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Committee on Political Affairs and Democracy

For more democratic elections

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Draft Report

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A. Preliminary draft resolution

1. The Parliamentary Assembly emphasises once more that democratic elections are decisive for ensuring that the will of the people is respected in the shaping of the legislature and government at all levels and that elected bodies are effectively representative. It recalls in this respect its Resolution 1705 (2010) on thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States and its Resolution 1706 (2010) on the need to increase the representation of women in politics through electoral systems.

2. The Assembly notes that, today, when citizens seem to have less and less confidence in the institutions of representative democracy, it is all the more crucial to enhance the democratic character of elections and thus reinforce the link between the expression of the people and the actual outcome of the vote.

3. Ten years after the elaboration of the Code of Good Practice in Electoral Matters by the European Commission for Democracy through Law (Venice Commission), following an initiative of the Assembly, considerable improvements, both in electoral legislation and practice, have taken place in most member States of the Council of Europe. However, the Assembly election observation reports still all too often identify irregularities which show that the holding of “free and fair” elections remain a major challenge to be addressed.

4 Whereas domestic electoral legislation in most member States generally offers a good basis to hold “free and fair” elections, recurrent violations are mainly due to the lack of political commitment at the highest level, generally on the part of the ruling political forces, to ensure full and effective implementation of the law and a level playing field to all candidates. Also, at present, the most serious violations tend to occur in the pre-electoral period and are thus more difficult to detect.

5. The Assembly is in particular concerned that the following election-related violations still persist in a number of Council of Europe member States: misuse of administrative resources; opacity of election campaign funding and other problems related to political party funding; lack of equal access to the media and of media impartiality; lack of independence and neutrality of the electoral administration; threats, pressure, violence and intimidation on candidates or voters; inaccuracy of electoral registers likely to lead to electoral fraud; restrictions on the right to stand for election, including excessive registration requirements for candidates and political parties; vote buying, ballot box stuffing, falsification of electoral protocols and other irregularities during vote counting; ineffective election complaints and appeals procedures.

6. While most of the violations that occur on voting day and during counting are more frequent in countries with a less long tradition of democracy, others, such as those linked to election campaign and political party funding, media impartiality and use of administrative resources, also occur in member States with longstanding democratic experience. Serious election violations have resulted in periods of instability and political crisis in some member States and may in general pose a threat to the “soft security” of societies.

7. In the light of recurrent and persistent problems in the electoral process, measures to improve the democratic character of elections should respond to three main imperatives: foster participation, ensure transparency and strengthen supervision. Therefore, the Assembly calls on Council of Europe member States to:

8. foster citizen participation in the electoral process, notably by:

8.1. drawing up electoral registers in such a way as to ensure that as many voters as possible register. First-time registration should be automatic, electoral registers should be permanent and recourse to supplementary lists exceptional. Multiple voting should be effectively prevented without, however, violating the principle of the secrecy of the vote;

8.2. ensuring a free choice for voters by making as many political options as possible available in line with the principle of political pluralism. Too strict requirements for the registration of candidates and political parties should be abolished;

8.3. opening lists in proportional electoral systems to allow citizens, where appropriate, to choose individual candidates from among different lists;

- 8.4. enhancing internal party democracy through adoption of the relevant legislative framework, in particular as regards transparency of financing of political parties and the selection of candidates for election, in line also with the Code of Good Practice in the field of Political Parties;
 - 8.5. opting for an electoral system which better reflects the opinion of the people and the political composition of the electorate, as well as other important aspects such as geographic distribution, gender or ethnicity;
 - 8.6. combining mechanisms relating both to electoral systems and the internal party functioning to promote increased representation of women in politics and raising awareness among the electorate and the leaders of political parties to foster women candidacies and the vote for women;
 - 8.7. ensuring that the design of the electoral system and the delimitation of constituencies facilitate the effective participation of minorities in the election process and thus promote minority representation as a factor guaranteeing interethnic peace and stability;
 - 8.8. guaranteeing that electoral campaigns are open and accessible and allow genuine debate that is not only of interest to voters but also informative for their choices. This requires inter alia equal access to, and impartiality of the public service media. Any national regulations on the role of private broadcasting media and the Internet, including websites, in election campaigns should strike a fair balance between freedom of expression and ensuring equal opportunities;
 - 8.9. requiring that political parties permanently refrain from exercising pressure, violence and intimidation of the population, and protecting voters and candidates against such threats. This requires strict compliance with the principle of secrecy of the ballot and application of dissuasive but proportionate sanctions against perpetrators (of any of these violations);
 - 8.10. guaranteeing that all possible means are used to make polling stations accessible,
 - 8.11. enabling all citizens to exercise the right to vote through proxy voting, postal voting or e-voting on the condition that the secrecy and the security of the vote are guaranteed; facilitating the participation in the electoral process of citizens living abroad, whilst ensuring that, if polling stations are set up abroad, their establishment is based on transparent criteria; safeguarding the right to vote of vulnerable groups (people with disabilities, the illiterate etc.) by adapting polling stations and voting material to their needs; abolishing legal provisions providing for general, automatic and indiscriminate disenfranchisement of all serving prisoners;
9. ensure transparency of the electoral process, notably in:
- 9.1. the organisation of elections: they should be organised by independent and impartial bodies, which should lead to the general introduction of central electoral commissions, ensuring that adequate resources are made available for the effective registration of voters and efficient organisation of the ballot. The latter should perform in a transparent, efficient and professional manner. Partisan electoral commissions, which have gained recently in popularity, do not seem to be the best solution. When they are opted for, there should be guarantees for their composition to be politically balanced and their functioning transparent throughout the electoral process;
 - 9.2. electoral campaign funding and party financing: legislation in this field is necessary not only to regulate the origin of funding and set a limit on expenditure but also to enable all voters to have access to data on the nature and amount of campaign and party spending. To ensure strict implementation of such legislation, any violations should be sanctioned by proportionate penalties;
 - 9.3. the conduct of voting: this requires the appropriate design of polling stations, the use of transparent ballot boxes, the presence of voting booths, public counting and the good regulation of distance voting. The presence of domestic or international observers should be facilitated in line also with the Venice Commission's guidelines on an internationally recognised status of election observer. National observers, including from civil society, should be authorised in all member States. Accreditation procedures should be simple and easily accessible;
10. strengthen supervision by ensuring an effective, transparent and accessible complaints and appeals system in order to reverse the culture of impunity for election-related offences and enhance public confidence in the electoral process. This requires notably that:

10.1. supervision be assigned to a judge (whether special, ordinary or constitutional), at least in last recourse, and covers the entire electoral process. The system of parliamentary verification of credentials employed in several States would not seem to ensure the necessary impartiality;

10.2. access to courts be facilitated through simplified, free procedures involving short but reasonable timeframes. Voters should be well informed of the existing appeal procedures and have easy access to the necessary forms;

10.3. dissuasive but proportionate penalties be provided in cases of fraud, manipulation or cheating. The penalties must be applicable to both the direct perpetrators (rarely the candidates themselves) and to those instigating the fraud. Public opinion and international observers should be informed of any sanctions imposed.

11. Finally, in the light of its election observation experience over the past twenty years, during which it has observed more than 140 parliamentary and presidential elections, involving some 1 900 of its members, the Assembly believes that there is a need to strengthen synergies and enhance follow-up to election observation both within the Council of Europe and through co-operation with other specialised international organisations. Therefore the Assembly:

11.1. resolves to enhance follow-up to recommendations made in international election observation reports in the context of the work carried out within its Monitoring Committee and in particular in the context of co-rapporteurs' visits to the States concerned, in the preparation of their reports and also, as appropriate, in the context of the Committee's annual progress report;

11.2 recalls in this context that the co-rapporteurs of the Monitoring Committee for the country concerned are entitled, in accordance with the Guidelines for the Observation of Elections by the Assembly, to participate *ex-officio* in an *ad hoc* committee to observe an election in that country;

11.3. resolves to strengthen synergies with other international organisations, which have an expertise in the field of elections, including after election observation, with a view to promoting the recommendations made by the international community and ensuring their implementation;

11.4. promote regular consultations, aiming at greater complementarity between the various Council of Europe bodies which have expertise in the field, notably: the Assembly, the European Court of Human Rights, the Venice Commission in legal terms and the Group of States against Corruption (GRECO). This unique potential of the Organisation could be turned to greater account;

11.5. invites the Secretary General of the Council of Europe to strengthen the Organisation's medium and long-term electoral assistance programmes by better targeting them at the problems observed.

B. Explanatory memorandum by Mr Gardetto, rapporteur

1. Introduction

1. On 21-23 October 2009 in Kyiv, the Forum for the Future of Democracy stated in the part of its conclusions concerning elections:

“[...] 3. Democratic elections are decisive for ensuring that the will of the people is respected in the shaping of the legislature and government at all levels. The process of translating the outcome of elections into political mandates should take place in a fair, impartial and trustworthy manner. Citizens must be sure that their collective will has been respected and, in turn, they will accept the verdict from the ballot box.”

“4. [...] The Council of Europe’s objective is to establish a common understanding about all the principles which qualify elections as being ‘free and fair’ in compliance with democratic standards. Those standards must be fully implemented in all elections throughout the Council of Europe space and in those States aspiring to join the Organisation or engage in a privileged relationship with it [...]”

2. The Assembly has played a key role in the creation of Europe’s electoral heritage. In particular, it initiated the Council of Europe’s standard-setting work on elections, which has served as a basis for improving national electoral legislation and, indeed, for drafting such legislation in some Eastern and South-Eastern European countries. It has made a significant contribution to the development of co-operation in this area, both within the Council of Europe, especially with the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections, and with other organisations, such as the Organisation for Security and Co-operation in Europe (OSCE) and its Office of Democratic Institutions and Human Rights (ODIHR), and the European Parliament.

3. It should be pointed out that, since it was set up in 2002, the Council for Democratic Elections has acted as an inter-institutional bridge in election matters within the Council of Europe. It is a tripartite body made up of representatives of the Venice Commission, the Assembly and the Congress of Local and Regional Authorities and is currently chaired by our colleague Andreas Gross. Its aim is to foster co-operation in the electoral field between the Venice Commission, which is a legal body, and the Assembly, the political body responsible for the observation of elections. The Council has encouraged the European Parliament, the European Commission, the ODIHR and also the Parliamentary Assembly of the OSCE, as well as the Association of Central and Eastern European Election Officials (ACEEEO), to join in its work in an observer capacity. Representatives of the ODIHR do participate regularly at its meetings in such a capacity.

4. The Parliamentary Assembly was also behind the introduction of institutionalised international election observation in Europe, having already observed the first elections held in Greece after the fall of the colonels in November 1974. Since 1989, it has observed more than 140 parliamentary and presidential elections in European countries, and some 1900 members of the Assembly have been deployed for this purpose. I personally have observed 10 elections for the Council of Europe (and have had the honour to head four observation missions) and have been a member of several other observation missions with the OSCE Parliamentary Assembly.

5. With the institution of special guest status in 1989, the principle that national legislative assemblies are chosen by regular, free and fair elections became a central precondition for any parliament seeking special guest status with the Assembly. This principle was further strengthened and became a clear precondition for accession to the Council of Europe by the Vienna Declaration, adopted at the first Council of Europe Summit of Heads of State and Government in October 1993. With the gradual establishment of a monitoring procedure and post-monitoring dialogue, compliance with the principles relating to free and fair elections has been regularly monitored by the Parliamentary Assembly not only in States applying for membership but also in member States which are subject to a monitoring procedure or post-monitoring dialogue. The same condition has been imposed with respect to the more recently created Partner for Democracy status for parliaments in the Council of Europe’s neighbourhood.

6. As the Assembly election observation reports and opinions and studies of the Venice Commission indicate, considerable improvements both in electoral legislation and practice have taken place in most member States in the last ten years. That said, in spite of the undeniable achievements regarding democratic elections, the Assembly still all too often identifies irregularities, which show that “free and fair” elections remain a major challenge to be addressed. The Assembly is confronted with a number of recurrent problems detected throughout the electoral process. As a general rule, these take on two forms:

firstly, they may be observed in the application of the relevant laws, such as unintentional difficulties associated with the fact that democracy has only recently been introduced in some countries. Other irregularities, however, are very much intentional, often caused by the unwillingness of political key players to secure a level playing field to all candidates, and come under the heading of election fraud. It should be noted that, over time – the Assembly has been observing elections in Council of Europe member States which are subject to a monitoring procedure or a post-monitoring dialogue for almost twenty years – the justifications given by the authorities concerned, based on the lack of experience or inadequacy of legal and administrative staff, are becoming less and less credible. It should also be noted that electoral violations have changed over time. While, initially, irregularities occurred mainly on voting day, at present, the most serious violations occur in the pre-electoral period and it is thus more difficult to detect them.

