



Office for Democratic Institutions and Human Rights

**INTERNATIONAL STANDARDS AND COMMITMENTS  
ON THE RIGHT TO DEMOCRATIC ELECTIONS:**

**A PRACTICAL GUIDE TO DEMOCRATIC ELECTIONS  
BEST PRACTICE**

**OSCE/ODIHR DRAFT PAPER**



Warsaw  
20 November 2002

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>I. INTRODUCTION</b> .....	<b>2</b>
<b>II. HUMAN RIGHTS BACKGROUND FOR DEMOCRATIC ELECTIONS</b> .....	<b>4</b>
A. INTERNATIONAL BACKGROUND .....	4
B. REGIONAL BACKGROUND .....	6
<b>III. NECESSARY COMPONENT PARTS OF A SYSTEM OF DEMOCRATIC ELECTIONS</b> .....	<b>7</b>
A. ELECTION SYSTEM .....	8
B. DISTRICTING .....	8
C. ELECTION ADMINISTRATION .....	9
D. SUFFRAGE RIGHTS AND VOTER REGISTRATION .....	10
1. <i>Suffrage Rights Generally</i> .....	11
2. <i>National Minorities</i> .....	12
3. <i>Women</i> .....	12
4. <i>Persons with Disabilities</i> .....	12
5. <i>Voter Registration</i> .....	13
E. CIVIC EDUCATION AND VOTER INFORMATION .....	13
F. CANDIDATES, POLITICAL PARTIES, AND CAMPAIGN SPENDING .....	13
G. MEDIA ACCESS AND PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION IN ELECTORAL CAMPAIGNS .....	17
H. BALLOTING .....	18
I. ELECTION OBSERVATION .....	19
J. COMPLAINT MECHANISMS AND DISPUTE RESOLUTION .....	19
<b>IV. BEST PRACTICES</b> .....	<b>20</b>
A. SYSTEM OF VOTING .....	20
1. <i>System Choice</i> .....	20
2. <i>Institutions Elected</i> .....	20
B. DISTRICTING .....	21
C. ELECTION ADMINISTRATION .....	21
D. SUFFRAGE RIGHTS AND VOTER REGISTRATION .....	22
1. <i>Universal and Equal Suffrage</i> .....	22
2. <i>Non-Discrimination</i> .....	22
3. <i>Scrutiny of Any Restriction of the Right of Suffrage</i> .....	22
4. <i>Voter Registration</i> .....	22
E. CIVIC EDUCATION AND VOTER INFORMATION .....	23
F. CANDIDATES, POLITICAL PARTIES, AND CAMPAIGN SPENDING .....	23
1. <i>Equal Treatment Before the Law</i> .....	23
2. <i>Ballot Access</i> .....	23
3. <i>Public Funding of Political Parties and Campaigns</i> .....	24
4. <i>Private Funding of Political Parties and Campaigns</i> .....	24
5. <i>Reporting and Disclosure Requirements</i> .....	24
G. MEDIA ACCESS AND PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION IN ELECTORAL CAMPAIGNS .....	25
1. <i>Equal Treatment and Access</i> .....	25
2. <i>Protection of Freedom of Speech and Expression during Electoral Campaigns</i> .....	25
H. BALLOTING .....	26
1. <i>Secrecy of the Vote</i> .....	26
2. <i>Voting Procedures</i> .....	26
3. <i>Mobile Voting</i> .....	26
4. <i>Military Voting</i> .....	27

5. <i>Counting of Ballots</i> .....	27
6. <i>Tabulation of Results</i> .....	27
7. <i>Public Announcement and Publication of Counting/Tabulation of Results</i> .....	28
I. ELECTION OBSERVATION.....	28
J. COMPLAINT MECHANISMS AND DISPUTE RESOLUTION.....	28
<b>ANNEX I - SUMMARY TABLE OF STANDARDS AND BEST PRACTICES</b> .....	<b>29</b>
<b>ANNEX II - SUMMARY OF ECHR CASES</b> .....	<b>38</b>
<b>ABOUT THE OSCE/ODIHR</b> .....	<b>46</b>

**INTERNATIONAL STANDARDS AND COMMITMENTS  
ON THE RIGHT TO DEMOCRATIC ELECTIONS:  
A PRACTICAL REFERENCE GUIDE  
TO DEMOCRATIC ELECTIONS BEST PRACTICE<sup>1</sup>**

**OSCE/ODIHR DRAFT PAPER – 20 NOVEMBER 2002**

**EXECUTIVE SUMMARY**

The past dozen years have seen important growth in the body of texts at national, regional and international levels that set forth the standards for democratic elections. Although the principle of democratic elections was set forth in the Universal Declaration of Human Rights in 1948 and the International Covenant on Civil and Political Rights in the 1960's, the international community was unable to address the issue in depth until only recently. The Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in the early 1950's, but until 1990 it only covered those countries of Western Europe that were functioning as democracies. Other regions fared even more poorly.

