

# The Congress of Local and Regional Authorities



17<sup>th</sup> PLENARY SESSION  
CG(17)12  
15 September 2009

## Equal access to local and regional elections

Institutional Committee  
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### *Summary*

The right to vote and to stand for election is guaranteed in states' domestic legislation by the principle of equal access to elections, whether at national, regional or local level. It is a principle protected by international legal norms.

The purpose of this report is to describe these legal norms and the conditions for access to local and regional elections, both for voters and for candidates. The report also proposes to identify the different types of restrictions, legal or otherwise, to the right to vote, exercise of the right to vote and eligibility to stand for election in the Council of Europe member states.

Inequalities continue to exist in some countries, particularly with regard to certain population categories such as non-citizens, women or immigrants. Other inequalities can be seen in the financing of election campaigns, registration of political parties, participation of candidates and access to the media.

On the basis of these findings, the report puts forward some concrete proposals. The recommendation to the Committee of Ministers suggests that the Congress should continue this work as part of the monitoring of local and regional elections, and calls on member states to grant the right to vote and to stand in local elections to all residents who have been legally resident on their territory for at least three years, irrespective of their origin.

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<sup>1</sup> L: Chamber of Local Authorities / R: Chamber of Regions  
ILDG: Independent and Liberal Democrat Group of the Congress  
EPP/CD: European People's Party – Christian Democrats of the Congress  
SOC: Socialist Group of the Congress  
NR: Members not belonging to a Political Group of the Congress



**A. DRAFT RECOMMENDATION<sup>2</sup>**

The Congress,

1. Having regard to Article 2, paragraph 1.b., of Statutory Resolution (2000)1 relating to the Congress of Local and Regional Authorities of Europe, which stipulates that one of the objectives of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”, and to Article 2-3 of Statutory Resolution (2007)6 of the Committee of Ministers;

2. Recalling that the fundamental principles of democratic participation of everyone in decision-making have been enshrined by the Council of Europe in a number of legal and political instruments, which form a common set of standards on democracy for Europe as a whole;

3. Considering the European Charter on Local Self-Government, particularly its Preamble and Article 3 which states that local councils or assemblies shall be composed “of members freely elected by secret ballot on the basis of direct, equal, universal suffrage (...)”;

4. Referring to its Explanatory Memorandum on equal access to local and regional elections;

5. *Recommends that the Committee of Ministers urge the governments of member states:*

a. to invite the Congress of Local and Regional Authorities to monitor local and regional elections in their countries to ensure that the requirements for equal access to local and regional elections, are met ;

b. to grant the right to vote and stand in local elections to all residents legally residing for at least three years on their territory, irrespective of their origin ;

c. to assist local and regional authorities in implementing, and taking part in, awareness-raising campaigns especially addressed to young people, and in initiating youth local councils, in order to promote their participation in the decision making process at local level ;

d. to stimulate the creation of secure alternative forms of access to the polls such as postal, proxy voting or secure e-voting systems ;

e. to review their domestic legislation in order to ensure that no provisions remain in place which would impede the registration of political parties and candidates, and to guarantee transparency and fairness in the financing of electoral campaigns at local and regional levels ;

f. to guarantee, by appropriate domestic regulations, fair and balanced media coverage (TV, radio and newspapers) of all candidates in local and regional electoral campaigns, notably under the supervision of local or regional independent authorities;

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<sup>2</sup> Preliminary draft recommendation approved by the Institutional Committee on 15 May 2009

Members of the Committee:

*K. Whitmore (Chair)*, R. Aguilar Rivero, J. Almeida Barreto (*alternate: A. Torres Pereira*), Z. Almpic, M. Y. Barcina Angulo, C. Bijl, P. Bosch I Codola, J. Brons, *E. Calota*, M. Catovic, L. Caveri, V. Chilikov, M. Cohen, *B. Collin-Langen*, F. Demirci, C.M. Do Vale Cesar, *J. Gabriels*, B. Grasset, A. Grytsenko (*alternate: T. Demchenko*), G. Grzelak, *M. Guégan*, M. Gulevskiy (*alternate: V. Belikov*) M. Haak-Griffioen, A. Harutyunyan, G. Illes (*alternate: K. Bene*), M. Kebo, *W. Kelsch*, O. A. Kvaløy, I. Kulichenko (*alternate: O. Luk'ianchenko*), *J. Landberg*, V. Lazovska (*alternate: J. Teikmanis*), F. Lec, I. Loizidou, J.-C. Mairal, Y. Mischeriakov (*alternate: I. Shubin*), L.O. Molin, J. Mrazek, A. Muzio, *C. Newbury*, G. Pavlidis, F. Paköz, H. Pihlajasaari, G. Pieper, *M. Pineschi*, G. Policinski (*alternate: A. Globa*), C. Radulescu, A. Rokofillou, *B. Rope*, Y. Rzayeva, V. Salygin, P. Schowtka, D. Shakespeare (*alternate: A. King*), V. Storm Rasmussen (*alternate: K. Andersen*), E. Tobler, A. Turku, *S. Ugrehelidze*, *J.-C. Van Cauwenberghe*, *H. Van Staa*, M. Varnavskiy, P. Volner, *E. Yeritsyan (alternate)*, Y.Z. Yilmaz, N. Zeybekci (*alternate: G. Doganoglu*), D. Zmegac.

