



Office for Democratic Institutions and Human Rights

REVIEW OF ELECTORAL LEGISLATION AND PRACTICE IN OSCE PARTICIPATING STATES



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List of Frequently Used Abbreviations

| | |
|-----------------------|---|
| AVA | Alternative Voting Arrangement |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CEMB | Central Election Management Body |
| Code of Good Practice | Venice Commission Code of Good Practice in Electoral Matters |
| CoE | Council of Europe |
| EAM | Election Assessment Mission |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EET | Election Expert Team |
| EMB | Election Management Body |
| EOM | Election Observation Mission |
| GC | General Comment |
| HRC | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| IDP | Internally Displaced Person |
| LEOM | Limited Election Observation Mission |
| NAM | Needs Assessment Mission |
| ODIHR | Office for Democratic Institutions and Human Rights |
| OSCE | Organization for Security and Cooperation in Europe |
| PS | Statement of Preliminary Findings and Conclusions (Preliminary Statement) |
| ROM | Referendum Observation Mission |
| VC | Venice Commission (The European Commission for Democracy through Law) |
| UDHR | Universal Declaration of Human Rights |
| UNCAC | United Nations Convention against Corruption |
| UNCRPD | United Nations Convention on the Rights of Persons with Disabilities |
| UNHRC | United Nations Human Rights Committee |

REVIEW OF ELECTORAL LEGISLATION AND PRACTICE IN OSCE PARTICIPATING STATES

I. INTRODUCTION

1. RATIONALE

On 25 January 2013, the Chairperson of the OSCE Permanent Council requested the Director of ODIHR to conduct an extra-budgetary project that would review major areas of electoral legislation and practice in the OSCE participating States in view of their implementation of the provisions of the 1990 OSCE Copenhagen Document. ODIHR agreed to undertake this review on the basis of ODIHR election-related reports published in the years 2010, 2011 and 2012,¹ analyzed against OSCE commitments (principally the 1990 OSCE Copenhagen Document) as well as other international standards for democratic elections and good electoral practice. Given the limited resources, the selected timeframe ensures that the review covers as many participating States as possible and that the information drawn upon would be the most up-to-date and minimize duplication.

In line with the request of the Chairperson of the OSCE Permanent Council, the purpose of the review is to strengthen implementation of OSCE commitments undertaken by participating States. Thus, this review synthesizes information from existing ODIHR election-related reports and identifies good practices and common shortcomings. Ideally, the information contained within the review will stimulate discussion among participating States and enhance follow-up to ODIHR recommendations.

This review was conducted on the basis of a project proposal that was made available to OSCE participating States.² The review was undertaken by a team of three external experts, Dr. Christina Binder (Austria), Dr. Armen Mazmanyan (Armenia), and Mr. Nikolai Vulchanov (Bulgaria).

2. METHODOLOGY

2.1. Analytical Focus of the Review³

The review evaluates the extent to which OSCE commitments and other international standards for democratic elections are reflected in the electoral legislation and its implementation by OSCE participating States. The review reflects, first and foremost, on the commitments contained in the 1990 OSCE Copenhagen Document focusing on (aspects of) paragraphs 5, 6, 7, 8, 9, 10, 24, and 30-39. Reference is also made to paragraphs 18-21 and 40 of the 1991 OSCE Moscow Document and paragraphs 23 and 25 of the 1999 OSCE Istanbul Document.

The review likewise assesses the compliance of electoral legislation and practice, as referred to in the ODIHR reports, with relevant international instruments, notably the 1966 International Covenant for Civil and Political Rights (ICCPR) and the related General Comments No. 13, 25 and 34 by the UN Human Rights Committee (UNHRC). Reference is made to the 1979 Convention for

¹ These reports were prepared in line with OSCE/ODIHR's mandate to observe the elections of participating States that derives from paragraph 8 of the 1990 OSCE Copenhagen Document, based on the principles enunciated in OSCE Ministerial Council Decision 19/06 that tasks ODIHR "to give utmost attention to the independence, impartiality and professionalism of ODIHR's election observation".

² OSCE extra-budgetary projects are funded from contributions from OSCE participating States for activities that are not covered by the annual unified budget. All participating States were invited to contribute based on a project proposal that identified the project objectives and outputs.

³ See Annex 1 "OSCE Commitments and other International Standards" for the text of the main instruments that are of relevance for this review.

Elimination of All Forms of Discrimination against Women (CEDAW) and the related General Recommendation No. 23, to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as to the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the 2003 UN Convention against Corruption (UNCAC). Reference is also made to the 1948 Universal Declaration of Human Rights (UDHR).

Regional instruments are likewise referred to, including the European Convention on Human Rights (ECHR) and the accompanying case law of the European Court for Human Rights (ECtHR), as well as the 2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States (CIS Convention).

Good practice is also noted, where applicable, including the 2002 Council of Europe's (CoE) Venice Commission Code of Good Practice in Electoral Matters (VC Code of Good Practice).⁴

2.2. Sources of Information for the Review⁵

The final reports of ODIHR election observation activities are the main source of information for the review. Reference to needs assessment mission (NAM) reports,⁶ interim reports or preliminary statements is made only where there is no final report available, for example because no election observation activity was deployed or because the final report was published in 2013 and thus outside of the reporting period. The review does not make reference to external sources, such as reports or statements by other organizations or stakeholders. Although the report attempts to be as exhaustive as possible, readers are encouraged to consult the original reports for detailed information regarding a given election.

Drawing on final reports as the main sources of data implies that changes which were introduced to the electoral legislation and/or practice between the time of the corresponding report and this review could not be taken into account. Although all electoral legislation and practice are a constantly shifting process, this review presents a comprehensive viewpoint of the topic in question.

2.3. Structure of the Review

In order to assess the compliance of the participating States' electoral legislation and practice with relevant OSCE commitments and other international standards, the review is structured according to the following thematic sections:

1. Legal Framework;
2. Electoral System;
3. Election Administration;
4. Voter Rights and Registration;
5. Candidate Rights and Registration;
6. Election Campaign;
7. Campaign and Political Party Finance;
8. Media;
9. Election Day: Voting, Counting and Tabulation;
10. Complaints and Appeals;

⁴ Paragraph 40 of the 1999 OSCE Istanbul Document tasks the OSCE to undertake "common projects with other partners, in particular the Council of Europe, allowing the OSCE to benefit from their expertise while respecting the identity and decision-making procedures of each organization involved."

⁵ See Annex 2 "ODIHR Election Reports published between 1 January 2010 and 31 December 2012" for the list of election reports consulted.

⁶ Reference to NAM reports is under the caveat that, in accordance with the standard methodology of OSCE/ODIHR, NAM reports provide only preliminary assessment of some aspects of the legal framework and its implementation.

11. Participation of Women;
12. Participation of National Minorities; and
13. International and Citizen Election Observation.

The choice of the thematic sections draws on the ODIHR “Guidelines for Reviewing a Legal Framework for Elections”,⁷ as well the structure of ODIHR election reports. Each section provides a brief overview of the thematic issue and a summary of the relevant OSCE commitments and other international standards, followed by a detailed review of participating States’ legislation and electoral practice on the given theme.

Reference to the specific election reports is made by the name of the OSCE participating State. In participating States where more than one election was observed during the reporting period, the year of the election is also provided in case that it is necessary to distinguish between reports, for example, because only one of the two reports contains the relevant information. Reference to particular elections, such as parliamentary, presidential, or local, is made only when such information affects the analysis.

II. EXECUTIVE SUMMARY

From the review undertaken of OSCE participating States’ electoral legislation and practice, certain positive elements with regard to compliance with OSCE commitments and other international standards were noted. However, shortcomings related to different areas of electoral legislation and practice were observed in a wide range of participating States, particularly in respect of inclusive candidate rights and registration, the ability to campaign on the basis of equal treatment, effective complaints and appeals mechanisms, and credible procedures for voting, counting, and tabulation. When shortcomings were identified, ODIHR consistently made recommendations for improvements and stated its readiness to assist participating States in the follow-up of recommendations.

Most participating States’ performance with respect to the formal attributes of the legal framework was largely in compliance with OSCE commitments and other international standards. The requirements in paragraphs 5.7 and 5.8 of the 1990 OSCE Copenhagen Document to guarantee human rights and fundamental freedoms by law and to ensure accessibility of the law were complied with. However, observers reported that the electoral legal framework in a considerable number of participating States could be improved with a view to removing inconsistencies or gaps, simplifying the legislation, and clarifying specific aspects. This would, in turn, facilitate its implementation, remove possible obstacles to accessibility, avoid potential abuse, and provide appropriate conditions for the conduct of elections in line with OSCE commitments and other international standards for democratic elections.

OSCE participating States utilize a broad range of electoral systems. While it is recognized that the choice of electoral system is a matter of national determination, OSCE commitments and other international standards require that it be based on equal suffrage and reflect the will of the voters. While States in general complied with OSCE commitments related to electoral systems, exceptions remained. In two States there was no chamber of parliament where all seats were filled on the basis of elections by popular vote. In three States, the electoral system was observed to not fully respect the will of voters. On a number of occasions, observers reported that the equality of the vote was not fully respected due to the delimitation of electoral districts or the method for assigning seats to districts.

⁷ ODIHR Guidelines for Reviewing a Legal Framework for Elections, Second Edition, 2013:
<https://www.osce.org/odihr/elections/104573>.

Although the majority of OSCE participating States were found to adhere to international standards in terms of election administration, the impartiality and independence of the election administration was a matter of concern in a number of States. In some cases, undue influence from the state or a lack of separation of the election administration from state institutions posed problems. In several countries, the transparency of the election administration was undermined due to restricted access for observers and media to monitor the work of election commissions or the inadequate publication of relevant decisions or election results.

In terms of voter rights and registration, OSCE participating States' laws largely ensured universal and equal suffrage, as required by OSCE commitments and other international standards. However, there were concerns related to the disenfranchisement of certain groups, including disproportionate restrictions in respect of residency and citizenship, as well as of persons convicted for a crime irrespective of the severity. In a number of States, problems with the accuracy of voter registration restricted the exercise of individuals' right to vote.

Electoral legislation and practice in respect of candidate rights and registration varied across the OSCE region, with a number of undue limitations observed that ran contrary to OSCE commitments and other international standards. In some cases, participating States' laws were assessed as discriminatory, including ethnicity-based limitations in one country and age-based limitations in two countries. Other States have unreasonable legal restrictions related to citizenship and residency requirements, criminal convictions, as well as limitations on independent candidates and the activities of some political parties and their members. In still other countries, candidate rights were denied due to an overly restrictive application of candidate registration procedures, particularly during the verification of candidate support signatures.

With regard to the election campaign, participating States complied to a varying degree with OSCE commitments and other international standards. Problems in legislation in States that regulated campaigning related mainly to defining what activities constituted a campaign, the lack of or insufficient regulation of specific aspects of the campaign, for example its duration, and insufficient legal safeguards to protect fundamental freedoms. In practice, failures to provide for a level playing field among electoral contestants and the abuse of state resources in favour of incumbents caused concern in several States, particularly when such abuse amounted to intimidation of voters. Finally, instances of vote buying and violent incidents during the campaign were observed in several States.

Participating States' legal approaches to campaign and political party finance varied substantially, ranging from liberal to restrictive regulations. Most states imposed some restrictions on contributions and expenditures, including the prohibition of funding from certain sources, limits on private funding, and maximum ceilings for campaign expenditure. The most common problems in law and practice related to a lack of reporting and disclosure, insufficiently mandated oversight bodies, and a lack of timely deadlines for monitoring and reporting on campaign finance.

Participating States complied to a varying degree with their media-related OSCE commitments and international standards. An overly restrictive legal framework, which did not allow for sufficient editorial freedom, was observed in some States. Other problems related to non-compliance with equal treatment and access requirements, which were partly caused by insufficiencies in law and partly by deficient implementation. Insufficient legal safeguards for freedom of expression and the criminalization of defamation allowed for undue restrictions on media freedom in several States. Also, the lack of independent media oversight bodies, insufficiencies in their mandates and the deficient functioning of the institutions in practice were raised as matter of concern in some States.

Concerning election day procedures, most OSCE participating States have enshrined in their legislation the principles of universality, equality, and secrecy of the vote, in line with OSCE

commitments and other international standards. Also States' laws usually provided for detailed procedures for voting, counting, and tabulation of the vote. Still, certain areas were of concern, including insufficient legal safeguards in the application of alternative voting arrangements as well as the legal possibility of proxy voting in a few States. In electoral practice, election day procedures often complied with OSCE commitments and other international standards in most States, although cases of breaches of the secrecy of the vote, and group and (illegal) proxy voting were reported on occasion. In some OSCE participating States, a tendency was observed that while voting procedures were overall respected, the process deteriorated during the counting and the tabulation of votes, particularly with regards to transparency, indications of ballot box stuffing and tampering with results protocols.

In the area of complaints and appeals OSCE participating States' electoral dispute resolution mechanisms frequently only partially complied with OSCE commitments and other international standards. With regard to legislation, particular concerns included lack of possibility for affected stakeholders to challenge all aspects of the electoral process, limited means of appeal, and overlapping jurisdictions of different institutions for electoral dispute resolution. In some cases, timelines for review of complaints and appeals were not provided or did not ensure a timely remedy. Non-compliance with relevant commitments in electoral practice related especially to due process guarantees, such as transparency, reasoning, and formal handling of complaints. At times, the latter were not implemented even though they were provided for in legislation.

A number of OSCE participating States took measures to further the political participation of women, in compliance with paragraph 40 of the 1991 OSCE Moscow Document. This was usually done through the introduction of special measures, most often candidate quotas for the underrepresented gender and at times with additional ranking requirements. Despite efforts to enhance gender equality, women's representation in elected politics remained at some 23 per cent across the OSCE region. Low visibility of women candidates during election campaigns was observed by ODIHR, as was the disenfranchisement of women through practices such as group or illegal proxy voting, in particular in minority populated areas.

In addition to general non-discrimination provisions several OSCE participating States provided for legal measures to allow for the effective political participation of national minorities in line with OSCE commitments and other international standards. Affirmative action ranged from reserved seats to exemptions from representation thresholds for minority based political parties. However, legal impediments to national minorities' effective participation remained in several States, including the lack of legal recognition of specific minorities, prohibition of minority based parties, language requirements preventing election campaigning in minority languages, or electoral district delimitations that negatively impacted on minority representation. Problems in electoral practice related to instances of undue influence on minority voters and a lack of voter education material in minority languages. In a number of OSCE participating States, undue influence or pressure on Roma voters, as well as inflammatory language directed at Roma was of concern.

A number of OSCE participating States have adopted legislative measures providing for participation of international and citizen observers in their elections, in compliance with OSCE commitments. While some States have not yet brought their legislation fully in line with OSCE commitments, most of these identified other legal means to provide for international election observation and in practice provided unimpeded access of observers to all stages of the election process. On a limited number of occasions, international and citizen observers reported restrictions and/or obstruction to their work in the field.

III. REVIEW OF ELECTORAL LEGISLATION AND PRACTICE

1. LEGAL FRAMEWORK

1.1. Background

The legal framework refers to the enacted principles and rules guiding and regulating the conduct of elections. This may include the constitution, legislative acts, as well as normative acts at the sub-statutory level.

The way in which the legal framework is structured may have implications on whether or not effective opportunities are created for citizens to exercise their electoral rights. Paragraphs 5.7, 5.8, and 7.1 of the 1990 OSCE Copenhagen Document commit participating States to guarantee human rights and fundamental freedoms (including those pertaining to elections) by law. These basic rights are included in Article 25 of the 1966 ICCPR and are further elaborated in paragraph 5 of the 1996 UNHRC General Comment No. 25. International good practice, particularly the 2002 VC Code of Good Practice, recommends that the law contain explicit procedures for democratic elections and all components of an overall electoral system. The legal framework for elections should also be clearly written, consistent, and accessible. Lastly, the legal framework should be stable with a view to provide certainty among electoral stakeholders regarding the electoral process. The 2002 VC Code of Good Practice recommends that the fundamental elements of electoral law should not be amended less than one year before an election.

1.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 5.7, 5.8 and 7.1
- 1966 International Covenant on Civil and Political Rights, Article 25
- 1996 UNHRC General Comment No. 25, paragraphs 1, 5, and 10
- 2002 VC Code of Good Practice, section II.2

1.3. Electoral Legislation and Practice in OSCE Participating States

1.3.1. Overview

During the period covered by this review, most participating States' performance with respect to the formal attributes of the legal framework was largely in compliance with OSCE commitments and other international standards. More specifically, the requirements in paragraphs 5.7 and 5.8 of the 1990 OSCE Copenhagen Document to guarantee human rights and fundamental freedoms by law and to ensure accessibility of the law were complied with, albeit with some exceptions as specified below.