The 1990 Copenhagen Document, adopted by the CSCE, at the time represented the most coherent compilation of international standards for democratic elections and the first time that states had made specific international commitments concerning election processes. Since 1990, additional commitments have supplemented the initial provisions of the Copenhagen Document in the OSCE area, the most recent example being the Istanbul Summit Declaration's commitment to implement ODIHR election related recommendations, while other agreements have been reached in the United Nations Organisation, Organisation of American States, and other international or regional bodies.

The Office for Democratic Institutions and Human Rights (ODIHR) was founded in 1991 under the name of Office for Free Elections specifically to help promote the observance of the Copenhagen Document. Since then it has observed some 110 elections in the OSCE region, deploying in the process more than 10,000 international observers in cooperation with the OSCE Parliamentary Assembly, the Council of Europe and the European Parliament. The written record from these observation missions, in particular the ODIHR final reports and legal analysis evaluating the electoral processes and the legislative framework of the elections observed, constitutes a rich source for the evaluation of how the Copenhagen Document standards and commitments have been implemented in the OSCE region.

During the past eleven years and even earlier, other institutions have also contributed to the codification of international standards related to elections, not to forget the national institutions around the OSCE region. In Europe, the work in this field by the Council of Europe's

---

<sup>1</sup> The draft paper was prepared for ODIHR by Jessie Pilgrim, an attorney experienced with election laws and practices in more than 15 countries. ODIHR acknowledges the contributions of its Democratisation Section lawyers Denis Petit, Stephen Heidenhaim, Berislav Kralj and Caroline Carlsson. Comments on the draft paper were provided by the following experts: Michael D. Boda, Charles Costello, Pierre Garrone, Guy S. Goodwin-Gill, John Hartland, Stephen Judson, Aleksandra Kuratko, Therese Laanela, Lindsay Lloyd, Vladimir Lysenko, Patrick Merloe, Andrea Malnati, Joseph Middleton, Stephen B. Nix, Vanja Skoric, Mark Stevens, Alexander Veshnyakov, and Steven Wheatley. The ODIHR project for which this draft working paper was produced was made possible with a contribution from Switzerland.

Parliamentary Assembly, Council for Democratic Elections and the European Commission for Democracy Through Law (Venice Commission), and the case law of the European Court of Human Rights have enriched the international standards for democratic elections. The Parliamentary Assembly of the Commonwealth of Independent States is the most recent contributor to the effort. On the global scale, the UN Human Rights Committee adopted a General Comment on standards for democratic elections in 1996 and other UN fora have contributed to a growing list of international documents on the subject as consensus in support of democracy emerged in the 1990s.

These commitments, standards, case law, comments and reports are dispersed across a considerable number of documents in various fora. As Europe's foremost institution addressing democratic elections, the ODIHR has accumulated a rich experience in the implementation of election-related commitments and is uniquely placed to review and analyse these documents. The present draft paper reviews these standards and commitments. When finalised, this review could assist ODIHR and the OSCE participating States with a more consistent methodology when observing elections and providing technical assistance. Moreover, the document could serve to initiate a debate on the further development of OSCE commitments for democratic elections. The need to enhance the OSCE commitments for democratic elections was acknowledged at the 2001 OSCE Human Dimension Seminar dedicated to electoral processes. Also, the possibility of developing these commitments through a "Copenhagen II" document was raised at the 2002 OSCE Human Dimension Implementation Meeting. This draft paper could also be a contribution to the debate about electoral rights within the Council of Europe and the Commonwealth of Independent States.

A preliminary draft document – "International Standards and Commitments on the Right to Democratic Elections: A Practical Reference Guide to Democratic Elections Best Practice" (20 August 2002) – was submitted to participating States, international organisations, NGOs and experts for consideration during a day-long working session on election standards which took place on 18 September 2002 at the OSCE Human Dimension Implementation Meeting (HDIM). The present document has been revised based on comments received during the meeting and additional written material submitted for consideration.

## **I. INTRODUCTION**

Democratic elections and representative government were first recognized as international human rights standards by the 1948 Universal Declaration of Human Rights, which affirmed: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."<sup>2</sup> To varying extents, these standards became enforceable under the International Covenant on Civil and Political Rights,<sup>3</sup> American Convention

---

<sup>2</sup> Universal Declaration of Human Rights, General Assembly Resolution 217A (III) of 10 December 1948, Article 21, Paragraph 3 (hereinafter UDHR).