N.B. : The names of members who took part in the vote are in italics.

Secretariat of the Committee : A. Schroeder and S. Poirel

6. *Requests that the Committee of Ministers call on all member states to give appropriate follow-up to its Recommendation (2003)3 on balanced participation of women and men in political and public decision making, as well as the Parliamentary Assembly Recommendation 1674 (2004) on women's participation in elections, in which states have been asked to take special measures to stimulate and support women's will to participate in political and public life, by introducing parity measures (such as, for example the implementation of quotas) in order to bring a change in attitudes and to stimulate and support women's willingness to participate in political and public life.*

## **B. EXPLANATORY MEMORANDUM**

### **I. Introduction**

1. Pluralist elections are the health and strength of modern representative democracies. They legitimise the decisions of a government for electoral terms of several years. However, the legitimacy of democracy is at stake when in reality it becomes a democracy of "the happy few" or "the active few". Despite the fact that, in all Council of Europe member states, citizens have the formal right to vote and stand for election, in practice turnout is often frighteningly low, especially in local and regional elections, and certain categories of population such as women and immigrants, are constantly under-represented in political decision-making bodies.

2. In order to win a mandate in an election, access to public or private financial resources has become essential, but many states fail to ensure effective control over fair election finance and the transparent and lawful use of administrative resources in elections. In some countries, exaggerated requirements for registration of a political party are an obstacle for candidates from opposition parties to stand for election. Access to air-time on radio and television has also become a crucial condition for a successful election campaign. All these factors influence the chances in a fair and equitable political competition and thus may impede equal access to elections.

3. Against the background of international and European standards, this report seeks to describe in brief the general legal and material conditions of access to elections. This comprises access to voting on the one hand and admission to stand as candidate for an election on the other hand. The report furthermore aims to identify problem areas, where undue legal and/or material restrictions impede equal access to elections for certain segments of a society, and to produce concrete proposals on how to further protect and foster equal access to elections at local and regional level.

4. This report has been prepared with the support of the Group of Independent Experts on the European Charter of Local Self-Government. According to the usual methodology, the members of the Group from all Council of Europe members states were invited to respond in writing to a questionnaire which looked at specific aspects of access to local and regional elections. The answers subsequently received largely confirmed the problems identified and proposals made in existing Council of Europe Recommendations.

5. The report is structured in 5 parts. It begins with a brief description of the fundamental legal norms on electoral matters including international and European reference texts (II). It continues with a chapter on access to elections for voters, which dwells on the different conditions to vote and critically assesses restrictions of the right to vote which exist in some countries for certain categories of voters e.g. for members of the military (III.). Part IV describes the conditions of access to elections for candidates and again analyses legal and material restrictions on this right. In this part, special emphasis is laid on candidates' access to the media and financial resources during their campaign as well as on difficulties that exist in several countries for registering political (opposition) parties. The report concludes with a chapter (V.) presenting concrete proposals on how to further protect and foster equal access to elections both for voters and for potential candidates.

## II. Fundamental legal norms

### 1. International reference texts

6. Several Fundamental international texts guarantee equal access to elections at national, regional and/or local level:

The Universal Declaration on Human Rights (1948) in Article 21 states for instance that:

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) (...)

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”.

7. The International Covenant on Civil and Political rights (1966) states in Article 25 that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

8. In addition to these legally binding instruments, “Guidelines for reviewing a legal framework for elections” (2001) elaborated by the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR)<sup>3</sup> set forth basic components for legal frameworks governing any elections, and the minimum standards necessary to ensure their democratic conduct.

### 2. Reference texts of the Council of Europe

9. The “Code of Good practice in electoral matters”, a reference tool for elections in member states, was adopted in October 2002 by the European Commission for Democracy through Law, better known as the Venice Commission. The Venice Commission is the Council of Europe’s advisory body on constitutional matters. It contributes to the dissemination of the European constitutional heritage, based on the continent’s fundamental legal values through providing “constitutional first-aid” to individual states.

10. The Convention on the Participation of Foreigners in Public Life at Local Level elaborated by the Council of Europe in 1992, contains a chapter dedicated to the right to vote in local elections and states in particular in Article 6 that “Each Party undertakes (...) to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections”. This Convention entered into force in May 1997. However, so far only 8 countries have ratified it.

11. The Council of Europe also elaborated in 1995 the Framework Convention for the Protection of National Minorities in which Article 15 provides that “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”. It aims above all to encourage real equality for persons belonging to national minorities. So far, 39 Member States ratified this Convention.

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<sup>3</sup> The Office for Democratic Institutions and Human Rights (ODIHR) is an institution of the [Organisation for Security and Cooperation in Europe \(OSCE\)](#) established to help governments meet their commitments as participating States of the OSCE in the areas of elections, human rights, democracy, rule of law, and tolerance and non-discrimination. ODIHR plays the key role in the field of election observation in Europe. It has observed over 150 elections across the OSCE region and has deployed some 35,000 observers.

