP enfranchisement, problems of practical nature remained and impeded the political participation of IDPs in local as well as in other elections.

96 Congress of Local and Regional Authorities, Recommendation 339 Local elections in Bosnia and Herzegovina (7 October 2012), 2013; OSCE/ODIHR Election Observation Mission Final Report, General Elections, Bosnia and Herzegovina, 12 October 2014, pp. 10-11.

c. Georgia

83. Internal displacement within Georgia resulted from two conflicts, in and around the regions of South Ossetia and Abkhazia, in the early 1990s and in the aftermath of the 2008 Russian invasion. As a result, over 200,000 IDPs are currently unable to return to regions that are not under Government's control.⁹⁷

84. In order to adapt to the situation, Georgia has undergone a substantial transformation of its legislative framework governing IDPs' voting rights. During the 1990s, IDPs were not granted the right to vote, unless they registered the municipality where they wanted to vote as their new place of permanent residence.⁹⁸ Although legally feasible, any change in permanent residence implied the loss of IDP status, along with entitlements and benefits that such status entailed.⁹⁹ Moreover, IDPs feared that their change in permanent residence would signal acceptance of the *de facto* territorial situation and would be interpreted as a decision on their part to relinquish their right to return and seek

97 IDMC, Georgia, 2017, available at: <http://www.internal-displacement.org/countries/georgia/>.

98 Organic Law on Parliamentary Elections of Georgia.

99 Law of Georgia on Forcibly Displaced Persons — Persecuted Persons.

restitution of their property. There were also political reasons for state authorities to discourage IDPs from voting and integrating into local communities, which was perceived as an obstacle to re-establishing Georgia's control over the conflict areas.¹⁰⁰ Eventually, the situation was codified in the 1998 Law on Elections of Bodies of Local Government which explicitly stipulated that IDPs were ineligible to vote.¹⁰¹

85. The law was ultimately challenged at the Constitutional Court of Georgia and, subsequently, a new law on elections was adopted in 2001. The new law removed the restrictions on IDP voting and enabled them to participate in local elections at their actual place of residence and to fully participate in parliamentary elections.¹⁰² Additional amendments provided for IDPs' names to be automatically included in the voters' lists and for IDP certificates to be considered sufficient for voters' identification. The new Code also affirmed the right of IDPs to stand as candidates in parliamentary and local

100 E. Ferris et al., *From Responsibility to Response: Assessing National Approaches to Internal Displacement*, 2011, pp. 211-212, available at: <https://www.brookings.edu/wp-content/uploads/2012/04/From-Responsibility-to-Response-Nov-2011doc.pdf>.

101 Art. 36 Law on Elections of Bodies of Local Government of Georgia.

102 Art. 9 Unified Election Code of Georgia.

elections. These legislative changes removed the legal obstacles that hindered IDPs' ability to fully exercise their right to vote or to be elected.

86. However, some problems of a practical nature remained. In particular, insufficient co-ordination between central authorities and election management bodies resulted in inaccuracies and late preparation of IDP voters' lists, lack of training of authorities responsible for facilitating the exercise of IDPs political rights, and lack of IDPs' awareness of election procedures and specific provisions enhancing their political participation.¹⁰³ Despite the positive changes, voter turnout among IDPs remained very low and only a few IDPs exercised their right to stand as candidates.

87. In the 2017 local elections, however, the situation seems to have improved since some 200,000 IDPs were included in the voters' lists at their current places of residence. As welcomed by the Congress, the 2017 amendments to the Georgian Election Code also lifted a requirement for IDP cards to be used for voting purposes and other effective measure have been adopted to enfranchise IDP.

103 E. Ferris et al., *From Responsibility to Response: Assessing National Approaches to Internal Displacement*, 2011, p. 213.