7. Serious election irregularities have often resulted in periods of instability and political crisis in some Council of Europe States and may in general pose a threat to the “soft security” of societies: “The Council of Europe has been, is, and will be indispensable in this wider European security concept combining hard and soft security”.¹

8. Moreover, as emphasised in the Committee of Ministers document on the Council of Europe’s priorities for 2012-2013, the promotion of democratic elections remains one of the organisation’s priority activities.²

9. By highlighting the recurrent problems observed by our Assembly and its international partners during election observation missions, this report intends to identify the main challenges that Council of Europe member States face today in the area of electoral legislation and practice and suggest possible measures to improve the democratic character of elections.

10. In the context of the preparation of this report, the Committee on Political Affairs and Democracy held a hearing last December with Professor Jean-Claude Colliard, Vice-President of the Council for Democratic Elections and member (on behalf of France) of the Venice Commission, Dr Beata Martin-Rozumilowicz, Head of the OSCE/ODIHR’s Election Department, Mr Nicolas Kaczorowski, Country Director, International Foundation for Electoral systems (IFES), Tunisia Office, and Prof. Richard Ghevontian.

11. I am particularly grateful to all our guests for the most interesting exchange of views. At the committee’s request and on the basis of comments by Mr Colliard, the Venice Commission’s Council for Democratic Elections has produced a written contribution to this report for which I am also most grateful. The Council for Democratic Elections has decided to continue work on the subject and is currently considering concrete areas on which its future work should focus. This report has also drawn heavily on two other Venice Commission reports drawn up in the context of the Council for Democratic Elections, one from 2006 entitled “Electoral law and electoral administration in Europe – Synthesis study on recurrent challenges and problematic issues”³ and the other from 2010 on “the timeline and inventory of political criteria for assessing an election”⁴ (drawn up by our colleague Andreas Gross). The latter report rightly underlines that the free and fair character of elections cannot be assessed solely on the basis of the voting day but that the whole pre-electoral and post-electoral process must be taken into account. Finally, the reports presented at the Tirana conference, held on 2-3 July 2012 under the Albanian chairmanship on “The European electoral heritage: ten years of the Code of Good Practice in Electoral Matters”, have been particularly useful for the preparation of the present report.

2. Europe’s electoral heritage

2.1. Principles and standards of the Council of Europe and other sources

12. Article 21 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations on 10 December 1948, may be seen as the precursor to convention-based protection of the right to free elections at international level, since it is the only provision prior to Article 3 of Protocol No. 1 to the European Convention of Human Rights (ECHR).

¹ Communication by the Secretary General of the Council of Europe at the Assembly’s 2nd part-session in 2010, D13(2010), 27 April 2010.

² SG/Inf(2011)4 FINAL, 17 February 2011.

³ CDL-AD(2006)018.

⁴ CDL-AD(2010)037.

13. In particular, it enshrines the right to take part in the government of one's country either directly or through freely chosen representatives and the right to participate in free elections by universal suffrage held by secret vote.⁵

14. However, the UN declaration is only a solemn proclamation of principles, and the absence of a judicial instrument for monitoring compliance with the rights guaranteed inevitably limits the legal scope of the rights mentioned, in contrast with the system set up by the ECHR.

15. The principles guaranteeing the democratic nature of elections recognised by the Council of Europe are a specific aspect of the European constitutional traditions known as "Europe's electoral heritage". It comprises two aspects. On the one hand, a hard core, "being the constitutional principles of electoral law such as universal, equal, free, secret and direct suffrage", and on the other hand the principle that "truly democratic elections can only be held if certain basic conditions of a democratic State based on the rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees, are met". These various basic principles and conditions have been further developed in a large number of Council of Europe instruments.⁶

16. Protocol No. 1 to the ECHR states in Article 3: "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".

17. The right to free elections is a cross-cutting right involving numerous and increasing interactions with other rights and principles guaranteed by the Convention, the most important of which are the principle of freedom of expression and the freedoms of assembly and association (Articles 10 and 11 ECHR).

18. As far as presidential elections are concerned, the European Court of Human Rights does not rule out the possibility of the application of Article 3 of the Protocol "(s)hould it be established that the office of the Head of the State had been given the power to initiate and adopt legislation or enjoyed wide powers to control the passage of legislation or the power to censure the principal legislation-setting authorities".⁷

19. The European Court of Human Rights, and the former European Commission of Human Rights, have evolved a body of bold case law resulting in a significant expansion of the rights guaranteed by this provision. For instance, while the principle of universal suffrage was not retained in the drafting of Article 3 of Protocol No. 1, it was recognised by the former Commission already in 1967 and has since been confirmed in many cases both by the Commission and the Court. In the last twenty years, the Strasbourg case law has reduced the member States' margin of discretion in this area, which is traditionally a core element of sovereignty, and strengthened the protection provided by the right to free elections.⁸

20. For its part, the election-related standard-setting document of the OSCE is the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), generally known as the Copenhagen Document. It provides a more elaborate, but non-exhaustive, list of election related rights of individuals, and obligations of a State. Nevertheless, the Document is politically, not legally binding, as it was not subject to a formal ratification procedure.⁹

21. Moreover, in the past few years, the two statutory bodies of the Council of Europe, the Parliamentary Assembly and the Committee of Ministers, have adopted a considerable number of resolutions and recommendations containing principles relevant to the subject of elections, especially in the context of reports of the Assembly on the situation of democracy in Europe¹⁰ or through resolutions or

⁵ Article 25 of the International Covenant on Civil and Political Rights, which was adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976, is quite similar to Article 21 UDHR but adds a reference to non-discrimination and unreasonable restrictions on implementation of the right guaranteed. In 1996, the Human Rights Committee adopted General Comment No. 25 consisting of detailed observations on Article 25 of the Covenant.

⁶ Code of Good Practice in Electoral Matters, Explanatory Report, CDL-AD(2002)023rev, para. 2.

⁷ *Boškoski v. "Former Yugoslav Republic of Macedonia"*, 2 September 2004, Application No. 11676/04. See also *Paksas v. Lithuania*, 6 January 2011, Application No. 34932/04.

⁸ See in particular: *Podkolzina v. Latvia*, 9 April 2002, Application No. 46726/99; *Melnitchenko v. Ukraine*, 19 October 2004, Application No. 17707/02; *Aziz v. Cyprus*, 22 June 2004, Application No. 69949/01; *Hirst v. the United Kingdom* (No. 2), 6 October 2005, Application No. 74025/01; *Sejdić and Finci v. Bosnia and Herzegovina*, 22 December 2009, Applications Nos. 27996/06 and 34836/06. A recent analysis of the Strasbourg case law in this area was presented by Mr Vincent Berger, Jurisconsult of the Court at the above-mentioned Tirana Conference.

⁹ See also Doc. CDL-AD(2010)037.

¹⁰ Doc. 11202 (2007); Resolution 1547 (2007); Doc. 11214 (2007); Resolution 1548 (2007); Resolution 1617 (2008); Resolution 1618 (2008); Resolution 1619 (2008).

recommendations on electronic democracy¹¹ and e-voting,¹² on the balanced participation of women and men in political and public decision making¹³ and the need to increase the representation of women in politics through electoral systems¹⁴, on corruption in the funding of political parties and electoral campaigns,¹⁵ on media coverage of election campaigns¹⁶ and on thresholds and other features of electoral systems.¹⁷ During the June 2012 part-session, the Assembly adopted Resolution 1889 (2012) on the portrayal of migrants and refugees in election campaigns.

2.2. The Code of Good Practice in Electoral Matters and other standards and principles established by the Venice Commission¹⁸

22. The Parliamentary Assembly launched the initiative to draw up the Code of Good Practice in Electoral Matters of the Venice Commission with the aim of putting together the “universal standards which set absolute minimum requirements or prohibit certain forms of conduct in order for elections to be considered free and democratic”, thus making it possible to “prevent the application of different standards and make a positive contribution towards the assessment of situations in member States regarding the monitoring of their commitments”.¹⁹ In its Resolution 1264 (2001), the Assembly accordingly called on the Venice Commission to “devise a code of good practice in electoral matters”.

23. The Code was drawn up by the Venice Commission’s Council for Democratic Elections and was adopted by the Venice Commission in 2002 and then approved by the Assembly in January 2003.²⁰ Since then, it has provided significant assistance for the legislators of a number of member States to improve their electoral legislation.

24. As mentioned above, the Code incorporates the standards and principles of Europe’s electoral heritage, especially such constitutional principles as “universal, equal, free, secret and direct suffrage”, but it also sets out the basic conditions for their implementation, such as respect for fundamental rights, stability of the overall electoral legal framework and procedural guarantees such as the organisation of the ballot by an impartial body and the existence of an effective appeals and observation system. It makes election observation one of the conditions for the implementation of the principles of Europe’s electoral heritage, as a “procedural guarantee”. The Code is the most detailed legal instrument on electoral matters and is used by the Assembly Bureau’s ad hoc committees for the observation of elections as a basis for their work.

25. In accordance with its role as a Council of Europe advisory body, the Venice Commission has assisted several member States in drafting electoral legislation and has, for example, conducted a large number of comparative studies that have led to the drafting of standard-setting instruments.

26. Most of the recent reports and studies on electoral matters have been drawn up in the context of the Council for Democratic Elections and then adopted by the Venice Commission and, where appropriate, the Parliamentary Assembly. Among the recent documents produced in this connection, particular mention might be made of the Code of Good Practice in the field of Political Parties,²¹ the Guidelines on media analysis during election observation missions²² and the Guidelines on an internationally recognised status of election observers.²³

¹¹ See in particular: Resolution 1653(2009) on Electronic democracy.

¹² Recommendation Rec(2004)11 of the Committee of Ministers to member States on legal, operational and technical standards for e-voting; Recommendation Rec(2004)15 of the Committee of Ministers to member States on electronic governance (“e-governance”); Recommendation CM/Rec(2009)1 of the Committee of Ministers to member States on electronic democracy (e-democracy).

¹³ Recommendation Rec(2003)3 of the Committee of Ministers to member States on balanced participation of women and men in political and public decision making.

¹⁴ Resolution 1706 (2010) and Recommendation 1899 (2010) of the Parliamentary Assembly.

¹⁵ Recommendation Rec(2003)4 of the Committee of Ministers to member States on common rules against corruption in the funding of political parties and electoral campaigns.

¹⁶ Recommendation CM/Rec(2007)15 of the Committee of Ministers to member States concerning media coverage of election campaigns.

¹⁷ Resolution 1705 (2010) and Recommendation 1898 (2010) of the Parliamentary Assembly.

¹⁸ CDL-AD(2002)23rev.

¹⁹ Resolution 1264 (2001) on the Code of Good Practice in Electoral Matters, paras. 2 and 4.

²⁰ Resolution 1320 (2003) and Recommendation 1595 (2003) – Code of Good Practice in Electoral Matters.

²¹ CDL-AD(2009)021. See also Resolution 1736 (2010) on the code of good practice in the field of political parties.

²² CDL-AD(2009)031.

²³ CDL-AD(2009)059.

27. In the above-mentioned report on “the timeline and inventory of political criteria for assessing an election”,²⁴ the Venice Commission has, *inter alia*, listed the internationally recognised human rights which must also be exercised in the electoral context, without discrimination and restrictions, alongside the right to universal, equal, free, secret and direct suffrage including:

- the right to equality and non-discrimination;
- the right to associate into political organisations, such as political parties, candidate support organisations or groups favouring or opposing referenda propositions;
- the right to assemble peacefully for meetings, rallies and to otherwise demonstrate support for electoral competitors in locations easily accessible to the general public;
- the right to move freely, *inter-alia*, to build electoral support;
- the right to be free of the threat of violence or other forms of coercion, while making political choices or exercising political expression;
- the right to hold political opinions without interference;
- the right to freedom of political expression, including the freedom to seek, receive and impart information and ideas in order to develop informed choices required for the free expression of the will of the electors;
- the right to equitable access to public media in the electoral context;
- the right to an effective remedy for the violation of protected rights.

28. The Venice Commission has also adopted numerous opinions on States’ electoral legislation, and its expertise in this area enjoys very wide international recognition. These opinions are generally drawn up in close co-operation with the OSCE/ODIHR both at the request of national authorities and, quite frequently, the Assembly (especially its Monitoring Committee).²⁵

29. The Venice Commission has also regularly co-operated in the electoral field with the majority of States that have joined the Council of Europe since 1990, in particular with Albania, Armenia, Azerbaijan, Georgia, Moldova and Ukraine. It has worked on a more occasional basis in numerous other States, especially Bulgaria, Croatia, Hungary, Romania, the Russian Federation and: “the former Yugoslav Republic of Macedonia”. In 1997, it was tasked with drawing up a first draft electoral law for Bosnia and Herzegovina.