12. The European Charter of Local Self-Government should also be mentioned here as it stipulates in its preamble that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member states of the Council of Europe, and states in addition, in Article 3 paragraph 2 that:

“This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.”

13. The European Convention on Human Rights contains provisions which contribute indirectly to guaranteeing equal access to elections through Article 14 relating to the prohibition of discrimination, Article 10 on freedom of expression, Article 11 on the freedom of assembly and association which also applies to political parties. Similarly Article 3 of Protocol No. 1 to the European Convention on Human Rights<sup>4</sup> on the right to free elections refers not only to national parliaments but also to regional parliaments in so far as they have important legislative powers.<sup>5</sup>

14. Further reference texts, namely recommendations and resolutions relating to electoral matters at national and local/regional level in specific Council of Europe member states have been elaborated by the Council of Europe’s Parliamentary Assembly (PACE) and its Congress of Local and Regional Authorities. These organs observe elections in Council of Europe member states and provide their authorities where necessary with guidance for further improvement of the conduct of elections.

### 3. National legislations

15. The principles of free, fair, universal and equal elections are guaranteed in many countries by the constitution: Austria (Art. 117), Belgium (Art. 8), Estonia (Art. 156), Finland (Art. 14), France (Art. 88-3), Germany (Art. 28), Hungary (Art. 70), Latvia (Art. 101), Luxembourg (Art. 9), Netherlands (Art. 129), Poland (Art. 62), Portugal (Art. 62).

16. These principles are normally articulated in national laws, which often take the form of Electoral Codes covering all types of elections (local, regional, national and even referendums). In many federal states, the organisation of regional/local elections is stipulated by the constitution (Austria, Germany) and complemented by ordinary laws adopted by the *Länder* (regions with legislative powers) within the limits of the federal legislation. In Germany, for instance, apart from the federal electoral law, the *Länder* have their own electoral laws regulating election of the *Länder* assemblies as well as local/municipal elections (*Kreise*). Ministerial decrees/directives complement constitutional guarantee for free, fair and competitive elections in some countries, e.g. in the Czech Republic.

17. Some countries apply territorial reservations e.g. in Portugal, where national laws govern local elections in the mainland, but regional laws are applied for elections in the autonomous regions of Azores and Madeira. Similar distinctions exist in Spain where national laws govern the organisation of elections in the local governments of the mainland, but local laws apply for elections in the Balearic Islands.

18. While electoral rules are relatively stable in most established democracies, in some countries, notably with regard to local elections, regulations are frequently changed and sometimes very quickly before an election. For instance in Moldova, Bosnia and Herzegovina as well as in the former Yugoslav Republic of Macedonia (FYROM), authorities recently attempted to change, in some cases successfully, the election rules shortly before elections. The Venice Commission recommends that amendments to national electoral laws shall be effected not less than one year before the next elections.

<sup>4</sup> “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

<sup>5</sup> See judgment *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1997, Series A, vol. 113, p. 23, para. 53ff.

#### 4. European case-law

19. The European case-law reinforced this principle of equal access to local and regional elections. Two cases deserved to be mentioned in this respect, which are, firstly, the judgement delivered by the European Court of Human Rights, *Hirst v. UK*<sup>6</sup> in which the Court holds that an “absolute prohibition on voting in all circumstances on all offenders serving their sentence exceeds the limits of an acceptable margin of appreciation”, and concludes that there has been a violation of Article 3 of Protocol No. 1 of the European Convention on Human Rights (on this point see para. 32 below). Secondly, the judgment of the European Court of Justice in *Commission of the European Communities v. Kingdom of Belgium*<sup>7</sup> which concerned a failure to bring into force the Council Directive 94/80/EC of 19 December 1994<sup>8</sup> within the prescribed period on fixing arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

### III. Access to elections for voters

#### 1. General requirements for voters

20. The requirements for participating in elections as voters are prescribed by national laws. They constitute formal conditions which are more or less similar in European countries and which should comply with the international standards on electoral matters such as the European Convention on Human Rights and the European Framework Convention on minorities (as outlined in Part II).

##### a. formal requirements

21. In most Council of Europe States the right to vote in municipal and regional elections is subject to age and citizenship conditions.

22. **Age:** All Council of Europe member states share the idea that there should be a certain age of “political majority” at which young people can be expected to cast their vote<sup>9</sup>. According to the Venice Commission the minimum age for attaining voting rights should not be higher than the age of majority in the same country. Citizens aged 18 years by the day of elections, in most countries have the right not only to elect and to be candidate in an election, but also to be involved in other activities related to the electoral process such as voting in referendums and observing elections. In most countries the minimum age is 18, however, in Liechtenstein, the minimum voting age is 20. It is debated in several countries whether the minimum age of 18 should be lowered, especially in local elections. Some German *Länder* for example have already lowered the age to 16 years for local elections, and Norway is planning to lower it to 16 or 17 years as well. This trend reflects a desire to boost participation of youth in the political process at local level.