However, the legal framework for elections in a large number of countries was found to contain technical shortcomings, including inconsistencies and gaps in the laws (Azerbaijan, Kazakhstan, Norway, Turkey, Ukraine), an overly complex legal framework (Bosnia and Herzegovina, the Russian Federation), and a lack of clarity (Austria, Belarus, the Russian Federation, Turkey, the United Kingdom, the United States of America) that entailed problems in application of the law as well as presenting obstacles to equal and fair conditions for all electoral stakeholders. While technical problems with the legal framework were common to most OSCE participating States, in some cases the technical deficiencies were observed to be associated with instances of abuse and manipulation.

1.3.2. Legal Status

The commitment to establish basic electoral rights in law was largely complied with in all OSCE participating States, with all states providing explicit references to electoral rights and basic electoral procedures in their constitutions or at the statutory level. One reservation is the practice observed in Romania 2009, where election laws were frequently amended by so-called Government Emergency Ordinances in a process that was assessed by ODIHR to bypass the ordinary legislative procedures and challenge the requirement that electoral processes be regulated by laws.

1.3.3. Accessibility and Inclusive Adoption of Laws

Paragraph 5.8 of the 1990 OSCE Copenhagen Document provides that “legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone”. On formal grounds, ODIHR has not noted any cases of non-compliance in respect of accessibility, as all states had their electoral laws published and made accessible to the citizens. On substance, accessibility has been observed by ODIHR to be contingent, among other things, on the clarity of the legal framework, thus the lack of a consolidated and simplified body of law was observed to potentially cause problems with accessibility in Austria and the United Kingdom. ODIHR recommended accordingly that the electoral legal framework of the United Kingdom be simplified and modernized.

Issues related with the procedure for adoption of the legislation have also been raised by ODIHR. In Albania, the former Yugoslav Republic of Macedonia, Kazakhstan, and Ukraine, ODIHR noted a lack of inclusivity in the adoption of legal amendments. Accordingly, recommendations were made that legal reform for elections be undertaken on the basis of an inclusive and consultative process.

1.3.4. Comprehensiveness, Consistency and Clarity

A number of participating States had legal frameworks that failed to have adequate safeguards or sufficiently detailed procedures provided by law, presenting challenges in terms of comprehensiveness, consistency, and clarity. While in some cases this has been largely compensated by lower-level regulations (Switzerland, the United States of America), in other cases a lack of supplementary regulations was observed to pose significant problems that undermined the electoral process (Belarus, Tajikistan, Turkmenistan, Ukraine 2010, Uzbekistan).

Inconsistencies, ambiguities, and gaps in the legal framework governing elections were noted in Albania, Azerbaijan, Kazakhstan 2011, Moldova 2010, Norway, Romania 2012, Serbia, Tajikistan, Turkey, Ukraine, and the United States of America 2010. Conversely, in other States, the legal framework was generally assessed to be adequate and comprehensive, but a lack of regulation in one specific area was of concern. For example, in Estonia and Norway the legal framework was assessed to provide a sound basis for the conduct of elections, although aspects of internet voting were observed to lack comprehensive regulation.

Participating States’ practice varied with respect to their approach on whether to consolidate the whole body of election legislation in a unified electoral code or to regulate different aspects of elections or different elections through separate laws. In many cases regulation through one law may be preferable if associated with enhanced uniformity and consistency in application. As observed in Austria and the United Kingdom, this may also result in enhanced accessibility. Consolidation or harmonization of legislation, with a view to enhance consistency and clarity of law, was recommended in Croatia 2011, Romania 2012, Serbia, Slovakia 2010, the United Kingdom, and Ukraine 2012.

Problems with clarity of the electoral legislation were considered as an impediment to effective implementation of electoral rights in Belarus 2012, the Russian Federation 2011, and Turkey. In a number of cases, the electoral legal framework was assessed as overly complex (Bosnia and Herzegovina, the Russian Federation), and this has been sometimes viewed as a potential source of inconsistent application of law and apparent manipulation (Azerbaijan, the Russian Federation 2011, Ukraine 2010). In some cases, complexity of the legal framework was assessed to be a result of the specifics of a federal or quasi-federal system in which a multitude of electoral laws existed (Bosnia and Herzegovina, Switzerland, the United States of America 2012).

1.3.5. Stability

Stability of the legal framework is an important tenet of democratic elections as electoral stakeholders need timely information on the rules guiding the elections. Section II.2.b. of the 2002 VC Code of Good Practice recommends that “the fundamental elements of electoral law... should not be open to amendment less than one year before an election...”. ODIHR has often raised the issue of stability of the legal framework, in particular when changes in the legal framework were passed in a very short time preceding the elections (Azerbaijan, the former Yugoslav Republic of Macedonia, Georgia 2012, Kazakhstan 2011, Moldova, Poland, Romania 2012, Spain, the United States of America 2012)⁸ or between two rounds of the same election (Ukraine 2010) In this respect, recommendations were often made to ensure legal amendments be completed sufficiently in advance of an election.

2. ELECTORAL SYSTEM

2.1. Background

The electoral system is the formula to translate votes cast into seats in the elected body. Each electoral system is implemented through electoral districts. While there are parliamentary systems based on one electoral district, most systems within the OSCE region utilize more than one district.⁹

While it is recognized that the choice of a particular electoral system is a matter of national determination, OSCE commitments and international standards require that it be based on equal suffrage and reflect the will of the voters. However, this does not imply that any method to translate votes into seats is sufficiently adequate to represent an electoral system in line with international standards and good practice. There are sound criteria to assess whether a given electoral system is in line with international standards for democratic elections. While the term “electoral system” is not mentioned explicitly in the 1990 OSCE Copenhagen Document, paragraphs 6, 7.1, 7.2, 7.3, 7.5, and 7.9 refer to specific elements of any electoral system. In addition, Article 21.3 of the UDHR, Article 25 of the 1966 ICCPR, and paragraphs 9 and 21 of the 1996 UNHRC General Comment No. 25 refer to electoral systems.

2.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 6, 7.1, 7.2, 7.3, 7.5, and 7.9
- 1948 Universal Declaration of Human Rights, Article 21.3
- 1996 International Covenant on Civil and Political Rights, Article 25
- 1996 UNHRC General Comment No. 25, paragraphs 9 and 21
- 2002 VC Code of Good Practice, sections I.2, I.2.2, I.5, and I.6

⁸ The note on the United States of America related to certain states only.

⁹ Some systems included specific elements to enhance gender equality and participation of national minorities. These elements will be considered in Sections 11 and 12 of this report, respectively.

2.3. Electoral Legislation and Practice in OSCE Participating States

2.3.1. Overview

Electoral systems in OSCE participating States differed. Some States elected their parliaments and/or local councils on the basis of proportional representation,¹⁰ while others used majoritarian systems.¹¹ Still others implemented mixed systems comprising a proportional and a majoritarian component.¹² Where elected by popular vote, presidents and mayors were elected under majoritarian systems.¹³

While OSCE participating States overall complied with OSCE commitments related to electoral systems, exceptions remained including Kazakhstan and Uzbekistan with regard to fully electing the lower chamber of parliament by popular vote, while in Greece, Kyrgyzstan, and San Marino, the electoral system was observed to not fully respect the will of voters. Practical challenges to the equality of the vote were observed in a number of OSCE participating States due to the delimitation of electoral districts or the method of assigning seats to electoral districts. ODIHR offered recommendations to improve compliance with the 1990 OSCE Copenhagen Document on all these occasions.

2.3.2. Periodic Elections

Paragraph 6 of the 1990 OSCE Copenhagen Document commits participating States to hold periodic and genuine elections, while paragraph 7.1 requires that elections be held at reasonable intervals. Participating States enshrine the requirement for periodic elections in their legislation by defining the term of office of elected bodies. During the reporting period, there were no reported cases of non-compliance with the commitment for periodic elections, neither in the legal framework nor in practice.

As regards specific terms of office, most participating States' legislatures, executives and local authorities were elected for four or five-year terms.¹⁴ Constitutional or legal limitations on the maximum number of terms in office for presidents were established in numerous participating States including: a maximum of two terms in Bulgaria, Croatia, Kyrgyzstan, Romania, Serbia, and the United States of America; and a maximum of two consecutive terms in Austria, the Czech Republic, Finland, France, Kazakhstan, the Russian Federation, Turkmenistan, and Ukraine. Conversely, in Belarus, the president could be elected for an indefinite number of terms.

2.3.3. Legislative Bodies and the Popular Vote

Paragraph 7.2 of the 1990 OSCE Copenhagen Document requires that all seats in at least one chamber of the legislature be elected by popular vote. The electoral systems for parliamentary

¹⁰ Albania, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, the former Yugoslav Republic of Macedonia, Greece, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Montenegro, the Netherlands, Norway, Poland, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, (partly) Switzerland, and Turkey.

¹¹ Azerbaijan, Belarus, France, the United Kingdom, and the United States of America.

¹² Andorra, Armenia, Georgia, Hungary, Lithuania, Monaco, Tajikistan, and Ukraine.

¹³ Belarus, Bulgaria, Croatia, the Czech Republic, Finland, France, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, the Russian Federation, Serbia, Turkmenistan, and Ukraine.

¹⁴ Exceptions included Austria, Finland, Kyrgyzstan, and the Russian Federation where the presidential term was six years, and Kazakhstan where it was seven years. The United States of America elects their House of Representatives (the lower chamber) every two years.

elections in Kazakhstan and Uzbekistan fell short of this requirement as certain seats in the lower chamber of parliament were not elected by popular vote.¹⁵

2.3.4. Equality of the Vote

Equality of the vote, as provided for in paragraph 7.3 of the 1990 OSCE Copenhagen Document, requires that each voter has the same voting power. Most OSCE participating States formally complied with this commitment by enshrining the principle of equal suffrage in their electoral legislation.

However, electoral districts frequently coincide with borders of administrative units that may have broadly varying population numbers. If the law provides that each electoral district is initially assigned one seat and the remaining seats are allocated proportionally to the population, there is a risk to undermine the equality of the vote, as less populated districts may be overrepresented. This was observed in the parliamentary elections in Spain, Switzerland, and Turkey and relevant changes to address this inequality were recommended.

Likewise, where mixed electoral systems were used in parliamentary elections, mostly the number of seats filled through proportional representation differed considerably from the number of seats filled through a majoritarian system, as in Andorra, Armenia, Georgia, Hungary, Monaco, and Tajikistan. Thus, the average population per seat was different between those two categories of seats and the equality of the vote was not fully respected. Accordingly, ODIHR recommended compliance with the principle of equality of the vote.

The commitment for equality of the vote was not always implemented in practice when electoral districts were drawn. This was observed by ODIHR in a number of OSCE participating States, including Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, France, the former Yugoslav Republic of Macedonia (only for the out-of-country electoral district), Lithuania, and the United Kingdom. In these cases, ODIHR recommended to improve compliance with paragraph 7.3 of the 1990 OSCE Copenhagen Document.

2.3.5. Respect for Voters' Choices

Paragraphs 6 and 7.9 of the 1990 OSCE Copenhagen Document require respect for the will of the people. On a few occasions, ODIHR identified electoral systems which might challenge these commitments. For example, in parliamentary elections in Greece and San Marino, additional bonus seats could be assigned to a leading party, while in Kyrgyzstan the law placed a limitation on the maximum seats a party could win.

2.3.6. Turnout Threshold

Voter turnout thresholds require that a minimum number of registered voters participate in order for a given election to be valid. While there is no established good practice related to turnout thresholds, they create a possibility for an endless cycle of elections that fail to satisfy the turnout requirement. ODIHR commented on this possibility in Belarus, Hungary, Lithuania, and Moldova and mostly recommended to review the turnout threshold requirements.

¹⁵ In Uzbekistan 15 out of 100 seats; in Kazakhstan 9 out of 107 seats. In both participating States, the upper house comprises elected and appointed members.

3. ELECTION ADMINISTRATION

3.1. Background

Administration of elections, at both central and local levels, is crucial for the implementation of election-related rights. Key principles of election administration that impact on the fair and effective conduct of elections are related with composition and operation of election management bodies (EMBs), particularly aiming at their impartiality, independence, and transparency. The 1990 OSCE Copenhagen Document contains no reference to either composition or operation of EMBs, although paragraphs 6 and 7.4 establish the conceptual framework for the effective and professional administration of elections. In addition, paragraph 20 of the 1996 UNHRC General Comment No. 25 provides for impartial and independent election administration. Likewise, section II.3.1 of the 2002 VC Code of Good Practice recommends impartial and independent election administration, with a permanent central election commission.

3.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 6 and 7.4
- 1996 UNHRC General Comment No. 25, paragraph 20
- 2002 VC Code of Good Practice, section II.3.1

3.3. Electoral Legislation and Practice in OSCE Participating States

3.3.1. Overview

The vast majority of OSCE participating States was found to adhere to international standards in terms of administering elections in a fair, impartial, and transparent manner. Still, the impartiality and independence of EMBs were questioned in some participating States (Albania, Belarus 2012, Kazakhstan, the Russian Federation 2011, Tajikistan). Undue influence from the state, or a lack of separation between election administration and state institutions, was observed as a serious shortcoming in several states (Belarus, Kazakhstan, the Russian Federation 2011, Tajikistan). In a large number of states, lack of transparency in the performance of EMBs undermined the conduct of elections, largely due to restricted access of observers and media to monitor the work of EMBs (Azerbaijan, Bulgaria, Kyrgyzstan 2012, Romania 2012, Tajikistan, Turkey, Ukraine 2012, Uzbekistan) and inadequate publication of relevant decisions or the election results (Belarus and Moldova).

3.3.2. Impartiality and Independence

Paragraph 20 of the 1996 UNHRC General Comment No. 25 calls for an independent electoral authority to supervise the electoral process and ensure impartiality.¹⁶ Ensuring independence of EMBs from the influence from those holding power or those with a political interest in the outcome of the elections is the most important safeguard for achieving this.

In a number of countries the impartiality and independence of the election administration has been questioned (Albania, Belarus 2012, Kazakhstan, the Russian Federation 2011, Tajikistan). This included a lack of functional separation between EMBs and executive bodies or direct or implicit

¹⁶ Paragraph 20 of the 1996 UNHRC General Comment No.25 states that “an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially, and in accordance with established laws which are compatible with the Covenant”. Section II.3.3.1.b of the 2002 VC Code of Good Practice states that “where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels”.

influence of state bodies on EMBs (Belarus, Kazakhstan, the Russian Federation, Tajikistan). The most common recommendations to enhance the independence of EMBs concerned the formation and composition of EMBs, although no uniform formulae in this respect was, or could have been, specified.

3.3.3. Formation of Election Management Bodies

The formation of EMBs concerns the method of appointing or electing EMB members. Participating States differed significantly with respect to the mode in which EMBs were formed, with some largely relying on public servants and/or appointments from representatives of public agencies (Cyprus, France, Ireland, Monaco) or the judiciary (Croatia, Turkey), while others opted for party-based formulae in which, very often, the composition of EMBs reflected the representation of political parties in the parliament (Azerbaijan, Moldova). In other countries (Austria, Estonia, the former Yugoslav Republic of Macedonia, Finland), formation of EMBs was based on a mixed system, with both public servants and party nominees involved at different levels.

There are no international standards or commitments with respect to the formulae for the composition of EMBs, although some good practices have been provided.¹⁷ In the absence of uniform formulae, ODIHR has taken a context-based approach, where the feasibility of a given approach was assessed against the background of electoral practices and political situation in the participating State. ODIHR suggested reconsideration of existing formulae or the rules for the composition of EMBs, at all or only some levels, with a view to enhance their independence and impartiality (Albania, Armenia, the Russian Federation). In several cases, the balance of party representation in EMBs of different levels has been questioned (Azerbaijan, Moldova). Furthermore, the excessive role of the Head of State in appointing senior election officials was considered problematic (Belarus 2012).

The permanency of EMBs, especially the central election authority, and their ability to function on a continuous basis was another area of concern. While the vast majority of participating States had a permanent central election authority, deviations were noted in Bulgaria and Ireland.

3.3.4. Transparency

EMB transparency is an important safeguard that enables effective public monitoring of the conduct of elections. Participating States' practice with respect to the transparent administration of elections varied considerably. In a number of countries, the transparency of EMBs was praised (Austria, Bosnia and Herzegovina, Croatia, Finland, Georgia, Poland, the United States of America), while in others the practice was assessed negatively (Azerbaijan, Kazakhstan 2012, Tajikistan). Practices associated with a lack of transparency in election administration concerned the general access of election observers and/or media (Azerbaijan, Bulgaria, Kyrgyzstan 2012, Tajikistan, Turkey, Ukraine 2012, Uzbekistan) and lack of access to EMB decisions (Uzbekistan) or the full publication of election results (Belarus 2012, Kazakhstan, Moldova).