3. Recurrent challenges and problems in the electoral process²⁶

30. Election fraud can be seen at all stages of an election: during the pre-election period, on polling day and even when votes are counted. Throughout the last twenty years, techniques to usurp the will of the people have become more and more sophisticated.

31. It should be emphasised that this report does not dwell on each of the problems observed in the electoral process but focuses more on the most frequently identified irregularities, including and most significantly in the pre-electoral period, that prevent the holding of free and transparent elections.

32. Upon the specific request of members of our Committee, I have also included a short section on the issue of participation of minorities in elections drawn on the very interesting report recently presented by Professor J. Velaers at the above-mentioned Tirana Conference on “Electoral law and representation of minorities”.

²⁴ CDL-AD(2010)037.

²⁵ See also the Co-operation Agreement between the Parliamentary Assembly of the Council of Europe and the European Commission for Democracy through Law (Venice Commission), CDL(2004)102, signed on 4 October 2004.

²⁶ This part mainly deals with recurrent problems identified in the election observation reports by the Assembly Bureau’s ad hoc committees in countries under monitoring procedure or subject to a post-monitoring dialogue. References to other Council of Europe member States are also made on the basis of other Council of Europe sources such as the case law of the European Court of Human Rights and reports by the Venice Commission and the Group of States against Corruption (GRECO).

33. As regards problems related to women's representation in politics, I refer to the opinion on my report to be presented by the Committee on Equality and Non-Discrimination, as well as to the separate report that the latter committee is preparing on the more specific issue of women representation and political parties. As regards problems in the participation of migrants I refer to Resolution 1889 (2012) on the portrayal of migrants and refugees during election campaigns and to the opinion on my report to be presented by the Committee on Migration, Refugees and Displaced Persons.

3.1. Election administration: the issue of neutrality and impartiality

34. Election administration is one of the key aspects that are essential for maintaining the integrity of elections throughout the electoral process and ensuring application of the five constituent criteria of Europe's electoral heritage. According to the Code of Good Practice, "an impartial body must be in charge of applying electoral law. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results". Matters such as the drawing of constituency boundaries, the allocation of seats, the way the campaign is run, the calculation of funding and reimbursements, etc. should accordingly be dealt with or managed by an independent, impartial electoral administration or, at the very least, independent electoral commissions.

35. The emphasis seems to be placed on the performance of the election administration – which should be impartial – rather than on formalistic criteria, often difficult to verify, such as membership of a political party.

36. The requirement of neutrality on the part of the State and the administration is particularly crucial as the government is a stakeholder insofar as its very existence may depend on the results of the elections. It is therefore difficult for it to be both judge and party. It is nonetheless customary for elections to be organised by the election administration and, as a general rule, to be supervised by the executive, such as the Ministry of the Interior or the Ministry of Justice. Accordingly, the aforementioned Code states that such organisation is only permissible "(i)n States where the administrative authorities have a long-standing tradition of independence from the political authorities", the obvious aim being to ensure that the election administration is not under pressure from the political authorities attempting to influence it in the application of the electoral law. In France, for example, the electoral administration is under the supervision of the courts.

37. At the same time, it would seem necessary to set up independent, impartial electoral commissions in the emerging democracies in order to guarantee that the elections are properly conducted or at least remove serious suspicions of irregularity, and this at all levels, from the national level to the polling station level. The Code of Good Practice in Electoral Matters recommends that any central electoral commission (CEC) be permanent, as an administrative institution responsible for liaising with local authorities and the other lower-level commissions. The Venice Commission stresses as a positive development that formally independent electoral commissions are now common in Central and Eastern Europe.²⁷ Election commissions have been or are being gradually established also in some countries with established traditions of conducting democratic elections as they offer the advantage of a professional and impartial institution which can engage with international partners to exchange election management experience and best practice.

38. However, the presence of the executive in the administrative supervision of elections is becoming more subtle: the executive, no longer presenting itself openly as the sole supervisor of electoral operations, generally agrees to the setting up of independent electoral commissions while at the same time retaining control over their composition. Accordingly, election observation reports often note the political polarisation of the electoral administration: a significant number of these bodies are still appointed by the executive.

39. To mention some examples, in the case of Azerbaijan, the Venice Commission and the ODIHR proposed in 2004 that the composition of the Central Election Commission (CEC) set out in the Election Code be revised in order to ensure better compliance with the requirement of independence, stating that: "The commissions should enjoy the confidence of all major election stakeholders. To achieve this goal they should not be dominated by pro-government forces. The existing provisions are not sufficient to ensure that."²⁸ During the last presidential elections in Azerbaijan, the Assembly regretted that this

²⁷ CDL-AD(2006)018, para. 22.

²⁸ CDL-AD (2004)016 rev, para. 8.

recommendation had still not been taken up through an amendment to the electoral law or a change of behaviour (Doc. 11769).

40. The Assembly's observers also voiced criticism concerning the composition of the election commissions in Georgia following the two missions in 2004. For example, they expressed regret that "the composition of the CEC and of the Precinct Electoral Commission was still politically imbalanced. This was the result of the Baker Formula that favours the incumbent government in the composition of the election commissions" (Doc. 10151).

41. A partisan system of election administration does not seem to be the ideal solution either. Thus, in Albania, a sophisticated partisan system of election administration, aiming at increasing the confidence of the two biggest parties in the conduct of the elections, has been criticised as the election administration is divided along party lines and is thus vulnerable to blockage of its work by one of the main political parties. As a result, the co-rapporteurs of the Monitoring Committee have noted "an overall lack of trust in the impartiality of the election administration"²⁹ and the Venice Commission has recommended changing the current formation mechanism for election commissions in order to "narrow the scope for possible partisanship and politicisation of the election administration".³⁰ The fact that, in the 2009 parliamentary elections, the political parties made excessive use of their right to replace members of mid-level and lower level election commissions at will and without any legal cause has also been criticised by observers.

42. The election observation mission that visited Ukraine for the 2007 pre-term parliamentary elections criticised "the politicised nature of the CEC" (Doc. 11469).

43. The Assembly ad hoc committee's report on the observation of the 4 December 2011 parliamentary elections in Russia pointed out that representatives of most parties had expressed a high degree of distrust in the impartiality of election commissions at all levels. They also questioned the independence of various State administration bodies and criticised their bias in favour of the governing party. It was also felt that there was a general lack of trust in the Russian electoral administration because of its composition, which failed to guarantee its independence and impartiality. Later, during the campaign for the 4 March 2012 presidential election, the Assembly's ad hoc committee was informed by the candidates it met that the CEC had generally replaced members of the election commissions so as to exclude individuals who had refused to commit irregularities in favour of United Russia at the 4 December 2011 Duma elections (Doc. 12833).

44. In 2012, the Assembly report on the observation of the parliamentary elections in Armenia criticised the operation of the election administration on polling day for "lack of organisation inside the polling stations" with proxies creating chaos. The Assembly's observers also established that "(e)lection commissions and courts dealt with election complaints in a manner that often left stakeholders without effective consideration of their claims, because of the overly formalistic approach to handling complaints" (Doc. 12937).

45. Observation reports also frequently point out a lack of clarity or legal precision in the description of the obligations and responsibilities of the various electoral bodies subordinate to the Central Election Commission or to other election commissions, thus leading to a risk of abuse and inconsistency.

46. For example, in "the former Yugoslav Republic of Macedonia", despite a Venice Commission recommendation in 2006 that "the Draft Code (should) make it clear that the State Election Commission (SEC) and other election commissions have the responsibility to supervise the work of subordinate electoral bodies, which should prompt the commissions to take a more proactive approach to addressing irregularities",³¹ the interpretation of the law has not been able to prevent problems from arising: "The provision that all Election Board presidents be State or municipality officials proved difficult to implement and it was unclear what actually constituted a campaign activity and what constituted regular party activities, rendering provisions against early campaigning ineffective" (Doc. 11015).

47. Further recurrent problems of electoral administration refer to organisational structures. Thus, for instance, at the 2012 parliamentary and presidential elections in Serbia, the absence of a regional tier of election administration was once more criticised by international observers as being responsible for the overburdening of local electoral commissions (Doc. 12938).

²⁹ AS/Mon(2012)11 rev.

³⁰ CDL-AD(2011)042.

³¹ Joint opinion on the draft electoral code of "the former Yugoslav Republic of Macedonia" by the Venice Commission and the OSCE/ODIHR, 17-18 March 2006, para. II. 9.

48. A more specific challenge concerns the organisation of voting abroad. Thus, for example, in Moldova, where the opportunity for citizens to vote abroad was only introduced at the 2010 parliamentary elections, the fact that the criteria for establishing polling stations abroad were not transparent and the distribution of polling stations abroad did not correspond to the distribution of citizens of voting age abroad has been severely criticised. The governing parties have in particular been accused of having advantaged voting in countries where the majority of voters supports them at the expense of those foreign countries where the majority of voters favours the opposition (Doc. 12476).

3.2. *The right to vote and stand for election: universality of suffrage*

49. It is important that the fundamental rights to vote and to stand for election are neither formally nor in practice restricted for unjustified reasons. Currently, regulations in Council of Europe member States are in general in line with international standards. However, some problems remain as regards, on the one hand, restrictions for particular groups, and problems with the registration of voters and of candidates.

3.2.1. *Restrictions for particular groups*

50. Restrictions on the right to vote of convicted prisoners have given rise to cases brought before the European Court of Human Rights. Thus, in its *Hirst No. 2 v. the UK* (no. 74025/01) judgment of 6 October 2005 the Court found a violation of the right to vote of the applicant holding that general, automatic and indiscriminate disenfranchisement of all serving prisoners, irrespective of the nature or gravity of their offences, is incompatible with Article 3 of Protocol No. 1.

51. In a more recent judgment of 22 May 2012 in the case of *Scoppola v. Italy No. 3* (no. 126/05), the Grand Chamber confirmed its *Hirst (No 2)* judgment but did not find a violation of the right to vote of the applicant who was imposed a ban on public office as a result of his life sentence. The Court notably found that, under Italian law, only prisoners convicted of certain offences against the State or the judicial system, or sentenced to at least three years' imprisonment, lost the right to vote. There was, therefore, no general, automatic, indiscriminate measure of the kind that led the Court to find a violation of Article 3 of Protocol No. 1 of the Convention in the *Hirst (No 2)* judgment of October 2005. In this latter judgment of May 2012, the Court accepted the argument made by the United Kingdom Government, who had been given leave to make submissions as a third party, that each State has a wide discretion as to how it regulates the ban, both as regards the types of offence that should result in the loss of the vote and as to whether disenfranchisement should be ordered by a judge in an individual case or should result from general application of a law.

52. Disenfranchisement of all prisoners, regardless of the severity of the crime committed, is also a matter of concern in Armenia and in Bulgaria.

53. As regards the voting rights of citizens living abroad, the Parliamentary Assembly, in its Resolution 1459 (2005), invited member States to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. The Venice Commission, for its part, observed that since the 1980s the recognition of external voting rights had gained ground in Europe. While it also recommended that member States facilitate the exercise of expatriates' voting rights, it did not consider that they were obliged to do so. Rather, it viewed such a move as a possibility to be considered by the legislature in each country, which had to balance the principle of universal suffrage on the one hand against the need for security of the ballot and considerations of a practical nature on the other.³²

54. The matter was brought before the European Court of Human Rights in the case of *Sitaropoulos v. Greece* which concerned the impossibility of Greek expatriates to exercise their right to vote from the place of their residence. Contrary to the Chamber judgment of 8 July 2010, which found a violation of Article 3 of Protocol No. 1, the Grand Chamber, in its judgment of 15 March 2012, considered that, although "the presumption in a democratic State must be in favour of inclusion", the latter provision does not go so far as to require the State concerned to make arrangements for the exercise abroad of the voting rights of persons temporarily or permanently absent from the State. The Court further observed that a comparative survey of the legislation of Council of Europe member States in this sphere shows that, while the great majority of them allow their nationals to vote from abroad, some do not. As to the arrangements for exercising that right put in place by those Council of Europe member States that allow voting from abroad, the Court noted that there is currently a wide variety of approaches, including voting in polling stations set up abroad, and/or postal voting, proxy voting and e-voting.

³² See in particular the Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev.

3.2.2. Voter registration

55. The issue of voter registration is bound up with the requirement of universal suffrage as it establishes their entitlement to vote and ensures the legitimacy of the electoral process: if the registration system has defects, the entire process may be perceived as illegitimate. For the Venice Commission, voter registration “should be made much easier or even automatic”³³. However, it represents “one of the (...) least successful parts of electoral administration in emerging and new democracies, especially in post-conflict situations with a large number of refugees and internally displaced persons”³⁴.

56. In this respect, many Council of Europe member States have made considerable progress in the last years, in particular by introducing unified and computerised voter registers. However, shortcomings remain. Imprecise and incomplete lists may in fact contain names of invented or deceased voters and voters who have been registered twice, or else they may not include the names of some living voters. In Moldova, the election observation reports referred to “cases when unknown persons were registered as residing in apartments without the owners’ consent” (Doc. 11878).