23. **Citizenship:** The right to vote not only in national, but also in regional and local elections is in many countries strictly connected to the right of citizenship. Frequently, constitutions and/or ordinary legislation stipulate that voting rights are enjoyed only by people possessing the citizenship of the state. However, the aforementioned Convention on the Participation of Foreigners in Public Life at Local Level (see supra para.10) recommends that the right to vote in local elections be granted under certain conditions also to non-citizens, and was ratified by 8 countries viz. Albania, Denmark, Finland, Iceland, Italy, Netherlands, Norway and Sweden. Among the European countries which allow some categories of resident non-nationals to participate in local elections are Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden, six cantons in Switzerland, and the United Kingdom. Eight of these 17 states (Denmark, Hungary, Norway, Portugal, Slovakia, Sweden, 6 cantons of Switzerland, and the UK) allow non-nationals (EU nationals and third-country nationals) to vote in elections for regional or national representatives bodies<sup>10</sup>.

<sup>6</sup> *Hirst v. United Kingdom* (no 2) [GC], 6 October 2005, no. 74025/01, see in particular §§ 56-57, ECHR 2005-IX

<sup>7</sup> *Commission of the European Communities v. Kingdom of Belgium*, 9 July 1998, case 323/97

<sup>8</sup> See para. 24 below

<sup>9</sup> See study n° 306/2004 by the European Commission for Democracy through Law (Venice Commission).

<sup>10</sup> Local Voting Rights for non nationals in Europe, Kees Groenedijk, Migration Policy Institute, 2008

24. **Residence:** In the countries where non-citizens are allowed to vote in local elections, this right is conditioned by a certain minimum period of residence in the country. Regarding the condition of residence, the Code of good practice in electoral matters elaborated by the Venice Commission provides that “it would be advisable for foreigners to be allowed to vote to local elections after a certain period of residence. This right could be granted for example, after 5 years of permanent residence”. The Parliamentary Assembly of the Council of Europe demanded in its Recommendation 1500 (2001) that governments of the Council of Europe member states should be urged to grant the right to vote and stand in local elections to all residents legally residing for at least three years irrespective of their origin. It underlines that “democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country’s prosperity further justifies their right to influence political decisions in the country concerned”<sup>11</sup>. For instance, in the local elections in Norway, non-Norwegians are eligible to vote if they have been registered at the Population Registry as resident in Norway for the last three years prior to the election day.

25. A special rule applies to all non-citizens who possess the nationality of another European Union country: European Council Directive 94/80/CE of 19 December 1994<sup>12</sup> prohibits EU member states to make the right to vote and to be eligible for any EU citizen who reside in its territory subject to a minimum period of residence if its own nationals are not subject to a similar condition. Moreover, through this directive, even EU non-nationals are deemed to have fulfilled a residence requirement in their state of current residence if they have resided for a period equivalent to the minimum residence period in another EU member state (see in particular Article 4 paragraph 1 of the above mentioned directive). The voting right for non-citizens will be further discussed under restrictions to the right to vote 2) below.

26. Another formal requirement of the right to vote which is of crucial importance for guaranteeing universal suffrage is that voters have to register or to be registered on electoral registers. These registers must be regularly updated.

27. **Mental incapacity:** According to the Venice Commission’s Code of Good Practice, a person can only be deprived from the right to vote on the ground of a mental incapacity if such incapacity has been established by court decision.

#### **b. Additional factual requirements**

28. Real equal access to elections also requires that the formal right to vote can practically be exercised by all persons entitled to vote. This means for example that disabled, ill and elderly persons as well as persons living abroad, conscripts and prisoners should be given access to the poll if necessary by special arrangements such as slip roads for wheel chairs to polling stations, postal or proxy voting. Many countries have made postal and proxy voting available to all voters.

29. The introduction of electronic voting (“e-voting”) in local elections constitutes a new electoral tool. For example Estonia experimented with e-voting in October 2005 in local elections. Finland tried it out too for the first time in the same year and drew up an Act on e-voting which was applied in the 2008 municipal elections in 3 municipalities. E-voting could be a useful means to reduce the risk of fraud and confusion in the counting of votes and can also be a way of avoiding multiple votes. However, dangers could lie the fact that there is no physical evidence kept of the individual vote and e-voting as the only way to vote should be considered very carefully since it could exclude from the elections parts of society unfamiliar with new technologies.

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<sup>11</sup> In particular, Congress Recommendation 257 (2008) on local democracy in Latvia from 2008, shall be respected by the Latvian authorities, namely by allowing their long-term residents to vote and to be eligible in the context of local elections. In addition, the Congress calls on its members and national governments to ratify the Convention on the participation of Foreigners in Public Life at Local Level if they have not already done so.