<sup>3</sup> International Covenant on Civil and Political Rights, General Assembly Resolution 2000/200A (XXI) of 16 December 1966, Article 25 (hereinafter ICCPR).

on Human Rights,<sup>4</sup> African Charter on Human and Peoples Rights,<sup>5</sup> and European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>6</sup>

Democratic elections have also become a condition of membership in international organizations and the basis for the legitimization of governments among the community of nations.<sup>7</sup> Although international and regional institutions acknowledge that political and civil rights, such as the freedom to hold opinions, to exchange information, and to form associations, including political parties, are central to the consolidation of democratic government and the rule of law,<sup>8</sup> they have been slow to develop guidelines on such key issues as the periodicity of elections, the organization of political parties, the registration of voters, or the conduct of the ballot. Yet, beginning in the 1990s, these very institutions have, through their active involvement in election monitoring and technical assistance, steadily produced a body of practice that may be used to consolidate international norms and custom on democratic elections.<sup>9</sup> Nonetheless, clear criteria to judge the democratic nature of elections could both serve as a practical guide to democratic elections best practices, as well as the basis for the consolidation of international standards or commitments on democratic elections in the 21<sup>st</sup> century.<sup>10</sup>

The need for such criteria is clear. Terms like periodic, genuine, and democratic are often used subjectively in an appeal to those who are assumed to share the same political views. As one author has noted, “In practice, it may be easier to identify what is not a free, fair or genuine election, by focusing on evidence of overt external influence, the lack of meaningful choice in single candidate single party systems, or terrorism of the electorate.”<sup>11</sup> This Guide strives to address this concern by stating norms that can be applied objectively.

---

<sup>4</sup> American Convention on Human Rights, Article 23 O. A. S. Treaty Series No. 36, 1144 U.N.T.S. 123 (entered into force 18 July 1978) (hereinafter ACHR).

<sup>5</sup> African Charter on Human and Peoples Rights, Article 13, OAU Doc. CAB/LEG/67/3 rev. (entered into force 27 June, 1981) (hereinafter ACHPR).

<sup>6</sup> Protocol (No. 1) to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, E.T.S. No. 9, U.N.T.S. 262, 264 (opened for signature, 20 March 1952) (hereinafter European Protocol). The Article creates an obligation for “[t]he High Contracting Parties ... [to] hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” This inter-state obligation has been translated into an individual enforceable right by the case law of the European Commission and Court of Human Rights. *See* text accompanying note 21 below.

<sup>7</sup> *See, e.g.*, Protocol of amendments to the Charter of the Organization of American States, Article I (14 December 1992) (hereinafter Washington Protocol); Accession of Monaco to Council of Europe contingent upon reform of election law (Report of Parliamentary Assembly, June 1999).

<sup>8</sup> *See, e.g.*, Human Rights Committee, General Comment 25 on The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, Paragraph 8 (1996) (hereinafter General Comment 25); Commission On Human Rights Resolution 1999/57 on Promotion of the Right to Democracy (1999); Commission on Human Rights resolution 2000/47 on promoting and consolidating democracy (2000).

<sup>9</sup> *See* Goodwin-Gill, G.S., *Free and Fair Elections: International Law and Practice*, p.1, Inter-Parliamentary Union, Geneva (1994). Hereinafter referred to as Goodwin-Gill. Some of the institutions that have made significant contributions to the development of international election standards during the 1990s are the United Nations ([www.un.org/Depts/dpa/](http://www.un.org/Depts/dpa/)), the Carter Center ([www.cartercenter.org](http://www.cartercenter.org)), the National Democratic Institute ([www.ndi.org](http://www.ndi.org)), the Inter-Parliamentary Union ([www.ipu.org](http://www.ipu.org)), and the International Institute for Democracy and Electoral Assistance ([www.idea.net](http://www.idea.net)).

<sup>10</sup> Goodwin-Gill.

<sup>11</sup> *Ibid.*

This Guide is divided into three sections.<sup>12</sup> The first section examines the international human rights background relative to the concept of democratic elections. It references the various universal and regional norms and commitments governing the rights to popular participation, representative government and rule of law, together with their inter-dependent freedoms of expression, assembly and association.

The second section examines the basic components in a system of democratic elections.<sup>13</sup> These components encompass: law and administration; system of voting, districting, election administration, suffrage rights and voter registration; civic education and voter information; candidates, political parties, and campaign spending; media access and protection of freedom of speech and expression in electoral campaigns; balloting; election observation; and resolution of election disputes. This section will identify specific examples of practices that have been found to be consistent with or contrary to the international law background for democratic elections and will identify clearly delineated election system requirements created by international and regional instruments.