G. Conclusion

88. The voting rights of foreigners — migrants, refugees — and IDPs are in constant evolution, especially since there is a general trend towards the enfranchisement of foreigners in local elections. Such evolution is evidenced by international instruments as well as by various policy documents adopted in the framework of international organisations. It is also reflected at domestic level, within states. These developments acknowledge a growing mobility in times of globalisation with an increasing number of persons living in countries other than their own. With recent conflicts in Ukraine and Georgia leading to large numbers of IDPs, the voting rights of internally displaced persons have become a topical issue and attention has been paid to the legal and practical obstacles faced by IDPs when exercising their voting rights. In fact, IDPs have to be given *de facto* opportunity to electoral participation, by removal of barriers such as excessive residency requirements. IDPs should be involved, respectively, and able to make their own individual choices about the constituency of registration.

Recommendation 419 (2018)

Debated and adopted by the Congress on 6
November 2018

1. In the context of mass migration that currently occurs in the area of the Council of Europe for political, humanitarian and socio-economic reasons as well as due to military conflicts, an increasing number of people have settled or have been re-settled with varying degrees of permanence in countries or regions other than their country or region of origin. Considering effective integration policies for Internally Displaced Persons (IDPs), voting rights are a natural starting point for a successful long-term integration as voting encourages IDPs to actively participate in the life of their community.

2. Even though IDPs are frequently disenfranchised because they face legal and practical challenges with regard to voting rights, international standards and best practices promote the enforcement of their right to political participation. In particular, the existence of a “genuine link” between IDPs and the place where they cast a ballot at local level is of critical importance with respect to voting rights as a successful element of their integration.

3. The Congress’ political priorities for 2017-2020 focus on building secure societies that are respectful, inclusive and closer to citizens. To this end, the Congress committed itself to working in favour of the integration of refugees and migrants, the active participation of citizens as well as the

rights and protection of minority, underprivileged and vulnerable populations.

4. The Congress recognises the responsibility municipalities and regions bear with regard to promoting the integration, participation and non-discrimination of IDPs and encouraging good relations between them and local residents.

5. In light of the above, the Congress bears in mind:

- the Universal Declaration of Human Rights and the United Nations International Covenant on Civil and Political Rights;
- the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No.122);
- Recommendation (2006)6 of the Council of Europe/Committee of Ministers to member States on Internally Displaced Persons;
- the Code of Good Practice in Electoral Matters (2002) of the European Commission for Democracy through Law of the Council of Europe (Venice Commission);
- Recommendation 1877 (2009) of the Parliamentary Assembly of the Council of Europe on Europe's forgotten people:

- protecting the human rights of long-term displaced persons;
- the 2004 UN Guiding Principles on Internal Displacement;
 - its Recommendation 369 (2015) on Voters' lists and voters residing de facto abroad;
 - its Recommendation 386 (2016) on Observation of local elections in Ukraine (25 October 2015) and its Information Report on the municipal elections in Georgia (21 October 2017).

6. Against this background, the Congress has specifically examined the international standards and best practices with regard to voting rights at local level of IDPs. As a consequence, it recommends that the Committee of Ministers invite the governments of member States to ensure that:

- residence requirements do not prevent IDPs from exercising their voting rights, in particular that procedures for changing residence are appropriate so that IDPs can easily move their registration between their constituency of origin and their current constituency (and vice versa) without undue obstacles or delays ;
- legal provisions do not require IDPs to choose between expressing their voting

- rights and being eligible for IDP status and/or social benefits;
- voters' registration and polling procedures take into account the specific situation of IDPs, *inter alia*, with regard to the location of assigned polling stations and the type of documents required for voters' identification purposes (with temporary special measures introduced as appropriate to prevent disenfranchisement);
 - voters' education campaigns specifically target IDPs in a relevant language, in order to increase their understanding of registration and polling procedures and to enable them to make informed electoral choices;
 - IDPs are guaranteed protection against manipulation, intimidation or threats throughout the electoral process and that they exercise their voting rights freely and without fear of retribution;
 - IDPs are granted access to a system of complaints and appeals covering all stages of the election process that is accessible in terms of timing and location.

7. Nothing in this recommendation, including the efforts of member States undertaken for the successful integration of IDPs in Europe's

municipalities and regions, shall be interpreted as restricting or impairing IDPs' fundamental right to return, in safety and with dignity, to their homes or places of habitual residence.