<sup>12</sup> The directive lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

30. It is also crucial for a real democracy that people actually make use of their right to vote. Especially in local elections, voter turnouts are often alarmingly low. Young people particularly are often not aware of or not interested in their (active and passive) civic rights and precisely their rights to vote and to be eligible themselves. It is therefore of the utmost importance for a democratic society to make young people realise the significance of their involvement and participation in the decision-making process, and the conditions for taking part in electoral procedures, and to encourage them to participate actively in elections. Local and regional authorities should initiate and take part in awareness campaigns especially directed at young people. They have a fundamental role to play in this respect, as they are the public authorities closest to the citizens. Equal access to elections furthermore requires that women, e.g. for reasons of tradition, are not prevented from casting their own vote.

## 2. Restrictions on the right to vote

31. According to the Venice Commission, restrictions on the right to vote shall have a legal basis and must be clearly prescribed by law. Furthermore, restrictions must respect the principle of proportionality. However, even if these restrictions are prescribed by national law, they can be inconsistent with European or international standards.

32. Excluded categories: Certain groups of society are in some countries excluded by law from the right to vote. These include non-citizens (see above para.23ff.), military members and prisoners.

33. **Non-citizens:** The most problematic restriction on the right to vote is the requirement of citizenship in the case of non-citizens who are long-term or even permanent residents in the country. Some countries do not grant the right to vote to non-citizens for local elections even if they are permanent residents in the country (Austria, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Italy, Latvia, Malta, Poland and Romania. This is the case for example in Latvia where non-citizens are made up mostly of people of Russian origin who have for historical reasons lived in the same (today Latvian) municipalities for decades and often were even born there. Their status as permanent residents entitles them to all citizens' rights apart from voting, being elected and entry into the civil service. Neighbouring countries of Latvia, namely Estonia and Lithuania, have a similar population structure and granted non-citizens the right to vote and to be candidates to local elections. On the basis of the European Charter on Local Self-Government, the Congress of the Council of Europe recommended that the Latvian authorities give the right to vote and to be eligible to non-citizens in local elections. In the Czech Republic, Italy and Malta, respective constitutional laws permit non-nationals to vote, but the required national legislation or international agreements have not been adopted. Thus, third-country nationals have never participated in local elections in these three countries. Denial of the voting right to long-term residents, even when defined by law, is a denial of a fundamental right to this group of society as the condition of proportionality of the restriction is not respected. It rests with the Council of Europe and other institutions to pay particular attention to the respect of the state commitments in this respect.

34. **Armed forces:** Other population groups whose democratic participation rights require special protection are members of the military. Although in most Council of Europe countries, soldiers are considered "citizens in uniform", who are allowed to participate fully in political life at local, regional and national level of the country<sup>13</sup>, this group is in several countries subject to special restrictions regarding their voting rights as criticised in a report and Recommendation of the Parliamentary Assembly<sup>14</sup> of the Council of Europe. Armenia and Turkey for example exclude most military personnel from voting.

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<sup>13</sup> See [Resolution 1166](#) (1998).

<sup>14</sup> PACE Recommendation 1742 (2006), see in particular points 9-3 and 9-4.

35. **Prisoners:** The withdrawal of the right to vote of persons convicted of criminal offences is another restriction on the right to vote. The Venice Commission considers that prisoners should be allowed to exercise their right to vote without restrictions, unless the deprivation of this right is prescribed by law, respects the principle of proportionality and is imposed by a court decision.

#### IV. Access to elections for candidates

36. Like the requirements for voters, the general requirements for candidates in the relevant domestic legislation are generally in compliance with European norms.

##### 1. General requirements

37. The main conditions for the right to vote (age and citizenship) are also prerequisites to stand as candidate in an election.

38. The concrete age, however, for standing as candidate in an election, differs in many countries from the age required for voting. Particular maturity and experience are needed to stand as candidate for a political mandate. Thus, the required age is often higher than the age for mere voting in an election. In a number of countries the minimum age to stand as candidate is 21 years, in others 23 or 25 years, minimum ages which have been considered reasonable by the Venice Commission. However, in many countries, the minimum age to stand as candidate in an election is 18 years.

39. Incompatibilities of a political mandate with other public functions or a certain status have been defined in all countries in order to avoid conflicts of interests and to guarantee a minimum credibility of elected office holders. Incompatibilities often relate to certain types of multiple-office holding, citizenship conflicts or to a penal record. For instance, the leading official of local authorities is not eligible in Sweden to run for elections.<sup>15</sup> Moldova prevents military personnel in particular from being candidates in elections.

##### 2. Restrictions on the right to be a candidate in elections

40. **Excluded categories:** The list of categories of persons excluded from standing as candidates in elections is rather long in some countries, such as Azerbaijan, where military, judges, public servants and clergy cannot run for elective office<sup>16</sup>. Restrictions are imposed e.g. in Ireland on the consecutive holding of office at various levels of administration, or if the candidate is: (1) under sentence of imprisonment for a term exceeding six months, or (2) has at any time been convicted of an offence relating to fraudulent or dishonest dealings affecting a local authority.