4. VOTER RIGHTS AND REGISTRATION

4.1. Background

Universal and equal suffrage is one of the fundamental tenets of international law on political rights. Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits the OSCE participating States to guarantee universal and equal suffrage to adult citizens. Article 2 of the 1966 ICCPR implies that the right to vote shall extend to all citizens without any distinction related to "race, color, sex,

¹⁷ See, for example, section II.3.1 of the 2002 VC Code of Good Practice.

language, religion, political or other opinion, national or social origin, property, birth or other status”. While non-discrimination is an embedded precept of the right to vote, OSCE commitments and other international standards provide for possible limitations should they be reasonable and provided by law. Paragraph 24 of the 1990 OSCE Copenhagen Document stipulates that any limitations must be related to the objectives and aims of the law and be strictly proportional to them. Similarly, paragraph 10 of the 1996 UNHCR General Comment No. 25 provides that any restriction on voting rights must be reasonable.

While OSCE commitments and other international standards do not provide an exhaustive list of reasonable grounds for limiting voting rights, the most common limitations relate to citizenship and age, as provided in paragraph 7.3 of the 1990 OSCE Copenhagen Document. Reasonable restrictions to voting rights based on mental incapacity or criminal conviction are further provided for by paragraph 4 of the 1996 UNHCR General Comment No. 25. However, international standards and good practice provide that only conviction for serious crimes shall be grounds for suspending voting rights and there is an emerging trend to discontinue restrictions on voting rights for persons with mental disabilities.¹⁸ Ultimately, there are no OSCE commitments or international standards for enfranchisement of citizens abroad.¹⁹

The right to vote is linked closely with voter registration and the capacity to accurately determine who is eligible to vote. Voter registration can be active or passive. In an “active” voter registration system, voters must take action to register with the relevant authority their intention to participate in elections. In a “passive” voter registration system, voters are not required to take any specific action and are automatically included on voter lists that are compiled on the basis of existing state data. Paragraph 11 of the 1996 UNHCR General Comment No. 25 requires that states take effective measures to ensure that all persons entitled to vote are able to exercise that right. Section I.2 of the 2002 VC Code of Good Practice recommends that voter registers be permanent, updated regularly, and publicly available.

4.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 5.19, 7.3 and 24
- 1948 Universal Declaration of Human Rights, Articles 2 and 21
- 1966 International Covenant on Civil and Political Rights, Articles 2 and 25
- 1996 UNHRC General Comment No. 25, paragraphs 1, 3, 4, 10, 11, and 14
- 2006 UN Convention on the Rights of Persons with Disabilities, Article 29
- 2002 VC Code of Good Practice, sections I.1 and I.2

4.3. Electoral Legislation and Practice in OSCE Participating States

4.3.1. Overview

OSCE participating States’ laws largely prohibited restrictions of voting rights based on discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as required by OSCE commitments and other international standards. However, there were concerns related to disenfranchisement of certain groups of citizens, including restrictions of residency and citizenship (Estonia and Latvia), as well as of persons convicted for a crime irrespective of the severity (Armenia, Belarus, Bulgaria,

¹⁸ See Article 29 of the 2006 UNCRPD, section I.1.1.d of the 2002 VC Code of Good Practice, as well as *Hirst v. United Kingdom* (ECtHR, 2005), *Söyler v. Turkey* (ECtHR 07), *Frodl v. Austria* (ECtHR 2010), and *Alajos Kiss v. Hungary* (ECtHR 2010).

¹⁹ According to the ruling in *Sitaropoulos and Giakoumopoulos v. Greece* (ECtHR, 2012), failure by States to provide conditions for citizens to vote in national elections while abroad is not a violation of voting rights.

Estonia, Hungary, Turkey, Turkmenistan, United Kingdom, the United States of America, Uzbekistan). In several participating States, problems related to the accuracy of voter registration have restricted the exercise of individuals' right to vote (Albania, Kyrgyzstan, Montenegro, the United States of America).

4.3.2. Age

In line with paragraph 7.3 of the 1990 OSCE Copenhagen Document, voting rights were provided to all adult citizens. Almost all OSCE participating States established the voting age at 18 years or older. Two exceptions were Austria and the Swiss canton of Glarus, which both set the voting age at 16 years or older.

4.3.3. Citizenship and Residency

While citizenship-based restrictions are recognized as an acceptable limitation on voting rights, in several OSCE participating States problems persisted with disenfranchisement of certain groups of permanent residents without citizenship or with "undetermined citizenship". A significant number of permanent residents were disenfranchised in Estonia and Latvia as they had longstanding problems with obtaining citizenship. In these cases, ODIHR recommended taking steps for accelerating the naturalization process of these people. In the United States of America, over 4 million citizens resident in overseas US territories were disenfranchised and some 600,000 residents of the District of Columbia were only eligible to vote in presidential elections: this was assessed by ODIHR as being at odds with the principle of universal suffrage.

While lack of citizenship is considered an admissible ground for restricting voting rights, the CoE Convention on the Participation of Foreigners in Public Life at Local Level prescribes granting of voting rights to resident foreigners in local elections.²⁰ ODIHR expressed respective concerns in Bulgaria where resident foreigners were not granted right to vote in local elections. A recommendation was also made in Latvia to grant non-citizens a right to vote in local elections.

Montenegro imposed residency requirements as a condition for citizens to be eligible to vote. In particular, the Constitution provided that citizens could only vote if they had been resident in the country for 24 months prior to the election. This was assessed as overly restrictive and contrary to international standards.

4.3.4. Criminal Conviction

Participating States' laws that stipulated a blanket denial of voting rights of those convicted for crimes were consistently criticized as being contrary to OSCE commitments and other international standards, particularly paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document, as well as the 2002 VC Code of Good Practice and ECtHR case law. Legislation in Armenia, Belarus, Bulgaria, Estonia, Hungary, Kyrgyzstan, Monaco, Turkey, Turkmenistan, the United Kingdom and Uzbekistan, as well as a large number of jurisdictions in the United States of America denied voting rights to those with a criminal conviction, irrespective of the severity of the crime. In all of these States, ODIHR criticized the existing provisions and, where an observation activity was deployed, recommended that the blanket denial of voting rights of citizens serving prison sentences be removed.

In Cyprus, Georgia 2012, and Slovakia, the legal framework was amended to limit the restrictions on suffrage rights only to those who serve prison sentences for serious crimes, in line with ECtHR

²⁰ The following OSCE participating States have signed and ratified the Convention: Albania, Denmark, Finland, Iceland, Italy, the Netherlands, Norway, and Sweden.

rulings. In Cyprus, however, the legal framework has not been harmonized so as to allow prisoners to vote in all elections.

In Belarus and Turkmenistan, citizens in pre-trial detention were denied voting rights, which is contrary to the presumption of innocence enshrined in paragraph 5.19 of the 1990 OSCE Copenhagen Document. In Turkey and many US states, ex-prisoners faced obstacles in exercising their voting rights, which is at odds with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

4.3.5. Disabilities

While steps to facilitate voting rights of persons with disabilities were taken by an increasing number of participating States in line with Article 29 of the 2006 UNCRPD, issues persisted with access of disabled voters to polling stations, voting by persons with visual impairment, as well as voting rights of those with mental disabilities.²¹ Participating States' laws regarding the voting rights of people with mental disabilities varied across the OSCE region. In several cases, ODIHR observed that granting voting rights to people with mental disabilities was consistent with OSCE commitments on universality, as well as with the ECHR and the UNCRPD. However, while some countries extended voting rights to voters declared incapable on the grounds of mental health (the Netherlands, Turkmenistan), the majority of participating States continued to deny voting rights to those with mental disabilities.

4.3.6. Military Personnel

In a limited number of OSCE participating States (Moldova, Turkey), military personnel were denied voting rights by law, which was assessed as an excessive restriction of voting rights and at odds with the principles of universal and equal suffrage provided for in paragraph 7.3 of the 1990 OSCE Copenhagen Document. In both of these countries, ODIHR recommended that the prohibition to vote for military personnel be removed.

4.3.7. Voter Registration

The majority of participating States provided efficient mechanisms for voter registration that were considered accurate by OSCE/ODIHR interlocutors. However, in several States, the right to vote was negatively impacted by challenges related to voter registration. In several countries, voters faced problems in exercising their suffrage rights due to issues related to the accuracy of voter lists. The most common challenges included the maintenance of up-to-date and accurate voter registers (Albania, France, Kyrgyzstan, Moldova, Montenegro, the United Kingdom, the United States of America), the uneven application of residency regulations (Albania, Kyrgyzstan), and issues related with absentee voting (the Russian Federation 2012, Ukraine 2012). In addition, in some cases, citizens faced challenges in obtaining valid identification documents (Latvia, the United States of America). In Georgia 2012, a number of internally displaced persons (IDPs) were disenfranchised due to the absence of a current temporary address on their IDP cards. In the United States of America 2012), the large number of eligible voters that were not registered to vote brought into question the effectiveness of existing measures to ensure that all persons entitled to vote are able to exercise that right, as provided by paragraph 11 of the 1996 UNHCR General Comment No. 25.

Transparency of voter lists and the voter registration process is important to ensure that eligible voters are not disenfranchised and is a safeguard against potential attempts to manipulate voter lists. In some countries, problems with the transparency of voter lists and the voter registration process

²¹ See Sections 9.3.4 and 9.3.6 of this report for election day related issues concerning voters with disabilities, including access to polling stations and voting by persons with visual impairment.

were observed. These included a lack of transparent and formal regulations on managing the voter registration system in Kyrgyzstan; a complex voter registration system and lack of public scrutiny in case of updates in Montenegro; a lack of transparency during the compilation of the unified voter register in Serbia; and short time-frames established for public scrutiny of voter lists in Turkey. In some States, transparency of voter lists was impaired due to the limited access of voters (Tajikistan) or observers (Belarus) to scrutinize the lists.

4.3.8. Voter Education

Paragraph 11 of the 1996 UNHRC General Comment No. 25 highlights the importance of voter education to ensure the effective exercise of political rights. However, participating States' practice often lacked adequate voter education programmes, as observed in Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, France, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovenia, Ukraine, and the United States of America. In a number of cases, voter education campaigns were recommended especially for vulnerable groups, including minority voters (Bosnia and Herzegovina, Moldova, Serbia) and disabled voters (Romania). The lack of sufficient voter information was observed to contribute to the disenfranchisement of voters in Kyrgyzstan where no information was provided on how to apply for special or absentee voting, as well as in the United States of America where a significant number of eligible voters were not registered to vote.

5. CANDIDATE RIGHTS AND REGISTRATION

5.1. Background

The right to seek political and public office is stipulated in paragraph 7.5 of the 1990 OSCE Copenhagen Document, which provides that citizens should be given the opportunity to stand for election individually or as a representative of a political party without discrimination. Paragraphs 7.6 and 9.3 of the 1990 OSCE Copenhagen Document provide for freedom of association and the right to establish political parties and organizations. According to Article 2 of the ICCPR, the right to stand, like the right to vote, shall extend to all citizens without any distinction related to "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Similarly, candidate rights may be subject to restrictions if they are provided by law, and if they are reasonable and proportionate to the objectives and aims of the law, as provided by paragraph 24 of the 1990 OSCE Copenhagen Document, Article 25 of the 1966 ICCPR, paragraph 15 of the 1996 UNHRC General Comment No. 25, and Article 29 of the UNCPRD. There is no international instrument that exhaustively lists the admissible limitations on candidate rights, although section I.1 of the 2002 VC Code of Good Practice includes some guidance in relation to age, nationality, and residence.

Candidates may be required to demonstrate a minimum level of support in order to register, such as signature petitions or a financial deposit. However, in line with paragraph 7.5 of the 1990 OSCE Copenhagen Document, procedures for candidate registration should be non-discriminatory. The grounds for rejecting registration applications should be based on objective criteria and clearly stated in the law. Section I.1.3 of the 2002 VC Code of Good Practice provides detailed guidance on the submission and verification of supporting signatures, as well as requirements regarding the use of financial deposits and their reimbursement.

5.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 7.5, 7.6, 9.3, and 24
- 1966 International Covenant on Civil and Political Rights, Articles 2 and 25

- 1996 UNHRC General Comment No. 25, paragraphs 1, 4, 15, 16 and 17
- 2006 UN Convention on the Rights of Persons with Disabilities, Article 29
- 2002 VC Code of Good Practice, sections I.1 and I.2

5.3. Electoral Legislation and Practice in OSCE Participating States

5.3.1. Overview

Electoral legislation and practice in respect of candidate rights and registration varied across the OSCE region, with a number of undue limitations observed that ran contrary to OSCE commitments and other international standards. In some cases, participating States' laws were assessed as discriminatory, including ethnicity-based limitations in Bosnia and Herzegovina and age-based limitations in Kyrgyzstan and Turkmenistan. In other States, legal restrictions related to citizenship and residency requirements, criminal convictions, as well as limitations imposed on independent candidates and the activities of some political parties and their members. In still other countries, candidate rights were denied due to an overly restrictive application of candidate registration procedures, particularly during the verification of candidate support signatures (Belarus, Kazakhstan, Spain).

5.3.2. Citizenship and Residency

In general, no legal limitations on candidate rights were noted in respect of citizenship. However, concerns were raised that long-term residents with "undetermined citizenship" did not have a right to stand for election in Estonia and Latvia. In addition, limitations applied to individuals with dual citizenship (Armenia, Bulgaria, Lithuania, the Russian Federation) were also noted as concerns.²² Corresponding recommendations were made to grant the right to stand to dual citizens.

Paragraph 15 of the 1996 UNHCR General Comment No. 25 states that the exclusion of candidates on the basis of residency is unreasonable and discriminatory. Section I.1.1.c of the 2002 VC Code of Good Practice recommends that residency requirements may only be imposed for local and regional elections with the requisite residency period not exceeding six months. Residency requirements were considered unreasonably long in Armenia (10 and 5 years for presidential and parliamentary candidates respectively), Kazakhstan (15 and 10 years, for presidential and parliamentary candidates respectively), Kyrgyzstan (15 years for presidential candidates), Turkmenistan (15 years for presidential candidates), Ukraine (10 and 5 years for presidential and parliamentary candidates respectively).

5.3.3. Criminal Conviction

In a number of participating States, citizens with a criminal conviction were denied candidate rights, irrespective of the gravity of the crime (Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine). This is at odds with the principle of proportionality enshrined in paragraph 24 of the 1990 OSCE Copenhagen Document. In Belarus, candidate rights were denied to presidential and parliamentary candidates who had a prior criminal record, even if the conviction had been expunged. In Turkey, candidacy rights of those who had committed non-negligent crimes and sentenced to more than one year of imprisonment were denied by the Constitution, which is also at odds with the principle of proportionality.

²² In *Tanase v. Moldova* (2010), the ECtHR held that restrictions on suffrage rights of dual citizens were a disproportionate measure and, thus, contrary to Article 3 of Protocol 1 of the ECHR.

In Tajikistan and Uzbekistan, candidate rights were denied to citizens who were under investigation or awaiting a trial for grave crimes, which was in violation of the principle of presumption of innocence as provided by paragraph 5.19 of the 1990 OSCE Copenhagen Document.

5.3.4. *Other Restrictions*

Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, legislation in Bosnia and Herzegovina imposed ethnicity-based limitations on the right to stand.²³ Other types of restrictions that were at odds with OSCE commitments and other international standards included limitations on the maximum age of candidates (Kyrgyzstan, Turkmenistan), active military personnel (Finland, Greece, Tajikistan, Uzbekistan) or those who had not performed military service (Turkey), civil servants (Greece), blanket restrictions on people subject to lustration provisions (Latvia), citizens who did not have higher education (Tajikistan), individuals who had been removed from office through impeachment procedure (Lithuania), religious functionaries (Tajikistan, Uzbekistan, the Swiss Canton of Geneva). Austria denied the right to be elected to “members of reigning houses or of formerly regnant families”, a practice which was found to present an unreasonable restriction on the right to be elected.

5.3.5. *Independent and Party Candidates*

Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, several participating States denied the possibility, or imposed disproportionate obstacles, for individual candidates to stand independently in national elections (Croatia, the Czech Republic, Finland, Greece, Kazakhstan, Kyrgyzstan, Latvia, Montenegro, Poland, the Russian Federation, San Marino, Serbia, Slovakia, Turkey, Uzbekistan). Accordingly, recommendations were made to allow for individual candidacy or to provide equal conditions for independent candidates.