The third section sets forth the “Best Practices”, or clearer criteria on what the practical components in a system of democratic elections should satisfy in order to operate within the international human rights background. Using the concepts from the first two sections, this section will attempt to elaborate a framework for democratic elections. Also annexed to this Guide are two summary tables. The first annex is a summary table of all standards discussed and the Best Practices for democratic elections. The second annex is a summary table of the case law of the European Commission and Court on Human Rights addressing the issues discussed in this paper.

## **II. HUMAN RIGHTS BACKGROUND FOR DEMOCRATIC ELECTIONS**

### **A. INTERNATIONAL BACKGROUND**

The foundational international principles and obligations for democratic elections are succinctly stated in the UDHR and ICCPR. Article 21 of the UDHR identifies five basic premises of electoral democracy: legality, periodicity, secret ballot, and universal and equal suffrage. These premises were translated into justiciable norms by Article 25 of the ICCPR. Article 25 of the ICCPR equally added three further binding rules for the conduct of democratic elections: non-discrimination, direct choice, and free expression. At the same time, it segregated the UDHR Article 21 declaratory collective right to internal self-determination into three separate, yet inter-dependent, potentially enforceable citizen rights: right to elections; right to representative government; and, right to access to public service.<sup>14</sup>

Four articles of the ICCPR state the relevant principles and obligations. Article 19 of the ICCPR provides:

---

<sup>12</sup> As discussed by Professor Goodwin-Gill, it is useful to divide this discussion into three sections in order “to present the international law dimensions to the *criteria* and *conditions* for the conduct of free and fair elections, showing what States have assumed in the way of obligation, and what may be required to ensure that such obligations are effectively implemented.” *Ibid.*, p. 3; *See also* ACE Project (2002).

<sup>13</sup> *Ibid.*, 4. This section also includes discussion of relevant cases and specific international instruments that address narrower election system issues.

<sup>14</sup> ICCPR, *supra* footnote 3, art. 25.

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 of the ICCPR provides that “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 of the ICCPR provides:

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.
3. These political rights coupled with the legislative entitlements to free and fair elections together offer a legal basis for an individual enforceable claim to representative government.

Article 25 of the ICCPR provides that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions to: (a) take part in the conduct of public affairs, directly or through freely chosen representatives; (b) 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) have access, on general terms of equality, to public service in his country.”

The above articles state the core principles that create the foundation for the right to democratic elections.<sup>15</sup> These articles state the “obligations of result” that are required by these international instruments.<sup>16</sup> Although States undertake to achieve a specific result, they enjoy substantial choice

---

<sup>15</sup> Although these are the foundational articles, international principles for democratic elections may also arise from other general principles of international law. As Professor Goodwin-Gill has noted, achieving an international standard may be guided by the concept of international law found in Article 38 of the International Court of Justice Statute (1946), which declares that its authority comes from (1) international conventions; (2) international custom that evidences a general practice accepted as law; (3) general principles of law which are recognized by civilized nations; and (4) judicial decisions of international and national courts and teachings of the most highly qualified jurists of various nations. Goodwin-Gill, 7. Thus, the case law found in the second Annex of this Guide is particularly instructive.

<sup>16</sup> Goodwin-Gill, 7.



of means for reaching an internationally required objective. Success in fulfilling an obligation of result depends on evaluation of both the means chosen for implementation and the actual result. However, the standard of achievement remains an international one, because the choices and means in the electoral field are significantly structured by specific reference in the key human rights instruments to the underlying principles of non-discrimination, universal and equal suffrage, secret ballot, due process of law, and the will of the people as the basis of government authority.<sup>17</sup>

## B. REGIONAL BACKGROUND

The above standards are also stated in regional human rights instruments.<sup>18</sup> The preamble to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms reaffirms the “profound belief” of the Contracting States “in those Fundamental Freedoms which are the foundations of justice and peace in the world and are best maintained ... by an effective political democracy.”<sup>19</sup> However, electoral rights – as distinct from the right to live in a representative democracy – are not addressed in the body of the convention, but appear in Article 3 of the First Protocol, which provides: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” The European Court of Human Rights subsequently observed that the words of the preamble are of primary importance since they enshrine a characteristic principle of democracy, developing “[f]rom the idea of an ‘institutional’ right to the holding of free elections ... [moving] to the concept of ‘universal suffrage’ and then, as a consequence, to the subjective rights of participation – the ‘right to vote’ and the ‘right to stand for election to the legislature.’”<sup>20</sup>

One of the most “extensive and coherent statements of principle with respect to elections”<sup>21</sup> is found in the 1990 Copenhagen Document, where the participating states recognized that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms. The Copenhagen Document recognizes that, “Among (the necessities inherent) to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are ... free elections, held at reasonable intervals by secret ballot...; ... government that is representative in character in which the executive is accountable to the elected legislature or the electorate, ... and a clear separation between the state and political parties...”<sup>22</sup>

Paragraph 7 of the Copenhagen Document is particularly important, stating that participating States must:

- Hold free elections at reasonable intervals, as established by law;
- Permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

---

<sup>17</sup> Ibid., 7.