57. The faulty nature of many electoral rolls can be ascribed to several factors. For example, if there is no single centralised register at the national level it is hard to draw up complete and legitimate voter lists. In several countries, voter rolls are drawn up solely at local and regional authority level, thus facilitating multiple entries of the same voter on several rolls at the same time. Election observers frequently pinpoint this irregularity, which requires considerable investment in human and material resources to remedy. In this connection, the absence of a national electoral register was once again criticised by the Assembly at the time of the September 2010 constitutional referendum in Moldova.

58. The lack of a permanent list also seems to encourage irregularities. Periodical lists have a number of drawbacks and create a climate favourable to election fraud in some emerging democracies. Very often, voters are registered within a relatively short period, thus increasing the risk of disruption due to political upheavals. Moreover, owing to a lack of time, the periodical list is particularly vulnerable with regard to its accuracy and completeness: in order to get the official list ready in time for polling day, the quality of the data checking process is often compromised. In this connection, the law on the State Register of Voters in Ukraine proposing to draw up a “permanent, computerised and constantly updated” voter register has helped to reduce election fraud at the voter registration stage.

59. In order to address the problem of the inaccuracy of voter lists, some countries have drawn up supplementary lists. A supplementary list should normally only be used in very specific cases involving people who have changed their address or have reached voting age since the publication of the final list, but this method is actually employed in some States in order to enable voters who cannot find their name on the official lists on polling day to enter their names on the supplementary list and cast their ballot. According to the OSCE/ODIHR, the proportion of voters entered on a supplementary voter list has doubled in less than ten years. According to the Venice Commission, this use of supplementary lists “increases the risk of multiple voting and the risk of voters voting in the wrong municipality. (...) As a general rule, election day registration should be avoided, if possible, and at any rate should not take place at the polling station”³⁵. The practice of supplementary lists is even more suggestive of manipulation in the case of out-of-country voting which cannot be properly observed. Thus, in the 2010 parliamentary elections in Moldova, observers criticised the fact that almost all voters abroad were added to supplementary lists on election day (Doc. 12476).

60. It is worth recalling that the, rather arcane, system of voter registration without personal identifiers in Great Britain has been criticised by the Venice Commission and the Monitoring Committee of our Assembly as open to electoral fraud. This vulnerability was exacerbated by the introduction of postal voting on demand, although the latter was introduced for good reasons, namely with a view to improving citizens’ participation in elections and facilitating the vote. The Monitoring Committee concluded that, “despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the people of the United Kingdom” and thus decided not to propose the opening of a monitoring procedure for the United Kingdom, opening requested by members of the Assembly. However, the Monitoring Committee stressed that if the United Kingdom delivers democratic elections, this is “despite the vulnerabilities in its electoral system. These vulnerabilities

³³ CDL-AD(2012)005.

³⁴ CDL-AD(2006)018.

³⁵ CDL-AD(2006)018.

could easily affect the overall democratic nature of future elections in Great Britain.” Together with numerous British experts, the Monitoring Committee thus recommended to eliminate those vulnerabilities.

61. Both the Venice Commission and the Monitoring Committee concluded that postal voting on demand is “an important means to counter the increasingly lower turnout at British, and indeed elections in European States, and is a preferred option for many voters.” Postal voting would not run counter to Council of Europe standards for democratic elections, “on the condition that the security of the vote is guaranteed”.³⁶

3.2.3. Restrictions on the right to stand for election and registration of candidates

62. As regards restrictions imposed on particular groups to stand for election, a five-year citizenship and residence requirement in Armenia has been criticised by international observers. The fact that in the 2010 general elections in Bosnia and Herzegovina citizens were barred from standing for election for ethnic reasons constitutes a clear violation of the European Convention of Human Rights and has been repeatedly criticized by the international community, including our Assembly.³⁷

63. The registration of candidates is also an important issue as too restrictive candidacy requirements and/or their incorrect implementation may hinder citizens to make use of their right to stand for election.

64. Rules regulating the registration of political parties are of particular importance in this respect. In the Russian Federation, the restrictive character of these rules has been systematically criticised by international observers as restricting citizens’ rights to create associations as protected by the Constitution and Articles 10 and 11 of the ECHR. The Assembly observation report on the parliamentary elections of 4 December 2011 notes: “The Law on Political Parties requires all political parties to have at least 45 000 members and regional branches with at least 450 members in more than half of the subjects of the Federation. Several attempts to register political parties were made since the elections of 2007 and only one, the “Right Cause” (*Pravoe Delo*), managed to get registered for the 2011 elections. All other formations were denied registration (the People’s Freedom Party, the ROT Front Party (Russian Unified Labor Front), and Other Russia). The European Court of Human Rights delivered a judgment in 2011 on the case of the dissolution of the Republican Party in 2007 on grounds of its failure to comply with the minimum membership and regional representation requirements; this was considered by the Court to be in breach of Article 11 of the Convention. The Russian authorities challenged the ruling to the Court’s Grand Chamber; this appeal was rejected” (Doc. 12833). In its conclusions, the Assembly report welcomes the fact that the President of the Russian Federation has announced a comprehensive reform of the Russian political system, including a drastic simplification of the rules governing the registration of political parties (*ibid.*).

65. In the parliamentary elections of 2010 in Azerbaijan, Assembly observers criticised the fact that a number of citizens were not admitted to stand for election because of minor technical mistakes and without due consideration of the principle of proportionality of errors (Doc. 12475). There have also been allegations that candidates were directly intimidated or their supporters were put under pressure to withdraw their signature from the relevant signature sheets.³⁸

3.3. Participation of minorities in elections

66. As noted by Professor Velaers, the Venice Commission has so far applied a double approach as regards the participation of minorities in elections. While noting that “the long term interests of minorities and of societies as a whole are in principle, better served by representation under the ordinary electoral system, which guarantees equal rights to citizens, irrespective of the group to which they are initially affiliated”, it does not exclude “specific measures of a transitional nature when needed in order to ensure proper representation of minorities”.³⁹

67. For its part, the European Court on Human Rights allows States a wide margin of appreciation in the choice of the voting system and more specifically in balancing the requirement of the protection of

³⁶ Application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom, Opinion of the Monitoring Committee for the Bureau of the Assembly, Doc. 11565 Addendum II, April 2008.

³⁷ Doc. 12432. See also the judgment of the Court in *Sejdić and Finci v. Bosnia and Herzegovina*, 22 December 2009, Applications Nos. 27996/06 and 34836/06.

³⁸ OSCE/ODHIR: Azerbaijan, Parliamentary Elections 7 November 2010, Election Observation Mission Final Report, Warsaw, 25 January 2011, pp. 9-10.

³⁹ Report on Dual Voting for Persons belonging to National Minorities adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008), CDL-AD(2008)013, para. 65

minorities with the national, traditional constitutional and electoral arrangements. The Court accepts that all votes must not necessarily have equal weight as regards the outcome of the election. If a legitimate aim is pursued – providing means for an effective participation of minorities – and if the action taken is proportional to this aim and to the real needs of minority group in question, then the affirmative action can be justified. Affirmative action electoral rules can be formulated for the various dimensions of the electoral system and the electoral law.⁴⁰

68. As regards the choice of the electoral system, in principle, the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies. However, the proportionality of the outcome may be influenced by other factors, beyond the choice of the electoral system as such, including the presence of an electoral threshold, the size of the constituencies, the number of seats per constituency. In Albania for, example, the Greek minority party has been able to enter the Parliament only due to the mixed electoral system.

69. The delimitation of the constituencies can be used as a tool to advantage or to disadvantage minorities.⁴¹ Single member electoral constituencies, in areas where minorities are concentrated, enhance the chance for the minorities to be represented. In Croatia the creation of a country-wide electoral district allows minorities to choose whether to vote for a minority candidate or for a candidate in the constituency of their residence.

70. Electoral thresholds can constitute important obstacles for minority parties. To lower the threshold – as for instance Lithuania did - or even to abolish it for minority parties is an effective affirmative action to enhance minority representation. In Serbia, the minority parties failed to cross the 5% threshold in the 2003 parliamentary elections. After the abolition of the threshold in 2004, five minority parties representing Hungarians, Bosniaks, Albanians and Roma returned to Parliament in the next elections of 2007. In Poland and Germany, the threshold of 5% does not apply to minority lists. The European Court on Human Rights stated in the case *Yumak and Sadak v. Turkey*, that it would be desirable for the 10% threshold applied to Turkish elections to be lowered and/or for corrective counterbalances to be introduced to ensure optimal representation of the various political tendencies.⁴² Our Assembly has recommended decreasing electoral thresholds that are higher than 3%.⁴³

71. Reserved seats on the basis of ethnic affiliation are the most obvious way of favouring minority representation. In Slovenia, one seat in the National Assembly is reserved for the Italian minority and one seat for the Hungarian minority. In Romania, the organisations of citizens belonging to a national minority, which do not win parliamentary representation in either chamber, are entitled to one seat each in the Chamber of Deputies on the condition that the organisation obtains at least 10 per cent of the average number of valid votes cast for an elected Deputy. After the 2008 elections, 18 seats were distributed among ethnic minority parties. In Croatia, the law specifies that, out of 140 seats, eight seats are guaranteed in advance for national minority members.

72. The Venice Commission has a nuanced opinion on the system of reserved seats, emphasising that “all the solutions providing for reserved seats for persons belonging to national minorities imply the disadvantage that the persons concerned are obliged to declare their ethnic or linguistic identity”.⁴⁴

73. In some countries persons, belonging to national minorities are entitled to cast two votes: they may vote for a general list but may also vote for specific minority lists (“dual voting rights”). Slovenia is currently the only country that grants dual voting rights to the members of the Hungarian and Italian minorities. The Croatian Constitution stipulates that the law might give members of all national minorities, besides the general voting right, the right to elect their minority representatives to the Sabor (the Croatian parliament), but such a dual voting has not been introduced up to now. For the Venice Commission dual voting needs to be very exceptional and may be accepted only if “it respects the principle of proportionality under its various aspects”.⁴⁵

⁴⁰ See the report on “Electoral law and representation of minorities” presented by “Professor J. Velaers at the above-mentioned Tirana Conference

⁴¹ Report on “Electoral Law and National Minorities”, CDL-AD (2000)04.

⁴² ECHR, *Yumak and Sadak v. Turkey*, 8 July 2008, para.147. The Court considers that in general a 10% electoral threshold appears excessive.

⁴³ See Resolution 1705 (2010). See also below.

⁴⁴ CDL-AD(2008)013, para.54.

⁴⁵ *Ibid.*, para. 71.

3.4. Equality of opportunity and obstacles during the election campaign

74. According to the Code of Good Practice in Electoral Matters, the pre-election period must comply with the principle of equality, which is part of Europe's electoral heritage: "Equality of opportunity should be ensured between parties and candidates and should prompt the State to be impartial towards them and to apply the same law uniformly to all. In particular, the neutrality requirement applies to the electoral campaign and coverage by the media, especially the publicly owned media, as well as to public funding of parties and campaigns".

75. Concrete recommendations then follow in the same document: "The basic idea is that the main political forces should be able to voice their opinions in the main organs of the country's media and that all the political forces should be allowed to hold meetings, including on public thoroughfares (...) All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions".

76. However, there are numerous obstacles to these principles during the pre-election period, especially to freedom of movement, expression, association and assembly. State resources are frequently placed at the disposal of members of the ruling party (media, vehicles, meeting rooms, law enforcement officers), whereas the opposition parties are very often confronted with impediments to their campaign: threats, intimidation, the refusal of printers to print their campaign documents, unfair use of airtime on public radio and television or difficulty in gaining access to meeting rooms are part of the opposition's daily life in the run-up to an election in many emerging democracies.

77. Since there are countless possible violations of the principle of equality in the run-up to an election, the election campaign process requires increased vigilance by governments if they are to retain maximum voter confidence in the election system and, more generally, the State authorities.

3.4.1. Election campaign funding: opacity of financial sources

78. As the Venice Commission points out, while public funding of political activities is now broadly accepted and widespread, there are still many problems regarding the application of rules, such as the ratio applied between parties and candidates and, perhaps most importantly, the issue of setting a maximum amount of election expenditure to avoid situations in which money plays a dominant role, as can be seen in the United States. In addition, the rules laid down must be effective, which presupposes a control mechanism and genuine but also proportional penalties for non-compliance.⁴⁶

79. As regards the question of the legality of donations from businesses and private organisations, given that it is difficult to imagine that their contributions have no ulterior motive different approaches are possible. Should donations be prohibited (as in France) or limited or published? The Venice Commission has proposed addressing this issue in a study, taking into consideration the member States' different traditions.