At odds with paragraphs 7.6 and 9.3 of the 1990 OSCE Copenhagen Document, long-term residents with undetermined citizenship were denied the right to join political parties in Estonia. Laws regulating political parties and their participation in elections have also raised concerns regarding their compliance with OSCE commitments in Kazakhstan (disproportionate requirements for registration and conditions for deregistration of parties), Spain (measures restricting activities of political parties for their support of violence or terrorism) and Turkey (provisions on dissolution of political parties; denial of political activities by members of dissolved political parties). In the respective reporting periods, no parties were subject to restrictions on the above-mentioned grounds in Spain, while several non-registered parties were denied the right to participate in the parliamentary elections in Kazakhstan and a number of previously dissolved political parties, as well as their members, were effectively denied the right to stand in Turkey. Arbitrary limitations on the right to form a political party and stand as a candidate were also observed in Uzbekistan.

5.3.6. *Candidate Registration*

In several participating States, candidate nomination and registration procedures were found to create unnecessary hurdles for the right to stand. In many cases, this related to requirements for collection of supporting signatures, as well as procedures for verification of the signatures (or in the case of Hungary, candidate endorsement coupons). The number of signatures required for nomination of a candidate was considered excessive in Belarus 2012, Hungary, Serbia, and in some US states.²⁴ Furthermore, the practice of signature verification or the criteria for invalidation of

²³ See also, *Sejdić and Finci v. Bosnia and Herzegovina* (ECtHR 2009).

²⁴ Section I.1.3.ii of the 2002 VC Code of Good Practices recommends that “law should not require collection of the signatures of more than 1% of voters in the constituency concerned.”

signatures was assessed as restrictive in Belarus 2012, Hungary, Kazakhstan, Poland, the Russian Federation 2012, Serbia, and Spain.

In a number of participating States, procedures required candidates to submit certain types of information, such as tax returns or property or income declarations. Denial of registration on these grounds was assessed negatively in Belarus 2012 and Kazakhstan 2012. Candidate registration procedures were also recognized to be overly restrictive in Kazakhstan 2010 (lack of objective criteria and transparency in evaluating presidential candidates' fluency in the Kazakh language) and Ukraine (denials of registration based on minor omissions in submission of documents). The monetary deposit to stand as a candidate in Tajikistan, some 24 times the national average salary, was assessed to be an unduly high requirement that could prevent a large number of candidacies. In Armenia, Kazakhstan, and Kyrgyzstan, candidate deregistration was evaluated to be overly broad and lacking sufficient safeguards to protect against disproportionate deregistration. In all of these cases, recommendations were made to amend the laws to further protect candidate rights.

6. ELECTION CAMPAIGN

6.1. Background

Election campaigns allow electoral contestants to convey their message to the public and, thus, provide voters with the opportunity to make an informed choice. In line with relevant provisions of the 1990 OSCE Copenhagen Document and 1966 ICCPR, this presupposes respect for fundamental freedoms, most importantly freedoms of expression, association, assembly, and movement. Measures to ensure a level playing field for candidates are elaborated in the 1990 OSCE Copenhagen Document. In particular, paragraph 7.7 commits participating States "to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution", with similar language provided in paragraph 19 of the 1996 UNHRC General Comment No. 25. Also, paragraph 5.4 of the 1990 OSCE Copenhagen Document commits participating States to ensure "a clear separation between the State and political parties", thereby protecting against the abuse of state resources in favour of the ruling party or incumbent. The 2002 VC Code of Good Practice recommends that equality of opportunity for campaigning be provided either on a strict or proportional basis.

6.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs. 5.4, 7.6, 7.7, 9.1, 9.2, and 24
- 1966 International Covenant on Civil and Political Rights, Articles 12, 19, 20 and 21
- 1996 UNHRC General Comment No. 25, paragraph 19
- 2002 VC Code of Good Practice, sections I.2.3, I.3.1, and II.1

6.3. Electoral Legislation and Practice in OSCE Participating States

6.3.1. Overview

Participating States complied to a varying degree with OSCE commitments and international standards applicable to the election campaign. The most significant problems concerned restrictions of the freedoms of expression, association, assembly and movement (Kazakhstan, the Russian Federation, Turkey, Uzbekistan), violent incidents (Albania, Turkey), the abuse of state resources in favour of incumbents as observed in the former Yugoslav Republic of Macedonia, Kazakhstan,

Kyrgyzstan 2010, the Russian Federation 2011, and Ukraine, as well as credible instances of reported vote buying.

6.3.2. Legal Framework

In several participating States, such as Austria, Bulgaria, Cyprus, Estonia, France, Greece, Latvia, Lithuania, Monaco, Montenegro, Romania, San Marino, Slovenia, and Spain, election campaign related legislation and, where observed, practice was found to be generally in line with OSCE commitments and other international standards.

In other participating States, the legal framework left specific aspects of the campaign unregulated, such as the official campaign start (Cyprus, the Czech Republic 2010, Finland, the Netherlands, Slovakia 2011) or campaigning on election-day (Georgia). Vagueness in the law was observed to pose problems in practice in Kyrgyzstan 2010, resulting in inconsistencies between the law and EMB regulations about the official campaign start, as well as in Hungary, resulting in unequal implementation of campaign silence provisions. In the former Yugoslav Republic of Macedonia it was recommended generally that the regulatory framework for campaigning should be fully implemented and enforced.

Strict limitations on campaigning in Belarus (2012), in respect of organization of meetings with voters, the printing and distribution of campaign materials, as well as campaign finance and media access, negatively impacted voters' ability to make an informed choice, contravening paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document. Short campaign periods were observed in Azerbaijan (22 days) and the United Kingdom (17 days).

6.3.3. Fundamental Freedoms of Expression, Association, Assembly, and Movement

Freedoms of expression, association, assembly, and movement are essential preconditions for an effective election campaign and voters' ability to make an informed choice. General respect for fundamental freedoms, in line with OSCE commitments, was observed in Austria, Bulgaria, Cyprus, Estonia, Finland 2011, France, the former Yugoslav Republic of Macedonia, Greece, Hungary, Latvia 2010, Lithuania, Montenegro, the Netherlands 2012, Poland, Romania, Slovenia, Spain, and the United States of America.

In other countries, conversely, legislation was found to be partly deficient, especially with regards to overly broad restrictions of freedom of expression (Kazakhstan 2012, Turkey, Uzbekistan).²⁵ In Kyrgyzstan 2010, the legal prohibition on certain groups (members of charitable or religious organizations, persons under 18 years of age and foreign citizens) to campaign was considered an unreasonable restriction of citizens' political rights. In the Russian Federation 2011, undue restrictions were observed in implementation, since the authorities frequently interpreted the notification procedure for organizing campaign events as an authorization procedure.

General problems in contravention of relevant OSCE commitments were observed in Albania (violent incidents), Azerbaijan (obstruction of opposition candidates' campaign activities by police/public authorities), Belarus 2012 (limitations on the freedom of assembly), Kazakhstan 2012 (state of emergency in certain regions) and Turkey (outbreaks of violence and attacks on party premises).

²⁵ For related discussion of defamation and libel being established as criminal offences, see Section 8 of this report.

6.3.4. Equal Treatment/Level Playing Field

A level playing field is of key importance in ensuring that all candidates have an equal opportunity to convey their messages to the electorate without hindrance. It requires the state to be impartial and apply the law equally to all electoral contestants. In some countries, legal frameworks explicitly aimed at ensuring equal opportunities (Croatia, Turkey). However, general deficiencies in law and practice were observed in Armenia and Georgia, including unequal access to public buildings for campaigning. In these instances, a review of the legal framework was recommended to address these shortcomings.

Particular problems in electoral practice that privileged the incumbents were noted in Belarus, Kazakhstan 2011, the Russian Federation 2011, and Tajikistan. In these instances, the inconsistent application of campaign regulations by electoral authorities disadvantaged opposition candidates.

6.3.5. Abuse of State Resources

The abuse of state resources was raised as a general problem in Azerbaijan, the former Yugoslav Republic of Macedonia, Kazakhstan, Kyrgyzstan 2010, the Russian Federation 2011, Ukraine and, at the local level, in Estonia, and Latvia. The lack of or insufficient legal provisions prohibiting the abuse of state resources was also observed in other participating States, including in Armenia, Slovakia 2012, and Tajikistan. In some other countries, the implementation of legal provisions prohibiting the abuse of state resources was deficient or lacking (the Russian Federation 2012, Ukraine 2012). In the former Yugoslav Republic of Macedonia and Georgia 2010 an insufficient separation between State and party structures was noted as being in contravention with paragraph 5.4 of the 1990 OSCE Copenhagen Document. In these cases, legal amendments were recommended to prevent conflicts of interests.

Continued abuse of state resources, amounting to pressure, intimidation or undue influence on voters was also observed. For instance, pressure on state employees was noted in Albania, Belarus, Georgia, Serbia, and Ukraine; pressure to support the ruling party's campaign events was observed in Armenia, Kyrgyzstan 2011, and Ukraine 2012; and other incidents such as the destruction of opposition campaign materials was observed in Belarus 2010. On election day, observers reported the abuse of state resources in Armenia, Azerbaijan, Belarus 2010, the former Yugoslav Republic of Macedonia, Georgia 2010, the Russian Federation, Slovakia 2010, and Ukraine.

6.3.6. Vote Buying

Vote buying poses a serious challenge to maintaining a level playing field. It was raised as a concern by stakeholders in several countries, including Bulgaria, Lithuania, Montenegro, Romania, San Marino, Serbia, and Slovakia 2011. In these cases it was often recommended to incorporate legal sanctions for vote buying in the criminal code. In Georgia 2012, the legal prohibition of vote buying was considered to be unclear and further review was recommended. Credible allegations of vote buying on election day were reported in Armenia, Bulgaria, Kyrgyzstan, Latvia 2010, Lithuania, Moldova 2011, Romania 2012, the Russian Federation 2011, Serbia, Slovakia, and Ukraine 2012.

7. CAMPAIGN AND POLITICAL PARTY FINANCE

7.1. Background

A sound system of campaign and political party finance is a central tenet for democratic elections. A transparent and effectively regulated system can help provide candidates with independence from undue influence and enable voters to make a more informed choice before voting. Article 7 of the

2003 UNCAC calls on countries to take appropriate legislative and administrative measures to enhance the transparency of campaign and party financing. While OSCE commitments and other international standards are minimal and general with regard to campaign and political party finance – paragraphs 7.6 and 7.7 call for equal and fair treatment of candidates before the law –, paragraph 19 of the 1996 UNHRC General Comment No. 25 provides guidance on campaign expenditure limits. Sections I.2.3 and I.3.1 of the 2002 VC Code of Good Practice recommend transparency and neutrality in the funding of candidates and parties.

The possible sources of funding can generally be distinguished between public funding by the state and private funding by individuals or legal entities. In regards to the former, one may further differentiate between general funding provided to political parties on a permanent basis and funding of electoral contestants provided for a given election. Since both are usually considered jointly in election reports, they are also dealt with jointly here.

7.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraph 7.6 and 7.7
- 1996 UNHRC General Comment No. 25, paragraph 19
- 2003 UN Convention against Corruption, Article 7
- 2002 VC Code of Good Practice, sections I.2.3, and I.3.1

7.3. Electoral Legislation and Practice in OSCE Participating States

7.3.1. Overview

Systems of campaign and party funding differed significantly across the OSCE region. The majority of countries used mixed systems, relying on private and public funding. States' legal approaches to campaign and political party finance varied substantially, ranging from liberal to restrictive regulations. Most States imposed some restrictions on contributions and expenditures, including the prohibition of funding from certain sources, limits on private funding, and maximum ceilings for campaign expenditure. The most common problems in law and practice related to a lack of or non-compliance with reporting and disclosure requirements (Czech Republic 2010, Georgia, Moldova 2010, Slovakia 2012, Slovenia, Switzerland) and the lack of or deficient supervision of campaign finance (Greece, Hungary, Kyrgyzstan, Moldova, Slovakia).

7.3.2. Legal Framework

The legal regulation of campaign and political party finance was found to be generally satisfactory in some countries (France, Latvia, Poland). While generally in compliance, an insufficient legal regulation of certain aspects was noted in Armenia (lacking definition of “campaign expenditure”), Bulgaria (insufficient definition of “campaigning”), and Lithuania (insufficient regulation of several aspects, including party membership fees).

No or deficient legal regulation of campaign finance was found in Albania, Andorra, Austria, Croatia 2009/2010, Georgia 2012, San Marino, Slovakia 2010, Sweden, Switzerland, Turkey, Turkmenistan, and Ukraine. Conversely, legal “overregulation” was observed in Belarus 2010 (unduly low limits for independent campaign funds and private contributions), Bosnia and Herzegovina (in respect of donation limits as well as non-parliamentary parties), and Ireland (narrow regulation with previous ODIHR recommendations remaining unaddressed). The legal framework and its implementation were criticized in Hungary (lack of transparency and insufficient oversight) and Slovakia 2011 (insufficiently detailed regulation and lack of enforcement), while general problems of transparency were noted in Kyrgyzstan 2011.

7.3.3. System of Campaign and Party Funding

Systems of funding differ significantly across the OSCE region. The majority of countries used mixed systems, relying on private and public funding (including Greece, Finland, the Netherlands), often with predominance of private sources (the United States of America). In Azerbaijan and Kazakhstan contestants had to rely entirely on their own sources for campaigning, with no availability of public funds. A strong dependency on private donors was observed in Moldova 2010 (limited number of donors and visible differences in resources available to contestants) and the United Kingdom (financially stronger parties could invest more in advertising). Conversely, countries like Austria, Slovakia, Sweden, and Turkey had predominantly public funding. Among the latter, concerns were raised with respect to Turkey's high threshold for receiving party funding (10 per cent of votes received in parliamentary elections), which was observed to exclude smaller parties and independent candidates, leading to a recommendation to lower the threshold for allocation of public funds. In Slovakia 2010, a significant cut in public subsidies was observed to particularly disadvantage smaller parties. In Albania, the formula for the allocation of public funds was seen to disproportionately disadvantage smaller parties.

7.3.4. Contribution and Expenditure Restrictions

To promote fair and equal competition during elections and to lessen incentives for corruption, it may be necessary to impose restrictions on contributions and expenditures. Measures include the prohibition of funding from certain sources; limits for private funding; and maximum ceilings for campaign expenditure.

Participating States frequently restricted certain sources of funding. Donations from (certain) foreign sources were prohibited in the majority of States, including Croatia, Cyprus, Greece, France, the former Yugoslav Republic of Macedonia, Kazakhstan, and the United States of America. Donations from anonymous sources were not permitted in some States including Croatia 2012 and the United States of America. In addition, donations from (certain) public sources were explicitly prohibited in Cyprus (state institutions), Finland 2011 (corporations under governmental or municipal control, foundations governed by public law), the former Yugoslav Republic of Macedonia (public sources) and Greece (state companies, government bodies, and public media).

Some countries provided for maximum ceilings for donations from (certain) private sources, such as Cyprus, France, Poland, and the United States of America. In contrast, no limitations existed in Austria, Croatia, Finland 2011, the Netherlands, and Slovakia. Concerns in respect of the maximum, or absence of, limits for anonymous donations were noted in Denmark, Greece, and Ireland. It was recommended that maximum contribution limits be introduced, for example, in Croatia 2009/2010, Finland 2011, and Slovakia 2010. In Serbia, the maximum ceiling on contributions was assessed as too high to be effective.

Maximum limits on campaign expenditure existed in Georgia 2012, Hungary, Ireland, Kazakhstan 2012, Latvia 2011, Moldova 2010, Poland, and Romania 2009. In Hungary, the limit for maximum campaign spending was considered unrealistically low and a revision was recommended. Conversely, (partly) lacking ceilings were noted in Cyprus, the Czech Republic, Denmark, Finland 2012, the Netherlands 2012, Slovakia 2010, Switzerland, and the United States of America. Sometimes, this seemed to have led to considerable variations in the maximum amount spent on campaigning (the United States of America 2010).

7.3.5. Reporting and Disclosure Requirements

Article 7 of the 2003 UNCAC calls for a transparent political and campaign finance system. In terms of good electoral practice, this has typically manifested in obliging political parties and candidates to report periodically and publicly disclose the campaign funds received and expenditures made.

General deficiencies regarding reporting and disclosure requirements were found in the Czech Republic 2010, Slovakia 2012, Slovenia, and Switzerland. Additionally, in Armenia, Austria, Finland 2011, the former Yugoslav Republic of Macedonia, Hungary, Moldova, and the Netherlands 2012, it was recommended to strengthen the regulatory framework governing reporting obligations. Limited implementation of legal provisions was observed in Moldova 2011, where contestants did not treat their reporting obligations with due diligence.