<sup>18</sup> As this is an OSCE/ODIHR paper, the regional background is limited to the OSCE region.

<sup>19</sup> Goodwin-Gill, 14, *supra* n. 9.

<sup>20</sup> *Mathieu-Mohin and Clerfayt v. Belgium*, No. 9/1985/95/143, para. 47 (2 March 1987) (hereinafter *Mathieu-Mohin*).

<sup>21</sup> Goodwin-Gill, 23, *supra* n.9.

<sup>22</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, 29 June 1990, para. 5, 29 ILM (hereinafter Copenhagen Document).

- Guarantee universal and equal suffrage to adult citizens;
- Ensure voting by secret ballot or equivalent voting procedure, and honest tabulation and public reporting of results;
- Respect the nondiscriminatory right of citizens to seek political or public office, individually or as representatives of political parties or organizations;
- Respect free establishment of political parties or other political organizations and provide them with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment;
- Ensure political campaigning in a fair and free atmosphere in which administrative action, violence, and intimidation do not bar the parties and the candidates from freely presenting their views and qualifications, or prevent the voters from learning and discussing them or from casting their votes free of fear of retribution;
- Prevent legal or administrative obstacles from impeding nondiscriminatory access to the media for all political groupings and individuals wishing to participate in the electoral process;
- Ensure that the candidates who obtain the necessary number of votes required by the law are duly installed in office and are permitted to remain in office until their terms expire or are otherwise legally and constitutionally brought to an end.

Paragraph 8 of the Copenhagen Document notes that the presence of national and foreign observers enhances the electoral process and stresses that cooperation and exchange of information are important for democratic elections.<sup>23</sup>

A recent attempt to articulate regional obligations and commitments is that of the Council of Europe's European Commission for Democracy Through Law (Venice Commission). At its sessions on 5-6 July and 18-19 October 2002, the Venice Commission adopted a "Code of Good Practice in Electoral matters: Guidelines and Explanatory Report". These guidelines, similar to the Copenhagen Document, set forth a comprehensive list of underlying principles of European electoral systems.

Thus, regional obligations and commitments affirm the core principles stated in international human rights instruments for the right to democratic elections.

### **III. NECESSARY COMPONENT PARTS OF A SYSTEM OF DEMOCRATIC ELECTIONS**

This section examines the necessary component parts of a system of democratic elections, law and administration in light of the human rights norms discussed in the previous section. This section also includes discussion of relevant cases and specific international instruments that address these component parts.<sup>24</sup> The component parts are divided into the following categories: (1) election system, (2) districting, (3) election administration, (4) suffrage rights and voter registration, (5)

---

<sup>23</sup> Ibid.

<sup>24</sup> In discussing ECHR cases, it is worth noting that these cases often reinforce the idea that election systems have conflicting objectives: the need to reflect the opinion of the electorate versus the need to promote the emergence of sufficiently representative currents of thought, in order to promote the emergence of a sufficiently clear and coherent political will. ECHR cases further emphasize that equal treatment of each voter does not necessarily mean equal weight of each vote.

civic education and voter information, (6) candidates, political parties, and campaign spending, (7) media access and protection of freedom of speech and expression in electoral campaigns, (8) balloting, (9) election observation, and (10) resolution of election disputes.<sup>25</sup>

## A. ELECTION SYSTEM

Democratic elections require that there be an election system in place to convert the will of the people (votes) into seats or mandates to be held by a group of elected representatives (legislature). This system may be a proportional voting system, a majoritarian voting system, or a combination of both. Regardless of the system chosen, there must be an established mechanism for converting the popular vote of the people into representative government in the legislature.

Regional jurisprudence and UN General Assembly Resolutions recognize that there is no single electoral system that is equally suited to all states.<sup>26</sup> Such systems and processes are subject to historical, political, cultural, religious, and other factors.<sup>27</sup> However, whatever the system chosen, elections must result in a legislature representative of the country's main political forces.<sup>28</sup> "The chosen system, therefore, must facilitate the expression of the will of the people through periodic and genuine elections conducted on the basis of universal and equal suffrage and secret ballot."<sup>29</sup>

The term periodic is susceptible to varying interpretations, depending on the length of time between elections. The European Commission of Human Rights has held that a five-year electoral cycle does not contravene the provision of reasonable intervals.<sup>30</sup> This is consistent with the general international practice to hold elections every four to five years for national legislatures. Attention should also be given to the appropriate time interval between calling and setting elections, so that parties and candidates have sufficient time to prepare for elections, particularly for communicating political messages to the electorate.