Resolution 431 (2018)

Debated and adopted by the Congress on 6
November 2018

1. In the context of mass migration that currently occurs in the area of the Council of Europe for political, humanitarian and socio-economic reasons as well as due to military conflicts, an increasing number of people have settled or have been re-settled with varying degrees of permanence in countries or regions other than their country or region of origin. Considering effective integration policies for migrants and Internally Displaced Persons (IDPs), voting rights are a natural starting point for a successful long-term integration as voting encourages migrants and IDPs to actively participate in the life of their community.

2. Even though migrants are frequently disenfranchised because of their legal status as non-citizens and IDPs face legal and practical challenges with regard to voting rights, international standards and best practices recommend the enforcement of their right to political participation at local level. In this respect, the Congress acknowledges the emerging trend among Council of Europe member States towards an increasing enfranchisement of long-term foreign residents at least in local elections.

3. The Congress' political priorities for 2017-2020 focus on building secure societies that are respectful, inclusive and closer to citizens. In line

with these priorities, the Congress likewise committed itself to working in favour of the integration of refugees and migrants, the active participation of citizens as well as the rights and protection of minority, underprivileged and vulnerable populations.

4. The Congress recognises the responsibility municipalities and regions bear with regard to promoting the integration, participation and non-discrimination of migrants and IDPs and encouraging good relations between them and local residents. In particular, the existence of a “genuine link” between foreigners, IDPs and the place where they cast a ballot at local level is of critical importance with respect to voting rights as a successful element of their integration.

5. In light of the above, the Congress bears in mind:

- the Universal Declaration of Human Rights and the United Nations International Covenant on Civil and Political Rights;
- the Council of Europe’s Convention on the Participation of Foreigners in Public Life at Local Level (ETS No.144);
- the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No.122);

- Recommendation (2006)6 of the Council of Europe/Committee of Ministers to member States on Internally Displaced Persons;
- the Code of Good Practice in Electoral Matters (2002) of the European Commission for Democracy through Law of the Council of Europe (Venice Commission);
- the 2004 UN Guiding Principles on Internal Displacement;
- its Recommendation 115 and Resolution 141 (2002) recalling that local democracy should include participation by all residents of the community, and that consequently foreign residents who are legally and lastingly settled in the territory of European States ought not to be excluded from local public life, whatever their country of origin;
- its Recommendation 369 and Resolution 378 (2015) highlighting the importance of a “genuine link”, through predominant relations (permanent residence, central point of life interests etc.), between voters and the place where they cast their ballot at local level;
- its Recommendation 394 and Resolution 411 (2017) recognising local and regional authorities as key actors in the organisation of migrants’ reception and their integration into local communities.

6. Against this background, the Congress has specifically examined the international standards and best practices with regard to voting rights at local level of migrants and IDPs. As a consequence, it

- asks the relevant instances of the Congress to provide specific information about standards and practices regarding voting rights of migrants and IDPs at local level in the framework of training seminars and awareness-raising activities;
- invites associations of local and regional authorities in Council of Europe member States to engage in awareness-raising activities with regard to the role of local and regional authorities in promoting political participation and voting rights of migrants and IDPs at local level;
- calls on opinion leaders in the local and regional political context to advocate for voting rights of migrants and IDPs as an element of their successful long-term integration in local communities and to support their right to return to their constituencies of origin.

Against the backdrop of the ongoing migration flows in Europe, participation in local elections is a key factor of successful long-term integration of populations that reside, for various reasons, in places different from their places of origin.

The Congress of Local and Regional Authorities of the Council of Europe has adopted a report on the role of voting rights for the integration of internally displaced persons (IDPs) and migrants in Europe's municipalities and regions.

The Congress recommends that legal provisions at national level allow IDPs to exercise their right to vote by facilitating the procedures for changing residence and registration on voters' lists. As regards the situation of migrants, there is a tendency to grant voting rights in local elections to foreign residents, in accordance with the Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 47 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 648 elected officials representing more than 200 000 local and regional authorities.