Inadequate timelines for the submission of financial reports, sometimes a considerable time after election day, were observed in Bosnia and Herzegovina, France, Monaco, Poland, Romania, Serbia, Spain, and Ukraine 2010. Cyprus and the former Yugoslav Republic of Macedonia seemed to impose no legal deadline for the submission of reports.

The lack of a requirement to publish campaign finance reports was noted in Georgia 2012. The lack of such regulation was remedied in practice in Sweden, where political parties agreed on voluntary reporting to enhance the transparency of parties' income.

7.3.6. Supervision of Campaign Finance

Independent institutions are a good practice to supervise the implementation of finance regulations. The lack of such an institution was noted in Kyrgyzstan 2010 and Slovakia 2010. Insufficiencies in the institutions' legal mandate were noted in Cyprus, Estonia, Finland 2011, Romania 2012, and Turkey.

Problems in law and practice of independent oversight were observed in Greece, Hungary, and Moldova 2011. A clarification and strengthening of the institution's authority was recommended in Hungary. In Georgia 2012, observers noted an unequal implementation of campaign finance regulations, disproportionately tackling opposition candidates.

8. MEDIA

8.1. Background

The media play an essential role during an election period, providing for citizens' informed participation in public and political affairs. In line with paragraph 7.8 of the 1990 OSCE Copenhagen Document, unimpeded and non-discriminatory media access during an election campaign is essential for political parties and candidates to inform the electorate about their policies and programmes. Section I.2.3.a of the 2002 VC Code of Good Practice goes into further detail when it affirms the necessary neutrality of publicly-owned media as crucial for the level playing field among electoral contestants.

Freedom of expression is a precondition and guarantee for unimpeded campaigning in the media and independent media coverage, as enshrined in paragraph 9.1 of the 1990 OSCE Copenhagen Document. In addition, paragraph 10.1 of the 1990 OSCE Copenhagen Document contains a more specific commitment of participating States to respect the right to seek, receive and impart information and views on human rights. Article 19 of the 1966 ICCPR enshrines the freedom of

expression and paragraph 20 of the 2011 UNHRC General Comment No. 34 elaborates on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. Unreasonable limitations on media access and coverage are prohibited in line with paragraph 24 of the 1990 OSCE Copenhagen Document and paragraph 13 of the 2011 UNHRC General Comment No. 34.

8.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 7.8, 9.1, 10.1, and 24
- 1966 International Covenant on Civil and Political Rights, Article 19
- 2011 UNHRC General Comment No. 34, paragraphs 13, 20, 37, and 47
- 2002 VC Code of Good Practice, sections I.2.3, I.3.1, II.1

8.3. Electoral Legislation and Practice in OSCE Participating States

8.3.1. Overview

Participating States complied at varying degree with their commitments under the 1990 OSCE Copenhagen Document. Particular problems related to insufficient legal safeguards for free expression, for example in Tajikistan, Turkmenistan, and Uzbekistan. Likewise, the criminalization of defamation was raised as a problem in several participating States. Other problems related to non-compliance with equal treatment and access requirements, including in Azerbaijan, Belarus 2010, Kazakhstan 2011, Kyrgyzstan 2010, and Serbia. Also the lack of independent media oversight bodies, insufficiencies in their mandate, and the deficient functioning of these institutions in practice were considered problematic in some States, such as Armenia, Georgia, Kyrgyzstan, Montenegro, and Romania.

8.3.2. Legal Framework

The legal framework governing campaigning in the media and media coverage should ensure equal treatment and access in order for voters to become adequately informed of the views and programmes of electoral contestants. Legal guarantees of freedom of expression should also be provided. The legal framework for media during elections was found to be in line with OSCE commitments and other international standards in several countries, including Montenegro and the United Kingdom. In other countries, certain aspects were self-regulated, for example in Andorra, Austria, Finland 2011, the Netherlands, Sweden and the United States of America. The practice of self-regulation was positively assessed in Denmark and Switzerland.

Conversely, the media-related legal framework was found not to be in line with OSCE commitments in Romania 2012 (narrow regulation of private broadcasters), the Russian Federation 2011 (obligation by state media to cover the activities of state officials), and Ukraine 2012 (insufficient provision of political pluralism as regards broadcasting and a sole reliance on self-regulation that was assessed as ineffective). In such cases, legal amendments were recommended to enable media outlets to establish their own editorial policies.

8.3.3. Equal Treatment and Access

Equal treatment and non-discriminatory media access is essential for political parties and candidates to inform the electorate about their policies and programmes on the basis of equal opportunity. Especially the neutrality of publicly-owned media is crucial for the level playing field among electoral contestants, as noted in section I.2.3.a of the 2002 VC Code of Good Practice. In several OSCE participating States, legislation was assessed to provide for a level playing field as regards

equal treatment and access to the media, including with respect to public media (for example, in Andorra, Estonia, and Finland 2012), as well as both public and private media (for example, in France, Greece, and Moldova).

In other participating States, gaps and/or inconsistencies in the legal framework resulted – at varying degree – in inequalities, for example with regard to public media in Bulgaria and Ukraine; as well as in general (relating to public and private media) in Kyrgyzstan, Turkey and the United States of America. Legal amendments were recommended accordingly.

In other participating States, equal treatment (equal access and/or impartial and balanced coverage) was provided in law but lacked implementation in practice, for example, in the former Yugoslav Republic of Macedonia, Kazakhstan 2011, Kyrgyzstan 2010, and Serbia. In Armenia, the Russian Federation 2011, and Ukraine 2012, the lack of sanctions for violations of equal treatment and impartiality requirements in case of biased reporting was noted.

More generally, practice was considered not to be in line with OSCE commitments in Azerbaijan, Belarus and Montenegro where a disproportionate focus on the incumbent was observed, thereby undermining the standard of equal treatment. It was thus recommended that public media should cover candidates in an impartial and equitable manner. In Kazakhstan, the imbalanced coverage in favour of the incumbent on commercial channels was observed. Also in Bosnia and Herzegovina, complaints about biased media coverage, disadvantaging smaller parties and opposition candidates, were noted.

8.3.4. *Paid Political Advertisements*

Paid political advertising was allowed in several participating States, including Cyprus, the Czech Republic, Sweden, and Uzbekistan. In other participating States, paid political advertising was subject to specific regulation, such as maximum time limitations (Slovakia 2010) or equal treatment requirements (Latvia and Poland). When political advertising was allowed, electoral contestants were to be guaranteed equal access and treatment with respect to the ability to purchase advertising. Partly on the basis of problems observed, the introduction of comparable rates was recommended (Slovakia 2010) or that the rates of paid political advertising be aligned to commercial advertising (Georgia). In Albania, the legal limits on paid political advertising based on parliamentary representation were considered contrary to the principle of non-discrimination. Measures to cap the amounts of time purchased by any one party may also be considered as a means to ensure a more level playing field and in Ukraine it was recommended that limitations be introduced on the maximum amount spent. In Tajikistan, the lack of labeling of paid advertising was considered problematic and it was recommended that all paid advertising be clearly labeled.

Paid political advertising was forbidden on public media in Austria and on broadcast media, in general, in Ireland, Spain, Switzerland, and the United Kingdom.

8.3.5. *Limitations on Freedom of Expression*

A democratic election is not possible where authorities prevent or inhibit campaign speech or freedom of expression. Insufficient constitutional and/or legal safeguards for freedom of expression were observed, for example, in Tajikistan, Turkmenistan, and Uzbekistan, that allowed for undue restrictions. In Turkey, media legislation was found not to be fully in line with the constitutional guarantee of freedom of expression and, accordingly, a review was recommended.

The criminalization of defamation and/or libel is problematic as criminal penalties may severely limit media freedom and also entail self-censorship. Paragraph 47 of the 2011 UNHRC General

Comment No. 34 recommends that states consider the decriminalization of defamation. Concerns in this regard were raised in Albania, Belarus 2010, Bulgaria, France, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Monaco, Poland, and San Marino. Problems in practice were noted in Belarus 2012 with intimidation, detentions and lawsuits and in Kyrgyzstan with respect to the practice of self-censorship. In Armenia and the Russian Federation 2012, positively, steps towards a decriminalization of defamation were noted.

An overly restrictive legal framework may also limit the freedom of expression, as observed at varying degrees in Croatia 2012 (strict equality requirement in media coverage), Greece (prohibition of opinion polls within 15 days before elections), and Kyrgyzstan 2011 (prohibition of campaigning via foreign media).

8.3.6. Oversight of Media

An independent national institution to monitor compliance with media regulations is an important safeguard for ensuring fairness in the electoral campaign. The lack of such an institution was observed in Kyrgyzstan and Montenegro. Insufficiencies in the legal mandate of the supervisory body were raised in Armenia (with regard to election-related complaints), Georgia 2012 (in respect of lack of competence to impose sanctions), and Romania 2012 (with regard to powers during the election campaign). Other problems related to problematic or lacking deadlines for the handling of complaints, such as in Bosnia and Herzegovina, and Romania. Accordingly, the introduction of appropriate deadlines for a timely decision on complaints was recommended.

Deficiencies in the institution's practical functioning were noted in the former Yugoslav Republic of Macedonia (insufficient independence), Serbia (supervisory body not established, albeit provided for by law), Slovakia 2012 (lacking publication of decisions), and in Slovenia and Spain (no use of full powers when initiating complaints). Insufficient action concerning complaints was likewise criticized in Georgia 2012 (noted insufficiencies also with self-regulatory bodies) and the Russian Federation 2011 (the central EMB, CEMB) acted only on complaints). With respect to the latter, the establishment of an independent media oversight body with the competence to consider media-related complaints was recommended.

9. ELECTION DAY: VOTING, COUNTING AND TABULATION

9.1. Background

Election day processes include voting, counting and tabulation of the vote by the EMBs. Several key OSCE commitments and other international standards are applicable, including the respect for universality, equality, and secrecy of the vote, as provided by paragraph 7.3 of the 1990 OSCE Copenhagen Document and Article 25 of the 1966 ICCPR. In addition, paragraph 7.4 of the 1990 OSCE Copenhagen Document requires that votes should be counted honestly and official results should be made public. While certification and publication of official final results could take some time, transparency requires that detailed preliminary results, including aggregated electoral district results, be published in a timely manner. Additional standards to ensure the effective enfranchisement of persons with disabilities are provided by Article 29 of the 2006 UNCRPD. In addition, the 2002 VC Code of Good Practice provides guidelines on election day procedures, including proxy and group voting, as well as alternative voting arrangements such as postal voting and electronic voting.

9.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 7.3 and 7.4

- 1966 International Covenant on Civil and Political Rights, Article 25
- 1996 UNHRC General Comment No. 25, paragraphs 9 and 20
- 2006 UN Convention on the Rights of Persons with Disabilities, Article 29
- 2002 VC Code of Good Practice, sections I.3.2 and I.4

9.3. Electoral Legislation and Practice in OSCE Participating States

9.3.1. Overview

Most OSCE participating States have enshrined the principles of universality, equality, and secrecy of the vote in their legislation, in line with paragraphs 7.3 and 7.4 of the 1990 OSCE Copenhagen Document. Also, States' laws usually provided for detailed procedures for voting, counting and tabulation of the vote. Particular concerns related to insufficient legal safeguards in the application of alternative voting arrangements were raised with regard to elections in Belarus, the Russian Federation, Uzbekistan, Turkmenistan, as well as with regard to the legal possibility for proxy voting in France, Monaco, the Netherlands, Poland, and the United Kingdom.

In electoral practice, generally, election day procedures complied with OSCE commitments and other international standards in most participating States, although cases of breaches of the secrecy of the vote, and group and (illegal) proxy voting were reported on occasion. In some states, a tendency was observed that while voting took place in a calm atmosphere and procedures were overall respected, the process deteriorated during the counting and the tabulation of votes.

9.3.2. Election Day Procedures

Participating States have systematically enshrined the principles of universality, equality, and secrecy of the vote in their legislation. Also, it is a usual practice that electoral legislation provides for detailed procedures for the opening of polling stations, voting, counting and tabulation of the vote.

Compliance of election day procedures with OSCE commitments and other international standards for democratic elections, as well as with domestic law, was largely positive. A professional and efficient conduct of election day processes, characterized by profound voter confidence was reported in Austria, Cyprus, Estonia, Finland 2011, France, Hungary, Latvia, Montenegro, the Netherlands, Poland, Slovenia, Spain, and Switzerland.

Still, a tendency existed in some participating States that while voting procedures were respected overall, the process deteriorated during the counting and the tabulation of the votes. This was observed in Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova 2010, the Russian Federation, Tajikistan, Ukraine 2012 and, to a lesser extent, in Albania, Armenia, and Georgia. Particular concerns with transparency also included the access of observers to copies of polling stations protocols and their posting for public display. Results protocols not being posted at the polling stations was noted in Armenia, Azerbaijan, Belarus, the former Yugoslav Republic of Macedonia, Kazakhstan, Moldova 2010, Montenegro, the Russian Federation, Tajikistan and Ukraine 2012. With a view to enhancing transparency, ODIHR often recommended to post preliminary polling station results at polling stations and, at times, also on the internet, as well as to make certified copies available to election observers.

9.3.3. Universal and Equal Suffrage

Universal and equal suffrage is furthered by increasing the opportunities for citizens to exercise their right to vote. Legislative measures to promote this – often called alternative voting

arrangements (AVAs) – include postal voting, out-of country voting at consulates and embassies, internet voting, and early in-person voting. The introduction and popularity of AVAs was notable in a large number of participating States, primarily due to considerations of convenience. The implementation of (often more than one) AVA was noted in Hungary, Kyrgyzstan 2010, Lithuania, Montenegro, Poland, the Russian Federation 2011, Slovenia, Spain, Switzerland, the United Kingdom, and the United States of America.

However, AVAs that include voting before election day may potentially undermine voters' choices, for example, if a candidate withdraws or passes away. Also, AVAs can represent a potential challenge to the secrecy of the ballot because they are often applied in uncontrolled environments. That is why legal safeguards are important and strengthened regulations for early voting were noted in Lithuania 2012 and the Russian Federation 2011. Conversely, observers raised concerns with regard to insufficient regulation of early voting in Turkmenistan and Uzbekistan, with different conditions for early voters in the United States of America 2010, and with the lack of transparency in the conduct of early in-person voting in Belarus.

Universal and equal suffrage can be compromised on election day through multiple voting, ballot box stuffing and tampering with results protocols. Instances of such violations were observed in Armenia, Azerbaijan, Belarus, Georgia 2010, Kazakhstan, Kyrgyzstan 2011, the Russian Federation, Tajikistan, Ukraine 2012, and Uzbekistan.

9.3.4. *Secrecy of the Vote*

Secrecy of the vote is enshrined in paragraph 7.4 of the 1990 OSCE Copenhagen Document. Observers noted that respect for voters' secrecy needed to be enhanced in Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia 2011, Finland 2011, France, the former Yugoslav Republic of Macedonia, Georgia 2012, Hungary, Kazakhstan, Latvia, Montenegro, Poland, the Russian Federation, Slovakia 2010, Slovenia, Spain, Tajikistan, Ukraine, the United Kingdom and the United States of America. On occasion, the secrecy of the vote was challenged due to practical elements of the polling station set-up (Serbia) or the use of (semi)transparent voting booth screens (Moldova 2010). Allegations of violations of voter secrecy with internet voting, including unsuccessful appeals to the courts, were reported in Estonia. Specific issues with the secrecy of the vote for persons with disabilities were noted in Cyprus, Finland, France, Greece, Latvia, and Slovenia. ODIHR systematically recommended to further strengthen the secrecy of the vote in these participating States, including through voter education programmes.

9.3.5. *Group and Proxy Voting*

Legislation of some participating States provided for proxy voting, including France, Monaco, the Netherlands, Poland, and the United Kingdom (upon justification). This was at odds with the principle of the secrecy of the vote as provided for by paragraph 7.4 of the 1990 OSCE Copenhagen Document.

Group voting and/or illegal proxy voting, whereby often a male member of a family voted for all family members, was noted by observers in Albania, Armenia, Belarus 2010, Bosnia and Herzegovina, Georgia, the former Yugoslav Republic of Macedonia, Kazakhstan 2011, Kyrgyzstan, the Russian Federation 2011, Slovakia 2010, Tajikistan, Ukraine 2012, and Uzbekistan. Group and proxy voting challenges the secrecy of the vote as well as the principles of universal and equal suffrage. In such cases, ODIHR recommended that steps be taken to counter the practice of group voting, usually through training of election officials and voter education.