41. **Non-citizens:** As mentioned above (paras. 23ff and 32f), in several countries, non-citizens, many of them belonging to national minorities in their country of residence, can still neither vote nor be candidates in local elections. Five states of the 17 mentioned above in para. 23 (Belgium, Estonia, Hungary, Luxembourg and Slovenia) do not allow third country nationals to stand as candidates in municipal elections. It is, however, a principle of international law recalled by the Venice Commission in its Code of good practice that the national law must guarantee equality for persons belonging to national minorities.

42. **Registration of political parties and of independent candidates:** Another obstacle to being a candidate in elections can be caused by unnecessary or disproportionate requirements to register the political party to which the potential candidate belongs or for independent candidates. The registration of political parties is in several countries impeded by excessive legislative requirements regarding registration procedures which often have the effect of hindering or delaying the participation of opposition parties and their candidates in elections.

<sup>15</sup> Swedish Local Government Act of 1991, Chapter 4 Section 6.

<sup>16</sup> Election Code of Azerbaijan of 2005, Articles 14.2.1-14.2.4

43. It is a key condition for free and fair elections to allow all political parties to form, register and take part in elections. Political parties constitute a permanent feature of modern democracies and a key element of electoral competition. They also constitute an essential instrument for the expression and representation of different interests. That is why the Committee of Ministers of the Council of Europe stated in November 2007 in reaction to a judicial decision by Russia's Supreme Court on the dissolution of political party, that when considering possible restrictions to the establishment of political parties, public authorities in member states should bear in mind the aforementioned considerations on the role of parties which are of the utmost importance for democracy. This applies to each level of democracy and thus to local elections as well.

44. Freedom of assembly and association, as guaranteed by Article 11 of the European Convention on Human Rights, clearly also applies to political parties, as the European Court of Human Rights has confirmed in its judgments<sup>17</sup>. However, in some countries, legal requirements make party registration very difficult, thus preventing equal access of candidates of all parties to elections. As the European Court of Human Rights stated on several occasions justifying its rigorous supervision of all restrictions placed on this freedom, "there is a direct relationship between democracy, pluralism and the freedom of association".

45. Registration of political parties requires for instance that branches or offices of political parties be maintained in Belgium, Estonia, Finland, Hungary, Latvia, Liechtenstein and Switzerland. Further requirements exist in other CoE member states, such as Ireland where a party headquarters must be maintained or in Turkey where a national office of the party must be maintained in the capital. In Moldova, political parties are required to establish structural sub-divisions with a minimum number of members in at least half of the secondary administrative territorial units (*raion*). In Ukraine, political parties are required to establish and register regional, city and district organisations in most regions and oblasts of Ukraine, in the cities of Kyiv and Sevastopol and in Crimea, within 6 months from the date of their registration. With respect to both Moldova and Ukraine, the Venice Commission found that the relevant requirements could potentially serve as a serious restriction to political activity at regional and local level<sup>18</sup>. In most CoE member states, the registration of political parties is also subject to requirements relative to territorial representation, minimum membership or minimum age. Other member states do not regulate these questions in any way and leave the matter to self-regulation under each political party's charter or statute (e.g. Ireland and Italy).

46. In countries where the registration of political parties is impeded by excessive legislative requirements for registration procedures, a revision of the respective rules should ensure that no provisions remain in place which would prevent fair and equal access to elections by all democratic parties.

47. **Freedom of expression and media:** Equal access to elections also means that candidates during the election campaign shall have equal opportunities to present themselves and their political programmes in the media. This refers in particular to the time available in TV and radio presentations, but also to space for advertisements in print media and bill posting. Biased coverage or treatment in the state-funded media is a matter of great concern to the Venice Commission in many countries, for instance in Azerbaijan<sup>19</sup>.

48. Media behaviour plays a key role in the organisation of free and democratic elections. In many countries, mass media are legally obliged to provide equal media access for all candidates in national as well as in regional and local elections while in others similar rules do not exist. There seems to be a very diverse understanding on how far access to media especially during elections should be regulated by law. The term 'access to media by candidates' could be interpreted in very different ways. If most people consider that legal access to national/regional/local media still needs to be defined and

<sup>17</sup> See *United Communist Party and others v. Turkey* of 30 January 1998, report 1998-I, pp. 20-21, §§42-43 and *Tsonev v. Bulgaria*, no. 45963/99, § 48, 13 April 2006: "The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy".

<sup>18</sup> Opinion of the Venice Commission [CDL-AD \(2003\)8](#) and doc. [CDL \(2002\)104](#).

<sup>19</sup> *Ibid.* CDL-AD (2008)011

safeguarded by special regulations, others see no reason to provide legal rights to accessing media, and consider that regulations could be interpreted as a 'violation of free speech'.

49. Apart from laws, other important reference norms for media behaviour in elections are professional standards aimed at ensuring balanced and non-biased behaviour of the media during elections. In many countries, media associations have adopted Codes of Ethics for this purpose (e.g. in FYROM, Bulgaria and Romania). Media workers in many countries are answerable to their professional associations, which is in fact a strong real incentive to improve the standards of public information and communication. Media professional groups where they exist usually react to the most blatant cases of political misuse of media during elections, but still the media code of conduct is not always respected. Ethical codes, however, only regulate the activities of the signatories of the code and are often not respected even by those who have subscribed to them.