Legislative institutions that must be elected by direct and universal suffrage include: (1) at least one chamber of the national parliament, (2) regional legislative bodies, and (3) local legislative bodies. However, this list should not be considered exhaustive. In *Mathews v. United Kingdom*, the European Court of Human Rights applied Article 3 of Protocol 1 of the ECHR to a body "sufficiently involved" in the "legislative process" so as to "constitute part of the legislature."<sup>31</sup> Thus, the list should be considered expansive.

## B. DISTRICTING

---

<sup>25</sup> Goodwin-Gill, 27.

<sup>26</sup> *Mathieu-Mohin*, *supra* n. 21, at 54; UN General Assembly resolution numbers 46/137 (17 December 1991) and 47/130 (18 December 1992).

<sup>27</sup> Goodwin-Gill, 28, *supra* n.9.

<sup>28</sup> *Mathieu-Mohin*, *supra* n. 21, at 54; *Liberal Party v. United Kingdom*, App. No. 8765/79, 21 Eur. Comm'n H.R.Dec. & Rep. 211, 221 (1980).

<sup>29</sup> Goodwin-Gill, 28, *supra* n.9.

<sup>30</sup> Commission decision on admissibility in the case of *Timke v. Germany*, Application No.27311/95, 11 September 1995, <http://hudoc.echr.coe.int>; (the Commission found five years to be acceptable interval between elections).

<sup>31</sup> European Court of Human Rights, Application No. 28433/94, 18 February 1999.

The election system must provide for the organization of electoral units (voting districts). This includes establishing boundaries of electoral units and involves determining the (1) frequency, (2) criteria, (3) degree of public participation, (4) respective roles of the legislative, judicial, and executive branches of government, (5) allocation of the ultimate authority for choosing the final plan for electoral units, and (6) delineation of circumstances when the size of an electoral unit might deviate from the established criteria.

Elections conducted on the basis of equal suffrage require equality of voting power; in principle, that no vote should carry disproportionately more weight than another. In principle, no vote should carry proportionally more weight than another. This does not necessarily require a system of proportional representation. On a complaint originating from the United Kingdom, the European Commission on Human Rights interpreted Article 3 of Protocol 1 to the ECHR to mean that different political parties must be given a reasonable opportunity to present their candidates for election, but did not require an electoral system which would guarantee that the total number of votes for each candidate or party would be reflected in the composition of the legislature.<sup>32</sup>

From an international law perspective, districting is very much a product of the overall electoral system.<sup>33</sup> The general aim always remains the same: to translate the will of the people into effective representative government.<sup>34</sup> Again, State practice and the disparity between the states themselves in terms of population, geography, population distribution, community traditions and resources reveal the range of possible and permissible variations.<sup>35</sup> Substantial differences in the representation population ratio among electoral units, however, raise questions. For example, does the disparity have the effect of disenfranchising a group or groups, contrary to the international norm of non-discrimination? Alternatively, does the unequal division affect the outcome of an election?<sup>36</sup> Either case raises the possibility of a violation of international law, depending on what actually happens in the election.<sup>37</sup>

Important to the concept of drawing districts is the decision of the location of polling stations, because each voter list corresponds to a polling station. The location of polling stations should be convenient and accessible for both regular and advance polls.

### C. ELECTION ADMINISTRATION

The administration of democratic elections requires that election commissions/bodies are in place to ensure that the election machinery functions. There must be an election administration in place to ensure that ballots are printed, polling stations opened, votes counted, and winners declared. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections.

There are two main forms of election administration machinery. First, the administration may be operated by the government through civil servants, with or without a supervisory body overseeing

---

<sup>32</sup> *X. v. United Kingdom*, App. No. 7140/75, 7 Eur. Comm'n H.R. to Dec. & Rep. 95, 96-97 (1976). The Court affirmed this view in *Mathieu-Mohin*, *supra*, n.21, at 23-24 (1985). See also, *Liberal Party v. United Kingdom*, *supra*, n.29, at 211.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

the process. Second, the administration may be operated solely by a body independent from the government. This latter form of administration may involve a balanced number of members from political parties. However, where election administrations include political parties, structural provisions should be implemented to ensure that representatives of minority and opposition parties have full access to meaningful participation. Regardless, the election administration will likely include a central or state election commission with authority and responsibility over subordinate election commissions. Usually, there will be a subordinate election commission for the electoral unit (voting district) in which a member of the legislature is elected. Generally, the lowest level of the election commission structure will be the polling station level where voting occurs.