9.3.6. Voters with Special Needs

Providing appropriate conditions for people with special needs to exercise their right to vote upholds the principles of universal and equal suffrage as provided by paragraph 7.3 of the 1990 OSCE Copenhagen Document as well as commitments to ensure the effective enfranchisement of persons with disabilities as provided in Article 29 of the 2006 UNCPRD. Participating States often included in their legislation possibilities for homebound (mobile) voting to serve the elderly or sick as well as for specific voting arrangements for people with special needs including facilities for access with a wheelchair to specific polling stations in Austria and possibilities to vote by mail for persons with disabilities in Poland. Specific legal minimum standards for voters with disabilities existed in the United States of America, where the voting equipment of every polling station had to allow for access of voters with disabilities, as well as voters with minority language needs. In Slovenia, legislation provided for special polling stations to serve voters with special needs. Likewise, special arrangements to facilitate voting by those with visual problems were made in Austria, Finland, Kyrgyzstan, Latvia, the Netherlands, Poland, Spain, and the United States of America, usually through the provision of Braille templates.

Conversely, a large number of polling stations were observed not to be easily accessible for people with disabilities in Armenia, Azerbaijan, Belarus, and the Russian Federation. Access of disabled people to polling stations also raised concerns in Romania, Spain, Switzerland, and Turkey. Likewise, problems were observed with voting rights of persons with visual impairment in France and Romania. In Romania, the authorities were recommended to organize voter education campaigns to inform those with visual impairment of their right to be assisted. Also in Belarus, the Russian Federation 2012, and Turkey, further improvements with respect to facilitating access for voters with disabilities were recommended.

10. COMPLAINTS AND APPEALS

10.1. Background

The effectiveness of electoral law requires that cases of non-compliance are open to challenge. Electoral stakeholders must therefore be able to complain before the competent administrative or judicial institution and to appeal to the relevant court. Key OSCE commitments are paragraphs 5.10 and 5.11 of the 1990 OSCE Copenhagen Document, guaranteeing effective redress against administrative decisions, as well as paragraph 5.12 that enshrines the independence and impartiality of the judiciary. Additional details on these issues are provided in paragraphs 18-21 of the 1991 OSCE Moscow Document, while further specification can be drawn from the right to fair trial in Article 14 of the 1966 ICCPR and provisions related to the independence, impartiality, and competency of the judiciary in paragraph 3 of the 1984 UNHRC General Comment No. 13.

10.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 5.10, 5.11, and 5.12
- 1991 OSCE Moscow Document, paragraphs 18-21
- 1948 Universal Declaration of Human Rights, Articles 8 and 10
- 1966 International Covenant on Civil and Political Rights, Article 14
- 1984 UNHRC General Comment No. 13, paragraph 3
- 1948 UDHR, Articles 8 and 10
- 2002 VC Code of Good Practice, section II.3.3

10.3. Electoral Legislation and Practice in OSCE Participating States

10.3.1. Overview

Frequently, OSCE participating States' electoral dispute resolution mechanisms only partially complied with OSCE commitments and other international standards. With regard to legislation, particular concerns included the lack of possibility for affected stakeholders to challenge all aspects of the electoral process (Armenia, Austria, the former Yugoslav Republic of Macedonia, Kazakhstan 2012, Lithuania, Slovakia 2010), limited means of appeal (Denmark, Turkey), and overlapping jurisdictions of different institutions for electoral dispute resolution (Armenia, Romania 2012, Turkmenistan, Ukraine). In some cases, timelines for review of complaints and appeals were not provided (Greece, Romania 2012, and Slovakia 2010) or did not provide a timely remedy (Azerbaijan, Monaco, Turkey, Tajikistan, United States 2012). Non-compliance with relevant commitments in electoral practice related especially to due process guarantees, such as transparency, reasoning, and formal handling of complaints (Bosnia and Herzegovina, Kyrgyzstan). At times, the latter were not implemented even though they were provided for in legislation (Albania, Azerbaijan, Serbia, and Tajikistan).

10.3.2. Legal Framework

In various participating States, such as Cyprus, Estonia, and Spain, legislation and practice related to electoral dispute resolution were generally in line with OSCE commitments and other international standards. In some participating States, the complaints and appeals system was very lightly regulated, for example, in Austria. The dispute resolution system of other countries, while generally enjoying a high level of trust by electoral stakeholders, took only limited account of the specific context and pace of the electoral process, for example, in Finland 2011, the Netherlands, Slovakia 2010, as well as in the the United States of America. In such cases, further adaptation to the exigencies of the electoral process was recommended. In other participating States, neither the legal framework nor the implementation was in line with OSCE commitments and other international standards with complainants being left without effective remedy. This was the case in Armenia, Azerbaijan, Belarus 2012, Kazakhstan, Tajikistan, and Ukraine.

10.3.3. Procedures and Fora

The right to an effective remedy presupposes a minimum of clarity with regards to procedures and available fora for electoral dispute resolution. Procedures, and especially the powers and responsibilities of the various bodies involved in it, should be clearly regulated by law, so as to avoid conflicts in jurisdiction. Procedures were partly criticized for their complexity (Turkey) or the vagueness of legal regulation (Kyrgyzstan 2010, Moldova 2011). At times, the law allowed competing jurisdiction of different institutions of certain aspects of the electoral process, such as in Armenia, Romania 2012, Turkmenistan, or Ukraine. In Kazakhstan, the unclear distinction between different jurisdictions resulted in numerous cases being filed to the wrong institution.

10.3.4. Right to Effective Redress

The right to submit an electoral complaint and seek effective redress should be granted as widely as possible. Thus, legal limitations of the right to complain of electoral stakeholders were a matter of concern. Most limitations related to possible challenges of the election results by voters and/or other interested parties (Armenia, Austria, Kazakhstan 2012, Lithuania). At times, the law was unclear as to who could file complaints and appeals, for example in Bulgaria ("interested party"). Also the significant monetary deposit required in Ireland to secure a petition was considered problematic, since it might discourage individuals from seeking legal redress. Other restrictions concerned insufficient complaint mechanisms for campaign violations (the former Yugoslav Republic of

Macedonia, Slovakia 2010), the lack of possibility to challenge certain violations before election day (Austria, Finland, France) and the limited grounds for which complaints could be submitted (the Netherlands). In addition, in Armenia and Belarus 2012, an overly formalistic approach to considering cases left plaintiffs without redress, which is contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document.

10.3.5. Right to Appeal

OSCE commitments provide that the right to an effective remedy includes the right to appeal to an appropriate court with authority to review and exercise final jurisdiction on the matter. However, no such possibility in electoral disputes existed in Denmark and Turkey. The right to appeal was also restricted in: Albania (no appeal against CEMB decisions on tabulation results); Belarus 2012 (judicial appeal only against limited types of decisions, excluding appeals against denial of candidate registration and invalidation of the final election results); Croatia 2009/2010 (no appeal against election campaign related CEMB decisions); France (no appeal against presidential candidate registration and validity of elections); Finland (limited means of appeal until after parliamentary elections and no appeals for presidential elections); Greece (no appeal against court decisions on the eligibility of political parties); Kazakhstan (no appeal against certain district court decisions on election-related cases); Romania 2009 (no effective redress against CEMB decisions); and Poland (appeal only against limited types of decisions). In Denmark, Lithuania and the Netherlands 2012, the parliament had the final decision on the validation of election results, with no appeal to a judicial authority possible. Specific concerns regarding the independence of the judiciary, as required by paragraph 5.12 of the 1990 OSCE Copenhagen Document, existed in Albania (judges selected for the adjudication of election appeals could be removed by parties) and Turkmenistan (appointment of judges rested with the President).

10.3.6. Timeliness

The pace of the electoral process requires an expedient decision on complaints and appeals. A general lack of legal timelines (Greece, Romania 2012, Slovakia 2010) or unduly long legal deadlines (Azerbaijan, Monaco, Turkey, Tajikistan, the United States of America 2012) were thus a matter of concern. In other cases, legally prescribed timelines were not respected in practice, including in Albania, Bosnia and Herzegovina, Bulgaria, Kazakhstan 2012, and Tajikistan.

Also, overly short legal timelines may prevent the due review of complaints and/or appeals, as observed, for example, in Georgia 2010, Lithuania, Montenegro, Serbia, and Uzbekistan. In Ukraine 2010, short timeframes for the filing of complaints and an overly restrictive interpretation by the EMB resulted in many complaints being rejected outright. In these cases, extensions of legal deadlines were recommended.

Finally, practice may provide for an expedited remedy where lengthy or no legal timelines are in place, as was reported in Ireland, Slovenia, and Switzerland.

10.3.7. Transparency and Due Process

In line with Article 14 of the 1966 ICCPR, the handling of complaints and appeals must comply with minimal due process guarantees including transparency, a fair and impartial hearing, the formal adoption of a decision, and the public announcement of a decision. Related problems in law and practice were observed, for example, in Bosnia and Herzegovina and Kyrgyzstan (transparency; no public records on complaints). In other participating States the law guaranteed due process, but was partly ignored in practice, such as in Albania, Azerbaijan, Serbia, and Tajikistan.

Despite adequate legislation, practice was found not to be in line with OSCE commitments and other international standards in Belarus (inconsistent and non-transparent handling of complaints), Kazakhstan 2011 (non-transparent and informal handling of complaints by CEMB), Turkey (handling of cases lacked transparency) or Ukraine 2012 (deficient reasoning). Also in Kyrgyzstan 2010 and the Russian Federation complaints were not always treated as formal complaints to be decided according to law.

10.3.8. Legal Effects of Decisions and Sanctions

The right to an effective remedy presupposes adequate legal effects of a decision, including sanctions. In several participating States, specific concerns were noted with inadequate or disproportionate sanctions for violations of campaign and campaign finance regulations, including in Andorra, Belarus 2012, Croatia, Kazakhstan 2012, Latvia 2010, Moldova 2010, Ukraine, and Uzbekistan. An entire lack of adequate sanctions for violations of campaign regulations was observed in Hungary, and a partial lack was observed in Estonia and Kyrgyzstan 2010. In Romania 2009, given the lack of legal regulation, it was recommended that there should be a possibility to annul the election results when the irregularities have affected the result.

A problem of implementation was noted in Georgia 2012 (partly inconsistent application of sanctions) as well as in Latvia 2010 and Montenegro (violations of campaign regulations were not investigated). In Bosnia and Herzegovina and Cyprus the lack of enforcement of sanctions was criticized for removing their deterrent effect.

11. PARTICIPATION OF WOMEN

11.1. Background

Throughout the OSCE region, women have historically been underrepresented in politics. Efforts to enhance gender equality include the adoption of specific legislation to promote women's participation, in addition to general non-discrimination provisions. This usually implies the introduction of temporary special measures, most typically candidate quotas for the less represented gender.²⁶

Key international standards for women's political representation are provided in Articles 4 and 7 of the 1979 CEDAW. Importantly, Article 4 of the 1979 CEDAW recognizes that temporary special measures aimed at accelerating the *de facto* equality between men and women should not be considered discriminatory, but should not entail as a consequence the maintenance of unequal or separate standards. This position was reaffirmed and elaborated upon in the 1997 CEDAW General Recommendation No. 23 and is supported by section I.2.5 of the 2002 VC Code of Good Practice. The 1997 CEDAW General Recommendation No. 23 adds that states have a responsibility, where possible, to appoint women to senior decision-making roles in state bodies, which includes EMBs.

In paragraph 40 of the 1991 OSCE Moscow Document, participating States recognized their general commitment to the 1979 CEDAW and, in paragraph 23 of the 1999 OSCE Istanbul Document, committed themselves to gender equality in policy making. Furthermore, the general non-discrimination commitments in paragraphs 5.9 and 7.5 of the 1990 OSCE Copenhagen Document are of relevance.

²⁶ One can distinguish between 1.) Quota among *aspiring* (prospective) candidates, usual for majoritarian systems; 2.) Quota among *registered* candidates, typical for proportional representation systems, sometimes with additional ranking requirements; and 3.) Quota among *elected* candidates ("reserved seats"; not applied with regard to women participation in the OSCE region during the reporting period).

11.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 5.9 and 7.5
- 1991 OSCE Moscow Document, paragraph 40
- 1999 OSCE Istanbul Document, paragraph 23
- 1979 Convention on the Elimination of All Forms of Discrimination against Women, Articles 4 and 7
- 1997 CEDAW General Recommendation No. 23
- 2002 VC Code of Good Practice, section I.2.5

11.3. Electoral Legislation and Practice in OSCE Participating States

11.3.1. Overview

A number of OSCE participating States addressed the need to further the political participation of women, in compliance with paragraph 40 of the 1991 OSCE Moscow Document. This was usually done through the introduction of temporary special measures, most often candidate quotas for the underrepresented gender and at times with additional ranking requirements, as for example in Albania, Armenia, Kyrgyzstan, and Spain. While women's representation has steadily increased throughout the region, it remained significantly under 50 per cent at some 23.6 per cent. Major challenges reported by ODIHR were the low visibility of women candidates during election campaigns including in Azerbaijan, Cyprus, Montenegro, and the disenfranchisement of women voters through voting practices such as group or illegal proxy voting as observed in Albania, Armenia, Bosnia and Herzegovina, and the former Yugoslav Republic of Macedonia. In such cases, the ODIHR frequently recommended to enhance women participation through consideration of temporary special measures.

11.3.2. Legal Framework

The legal framework for enhancing women's political participation was considered generally satisfactory in some OSCE participating States, including Croatia 2009/2010 and Finland 2011. In other countries, while gender equality legislation was in place, it still lacked effective implementation and/or enforcement, including in Albania, Azerbaijan, Bosnia and Herzegovina, Cyprus, Turkey, and Uzbekistan.

Deficiencies in, or a complete lack of, gender equality legislation was noted in Kazakhstan, Latvia 2011, and Lithuania, with legislative measures recommended to address women's underrepresentation. Conversely, in Sweden, notwithstanding a lack of legal regulation, women were well represented in politics, partly due to a voluntary candidate quota upheld by political parties. Also, in the Netherlands, a high level of women's participation in political life was noted.

11.3.3. Women Candidates

Several participating States introduced in their legislation temporary special measures to enhance the participation of women as candidates, in line with Article 4 of the 1979 CEDAW and paragraph 40.4 of the 1991 OSCE Moscow Document. Legal quotas for women among registered candidates were reported in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Greece, Montenegro, Poland, San Marino, Serbia, Slovenia, and Uzbekistan, and with additional ranking requirements in Albania, Armenia, Kyrgyzstan, and Spain. However, the legal possibility for women candidates to withdraw after registration and to be replaced by men may diminish the use of quotas, as observed in Armenia and Kyrgyzstan 2010. In Moldova, Montenegro, and Poland, it was recommended that there should be more women in electable positions on the candidate lists.

Voluntary or legal quotas among aspiring women candidates were noted in France, Sweden, Switzerland, Turkey, and the United Kingdom. Other legal measures included financial incentives for political parties to uphold women's participation in Georgia 2012 and Romania 2012, as well as fines and reduced public funding for political parties who failed to fully comply with their gender equality obligations in Albania and France. In San Marino, in case of a tie for a parliamentary seat between a man and a woman, the woman gets the seat.

11.3.4. Women's Electoral Participation in Practice

While women contested parliamentary elections and local elections on a regular basis, the share of registered women candidates usually remained under 50 per cent. In presidential and/or mayoral elections, women participation was typically lower than in parliamentary and local elections. For example, in presidential elections in Belarus, Kazakhstan, Kyrgyzstan, and Romania there were no registered women candidates.

The average share of women elected to participating States' legislatures increased across the OSCE region, underscoring growing compliance with international norms on gender equality, with an average share of women in parliament of 23.6 per cent for 2012.²⁷ During the reporting period, a number of participating States attained a level of women's representation that was close to or above this average, including in Belarus, Finland, France, the former Yugoslav Republic of Macedonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, the Netherlands, Slovenia, Spain, the United Kingdom, and Uzbekistan.

11.3.5. Women's Representation in EMBs

While women were generally well represented in EMBs across the OSCE region, with Tajikistan being an exception, observers reported that women were underrepresented at the senior levels of the EMBs during elections in Albania, Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, the Russian Federation, Spain, and Uzbekistan. This is at odds with paragraph 26 of the 1997 CEDAW General Recommendation No. 23.

11.3.6. Obstacles to Women's Electoral Participation

A variety of issues may negatively impact women's political participation. For instance, high electoral deposits and requirements for completed higher education had particularly detrimental effects for women candidatures in Tajikistan. Low visibility of women candidates in the media and during campaigning also had detrimental effects, as observed, in Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, the former Yugoslav Republic of Macedonia, Kyrgyzstan, Montenegro, Ukraine 2012, and Uzbekistan. Women voters were negatively affected by voting practices, such as group voting (family voting), as observed in Albania, Armenia, Bosnia and Herzegovina, and the former Yugoslav Republic of Macedonia. Additional disadvantages were faced by women belonging to national minorities, as noted in Bulgaria, Hungary, and Kazakhstan 2011.