50. The 'usual' restrictions for political advertising and communication concern speeches that could be qualified as 'defamation', incitement to violence or suspicions on corruption. Some election codes include quite a long list of rules concerning the broadcasting of the news, unbiased presentation of the party programmes, fair allocation of air-time, advertising space, political debates, etc. Most of Election Codes set out a long list of conditions aiming to ensure basic rules of equality for all contenders.

51. Censorship too, where it exists, deters free competition during the campaigns and thus is an obstacle to equal chances between candidates.

52. An important practical step towards fair and balanced coverage of electoral campaigns in the media would be to draw up a list of media organisations in each country and to take measures to ensure that candidates and parties are given fair amounts of airtime or advertising space, especially on radio and television stations, but also in print media. This has been recommended earlier by the Venice Commission for national elections and should likewise apply in local and regional elections.

53. However, the actual use of media and especially of mass media by candidates also much depends on their individual and very much on their financial capacity to manage a fully-fledged information and communication campaign.

54. **Financial resources:** Availability of financial means for an election campaign significantly determines the prospects a candidate or a party have to win in an election. Despite laws and regulations in place in many countries to regulate the financing of electoral campaigns, non-transparent and even illegal financing such as the abuse of administrative resources are today frequent features prior to elections. The financing of electoral campaigns remains in many states a rather opaque area, often inadequately and ambiguously regulated.

55. It is very important to define the appropriate criteria for financing political parties, as well as to identify tools which could ensure transparency of incomes and expenditures in elections. PACE formulated a number of general principles on financing political parties<sup>20</sup>, aiming to guide the member states when framing relevant laws. They comprise the need to ensure a reasonable balance between public and private funding, fair criteria for the distribution of state contributions to the parties, strict rules concerning private donations, limits on parties' expenditures on electoral campaigns, complete transparency of accounts, establishment of independent audit mechanisms and effective sanctions for violations.

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<sup>20</sup> See PACE Recommendation 1516 (2001).

56. The Council of Europe's Venice Commission as well as its Parliamentary Assembly (PACE) have developed several guidelines and report in order to provide countries with useful instructions on how to regulate the financing of elections.<sup>21</sup> PACE also calls for the elaboration of a 'Code of good practice for political parties and their members' which would further address the questions of legitimate financing<sup>22</sup>.

57. The financing of election campaigns requires, in many Council of Europe states, the drafting of new regulations or revision of the existing regulations with a view to making the relevant rules unambiguous, transparent and fair. Most necessary for a fair and balanced financing of elections are also effective judicial procedures to react quickly and efficiently where candidates, parties or authorities infringe democratic rules in this field.

**58. Under-representation of women and socially disadvantaged groups:** Equality between women and men in the legal, political and social spheres is an essential condition for genuine democracy and stems from the common understanding that in democracy men and women share power and influence<sup>23</sup>. Women meanwhile have, in all Council of Europe member states, the right to be candidates in elections.

59. However, figures show that the representation of women in politics at local level in most Council of Europe member states is still low. At local level in Portugal for example, only 6% of mayors are women. In Romania, despite of the fact that youth councils and youth parliaments are made up of a majority of girls, these girls very rarely stand for elections later in their life. The reasons for the low representation of women in political life are manifold. They are partly due to traditions or mentalities with the effect that in political decision-making many people have more confidence in men than in women.

60. Positive exceptions in the participation of women in political life exist in the Scandinavian countries for example. Also in Latvia, many women hold elected positions in local authorities and in the 2005 local elections, 42.3% of elected representatives were women. In France, a constitutional revision was made on 8 July 1999 which provides that the law favours equal access for women and men to electoral mandates (Article 3 of the Constitution). Under this provision, laws have been enacted to implement the principle of equal access of women to political elections. Thus, for the municipal elections in municipalities with more than 3 500 inhabitants, and for the regional elections, the law requires an equal number of candidates of either sex within each group of six candidates in the order of the list (so that women are not placed at the end of the list, in the position where they would be ineligible)<sup>24</sup>. Moreover, a law of 26 February 2008 facilitates women's access to the mandate of General Councillor. However, it has to be noted that women's access to the office of mayor is still difficult in France (14% of mayors are women, and only six women run a municipality of more than 100 000 inhabitants).

61. Recommendation 1674 (2009) of the Parliamentary Assembly on women's participation in elections as well as Recommendation (2003) 3 on balanced participation of women and men in political and public decision making of the Council of Europe's Committee of Ministers asks states to take special measures to stimulate and support women's willingness to participate in political and public life. Such efforts are essential. The issue of quotas might be one possible solution in order to bring about a change in attitudes and to boost women participation. In order to boost political participation of female local and regional politicians at European level too, the Charter of the Congress has included since 2008 a provision according to which each national Congress delegation must consist of at least 30% of the under-represented sex<sup>25</sup>. This rate of representation is now met since December 2008.