80. It is worth pointing out that the Venice Commission adopted guidelines and a report on the financing of political parties more than ten years ago.⁴⁷ Also, in its Recommendation Rec(2003)4, the Committee of Ministers set common rules against corruption in the funding of political parties and electoral campaigns. It is also worth recalling that in 2010 our Committee was seized for report following a motion for a recommendation on "The need for a Code of good practice in the field of funding of electoral campaigns". Upon the request of our Committee, on a proposal by Mr Harutyunyan, Rapporteur, the Venice Commission adopted an Opinion on the matter and concluded that "the adoption of a Code of good practice in the field of funding of electoral campaigns would not add much, compared with existing documents. Even the convenience to see all the (existing) recommendations in one document will hardly justify the efforts for its drafting and adoption".⁴⁸

81. In reality, there is no uniformity in the funding of election campaigns. While some regulations concern the overall funding of political parties, others relate only to election campaigns. Some countries prefer the practice of direct public funding and strictly prohibit private sources abroad, whereas others only permit

⁴⁶ CDL-AD(2012)005.

⁴⁷ Guidelines for Financing of Political Parties, adopted by the Venice Commission on 6 February 2000, CDL-INF (2001) 008. See also: the 2006 report of the Venice Commission on the prohibition of financial contributions to political parties from foreign sources, CDL-AD(2006)014, and Recommendation 1516 (2001) of the Assembly on the financing of political parties.

⁴⁸ CDL-AS(2011)020. See also the Memorandum by the Rapporteur, Mr Harutyunyan, Doc. AS/Pol (2011)27 which includes a list of several other issues related to campaign finance which could be further examined.

private funding. Accordingly, the diverse nature of the regulations in force makes it more difficult to draw up common standards. The only requirement made by the Code of Good Practice in Electoral Matters consists in guaranteeing a certain amount of “transparency” in party and election campaign funding.

82. Interestingly enough, the Council of Europe Group of States against corruption (GRECO) has recently been assessing transparency of party funding in Council of Europe member States in its country-by-country evaluation reports. These reports have brought to light serious shortcomings in this field also in “old democracies”.

83. Thus, in its evaluation report on Switzerland, GRECO concluded that the fact that the Swiss legal system, “as a consequence of certain distinct features of (the) political system”, has no rules on the transparency of political party and election campaign financing” is clearly incompatible with Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns”.⁴⁹

84. The recent evaluation report of GRECO on Italy concludes that despite the progress achieved to enhance the transparency and financial discipline of political parties following “notorious scandals concerning the illegal financing of political parties in the 1990s”, “a number of important deficiencies need to be tackled as a matter of priority”.⁵⁰

85. As regards the situation in member States observed by the Assembly, let us cite the example of Ukraine. After an initial opinion in 2004 on the draft law on the election of People’s Deputies in Ukraine, in which it voiced its concern about private election funds of the parties or blocs, the Venice Commission recommended to Ukraine in 2005 the “publication of the campaign fund accounts (...) [by the] parties and blocs (...) after the election (...). In order to provide timely and relevant campaign finance information to the public, the law should require full disclosure, before and after elections, of sources and amounts of financial contributions and the types and amounts of campaign expenditures”.⁵¹ In spite of an amendment to the Ukrainian electoral law, the Assembly’s ad hoc election observation committee said in 2010 that the campaign funding during the previous presidential elections still seemed opaque and recommended that the legislation on the funding of political parties be reviewed in order, in particular, to ensure the transparency of this funding (Doc.12475).

86. The Assembly’s ad hoc committee for the observation of the parliamentary and early presidential election in Serbia on 6 May 2012 said: “Regarding the transparency of campaign financing, the PACE delegation looks forward to the report of the Anti-Corruption Agency on this issue. The latest GRECO report on Serbia, published in 2010, raised issues concerning the application of the rules for financing election campaigns, the lack of transparency in that regard and the effectiveness of penalties for infringements of the legislation” (Doc. 12938).

87. Attention should be drawn to the general lack of effective rules for regulating disclosures of sources of finance. In fact, “(i)n the context of prevailing political intolerance, full disclosure may inhibit contributions to opposition parties, and, at the same time, may favour the pro-government forces”.⁵² The Venice Commission takes the case of Moldova to illustrate the problems involved in connection with these disclosures: the national electoral law allowed the Central Election Commission to identify the type of financial support that a candidate had received before polling day, and this provision could “in the Moldovan context (...) dissuade and pressure potential donors”.⁵³ However, the report on observation of the 6 March 2005 parliamentary elections in Moldova unfortunately states that no recommendations were implemented by the authorities. The ad hoc committee for the observation of the early parliamentary elections in Moldova on 28 November 2010 was informed that the election campaign funding had not been transparent and that in reality the rules governing campaign funding were obscure. The NGO Resource Centre for Human Rights (CREDO) has conducted a study of election campaign funding in Moldova which shows that the main political parties’ undeclared expenditure is two to three times higher than the official figures, and a situation such as this does not help to strengthen citizens’ confidence in the democratic electoral process (Doc. 12476).

⁴⁹ See GRECO Eval III Rep (2011) 4E, published on 21 October 2011 in: www.coe.int/GRECO

⁵⁰ See GRECO Eval III Rep (2011)7^E, published on 23 March 2012 in www.coe.int/GRECO.

⁵¹ Opinion on the Law on Elections of People’s Deputies of Ukraine, 15 December 2005, CDL-AD(2006)002.

⁵² CDL-AD(2006)018, para. 101.

⁵³ Joint Recommendations on the Electoral Law and the Electoral Administration in Moldova of the European Commission for Democracy through Law (Venice Commission, Council of Europe) and OSCE/ODIHR, June 2004, CDL-AD (2004) 027, para. 72.

3.4.2. Access to the media: lack of equal access and of media impartiality

88. Issues relating to access to the media and their impartiality have been dealt with extensively in various standard-setting texts. This is a particularly critical matter for some mass media, such as television and radio, as they are the main source of information for the population in many member States.

89. Article 10 of the ECHR guarantees freedom of expression, which includes “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. However, paragraph 2 of this article mentions certain grounds for imposing limitations that may lead to a restriction of freedom of expression.

90. Since the Assembly’s first election observation missions, the role of the media has been mentioned as a key element in the election process. As early as 1992, the Handbook for Observers of Elections referred in paragraph 2.6.4 to the need to “(check) the media: their affiliations, their availability to political parties and the ease of access of the public to them”, to see if they were “‘weighted’ in favour of any particular cause or (were) truly independent and, in particular, to see if they were “controlled by one political party”.

91. For its part, the Committee of Ministers has adopted an important recommendation on media coverage of election campaigns setting out principles applicable to all types of political elections that take place in member States. These principles include non-interference by the public authorities, protection against attacks, intimidation and other unlawful pressure on the media and transparency of, and access to, the media.⁵⁴

92. The Code of Good Practice in Electoral Matters stresses that “media failure to provide impartial information about the election campaign and candidates is one of the most frequent shortcomings arising during elections”. It adds that “democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press”.

93. We are also indebted to the Venice Commission, in partnership with the ODIHR, for the most comprehensive document on media monitoring during elections. The Guidelines on media analysis during election observation missions, adopted in June 2009, provide a detailed inventory of the different elements to be taken into account when undertaking an assessment, ranging from the election legislation and opinion polls to the speaking time allocated to candidates.⁵⁵

94. In spite of the considerable amount of work done by various Council of Europe bodies on setting standards for the impartial coverage of elections, the problem persists in some member States.

95. In Russia, the ad hoc committee for the observation of the second round of the 1996 presidential elections stated that “(i)n the wake of a bitter election campaign, freedom of the press must be fully restored” (Doc. 7633 Add I). The report on the observation of the 1999 parliamentary elections noted with regard to the media that “the character of this election campaign in the media was considerably worse than the previous parliamentary elections in 1995” and went on to say that “the media continued to be exploited, by those in power and by their owners, in such a blatant way that the campaign cannot be described as fair, clean or honest” (Doc. 8623). In the following year, it was again established that “independent media have come under increasing pressure and that media in general, be they State-owned or private, failed to a large extent to provide impartial information about the election campaign and candidates” (Doc. 8693). According to the report on the 2008 presidential elections, “(t)he equal access of the candidates to the media and the public sphere in general did not improve, putting into question the fairness of the election” (Doc. 11536). At the time of the 4 March 2012 presidential election in Russia, the Assembly’s ad hoc committee stressed that “(a)lthough candidates were able to campaign unhindered, conditions were clearly skewed in favour of one candidate, Prime Minister Putin, who was given a clear advantage in terms of media presence and, in addition, State resources were mobilised at the regional level in support for him. Public institutions, at various levels, instructed subordinate structures to organise and facilitate Mr Putin’s campaign events. Local authorities used official communication (institutional websites or newspapers) for Mr Putin’s campaign” (Doc 12903).

⁵⁴ Recommendation CM/Rec(2007)15 of the Committee of Ministers to member States concerning media coverage of election campaigns.

⁵⁵ CDL-AD(2009)031.

96. In Armenia, where a lack of strong and impartial media was observed in the past, significant progress was observed and welcomed during the May 2012 parliamentary elections. According to the Assembly's ad hoc committee, media provided extensive coverage of the main political contestants, giving each sufficient opportunities to reach out to voters. The public broadcaster provided political parties with both free and paid airtime, in accordance with the Electoral Code, which seemed an improvement compared to the run-up to the official campaign (Doc. 12937).

97. The Assembly noted various irregularities in the case of the media coverage of the electoral campaign in Albania, which it put down to voters losing confidence in their country's election process. The following concerns seem to persist in Albania from one election to the next: "lack of editorial independence in many of the media, absence of transparency about the funding of the media, and covertness of the links thought to have existed between media owners and political party leaders" (Doc. 12007).

98. During the parliamentary elections held in Moldova in 2005, the "overly restrictive and at times ambiguous media regulations seriously hindered the ability of voters to obtain the necessary information to make an informed choice on election day". Moreover, "(t)he public television and radio showed a clear bias in favour of the ruling party as did the nationwide private channel NIT" (Doc. 10480). The following parliamentary elections, in April 2009, confirmed this negative assessment since "the election campaigning by the Communist Party of Moldova was presented positively, whereas the activities of the opposition parties were generally shown in a neutral or even negative light" (Doc. 11870). Once again, a few months later during the early parliamentary elections, "the lack of quality by the media in the reporting of election news, which failed to meet the criterion of fairness", was noted (Doc. 12009).

99. Azerbaijan is another country with a media environment that is still far from meeting international standards. The first Assembly mission, in 1995, reported "a virtual monopoly of television airtime by the party in office" (Doc. 7430 Add.III.). Three years later, the ad hoc committee also noted that "the public media considerably favoured the incumbent President", whereas "the information offered by the public media on the main political formations in the country was far from objective, and an intolerant attitude towards opinions of parties that chose to boycott the elections was especially apparent" (Doc. 8256). Although it was subsequently possible to see signs of improvement, the last observation report to date, on the 2008 presidential elections, stresses that "the issue of media independence and freedom in that country remains problematic" (Doc. 11769).

100. Other States are still displaying shortcomings in this area, albeit to lesser degrees: Bosnia and Herzegovina, Georgia, Montenegro, "the former Yugoslav Republic of Macedonia" and Ukraine.

101. The Council for Democratic Elections has recently decided to develop further the issue of private media during campaigns.

3.4.3. Misuse of administrative resources

102. The misuse of administrative resources by the ruling political forces for election campaign purposes is a breach of international commitments which is still noted all too often in the Parliamentary Assembly's election observation reports. For example, the general rapporteurs of the Council of Europe's Forum for the Future of Democracy, held in Kyiv in 2009, stated in their conclusions that it was "a particularly widespread and recurrent problem in many elections observed, [ranging] from covert 'advertising', use of official resources for rallies and meetings, to rewards in cash or kind".

103. This misuse of resources may assume many different forms. For example, the mission to observe the 2002 parliamentary elections in Ukraine reported that the Bloc For a United Ukraine (FUU) "(had taken) advantage of State resources and official positions to obtain meeting venues, use official events for campaign purposes and obtain uncritical coverage from local and regional media while denying opponents similar facilities". Moreover, "(c)ommittee members on several occasions (had) noted FUU campaign materials on local administration buildings and even DEC premises" (Doc. 9415 Add.II). The ad hoc committee which was present at the 2004 presidential election in Ukraine noted that "President Kuchma dismissed 15 senior local administration officials after the announcement of the first round results, all from areas where Mr Yushchenko had won the elections or fared well" (Doc. 10369 Add).