The state or central election commission may be a body that functions on an active basis and not for a limited time period just before elections. However, lower election commissions/bodies, such as polling station committees, are usually temporary bodies established before an election. Generally, the election administration will oversee the elections, including the following matters:

- Training election officials and workers responsible for the administration of the election;
- Establishing voting procedures;
- Informing voters of the elections and voting procedures;
- Informing voters of political parties and candidates;
- Registering voters and preparing voter registers;
- Overseeing the voting processes;
- Counting ballots and tabulating results;
- Determining the winners;
- Adjudicating, in the first instance, complaints concerning the electoral processes and the right to vote or stand as a candidate.

Independent and impartial election administration is critical for elections to be democratic. Further, actual impartiality in the administration of elections must be accompanied by the appearance of impartiality. Regardless of how election administration is constituted, it is important that it function in an impartial manner, and be perceived by the electorate as administering election processes in an impartial manner.

#### **D. SUFFRAGE RIGHTS AND VOTER REGISTRATION**

Voting is a basic element of a system for democratic elections. The election system must state criteria so that it is possible to identify who has the right to vote in a given election. The election system must also provide criteria so that it can be determined under what circumstances the right to vote can be taken away or suspended. These circumstances, standards and thresholds for disqualification should be defined in law.

The voting system must also provide for the mechanism of registering voters. The right to vote is of diminished value if it is not possible to determine who should and who should not vote in a given election. Further, the right to vote is also of diminished value if the election system fails to ensure accuracy in voter registers. Thus, another component of the election system is the voter registration and maintenance of voter registers. The election system must specify the method of establishing voter eligibility.

## 1. Suffrage Rights Generally

As the right to vote is the most basic element of a system for democratic elections, there is a body of developing jurisprudence addressing what limitations may be imposed on the right without violating the principles of the international human rights background. In general, these limitations fall within four categories: (1) minimum age requirements, (2) citizenship requirements, (3) residency requirements, and (4) loss of right due to an adjudication of mental incapacity or criminal conduct.

Obviously, the right to vote and to be elected must be subject to a minimum age. This minimum age to vote should not be more than 18 years, as international human rights instruments clearly provide that a person obtains political rights at this age.<sup>38</sup> However, it is generally accepted that the minimum age requirement for standing for election may be higher.

The right to vote may be subject to citizenship requirements. However, specific regional human rights instruments provide that foreigners be allowed to vote in local elections after a certain period of residence.<sup>39</sup> Thus, the right to vote may be subject to reasonable residency requirements.

In some countries, persons who have been sentenced to prison terms are denied the right to vote. Such restrictions have been upheld by the European Commission on Human Rights.<sup>40</sup> However, in *Labita v. Italy*,<sup>41</sup> the Court found a violation of Article 3 of Protocol 1 of ECHR where an innocent person experienced a loss of rights as a voter due to legal provisions aimed at controlling criminal activity. Acknowledging that temporarily suspending the voting rights of persons against whom there was evidence of Mafia membership pursues a legitimate aim, the Court observed that, when Mr. Labita's name was removed from the electoral register after he was acquitted, there was no concrete evidence on which a "suspicion" that Mr. Labita belonged to the Mafia could have been based. The Court could not regard that measure as proportionate. There had therefore been a violation of Article 3 of Protocol 1.

The right to vote may be subject to loss. However, any provision for loss of the right to vote must be narrowly proscribed. Provisions for the loss of the right to vote must be clearly stated in law. The principle of proportionality must be respected. Loss of the right to vote or stand for election may be imposed only by an express adjudication by a court of law. Moreover, these rights may be automatically restored once the penalty has been paid for any criminal offence.

Voting in elections is considered a right associated with citizenship. A few countries go further and consider that voting is a duty and, thus, have made voting at elections compulsory. Some countries go as far as to impose sanctions on non-voters, but these sanctions are not always enforced. The

---

<sup>38</sup> See UN Convention on the Rights of the Child, art. 1, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

<sup>39</sup> See, Convention on the Participation of Foreigners in Public Life at Local Level, art. 6, E.T.S. No. 144 (entered into force, 1 May 1997).

<sup>40</sup> European Commission of Human Rights, 5 October 1972, c/RFA, DR 43 p. 28; *X. v. Federal Republic of Germany*, App. No. 2728/66, 25 Eur. Comm'n H.R.Dec. & Rep. 38, 40 (1967); *H. v. The Netherlands*, App. No. 9914/82, 33 Eur. Comm'n H.R.Dec. & Rep. 242, 245-46 (1983).