<sup>21</sup> Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF (2000)1); Guidelines and report on the financing of political parties (CDL-INF (2001)8); Guidelines and explanatory report on legislation of political parties (CDL-AD (2004)7rev).

<sup>22</sup> See PACE Resolution 1407 (2004) on new concepts to evaluate the state of democratic development; Recommendation 1680 (2004).

<sup>23</sup> See Recommendation (2003)3, 68 (1999), Recommendation 111 (2002) on balanced participation of women and men in political and public decision making.

<sup>24</sup> Following the municipal elections of 2008, 48.5% women were elected as councillors in the municipalities with more than 3 500 inhabitants.

<sup>25</sup> Charter of the Congress Article 2 para. 2d.

62. In a similar way to the under-representation of women, immigrants and groups with lower educational or social status are also often under-represented in public political life. Most of the European states have given legal effect to provisions to combat racism and discrimination on grounds such as race, colour, language, religion, nationality and national or ethnic origins according to Article 11 and 14 of the European Convention on Human Rights and General Policy Recommendations No. 7 on national legislation to combat racism and racial discrimination<sup>26</sup>. However, even if there are no formal limits to these groups' access to elections, in practice, immigrant groups and those with lower educational or social status are under-represented in public life. It is crucial to find and implement means of encouraging the participation of these disadvantaged groups. This could start at the local level.

## V. Proposals to protect and foster equal access to local and regional elections

63. **Observation of local and regional elections:** Observation of local and regional elections is one of the most useful tool to monitor equal access to elections. The Congress in co-operation with the OSCE/ODIHR as well as with the PACE and the Venice Commission should continue to monitor regularly how member states of the Council of Europe respect equality in the electoral process.

64. **Non-citizens:** Regarding equal of access to elections of non-citizens who are legal residents of a country, governments of the Council of Europe member states should be urged to grant the right to vote and stand in local elections to all residents legally resident for at least three years irrespective of their origin (see paras. 23f., 32f., 41).

65. **Alternative means of access to the poll:** Provisions should be introduced where they not yet exist to allow people the exercise of their voting right even if they can not be present at the polling station on the election day, e.g. through postal voting, proxy or e-voting (see para. 28ff.).

66. **Youth participation:** It is also crucial to increase young people's awareness of their active and passive civic rights and specifically their rights to vote and to be eligible themselves. It is of the utmost importance for a democratic society to make young people aware of the significance of their involvement and participation in the decision-making process at local level, and of the conditions for taking part in electoral procedures. Local and regional authorities should initiate and take part in awareness campaign especially directed at young people. They have a fundamental role to play in this respect, as they are the public authorities closest to the citizens (see para 30).

67. **Registration of political parties and independent candidates:** In countries where the registration of political parties is impeded by excessive legislative requirements for registration procedures, a revision of the respective rules should ensure that no provisions remain in place which would prevent fair and equal access to elections by all democratic parties (see para. 42 ff.).

68. **Media:** Election campaigns and their coverage by the media must be carried out in a fair and balanced manner. An important practical step towards this goal would be to draw up a list of media organisations in each country and to take measures to ensure that candidates and parties are given fair amounts of airtime or advertising space, especially on radio and television stations, but also in print media and during bill posting. This has been recommended earlier by the Venice Commission for national elections and should likewise apply in local and regional elections (see para. 47ff.).

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<sup>26</sup> Doc. CM (2003)8 of 13.12.2002

69. **Party financing:** The financing of electoral campaigns requires in many Council of Europe states the drafting of new or revision of the existing regulations with a view to non-ambiguity, transparency and fairness of the respective rules.

70. The elaboration of a 'Code of good practice for political parties and their members' as requested by the PACE would be a useful step towards further transparency and fairness in the field of election financing.

71. To ensure fair and balanced financing of elections it is also necessary that there are effective judicial procedures which can react quickly and efficiently where candidates, parties or authorities infringe democratic rules in this field (see para. 54ff.).

72. **Under-representation of women and socially disadvantaged groups:** Concerning men's and women's equal access to elections, it is important to combat stereotypes which call into question the professionalism of women in political decision-making. To this end, it is necessary to reiterate Recommendation 1674 (2009) of the Parliamentary Assembly on women's participation in elections and Recommendation (2003) 3 on balanced participation of women and men in political and public decision making of the Council of Europe's Committee of Ministers in which states are asked to take special measures to stimulate and support women's will to participate in political and public life. Such efforts are essential. The issue of quotas might be one possible solution in order to bring about a change in attitudes and to boost women's participation. The local level is often a first step for women as well as for members of socially disadvantaged groups to enter political life and to participate in the decision making process.

73. Regarding equal access of women and men to local and regional elections as candidates, the French example<sup>27</sup> could be taken into consideration as a good practice in this respect. Such constitutional revision could be an example in Europe in order to improve the representation of women in political life.

74. As immigrant groups and those with lower educational or social status are in practice also under-represented in public life in many European countries, it is crucial to find and implement means that encourage participation of these disadvantaged groups in elections. This could start at the local level (see para. 58ff.).

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<sup>27</sup> See para. 60 above.