12. PARTICIPATION OF NATIONAL MINORITIES

12.1. Background

A range of OSCE Commitments and other international standards recognize the right of national minorities to participate in public affairs without discrimination. Among OSCE commitments,

²⁷ See the compiled data from the Inter-Parliamentary Union "Women in Parliament" database, available at: <http://www.ipu.org/wmn-e/world.htm>.

paragraph 35 of the 1990 OSCE Copenhagen Document specifically commits participating States to promote the right of persons belonging to minorities to participate effectively in public affairs. Paragraph 12 of the 1996 UNHRC General Comment No. 25 explicitly calls for voting materials to be provided in minority languages. In addition, provisions for non-discrimination in the 1990 OSCE Copenhagen Document, as well as the 1966 ICCPR, 1965 ICERD, and 1948 UDHR are also of relevance.²⁸ Section I.2.4 of the 2002 VC Code of Good Practice provides further guidance on the formation of minority-based political parties and the possibility of special measures to guarantee national minority representation.

12.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraphs 5.9, 7.5, and 30-39,
- 1948 Universal Declaration of Human Rights, Article 1
- 1966 International Covenant on Civil and Political Rights, Articles 2 and 25-27
- 1996 UNHRC General Comment No.25, paragraph 12
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1.4, 2.2, and 5
- 2002 VC Code of Good Practice, section I.2.4

12.3. Electoral Legislation and Practice in OSCE Participating States

12.3.1. Overview

In addition to general non-discrimination provisions, several OSCE participating States provided for legal measures to allow for the effective political participation of minorities in line with paragraph 35 of the 1990 OSCE Copenhagen Document. Affirmative action ranged from reserved seats in Croatia, Finland, Kazakhstan, Romania, and Slovenia, to exemptions from representation thresholds for minority based political parties in Montenegro, Poland, and Serbia.

However, legal impediments to national minorities' effective political participation remained in several participating States, including the lack of legal recognition of specific minorities (Spain and Turkey), the prohibition of minority based parties (Kazakhstan, the Russian Federation), language requirements preventing election campaigning in minority languages (Bulgaria, Latvia, Turkey, Ukraine), or electoral district delimitations which negatively impacted on minority representation (Lithuania, Ukraine). Problems in electoral practice related to instances of undue influence on minority voters and a lack of voter education material in minority languages. In addition, particular challenges were faced by Roma in several participating States in Eastern and Central Europe, including undue influence or pressure on voters and inflammatory language against Roma populations by nationalist parties.

12.3.2. Legal Framework

There are no uniform international criteria for defining a "national minority", and participating States have adopted varying approaches as to which groups qualify. Most participating States referred to their minorities on ethnic grounds, although in Finland 2011 minorities were recognized on grounds of "language and culture". In Montenegro, a minority group could not exceed 15 per cent of the population. Only religious minorities were recognized in Cyprus (Maronite, Armenian

²⁸ See also the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, especially paragraphs 7-10, available at: <http://www.osce.org/hcnm/32240?download=true>, as well as the 1995 CoE Framework Convention for the Protection of National Minorities. Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>.

and Latin), Greece (Muslims of Thrace) and Turkey (non-Muslim). In Austria, some minorities were recognized in specific regions. In Bulgaria, minorities were not recognized, but the constitution recognized the right of ethnic self-identification. In Spain, Roma were not recognized as a minority, despite the size of their group.

In some OSCE participating States, legislation generally provided for the protection of minorities, including in Finland 2011 and the Netherlands 2010. In Hungary, while the Constitution provided for the political representation of minorities, it lacked detailed legislation that allowed effective implementation.²⁹

In other participating States, the legal framework governing minorities' political participation was considered partly problematic. High representation thresholds negatively impacted on minorities' political representation in the Russian Federation 2011, while the preferential treatment of certain minorities in Romania 2012 was considered somewhat excessive. Legal language requirements for campaign activities in Bulgaria (only Bulgarian) and Turkey (Turkish strongly encouraged) challenged paragraph 32.1 of the 1990 OSCE Copenhagen Document, which provides for national minorities "to use freely their mother tongue in private as well as in public". The lack of a comprehensive legal framework for the protection of minority rights was noted in Georgia 2010.

12.3.3. Minority Candidates and Political Parties

In line with paragraph 31 of the 1990 OSCE Copenhagen Document, special measures to enhance the political participation of minorities were included in legislation in several OSCE participating States. Reserved seats for minority representatives in national parliaments were provided by law in Croatia, Cyprus, Finland 2011, Kazakhstan, Romania, and Slovenia. Kyrgyzstan 2010 established a 15 per cent legal quota among registered candidates for representatives of national minorities. Other measures included reduced supporting signatures in Montenegro, reduced representation thresholds in Montenegro, and exemptions from representation thresholds for minority based parties/electoral committees in Poland and Serbia. However, features of these special measures were considered partly problematic in some participating States, including in Kazakhstan where minority representation was by nomination rather than by popular vote. In addition, minority-based parties were prohibited in Bulgaria, Kazakhstan, and the Russian Federation.

12.3.4. Electoral System

Some participating States adjusted their electoral systems to promote minority representation. In Croatia, voters belonging to minorities could choose to vote either for their constituency of registered residence or for their minority constituency. In parliamentary elections in Cyprus, voters belonging to constitutionally recognized religious groups could vote twice, once at the general election for the Greek Cypriot seats and once for special religious group seats. In parliamentary elections in Slovenia, minority community members were granted two votes, the first for the electoral district of residence and the second for the minority electoral district.

In respect of delimitation of electoral districts, a possible negative impact on minority representation was raised as a concern in Lithuania and Ukraine 2012. For example, in Lithuania, minority parties had to pass the same legal thresholds as other political parties, prompting a recommendation to reconsider this.

²⁹ ODIHR election observation activities did not explicitly raise minority-related issues in Andorra, Armenia, Belarus, Czech Republic 2013, Cyprus, Denmark, Finland 2012, France, Netherlands 2012, San Marino and the Russian Federation 2012.

12.3.5. Minority Voters

With regard to the effective participation of minority voters, general concerns were raised in Albania (pressure and possible disenfranchisement due to lack of identity documents), Ireland (illiteracy issues and concerns about proof of residency), and in Kyrgyzstan 2010 (disenfranchisement due to displacement in certain regions).

Roma voters in particular faced problems with effective political participation and were considered to be susceptible to undue influence or pressure in Albania, Bulgaria, Greece, Hungary, Romania, Serbia, and Slovakia. In addition, inflammatory language against Roma populations by nationalist parties was observed in Bulgaria, the Czech Republic 2011, Hungary, and Slovakia. A possible reason for disenfranchisement of Roma voters was a lack of identity documents, as observed in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Georgia 2010, and Romania.

The lack of election and voting material in minority languages may constitute an obstacle to minorities' electoral participation when it hampers their understanding of the process. Related concerns were raised, for example, in Latvia where the law was interpreted as allowing only for election materials in Latvian and in Ukraine 2012 where the election law allowed only for campaign materials in Ukrainian. A lack of voter education material in minority languages more generally was noted in Lithuania and Slovakia, and the publication of election materials in minority languages was recommended accordingly.

13. INTERNATIONAL AND CITIZEN ELECTION OBSERVATION

13.1. Background

International and citizen election observation is enshrined in paragraph 8 of the 1990 OSCE Copenhagen Document. This commitment was reaffirmed in paragraph 25 of the 1999 OSCE Istanbul Document and reflects the consensus among OSCE participating States to invite each other, as well as appropriate organizations and institutions, to observe their elections. As such, participating States have recognized that election observation can play an important role in promoting transparency and accountability, as well as enhancing public confidence in the electoral process. The 1999 OSCE Istanbul Document further recognized the value ODIHR can provide in developing and implementing electoral legislation and committed participating States to follow-up promptly on ODIHR election observation recommendations. International and citizen election observation is guided by a number of principles, notably the non-interference in and impartiality to the observed election process, and that election observation neither legitimizes, nor delegitimizes, the process including the election outcome.³⁰ Section II.3.2 of the 2002 VC Code of Good Practice also recommends the participation of international and citizen election observers at all stages of the electoral process.³¹

13.2. Relevant OSCE Commitments and other International Standards

- 1990 OSCE Copenhagen Document, paragraph 8

³⁰ See, OSCE Ministerial Council Decision 19/06, which tasks ODIHR “to give utmost attention to the independence, impartiality and professionalism of ODIHR’s election observation.” See also the 2005 Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available at: <http://www.osce.org/odihr/16935>; and the 2012 Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, available at: www.gndem.org/sites/default/files/declaration/Declaration_of_Global_Principles_0.pdf.

³¹ See also Articles 14 and 15 of the 2002 CIS Convention.

- 1999 OSCE Istanbul Document, paragraph 25
- 2002 VC Code of Good Practice, section II.3.2

13.3. Electoral Legislation and Practice in OSCE Participating States

13.3.1. Overview

A number of OSCE participating States provided for election observation by law, although not always comprehensively. For example, Finland did not provide for international observers, while Austria, the Czech Republic 2012, Poland, the Russian Federation, Tajikistan, Ukraine 2010, and Uzbekistan did not provide for domestic civil society observers. In other countries, such as Andorra, Cyprus, Denmark, Estonia, France, Greece, Hungary, Ireland, Lithuania, Monaco, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United States of America (at federal level), a legal basis for election observation was entirely lacking except, in most cases, for local party observers. Still, in many instances, the lack of legal provisions for international and/or citizen observation was remedied by acts of relevant authorities, frequently EMBs. Negatively, cases of obstruction of election observers in practice were reported in some participating States (Azerbaijan, Belarus, Georgia, Kazakhstan, the Russian Federation, and the United States of America) mostly on election day.

13.3.2. International and Citizen Election Observers

The legal framework of several participating States included provisions for access of international and citizen election observers, in general compliance with OSCE commitments. This included Albania, Azerbaijan, Kyrgyzstan, Moldova, Montenegro, the Netherlands, and Turkmenistan.

The legal framework of other States, conversely, was not in full compliance with OSCE commitments. At times, the legal framework was vague and/or lacked regulation of specific aspects of the electoral observation process, including in: Belarus (observation of signature verification), Bulgaria (attendance of CEMB meetings in pre-election period), Romania 2009 (observer rights before and after election day), the former Yugoslav Republic of Macedonia (receipt of results protocols), the Russian Federation 2011 (substantive scope of observers' activities restricted mostly to early voting and election day), Slovakia 2012 (lack of detail on observer access), the United Kingdom (restricted observation of certain electoral components, including voter registration), Ukraine 2012 (receipt of results protocols). Legal review was at times recommended as a means to address these gaps. Also in Armenia, Bosnia and Herzegovina, Croatia, Estonia, France, Georgia, Kazakhstan 2011, Latvia, Slovakia, and Ukraine 2010, broader legal deficiencies were noted and a possible improvement of the legal framework governing election observation was recommended.

In a large number of participating States, there was no specific provision in domestic legislation for international and/or citizen election observers (with a possible exception for party and candidates agents). For example, Finland did not explicitly provide for international observers, while Austria, the Czech Republic 2013, Poland, the Russian Federation, Tajikistan, Ukraine 2010, and Uzbekistan did not explicitly provide for domestic civil society observers. In other countries, such as Andorra, Cyprus, Denmark, Estonia, France, Greece, Hungary, Ireland, Lithuania, Monaco, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United States of America (at federal level), a legal basis for election observation was entirely lacking except, in most cases, for local party observers. While ODIHR was invited to observe the elections in all of these cases, it was nevertheless recommended to introduce specific legal provisions for election observation into the electoral legal framework.

Still, in most cases these insufficiencies in law were remedied through regulatory acts of relevant authorities, usually EMBs, at least with regard to the access of international observers. This approach included Cyprus, the Czech Republic 2010, Estonia, France, Greece, Hungary, Lithuania, Serbia, Slovenia, Spain, and Switzerland. While international observers were invited by the United States of America at the national level, some jurisdictions in the United States of America declined access of international observers to election day processes, which is contrary to paragraph 8 of the 1990 OSCE Copenhagen Document.

13.3.3. Party and Candidate Proxies

Partisan observation by representatives of political parties and/or candidates is an important contribution to the transparency of the electoral process. The vast majority of OSCE participating States provided for partisan observation. Still, in some participating States, the legal framework did not provide for party and candidate proxies (for example, in Croatia and Romania). Although at times they were accredited through civil society groups, this could undermine the overall transparency of the process and is at odds with paragraph 8 of the 1990 OSCE Copenhagen Document.

Party and candidate proxies were observed in large numbers in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Georgia 2010, Greece, Kazakhstan, Kyrgyzstan 2010, Latvia, Moldova, Montenegro, Lithuania, the Russian Federation, Spain, Tajikistan, Ukraine, the United States of America and Uzbekistan. Lower numbers were noted in Estonia and Finland 2011.

13.3.4. Obstruction of Election Observation

Practical cases of harassment of citizen election observers were reported in Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan 2011, the Russian Federation 2011, and Ukraine 2012. Instances of on-site obstruction to or restriction of international and/or domestic civil society election observers were noted in Azerbaijan (cases of hindrance of independent domestic election observation activities), Belarus (lack of access to some stages of the process, including the count), Georgia 2010 (intimidation and pressure on citizen observers), Kazakhstan (restriction and intimidation), Kyrgyzstan 2011 (delayed accreditation of international observers), the Russian Federation 2012 (cases of obstruction on election day) and Ukraine 2012 (obstruction to meaningful observation of the vote count) and the United States of America 2012 (cases of threatened criminal sanction for entering polling stations).

ANNEX 1: OSCE COMMITMENTS AND OTHER INTERNATIONAL STANDARDS

1. OSCE COMMITMENTS

1.1. 1990 OSCE Copenhagen Document³²

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following: [...]

(5.4) — a clear separation between the State and political parties; in particular, political parties will not be merged with the State; [...]

(5.7) — human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

(5.8) — legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(5.9) — all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) — everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(5.11) — administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

(5.12) — the independence of judges and the impartial operation of the public judicial service will be ensured; [...]

(5.19) — everyone will be presumed innocent until proved guilty according to law; [...]

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) — hold free elections at reasonable intervals, as established by law;

(7.2) — permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) — guarantee universal and equal suffrage to adult citizens;

(7.4) — ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) — respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal

³² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990: <http://www.osce.org/odihr/elections/14304>.

guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) — ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) — provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) — ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

(9) The participating States reaffirm that

(9.1) — everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(9.2) — everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

(9.3) — the right of association will be guaranteed. The right to form and — subject to the general right of a trade union to determine its own membership — freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards; [...]

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(10.1) — respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information; [...]

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law. [...]

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the

possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

1.2. 1991 OSCE Moscow Document³³

(18) The participating States recall their commitment to the rule of law in the Document of the Copenhagen Meeting and affirm their dedication to supporting and advancing those principles of justice which form the basis of the rule of law. In particular, they again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations.

(18.1) Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives.

(18.2) Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.

(18.3) To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

(18.4) The participating States will endeavour to provide for judicial review of such regulations and decisions.

(19) The participating States

(19.1) - will respect the internationally recognized standards that relate to the independence of judges and legal practitioners and the impartial operation of the public judicial service including, inter alia, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

(19.2) - will, in implementing the relevant standards and commitments, ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice, paying particular attention to the Basic Principles on the Independence of the Judiciary, which, inter alia, provide for

(i) prohibiting improper influence on judges;

(ii) preventing revision of judicial decisions by administrative authorities, except for the rights of the competent authorities to mitigate or commute sentences imposed by judges, in conformity with the law;

(iii) protecting the judiciary's freedom of expression and association, subject only to such restrictions as are consistent with its functions;

(iv) ensuring that judges are properly qualified, trained and selected on a non-discriminatory basis;

(v) guaranteeing tenure and appropriate conditions of service, including on the matter of promotion of judges, where applicable;

(vi) respecting conditions of immunity;

(vii) ensuring that the disciplining, suspension and removal of judges are determined according to law.

(20) For the promotion of the independence of the judiciary, the participating States will

(20.1) - recognize the important function national and international associations of judges and lawyers can perform in strengthening respect for the independence of their members and in providing education and training on the role of the judiciary and the legal profession in society;

(20.2) - promote and facilitate dialogue, exchanges and co-operation among national associations and other groups interested in ensuring respect for the independence of the judiciary and the protection of lawyers;

(20.3) - co-operate among themselves through, inter alia, dialogue, contacts and exchanges in order to identify where problem areas exist concerning the protection of the independence of judges and legal practitioners and to develop ways and means to address and resolve such problems;

³³ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991: <http://www.osce.org/odihr/elections/14310>.