104. Still in Ukraine, the Assembly's ad hoc committee for the observation of the 17 January 2010 presidential election criticised the fact that candidates Timoshenko and Yushchenko used official visits related to the offices they h(e)ld to pursue their election campaigns. The Government Pensions Agency sent letters to all pensioners explaining that under the draft legislation sponsored by the Party of the Regions, pensions would not be increased. In the same letter, the Agency explained that the present

government had managed to increase pensions even under economic crisis conditions, and promised to raise pensions in 2010. The ad hoc committee was also informed of cases in which food had been distributed to elderly persons (Doc. 12132).

105. In a similar context, the extraordinary presidential election in Georgia in 2008 was marked by the use of governmental welfare programmes for campaign purposes and the active involvement of State officials at all levels. The observers were of the opinion that this behaviour, “(e)ven if within the limits of the law, [...] clearly blurred the distinction between State and party resources” (Doc. 11496). The same type of problems were identified a few months later during the parliamentary elections, when the “distribution of fuel vouchers in some regions allegedly coincided with the campaign activities of the ruling party” (Doc. 11651).

106. On the occasion of the 2 March 2008 presidential election in the Russian Federation, the ad hoc committee said it had “heard allegations regarding the wide-scale abuse of administrative resources (the State infrastructure, funds and personnel on the public payroll) in support of Mr Medvedev” and that it had been told that “local authorities (had been) instructed to hamper Mr Zyuganov’s meetings with voters in the region of Ulianovsk, and that, in some cases, the publishing houses (had) refused to publish the opposition candidates’ election campaign materials”. However, the ad hoc committee was unable to verify these allegations (Doc. 11536). The Assembly’s report on the observation of the 4 December 2011 parliamentary elections in the Russian Federation stressed that “(i)n the campaign, the distinction between the State and the ruling party was frequently blurred by the fact that some people took advantage of their office, contrary to Article 46(4) of the Law on State Duma Elections and paragraph 5.4 of the 1990 OSCE Copenhagen Document. For instance, in two Moscow districts, billboards were observed stating that metro construction works were performed by the local branch of United Russia. This was perceived by other parties as campaigning for United Russia paid for out of State funds” (Doc. 12833).

107. Cases of the misuse of administrative resources have been observed in other States, including Albania, Armenia, Azerbaijan, Moldova and “the former Yugoslav Republic of Macedonia”.

108. As mentioned above, the Venice Commission has already begun a study on the use of administrative resources.

3.4.4 Threats, pressure, violence and intimidation

109. Pressure in the form of various threats and acts of violence can be brought to bear on candidates, the media and voters during the pre-election period to promote a particular party’s campaign or influence the voters’ choice.

110. Such methods are expressly condemned by the Code of Good Practice in Electoral Matters, according to which voters “must be protected from threats or constraints liable to prevent them from casting their votes or from casting them as they wish, whether such threats come from the authorities or from individuals; the State is obliged to prevent and penalise such practices”.

111. However, the Assembly’s election observation reports show that this problem is far from exceptional.

112. The Assembly reports on observation of elections in Azerbaijan in 2000, 2005 and 2008 describe several incidents of interference by the authorities, pressure on voters, candidates and campaign activists, including detention of opposition candidates (Docs. 8918, 10751, 11769) The OSCE/ODIHR final report on the observation of parliamentary elections in Azerbaijan of 7 November 2010 again underlined that its observers had received credible allegations of intimidation and pressure on opposition candidates not to stand in the elections and allegations of pressure being brought to bear on activists during the campaign period. Several opposition candidates faced difficulties in renting an office for campaign purposes, allegedly after owners were warned by local authorities.⁵⁶

113. Pressure on voters was also observed at the parliamentary elections of 6 May 2012 in Armenia (Doc. 12937).

114. The Assembly delegation sent to “the former Yugoslav Republic of Macedonia” in 2006 regretted that, during the first half of the campaign there had been “numerous violent incidents mainly in the North-West region of the country” (Doc. 11015). Incidents of violence, resulting in the death of one person and the

⁵⁶ OSCE/ODIHR Election Observation Mission Final Report on the parliamentary elections in Azerbaijan of 7 November 2010, page 12.

injury of others, and intimidation were also reported on the day of the parliamentary elections two years later (Doc. 11647).

115. In the Russian Federation, the campaign for the parliamentary elections in 2007 was “marred by allegations of wide-scale harassment of the opposition” and “reportedly, pressure was exerted on some candidates from opposition parties’ lists to make them change political allegiance” (Doc. 11473). Cases of threats and pressure have also been reported in several other member States, particularly Georgia and Ukraine.

3.5. Freedom and secrecy of suffrage and obstacles to these on polling day

116. Assembly election observation reports indicate that the polling practice has improved during the recent years. However, various irregularities still happen that often affect the integrity and legitimacy of the entire election process.

3.5.1. Vote buying

117. Vote buying consists in the distribution of goods or money to people in exchange for a promise to vote for a particular candidate or party. This type of fraud is difficult to prove but it is still common.⁵⁷

3.5.2. Stamping of ballot papers or identity papers after voters have made their choice

118. Stamping voters’ ballot papers after they have made their choice is a practice which is formally prohibited by the Code of Good Practice in Electoral Matters: “The voter should collect his or her ballot paper and no one else should touch it from that point on”. This is because the signatory or the person affixing the stamp might mark the paper so that the voter can be identified when it comes to counting the votes, thus violating the secrecy of the ballot.

119. An example of this was highlighted by the Ad hoc Committee to observe the referendum on constitutional reforms in Armenia in 2005: “After having marked their choice on the ballot paper, the voters had to have it stamped. Although, in principle, the ballot paper should be folded after completion, the delegation observed many cases when voters had forgotten, or simply were not aware that they should do so. Sometimes it was difficult to identify the member of the electoral commission putting the stamp, especially when the station was crowded and observers witnessed voters who were openly showing their completed ballot paper to anybody around them in a search of the right person. In the stations where the military were voting observers also saw this very person opening the ballot paper before stamping it and checking the vote” (Doc. 10778). Unfortunately, this practice has not been eliminated.⁵⁸

120. Stamping identity papers after voting is a direct infringement of the right to vote or not to vote. Some States use this technique to prevent multiple voting. This can make voters uneasy, however, because it leaves a lasting indication on their identity papers as to whether they took part in an election.⁵⁹

3.5.3. Ballot box stuffing and irregularities during vote counting

121. Although, in recent years, electoral violations tend to be more sophisticated and less easy to detect, obvious violations, such as ballot box stuffing and falsification of the election protocols and polling station results, are still not uncommon.

122. Thus, for instance, a team of Assembly observers witnessed with their own eyes ballot box stuffing at the parliamentary elections in the Russian Federation of 4 December 2011 (Doc. 12833). The Assembly’s report on the observation of the parliamentary elections in Azerbaijan on 7 November 2010, pointed out that “notwithstanding the CEC training and awareness raising campaigns, there were significant procedural violations and irregularities, including ballot box stuffing” (Doc. 12475). International observers assessed the vote count negatively in 31% of counts observed, with procedural errors reported from a quarter of

⁵⁷ CDL-AD(2006)018, para. 148.

⁵⁸ Joint opinion on the Electoral Code of the Republic of Armenia as amended up to December 2007, adopted by the Venice Commission on 17 and 18 October 2008.

⁵⁹ In Armenia, at the parliamentary elections of 6 May 2012, the CEC, in order to prevent multiple voting without violating the principle of secrecy of the vote, chose the method of stamping passports with special ink, which was supposed to last at least 12 hours, instead of the classical method of finger inking. However, the implementation of this new method “proved to be a complete fiasco”, according to the Assembly observers, due to the low quality of the ink which was actually becoming invisible much faster obliging electoral commissions at the polling station level had to use regular ink to stamp the passports, thereby conflicting with the principle of the secrecy of the vote.

those counts. In over 11% of counts observed, the number of ballot papers in ballot boxes was higher than the number of signatures on the voters' lists, 24 ballot boxes contained clumps or stacks of ballots, suggesting ballot box stuffing.

123. At the presidential elections of 19 February 2008 in Armenia, the Ad hoc Committee was "especially concerned about the deliberate falsification of the results of the count that were noted in a number of polling stations, including one case that was directly observed by a team from our Assembly" (Doc. 11564).

124. In Georgia, while at the presidential elections in 2000 "ballot box stuffing ... was a common occurrence", (Doc. 8742), the Assembly report on the parliamentary elections of 21 May 2008 noted some progress in this respect, observing that "the authorities acted rapidly to reported violations, with the CEC announcing the cancellation of the elections in 13 polling stations already on the election night". By the time the election observation report was drawn up, the number of polling stations where election results had been cancelled had reached 45 (Doc. 11651).

125. Serious infringements of procedure may also occur during vote counting, ranging from a lack of transparency to anomalies when determining the validity of ballots. In Armenia, during the presidential elections of 2008, some members of central election commissions signed blank or uncompleted results protocols. The election observers were also surprised "by the constant use of mobile phones by commission members during the vote count, which apparently were used to transmit the ongoing results to the party headquarters. This constant use of mobile phones raises questions about possible outside interference in the counting procedures" (Doc. 11564).

3.5.4. Impeding the work of observers

126. The presence of international observers is essential to enhance public confidence in the electoral process. Measures should therefore be taken to protect their rights and to amend any legal provisions which have the effect of restricting their observation work. At the same time, knowledge of the relevant domestic legislation and responsibility on behalf of the observers is also crucial.

127. More often than not observers are not directly refused access to polling stations but a series of subtle legal measures are used to complicate their task. Even where the rights of observers are enshrined in law, the law in question may lack clarity and give rise to very different interpretations.

128. The situation is a source of much concern so, at the request of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, the Venice Commission has drawn up guidelines to promote an internationally recognised status of election observer.⁶⁰ "Both international and domestic election observers should be granted the same freedoms and rights. They should have common principles, rights as well as duties, since such rights and duties are not always sufficiently ensured in existing domestic electoral legislation. Election observers should be given the widest possible opportunity to participate in an election observation process".

129. Several types of recurrent activities aimed at restricting observers' rights may be noted, one example being the approval by the central electoral commission of a select list of observers before the election, thus excluding any other observers.

130. For example, in 2006, in Azerbaijan, the Venice Commission noted "the absence of domestic observers, along with the fact that the number of international observers was very low, [and that this] clearly facilitated fraudulent behaviour".⁶¹ It pointed out that NGOs receiving more than 30% of their funding from foreign sources had not been authorised to observe the elections. On the other hand, a large number of international observers (1 029) were able to observe the parliamentary elections in Azerbaijan on 7 November 2010 (Doc. 12475).

131. At the presidential elections in Ukraine in 2010, the authorities prohibited non-partisan national observers. The only persons authorised to observe the elections were "representatives of the political parties, presidential candidates and the international observers. This situation is particularly unacceptable in that domestic observers were very active during the previous elections in Ukraine, when the quality of

⁶⁰ Guidelines on an internationally recognised status of election observers, adopted by the Council for Democratic Elections, Venice Commission, December 2009, CDL-AD(2009)059. See also PACE Resolution 1771 (2010) and Recommendation 1945 (2010) on an internationally recognised status of election observers.

⁶¹ CDL-AD(2006)018, para. 124.

their work and their civic commitment were widely acknowledged by the Ukrainian public and the international community” (Doc. 12475).

132. Setting up unwieldy and complicated registration procedures to obtain formal accreditation as an observer is also a means of impeding access to polling stations for observers. In Ukraine, for example, the legal provisions setting out observers’ rights are extremely detailed and complicated, and the formal requirements include authenticated signatures and notarised copies of the organisation’s statutes.⁶²

133. In Russia, according to the Law on the Election of Deputies to the State Duma, there can be no national observers from civil society (Article 30). At the Russian parliamentary elections on 4 December 2011, the main NGO to obtain accreditation to observe the elections was GOLOS and its observers were registered as journalists. This NGO was subject to several inquiries, a search of its premises shortly before polling day and criminal proceedings initiated by the prosecutor for violations of the electoral legislation, as a result of which it was fined 30 000 roubles (Doc. 12833).

3.6. Effectiveness of legal remedies in the event of electoral irregularities

134. It is not enough to draw up electoral laws protecting the integrity of elections. There is also a need to secure the efficient application of electoral legislation by making sure that impartial legal remedies are available. It must also be ensured that the proceedings are run in an unbiased and transparent manner and that the results of elections faithfully reflect voters’ wishes.

135. The possibility of appeal must apply to the entire electoral process, including the right to vote, electoral registers, candidacy, campaign rules etc. Domestic legislations vary as to the organisation of election-related appeals. They might be brought before the Central Electoral Commission or before a court or before the one after the other. They should be accessible to all stakeholders and appeal bodies should have the authority to annul elections.

136. Without a proper appeal procedure, the electoral process loses still more of its credibility among voters. The independence of the judiciary is a critical factor in this respect.

137. Often, legal remedies seem somewhat inaccessible to voters. Voters seem to be poorly informed on the subject and rarely have the special forms through which appeals can be lodged. However, it is essential for there to be a simple and quick appeal procedure and for it to be more accessible to the public. This may also act as a deterrent for those who would like to manipulate or hamper the process.

138. A report published by the OSCE/ODIHR in 2000 describes the culture of impunity with regard to infringements of electoral rules.⁶³ Among the issues it highlights is the need to adopt radical measures promptly to tackle the lenience with which offences relating to elections are treated and to restore completely the lawfulness of the electoral process as well as voters’ confidence in elections.

139. In its 2006 report, the Venice Commission strongly condemns the complexity of electoral rules in many emerging democracies: “in a number of cases, the procedures for dealing with complaints and appeals are not clearly defined and are very complicated. International observers’ reports repeatedly characterise complaint and appeals procedures as complex, ambiguous, and confusing, leading to an inconsistent interpretation and application of the electoral law. The rules and procedures are often not well understood by electoral subjects”.⁶⁴

140. The need to simplify and/or clarify the procedures for electoral complaints and appeals was noted in recent Assembly election observations reports regarding Armenia, “the former Yugoslav Republic of Macedonia” and Ukraine. Observers criticised the process of resolving complaints and the lack of implementation of appeal procedures in the 2008 parliamentary elections of Georgia, the 2010 parliamentary elections in Azerbaijan and the 2012 presidential election in Russia.

141. As was noted in the Tirana conference organised on 2-3 July 2012 on “the European Electoral Heritage: Ten Years of the Code of Good Practice in Electoral Matters”, we cannot but join the conclusion

⁶² CDL-AD(2006)018, para. 125.

⁶³ Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, by the OSCE/ODIHR, 2000.

⁶⁴ CDL-AD(2006)018, para. 169.

of the 2006 Venice Commission's report: "There is still a lot to do in order to improve election complaints and appeal procedures and to reverse the culture of impunity for election-related matters".⁶⁵

4. Measures to improve the democratic character of elections

142. Several Council of Europe documents, including texts adopted by the Assembly, have during the last twenty years proposed a series of measures to improve the democratic character of elections (see chapter 2 above). The present report does not intend to repeat all those proposals in detail but rather to draw attention to the main imperatives that have to be taken into account by the member States in the light of recurrent and persisting problems presented above. More specific aspects, such as issues related to the participation of women, minorities and migrants, voters' education as part of civic education, etc., will also be dealt with in the opinions of specialised committees on this report.

143. To start with, the measures which may be proposed must be both sufficiently specific to ensure their effectiveness and also sufficiently flexible to be adapted to the different situations in Council of Europe member States, irrespective of whether or not the States concerned have longstanding experience of free and democratic elections. On the basis of the hearing which the Committee held last December, as well as arguments advanced by members and experts, it can be concluded that any specific measures should respond to three main imperatives that need to be satisfied:

- Foster participation;
- Ensure transparency;
- Strengthen supervision.

4.1. Foster participation

144. The question of citizen participation in elections is vital here. In a democratic society, elections belong to the people.⁶⁶ They are held to enable citizens to take part in the conduct of their countries' public affairs and also in government. Low citizen participation in the electoral process undermines its essential purpose and reduces the legitimacy of the results and also of the process as a whole. I am referring to participation in the "electoral process", not just voter turnout, as it is a process which starts long before polling day and involves several stages in which citizens should take part, rather than a one-off exercise.⁶⁷

145. However, the current trend (outside the very few systems where voting is compulsory) is towards a substantial decline in participation. A lack of confidence in the electoral process and a more general lack of confidence in the institutions of representative democracy have resulted in very low participation or turnout levels in Europe. To give a recent example, only 55.5% of French voters turned out for the parliamentary elections in mid-June 2012. The committee has already voiced its concern about this trend in several reports which it has presented to the Assembly on the state of democracy in Europe over the last two years.

146. If we wish to increase the legitimacy and hence also the democratic character of elections, it is vital to ensure that the level of citizen participation in the electoral process is increased so that the process and, ultimately, the election results enjoy optimum legitimacy.

147. Compulsory voting, which might seem to be the most radical solution here, will not, in my view, fundamentally resolve the issue. As Professor Ghevontian said at the hearing last December, if a conscious choice is replaced by an obligation, there is a risk of shifting the problem and ending up with two types of voting: "committed voting" and "derision voting".

148. Apart from the more general and political issue of the need to increase public confidence in the institutions of representative democracy,⁶⁸ the following specific and practical measures could be taken to increase citizen participation in the electoral process.

⁶⁵ See paper prepared by Professor Dr. Florian Grotz on "Recurrent challenges and Problematic Issues of Electoral Law". For an analysis of the relevant Strasbourg case law see also the paper presented at the same conference by Mr Vincent Berger, *op.cit.*

⁶⁶ CDL-AD(2010)037

⁶⁷ *Idem.*

⁶⁸ See also the theme to be discussed at the European Conference of Presidents of Parliament, to be held in Strasbourg on 20-21 September 2012 under the title: "Is representative democracy in crisis? Challenges for national parliaments".

4.1.1. Accuracy of electoral registers

149. Electoral registers should be drawn up in such a way as to ensure that as many voters as possible register. First-time registration should be automatic and when people change addresses, the authorities should provide voters with the best information possible and make the relevant administrative procedures as straightforward as possible. In the countries where there is an obligation to register on the population registries, it would be preferable that the electoral lists are automatically drawn from such registries. Electoral registers should be permanent and, contrary to the current trend, recourse to supplementary lists should be permissible only to enable people who have changed their address or having reached voting age since the publication of the final list to cast their vote. States should also take measures to prevent effectively “multiple voting” without, however, violating the principle of the secrecy of the vote.

4.1.2. Political party pluralism and intra-party democracy

150. A free choice for voters should be ensured by making as many political options as possible available, in keeping with the principle of political party pluralism. Rules regulating the registration of political parties are of particular importance in this respect. Too strict requirements, such as excessive membership or regional representation requirements, requiring an excessive number of supporting signatures or an excessive amount of deposit etc., can hinder the creation of political parties and thus not only disproportionately restrict the citizens’ right to create associations, but also limit political party pluralism and, ultimately, the choice of voters.

151. Also of importance is the issue of the democratic internal organisation and functioning of political parties. Internal party democracy enhances citizens confidence in the electoral process and the entire democratic system as it ensures that parties which choose who will be stand for election to public office abide by the democratic principles within their own organisations.

152. Intra-party democracy is manifested in internal party procedures that enhance inclusion of members in deliberation and decision-making processes extending the involvement of party rank-and-file in certain key tasks of party governance, such as the selection of party leaders and election candidates, as well as the definition of party policies. According to the Code of Good Practice in the field of Political Parties,⁶⁹ bottom-up practices for the selection of nominees and candidates to the post of political party leader are “a healthy expression of internal democracy”. Also, whether directly or indirectly, candidates for election must be democratically chosen for elections at all levels. Moreover, when it comes to the succession of a vacant seat, internal party procedures for succession should take into account individual voters’ choice.

153. The Council for Democratic Elections has recently considered updating how the principles of Europe’s electoral heritage in this field are applied by political parties, particularly as regards gender parity and representation of national minorities. In my view, the issue of internal functioning of parties and especially the internal candidate selection process should be further examined as a priority issue, as it is closely linked to the credibility of the whole democratic system.

4.1.3. Women’s representation

154. As regards more specifically the issue of women’s representation in politics, political parties should devise mechanisms to promote gender equality not only in parliamentary elections but also in decision-making posts, both inside and outside the party. In its Resolution 1706 (2010) and Recommendation 1899 (2010) on increasing women’s representation in politics through the electoral system, the Assembly has listed concrete measures that member States could consider, including the introduction of gender quotas and the promotion of gender-sensitive civic education.

155. The fact that, despite important legislative progress in almost all member States and the introduction of gender quotas (either legally binding or voluntary party quotas) in most of them, the fact that women remain largely under-represented in parliament shows that there is a need to give thought to additional measures. The Council for Democratic Elections proposes thus to look for new methods and solutions, by combining for instance mechanisms relating both to electoral systems and the internal functioning of political parties. The Assembly, for its part, will debate, jointly with the present report, a report on the issue of women’s representation within political parties, which will also deal with the issue of the candidate selection process and which is being prepared by the Committee on Equality and Non-Discrimination.

⁶⁹ CDL-AD(2009)021.

156. The fact remains that electors may be reluctant to choose women from among a large number of candidates in a given constituency. For this reason, the Council for Democratic Elections also proposes drawing up guidelines for member States to raise awareness of this problem not only among the electorate but also the leaders of political parties. I think that this is again a matter that should be dealt as a priority by the Venice Commission and hope that the combined and resolute action of our Assembly and the Venice Commission in this field will bear its fruits, so as to lead to an effective increase of women's representation in politics and thus enhance the legitimacy of representative democracy institutions and of the electoral outcome.

4.1.4. Minority participation

157. As regards the participation of minorities, the short analysis made above shows that there is a wide spectrum of mechanisms or models to facilitate the participation of minorities in the electoral process. These include affirmative action measures, such as reserved seats on the basis of ethnic affiliation or "dual voting rights", which however have limited scope. Moreover, the choice of the electoral system as such, the presence of an electoral threshold and the delimitation of constituencies are all factors which can facilitate or, on the contrary, hinder minority participation and representation. There does not seem to be a "best practice" valid for all situations. What can be an appropriate solution to promote representation of minorities in one country may hinder such representation in another. What counts is not the method but the result, that is to ensure effective participation of minorities in the electoral process and thus in the political decision-making as a factor guaranteeing interethnic peace and stability. Other measures which improve minority participation in the election process may refer, for instance, to the composition of election commissions, the translation of electoral documents, voter education programmes, special requirements for candidacies and party lists, etc.

4.1.5. Open and accessible electoral campaigns and the role of the media

158. In order to foster participation, it is important that election campaigns are as open and accessible as possible so as to allow genuine debate that is not only of interest to voters but also informs their choices. "Generally, a free election is an election where candidates can compete without any obstacles erected by the authorities, where the electorate has genuine substantive options and a free access to information concerning those options."⁷⁰

159. In this context, the media have an important role to play in assisting the electorate to make an informed and genuine choice. But, while it would appear to be relatively clearly established that State-owned media should be subject to rules of equity and equality, what about the media that are in private hands? If, traditionally, it has been accepted for the press to campaign for one or another candidate, it is a much more sensitive question as far as broadcasting is concerned in view of the latter's impact.⁷¹ Codes of good practice have been drawn by international election observation organisations, but good practice applies above all to the public media.

160. The Council for Democratic Elections has recently considered carrying out a study in relation to private media, looking at ownership of such media by senior political figures and leaders of political groups.⁷² The Council has also decided to look in greater detail at the audiovisual media, in view of their impact, and focus thought on the Internet, including websites, blogs and social networks which now play a part in election campaigns. In some member States, national regulations regulate the latter, in others not. It is worth noting that any regulations in this field should provide for equal opportunities without limiting excessively freedom of expression. A quite delicate balance is to be struck, which is not easy to apply in practice. A study on this issue merits priority treatment in my view given its importance for ensuring equal opportunities during election campaigns.

4.1.6. Voters' protection from threats, pressure, violence and intimidation

161. To foster participation, it is also essential that voters are protected against any threats or undue pressure related to their choices, whether from the authorities or from individuals. This requires, on the one hand, strict compliance with the rules implementing a cardinal principle of electoral law, i.e. secrecy of the ballot. Stamping of ballot papers or identity papers after voters have made their choice must be excluded. On the other hand, when incidents of pressure, violence, threats and intimidation do occur, States should penalise them and apply dissuasive sanctions.

⁷⁰ CDL-AD(2010)037.

⁷¹ CDL-AD(2012)005

⁷² See CDL-AD(2012)05 including references to a report produced by the Venice Commission in 2009 on «media analysis during election observation missions», CDL-AD(2009)031.

4.1.7. Absentee voting and voting abroad

162. The right to vote of those unable to go to polling stations should be safeguarded through proxy voting, postal voting or e-voting. Whereas such practices seem to be necessary to improve citizens' participation, for them to comply with Council of Europe standards, they must be covered by appropriate rules ensuring the secrecy and security of the vote.⁷³ As the Venice Commission has held, "certain inherent difficulties in postal proxy or e-voting can never be completely overcome. Thus the advantage and convenience to the electors, and therefore incidentally their contribution to the overall aim of greater voter participation, have to be balanced with the inevitable dangers and risks of these absent voting systems", in particular in terms of the secrecy of the vote.⁷⁴

163. As regards in particular e-voting, Resolution 1705 (2010), the Assembly invited member States to consider "the use of information and communication technology (ICT) tools and the introduction of different forms of e-voting, including remote e-voting". In its Resolution 1653 (2009) on e-democracy the Assembly drew however attention to the risks for democracy linked to the development of ICTs, which include unequal access potentially resulting in e-exclusion and e-discrimination as well as possible abuses. It thus asked member States to draw up rules and regulatory frameworks including safeguards to protect citizens and implement them at an early stage. For the Assembly, "generalised access to e-tools is a necessary condition for the success of e-democracy and for the elimination of the risk of a 'technology gap'. This includes not only access in terms of equipment and affordable connections but also considerable efforts in education and training, in particular with regard to older generations and other vulnerable categories of the population."