(20.4) - co-operate on an ongoing basis in such areas as the education and training of judges and legal practitioners, as well as the preparation and enactment of legislation intended to strengthen respect for their independence and the impartial operation of the public judicial service.

(21) The participating States will

(21.1) - take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement;

(21.2) - ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments. [...]

(40) The participating States recognize that full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law. They recognize that the full development of society and the welfare of all its members require equal opportunity for full and equal participation of men and women. In this context they will

(40.1) - ensure that all CSCE commitments relating to the protection and promotion of human rights and fundamental freedoms are applied fully and without discrimination with regard to sex;

(40.2) - comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), if they are parties, and, if they have not already done so, consider ratifying or acceding to this Convention; States that have ratified or acceded to this Convention with reservations will consider withdrawing them;

(40.3) - effectively implement the obligations in international instruments to which they are parties and take appropriate measures to implement the United Nations Nairobi Forward-looking Strategies for the Advancement of Women (FLS);

(40.4) - affirm that it is their goal to achieve not only de jure but de facto equality of opportunity between men and women and to promote effective measures to that end;

(40.5) - establish or strengthen national machinery, as appropriate, for the advancement of women in order to ensure that programmes and policies are assessed for their impact on women;

(40.6) - encourage measures effectively to ensure full economic opportunity for women, including non-discriminatory employment policies and practices, equal access to education and training, and measures to facilitate combining employment with family responsibilities for female and male workers; and will seek to ensure that any structural adjustment policies or programmes do not have an adversely discriminatory effect on women;

(40.7) - seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures;

(40.8) - encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes and in international co-operation in general;

(40.9) - recognize the vital role women and women's organizations play in national and international efforts to promote and enhance women's rights by providing, inter alia, direct services and support to women and encouraging a meaningful partnership between governments and these organizations for the purpose of advancing equality for women;

(40.10) - recognize the rich contribution of women to all aspects of political, cultural, social and economic life and promote a broad understanding of these contributions, including those made in the informal and unpaid sectors;

(40.11) - take measures to encourage that information regarding women and women's rights under international and domestic law is easily accessible;

(40.12) - develop educational policies, consistent with their constitutional systems, to support the participation of women in all areas of study and work, including non-traditional areas, and encourage and promote a greater understanding of issues relating to equality between men and women;

(40.13) - ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women; these data should not contain any personal information.

1.3. 1999 OSCE Istanbul Document³⁴

23. The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization. [...]

25. We reaffirm our obligation to conduct free and fair elections in accordance with OSCE commitments, in particular the Copenhagen Document 1990. We recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation. In line with these commitments, we will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings. We agree to follow up promptly the ODIHR's election assessment and recommendations. [...]

26. With a large number of elections ahead of us, we are committed to these being free and fair, and in accordance with OSCE principles and commitments. This is the only way in which there can be a stable basis for democratic development. We appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR's election assessments and recommendations. We value the work of the ODIHR and the OSCE Parliamentary Assembly - before, during and after elections - which further contributes to the democratic process. We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin. We pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.

27. We commit ourselves to ensuring the freedom of the media as a basic condition for pluralistic and democratic societies. We are deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media. We underline the need to secure freedom of expression, which is an essential element of political discourse in any democracy. We support the Office of the Representative on Freedom of the Media in its efforts to promote free and independent media.

2. OTHER INTERNATIONAL STANDARDS

2.1. 1966 International Covenant on Civil and Political Rights³⁵

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

³⁴ 1999 OSCE Istanbul Document. Charter for European Security:
<http://www.osce.org/mc/39569?download=true>.

³⁵ 1966 International Covenant on Civil and Political Rights:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted. [...]

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country. [...]

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. [...]

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. [...]

Article 25

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

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. [...]

2.2. 1996 UNHRC General Comment No. 25³⁶

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant. [...]

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws. [...]

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent

³⁶ UNHRC, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25), 1996:
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument).

persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with. [...]

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election. [...]

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another.

The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely. [...]

2.3. 2011 UNHRC General Comment No. 34³⁷

13. A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output. [...]

20. The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint. The attention of States parties is drawn to the guidance that general comment No. 25 provides with regard to the promotion and the protection of freedom of expression in that context. [...]

37. Among restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing, restrictions on the number and type of written materials that may be distributed during election campaigns, blocking access during election periods to sources, including local and international media, of political commentary, and limiting access of opposition parties and politicians to media outlets. Every restriction should be compatible with paragraph 3. However, it may be legitimate for a State party to restrict political polling imminently preceding an election in order to maintain the integrity of the electoral process. [...]

47. Defamation laws must be crafted with care³⁷ to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any

event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others. [...]

2.4. 1979 Convention on the Elimination of All Forms of Discrimination against Women³⁸

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

³⁷ UNHRC, General Comment No. 34: Freedoms of opinion and expression, 2011 (footnotes omitted): <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

³⁸ 1979 Convention on the Elimination of all Forms of Discrimination against Women: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory. [...]

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. [...]

2.5. 1997 CEDAW General Recommendation No. 23³⁹

Temporary special measures 15. While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

2.6. 2006 – UN Convention on the Rights of Persons with Disabilities⁴⁰

Article 29 – Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

³⁹ 1997 CEDAW General Recommendation No. 23: Political and Public Life:
<http://www.refworld.org/docid/453882a622.html>.

⁴⁰ 2006 UN Convention on the Rights of Persons with Disabilities:
<http://www.un.org/disabilities/convention/conventionfull.shtml>.

- b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

2.7. 2003 – UN Convention against Corruption⁴¹

Article 7 – Public Sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

3. GOOD ELECTORAL PRACTICE

3.1 2002 Venice Commission Code of Good Practice in Electoral Matters⁴²

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. Furthermore, elections must be held at regular intervals.

1. Universal suffrage

1.1. Rule and exceptions

⁴¹ 2003 UN Convention against Corruption:
http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁴² 2002 VC Code of Good Practice:
[http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023-e.aspx).

Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

a. Age:

- i. the right to vote and to be elected must be subject to a minimum age;
- ii. the right to vote must be acquired, at the latest, at the age of majority;
- iii. the right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).

b. Nationality:

- i. a nationality requirement may apply;
- ii. however, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.

c. Residence:

- i. a residence requirement may be imposed;
- ii. residence in this case means habitual residence;
- iii. a length of residence requirement may be imposed on nationals solely for local or regional elections;
- iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities;
- v. the right to vote and to be elected may be accorded to citizens residing abroad.

d. Deprivation of the right to vote and to be elected:

- i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. it must be provided for by law;
- iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;
- iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.
- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

1.2. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. electoral registers must be permanent;
- ii. there must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period;
- iii. electoral registers must be published;
- iv. there should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day;
- v. a similar procedure should allow voters to have incorrect inscriptions amended;
- vi. a supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

1.3. Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures;
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned;
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines;
- iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked;
- v. Validation of signatures must be completed by the start of the election campaign;

vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

2.1. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

2.2. Equal voting power: seats must be evenly distributed between the constituencies.

- i. This must at least apply to elections to lower houses of parliament and regional and local elections;
- ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.
- iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).
- v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.
- vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.
- vii. When constituency boundaries are redefined – which they must be in a single member system – it must be done:
 - impartially;
 - without detriment to national minorities;
 - taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.

2.3. Equality of opportunity

a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.

b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

d. Political party, candidates and election campaign funding must be transparent.

e. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

2.4. Equality and national minorities

- a. Parties representing national minorities must be permitted.
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

2.5. Equality and parity of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

3. Free suffrage

3.1. Freedom of voters to form an opinion

a. State authorities must observe their duty of neutrality. In particular, this concerns:

- i. media;
- ii. billposting;
- iii. the right to demonstrate;
- iv. funding of parties and candidates.

b. The public authorities have a number of positive obligations; inter alia, they must:

- i. submit the candidatures received to the electorate;
- ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
- iii. The above information must also be available in the languages of the national minorities.

c. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

3.2. Freedom of voters to express their wishes and action to combat electoral fraud

- i. voting procedures must be simple;
- ii. voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:
- iii. postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible;
- iv. electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent;
- v. very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited;
- vi. mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud;
- vii. at least two criteria should be used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box;
- viii. voting slips must not be tampered with or marked in any way by polling station officials;
- ix. unused voting slips must never leave the polling station;
- x. polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting;
- xi. military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station;
- xii. counting should preferably take place in polling stations;
- xiii. counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records;
- xiv. results must be transmitted to the higher level in an open manner;
- xv. the state must punish any kind of electoral fraud.

4. Secret suffrage

a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.

b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.

- c. The list of persons actually voting should not be published.
- d. The violation of secret suffrage should be sanctioned.

5. Direct suffrage

The following must be elected by direct suffrage:

- i. at least one chamber of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

II. Conditions for implementing these principles

1. Respect for fundamental rights

- a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.
- b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

2. Regulatory levels and stability of electoral law

- a. Apart from rules on technical matters and detail – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.
- b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

3.1. Organisation of elections by an impartial body

- a. An impartial body must be in charge of applying electoral law.
- b. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.
- c. The central electoral commission must be permanent in nature.
- d. It should include:
 - i. at least one member of the judiciary;
 - ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.It may include:
 - iii. a representative of the Ministry of the Interior;
 - iv. representatives of national minorities.
- e. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis (see point I.2.3.b).
- f. The bodies appointing members of electoral commissions must not be free to dismiss them at will.
- g. Members of electoral commissions must receive standard training.
- h. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

3.2. Observation of elections

- a. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.
- b. Observation must not be confined to the election day itself, but must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.
- c. The places where observers are not entitled to be present should be clearly specified by law.
- d. Observation should cover respect by the authorities of their duty of neutrality.

3.3. An effective system of appeal

- a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.
- b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.
- c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.
- d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.
- e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.
- f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.
- g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
- h. The applicant's right to a hearing involving both parties must be protected.
- i. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

**ANNEX 2: ODIHR ELECTION REPORTS PUBLISHED BETWEEN 1 JANUARY 2010
AND 31 DECEMBER 2012**

| OSCE participating State | Election Type | Election Date | Election Activity | Report Type | Report Date |
|--------------------------|-----------------------------|----------------------------|-------------------|-------------|-------------|
| Albania | Municipal | 08/05/2011 | EOM | Final | 15/08/2011 |
| Andorra | Parliamentary | 03/04/2011 | | NAM | 30/03/2011 |
| Armenia | Parliamentary | 06/05/2012 | EOM | Final | 26/06/2012 |
| Austria | Presidential | 25/04/2010 | EAM | Final | 09/06/2010 |
| Azerbaijan | Parliamentary | 07/11/2010 | EOM | Final | 25/01/2011 |
| Belarus | Presidential | 19/12/2010 | EOM | Final | 22/02/2011 |
| | Parliamentary | 23/09/2012 | EOM | Final | 14/12/2012 |
| Bosnia and Herzegovina | General | 03/10/2010 | EOM | Final | 17/12/2010 |
| Bulgaria | Presidential / Municipal | 23/10/2011 | LEOM | Final | 05/01/2012 |
| Croatia | Presidential | 27/12/2009 & 10/01/2010 | LEOM | Final | 07/04/2010 |
| Croatia | Parliamentary | 04/12/2011 | LEOM | Final | 03/02/2012 |
| Cyprus | Parliamentary | 22/05/2011 | EAM | Final | 07/09/2011 |
| Czech Republic | Parliamentary | 28/05/2010 & 29/05/2010 | | NAM | 16/04/2010 |
| | Presidential | 11/01/2013 & 12/01/2013 | EAM | NAM | 26/11/2012 |
| Denmark | Parliamentary | 15/09/2011 | | NAM | 19/09/2011 |
| Estonia | Parliamentary | 06/03/2011 | EAM | Final | 16/05/2011 |
| Finland | Parliamentary | 17/04/2011 | EAM | Final | 21/06/2011 |
| | Presidential | 22/01/2012 | | NAM | 28/11/2011 |
| France | Presidential | 22/04/2012 & 05/05/2012 | | NAM | 15/03/2012 |
| | Parliamentary | 10/06/2012 & 17/06/2012 | EAM | Final | 10/09/2012 |
| Georgia | Municipal | 30/05/2010 | EOM | Final | 13/09/2010 |
| | Parliamentary | 01/10/2012 | EOM | Final | 21/12/2012 |
| Greece | Parliamentary | 06/05/2012 | EAM | Final | 27/07/2012 |
| Hungary | Parliamentary | 11/04/2010 | EAM | Final | 09/08/2010 |
| Ireland | Parliamentary | 25/02/2011 | | NAM | 23/02/2011 |
| Kazakhstan | Presidential | 03/04/2011 | EOM | Final | 16/06/2011 |
| | Parliamentary | 15/01/2012 | EOM | Final | 03/04/2012 |
| Kyrgyzstan | Referendum | 27/06/2010 | ROM | Final | 27/07/2010 |
| | Parliamentary | 10/10/2010 | EOM | Final | 20/12/2010 |
| | Presidential | 30/10/2011 | EOM | Final | 10/01/2012 |
| Latvia | Parliamentary | 02/10/2010 | LEOM | Final | 10/12/2010 |
| | Parliamentary | 17/09/2011 | LEOM | Final | 19/12/2011 |
| Lithuania | Parliamentary | 14/10/2012 | EAM | NAM | 23/07/2012 |
| Moldova | Parliamentary | 28/11/2010 | EOM | Final | 26/01/2011 |
| | Municipal | 05/06/2011 | LEOM | Final | 28/11/2011 |
| Monaco | Parliamentary | 10/02/2013 | EET | NAM | 21/12/2012 |
| Montenegro | Parliamentary | 14/10/2012 | LEOM | Final | 07/12/2012 |
| Netherlands | Parliamentary | 09/06/2010 | EAM | Final | 09/09/2010 |
| | Parliamentary | 12/09/2012 | EAM | Final | 16/11/2012 |
| Norway | Municipal | 12/09/2011 | EET | Final | 02/03/2012 |
| Poland | Parliamentary | 09/10/2011 | EAM | Final | 18/01/2012 |
| Romania | Presidential | 22/11/2009 & 06/12/2009 | LEOM | Final | 17/02/2010 |

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|--|---------------------------------|----------------------------|------|---|--|
| | Parliamentary | 09/12/2012 | EET | NAM | 18/10/2012 |
| Russian Federation | Parliamentary | 04/12/2011 | EOM | Final | 12/01/2012 |
| | Presidential | 04/03/2012 | EOM | Final | 11/05/2012 |
| San Marino | Parliamentary | 11/11/2012 | | NAM | 12/11/2012 |
| Serbia | Parliamentary / Presidential | 06/05/2012 & 20/05/2012 | LEOM | Final | 31/07/2012 |
| Slovakia | Parliamentary | 12/06/2010 | EAM | Final | 09/09/2010 |
| | Parliamentary | 10/03/2012 | | NAM | 17/02/2012 |
| Slovenia | Parliamentary | 04/12/2011 | EAM | Final | 07/02/2012 |
| Spain | Parliamentary | 20/11/2011 | EAM | Final | 17/02/2012 |
| Sweden | General | 19/09/2010 | | NAM | 28/07/2010 |
| Switzerland | Parliamentary | 23/10/2011 | EAM | Final | 30/01/2012 |
| Tajikistan | Parliamentary | 28/02/2010 | EOM | Final | 06/07/2010 |
| the Former Yugoslav Republic of Macedonia | Parliamentary | 05/06/2011 | EOM | Final | 06/10/2011 |
| Turkey | Parliamentary | 12/06/2011 | EAM | Final | 31/10/2011 |
| Turkmenistan | Presidential | 12/02/2012 | | NAM | 03/01/2012 |
| Ukraine | Presidential | 17/01/2010 & 07/02/2010 | EOM | Final | 28/04/2010 |
| | Parliamentary | 28/10/2012 | EOM | Interim 1 Interim 2 Interim 3 PS | 04/10/2012 19/10/2012 09/11/2012 29/10/2012 |
| United Kingdom | General | 06/05/2010 | EAM | Final | 09/07/2010 |
| United States of America | Mid-Term Congressional | 02/11/2010 | EAM | Final | 23/12/2010 |
| | General | 06/11/2012 | LEOM | Interim 1 Interim 2 PS | 19/10/2012 26/10/2012 07/11/2012 |
| Uzbekistan | Parliamentary | 27/12/2009 | EAM | Final | 07/04/2010 |