164. As regards the voting rights of citizens living abroad, the Assembly, already in 2005, had invited States to take measures to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. This can be achieved through various arrangements, including voting in polling stations set up abroad and/or postal voting, proxy voting or e-voting. Although States are not obliged to organise voting abroad, if they do so, they should ensure that the criteria for establishing polling stations abroad are transparent and their distribution corresponds to the distribution of citizens living abroad.

4.1.8. The right to vote of vulnerable groups

165. The right to vote of vulnerable groups (people with disabilities, the illiterate, etc.) should also be safeguarded by adapting polling stations and voting material to their needs (ballot papers for the blind and the illiterate, etc.).⁷⁵ However, it would seem that one technique should definitely be ruled out: the use of mobile ballot boxes as it opens the way to electoral fraud.

4.1.9. Restrictions on the right to vote of serving prisoners

166. Restrictions on the right to vote of convicted prisoners are permissible only if they are provided for by law and respect the principle of proportionality. Thus, legal provisions providing for general, automatic and indiscriminate disenfranchisement of all serving prisoners, irrespective of the nature or gravity of their offences, are incompatible with the right to vote enshrined in Article 3 of Protocol No. 1 to ECHR and need to be amended. It is worth noting that, already in its Resolution 1705 (2010), the Assembly called on member States to "eliminate obsolete provisions disenfranchising certain categories of population (such as certain categories of detainees)".

4.1.10. The choice of the electoral system and the presence of electoral thresholds

167. Finally, a chapter on citizens' participation and indeed a report aiming at more democratic elections in Europe cannot be complete without reference to the fundamental question of the electoral system. As the Assembly already stated in its Resolution 1705 (2010) on Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States, "the choice of electoral system is one of the most important institutional decisions for any democracy" having an obvious impact on representativity and a profound effect on the entire political life of the country concerned. Different voting systems may in fact give very different results. The voting system determines to a great extent a number of administrative issues, including the forming of a government. Resolution 1705 (2010) underlines

⁷³ See also above, section 3.2.

⁷⁴ Application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom, Opinion of the Monitoring Committee for the Bureau of the Assembly, Doc. 11565 Addendum II, April 2008.

⁷⁵ See also Assembly Resolution 1642 (2009) on Access to rights of people with disabilities and their full and active participation in society.

that an elected assembly “should reflect the political composition of the electorate as well as other important aspects like geographic distribution, gender, ethnicity or other group identities, including age or specific vulnerability”, and that this largely depends on the choice of the electoral system. Noting that there is a variety of types of electoral systems throughout Council of Europe member States, each of them with its advantages and disadvantages, the Assembly concluded: “There is no unique model which could be recommended to all countries as the best one”. For the Assembly, “the choice depends on a number of factors including historical background and political and party systems”. While sharing this conclusion, I think that, in order to guarantee the right of all citizens to be represented in the political decision-making and ensure the representativity of elected bodies, member States should opt for an electoral system which better reflects the opinion of the people and the political composition of the electorate.

168. In its Resolution 1705, the Assembly has called on Council of Europe member States to contribute to the establishment of a common understanding of principles which qualify elections as “free and fair” in compliance with democratic standards, “irrespective of the type of electoral system”. One of these principles concerns electoral thresholds. The latter make it possible to determine the candidates who can go forward (in the case of two-round voting) or the lists whose members can be elected (in the case of proportional representation). Without calling the existence of thresholds into question, it seems necessary to set limits so as to avoid their becoming an obstacle to the representation of the various political tendencies in a pluralist society. Thresholds which are too high or intended solely to eliminate a political group should be prohibited. Thus the Assembly has asked member States to consider “decreasing legal thresholds that are higher than 3%”.

4.2. Ensure transparency

4.2.1. In the organisation of elections

169. Elections should be organised by independent and impartial bodies, which should lead to the general introduction of the central electoral commissions already employed in many States.

170. In a number of countries, efforts should be made to improve the electoral administration bodies’ independence vis-à-vis both the government and political party interests. Rather than membership or other formalistic criteria, the emphasis should be placed on the performance of the election administration, which should be impartial. What matters is the transparent and effective performance of an accountable body of appropriately trained individuals who cannot be removed from office at will on the basis of political considerations. It is important for the election administration not only to function impartially but also to be perceived as doing so.

171. A broad political agreement on the type and composition of the central electoral administration is desirable and is likely to enhance public trust in the administration of elections and thus foster public confidence in the entire electoral process. Partisan (or multi-party) central electoral commissions, do not seem to be the best solution. When the choice is made in favour of such commissions, there should be guarantees for their composition to be politically balanced and for their transparent functioning throughout the electoral process. The experience of certain member States, where the chairmanship of central electoral commissions is given to representatives of the opposition can be considered as a good practice. However, it must be stressed that partisan commissions, as any other electoral commissions, can deliver democratic elections only if they respect the above-mentioned principles of transparency, impartiality and independence. Their members, even if appointed by political parties, should act in a professional manner and independently of political party interests.

4.2.2. In electoral campaign funding

172. As the analysis made above has shown, campaign and political party financing raises problems in many member States, including “old democracies”. Concrete measures to ensure transparency in the funding of electoral campaigns and political parties in general have been proposed to member States in the Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, which, inter alia, mentions Assembly Resolution 1516 (2001) on financing of political parties. I therefore refer to these texts and reiterate the need that member States implement them. The relevance of the 2003 Recommendation and the fact that it has not yet been implemented is demonstrated in the recent evaluation reports by GRECO.

173. In conclusion, it can be stressed that legislation on campaign funding and party financing is necessary. It must not only regulate the origin of funding and set a limit on expenditure but also, and above all, enable all voters to have access to data on the nature and amount of campaign spending. But legislation should

also be strictly applied and any violations should be sanctioned by proportionate penalties. The contribution of GRECO in this respect is important as its reports highlight shortcomings as well as good practices.

174. Of special concern is the issue of the use or rather misuse of administrative resources for electoral campaign purposes. This is a serious electoral violation still noted all too often in the electoral practice of many member States, where the distinction between the State and the ruling party is frequently blurred. We look forward to the conclusions of the on-going study by the Venice Commission on this issue. That said, this is a problem related less to legislation and more to the political will of those in power.

4.2.3. In the conduct of voting

175. Voting should be organised in such a way that all voters are always able to see that everything is correct and in order. This applies, in particular, to the design of polling stations, the composition of polling station boards, the use of transparent ballot boxes, the presence of voting booths and public counting.

176. In order to increase further transparency, the presence of domestic and international observers should be facilitated. I refer here to the Venice Commission's guidelines on an internationally recognised status of election observer according to which both international and domestic election observers should have common principles, rights and duties and should be given the widest possible opportunity to participate in an election observation process. National observers, including from civil society, should be authorised in all member States. Registration procedures to obtain formal accreditation should be simple and easily accessible.

4.3. Strengthen supervision

177. Supervision of electoral operations is a vital aspect of democratic electoral processes. It must be impartial, independent and dissuasive.

178. Whereas awareness about the importance of the pre-election period for domestic elections is increasing among specialists, the post-election period is often still neglected. Both electoral authorities and election observation missions should indeed pay more attention to the period between the end of the counting and the announcement of the final results.

179. Only an effective, transparent and accessible appeal system can reverse the culture of impunity for election-related offences and enhance public confidence in the electoral process.

180. The following measures are proposed here:

- Assign supervision to a judge (whether special, ordinary or constitutional). The independence of the judiciary is of course crucial in this respect. Judicial supervision could come on the top of other legal remedies, for instance following first instance examination of appeals by central electoral commissions. As regards the system of parliamentary verification of credentials employed in several States, it would not seem to ensure the necessary impartiality.
- Extend supervision to the entire electoral process: preparatory measures, including possible restrictions to the right to vote or to stand for election and electoral registers; election campaign, including media coverage and funding; actual voting arrangements; counting and announcement of results, etc.
- Facilitate access to the courts through simplified, free procedures involving short but reasonable timeframes.
- Ensure that voters are well informed of the existing appeal system and have easy access to the necessary forms.
- Provide for severe and dissuasive but proportionate penalties in the cases of fraud, manipulation or cheating. The penalties must be applicable both to the direct perpetrators (rarely the candidates themselves) and to those behind the fraud. The public opinion, as well as international observers, should be informed of any sanctions imposed.

5. Conclusions

181. Since 1989, the Parliamentary Assembly has been the source of a system for the international observation of elections in Europe, whose aim is to promote free, fair and pluralist elections, mainly in east and south-east European countries which do not have a tradition of democratic elections.

182. In close co-operation with other Council of Europe bodies, particularly the Venice Commission and the Council for Democratic Elections, the Assembly has made an extensive contribution to the development of the European electoral heritage through major standard-setting work, which has helped substantially to improve the domestic electoral legislation of several member States and to provide a footing for some sort of culture of pluralist elections.

183. Although standard-setting work concerning elections is important, the actual application of standards is still a major challenge to be addressed in several Council of Europe member States. Where serious and repeated irregularities are identified in one election after another, where the perpetrators are never brought to justice and the offences are never brought to the public's attention, this paves the way for instability or even violence and for long-term political crises. Electoral corruption poses a real threat and can undermine the principles of good governance.

184. In its election observation reports, the Parliamentary Assembly points out more and more frequently that, in the Venice Commission's opinion, domestic electoral legislation generally makes it possible to hold democratic elections. In most cases, the cause of the problem is not the legislation but the lack of political commitment at the highest level to ensure that the law is implemented in such a way as to be able to hold free and fair elections. It should be said that arguments evoking a lack of experience are no longer justified or credible in countries which have been holding elections for nearly twenty years.

185. The present report has listed the main challenges and recurrent problems observed by the ad hoc committees of the Assembly in several member States of the Council of Europe concerning in particular:

- the electoral administration and issues of neutrality and impartiality;
- the right to vote and stand for election and the universality of suffrage, including restrictions of the right to vote for particular groups, problems with voter registers and with the registration of candidates;
- equality of opportunity and obstacles during the election campaign linked to the funding of electoral campaigns (lack of transparency and opacity of financial sources), access to the media and, in particular, the public service media (lack of equal access and of media impartiality), as well misuse of administrative resources and threats, pressure, violence and intimidation vis-à-vis candidates or voters;
- freedom and secrecy of suffrage and obstacles to these on polling day: vote buying, stamping of ballot papers or identity papers after voters have made their choice, ballot box stuffing and irregularities during vote counting and obstacles to the work of observers;
- the effectiveness of legal remedies in the event of irregularities in the electoral process.

186. The report has then proposed a list of measures to improve the democratic character of elections by fostering participation, ensuring transparency and strengthening supervision. These measures are also listed in the proposed preliminary draft resolution.

187. It is worth noting that the ultimate aim is to restore public confidence in the electoral process, a condition sine qua non for a democratic election. And the more citizens have confidence in the process, the more of them are likely to come out to vote.

188. Moreover, the need to establish public confidence relates not only to electors but also to those seeking an election. As the Venice Commission notes, should those who seek to occupy public office lose confidence in elections as the best means to attain their goal, they could turn to non-democratic ways of gaining power.⁷⁶

⁷⁶ Doc. CDL-AD (2010)037.

189. In conclusion, we should, in my opinion, also strengthen synergies and follow-up to election observations both within the Council of Europe and through co-operation with other specialised international organisations. We should thus:

- Improve follow-up to recommendations made in international election observation reports in the context of the work carried out within the Monitoring Committee and in particular in the context of co-rapporteurs' visits to the States concerned, in the preparation of their reports and also, as appropriate, in the context of the Committee's annual report.
- Promote regular consultations among the various Council of Europe bodies which have expertise in the field. Indeed, within the Council of Europe, the Assembly has at its disposal a network of expertise whose complementarity is unrivalled among European organisations: the Venice Commission, the European Court of Human Rights and the Group of States against Corruption (GRECO) with regard to efforts to combat corruption (in particular lack of transparency in campaign funding and other problems relating to corruption in elections). This potential could be turned to greater account.
- Strengthen the Council of Europe's medium and long-term electoral assistance programmes by better targeting them at the problems observed.
- Strengthen synergies with other international organisations which have an expertise in the field of elections, not only at the pre-electoral stage (for instance when the Venice Commission and the OSCE/ODIHR prepare joint opinions on electoral legislation) and the voting day (joint observation missions and press statements) but also after the election observation, with a view to promoting the recommendations made by the international community and ensuring their implementation.