<sup>41</sup> *Labita v. Italy*, Application No. 26772/95 (6 April 2000).

European Commission of Human Rights has considered compulsory voting in conformity with Article 3 of Protocol No 1.<sup>42</sup>

## **2. National Minorities**

Ensuring that national minorities are effectively represented is important.<sup>43</sup> This includes the right to vote, stand for election, participate in public affairs, and form political parties without discrimination. The representation of national minorities can be facilitated through passive means by removing barriers to participation, such as constituency delimitations and quorum regulations. When necessary representation of minorities may also be facilitated through active means by taking positive measures, such as (1) printing ballots and other important public information in both the official language(s) and the language(s) of national minorities; (2) reserving or allocating positions in all the branches of government, including the legislative, judicial, executive, and administrative branches; (3) setting up single-member districts; (4) developing proportional representation systems; (5) allowing preference voting by letting voters rank candidates in order of choice; and (6) lowering numerical thresholds for representation in the legislature.

## **3. Women**

Women often face barriers to fair and effective representation due to generalized and endemic discrimination. Entitlement to equal rights regardless of gender has generally been recognized by the United Nations Charter, the UDHR, the ICCPR, the ICESCR, and other Conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture, and the Convention on the Rights of the Child. To combat discrimination in representation, states should strive to establish electoral systems that facilitate full equality of men and women so that both men and women may fully realize their guaranteed human rights.

## **4. Persons with Disabilities**

Discrimination, ignorance, poverty, and neglect all contribute to the political and electoral disenfranchisement of persons with disabilities. The ICCPR establishes electoral rights for all citizens “without unreasonable restrictions” and through “universal and equal suffrage”. Thus, the ICCPR prohibits restrictions on the right to vote on the basis of (1) physical or sensory disability, (2) literacy and education, or (3) intellectual disability or psychiatric illness, unless due process specifically restricts the right to vote. Moreover, criteria that are used to restrict the right to vote must be nondiscriminatory.

---

<sup>42</sup> Eur. Comm HR. 18 December, c/Austria, Ann. 8 p.168.

<sup>43</sup> The right of national minorities to participate equally in the political process is recognized in the UN Declaration on Minorities, Article 2(2), which states that minority persons have “the right to participate effectively in ... public life,” and in the Framework Convention on National Minorities, Article 15, which recognizes a state obligation to facilitate participation of “national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.” Also, the CSCE Copenhagen Document places a burden on participating States to respect the participation of national minorities in public affairs, particularly those “relating to the protection and promotion of the identity of such minorities.”

## **5. Voter Registration**

From recognition of the individual right to vote flows the necessity of voter registration machinery without which, in many cases, there would be no effective exercise of the right. Protection of the right to vote requires the establishment and maintenance of true and accurate voter registers. This is best achieved by the use of permanent registers that are periodically updated. Updating should occur, at a minimum, once a year. If voters are not registered automatically, then registration should be possible over a relatively long period. Voter registers should be public documents that are published and easily accessible for inspection. A procedure must be in place to provide for the registration of a voter who has been omitted from the register, or who has reached the legal age for registration after publication of the register.

### **E. CIVIC EDUCATION AND VOTER INFORMATION**

A system for democratic elections should provide for voters to learn about the purpose of elections and political parties and candidates. This may include education about the function and purpose of democratic institutions, the importance of and reason for alternating government through periodic elections, and the essential role of opposition parties in parliamentary governments. Voters should also be informed and educated concerning the election processes.

The developing body of jurisprudence on democratic elections has dealt primarily with basic issues such as the rights to vote and to be elected. Thus, the area of civic education and voter information has not yet been expressly considered within a judicial context. However, as shown by election observation reports compiled by international organizations in the field, voters must be adequately educated and informed about voting processes, candidates, political parties, and complaint mechanisms and dispute resolution in order for there to be a true expression of the will of the people in an election.

The importance of civic education and voter information is indicated by Paragraph 7.7 of the Copenhagen Document, which states that law and public policy should not prevent voters from learning about political parties and candidates. The corollary to this principle is that law and public policy should require that state authorities inform and educate voters concerning election processes, candidates, and political parties. In light of these principles, and based on experience in the field of election observation, election administration bodies should provide timely information to the public on (1) candidates and political parties, (2) voting procedures, and (3) procedures for protecting electoral rights. This information should be provided in the languages of national minorities in those geographical areas where such minorities are located and through the appropriate media calculated to reach such minorities.

### **F. CANDIDATES, POLITICAL PARTIES, AND CAMPAIGN SPENDING**

The right to be elected is one of the most basic elements of a system for democratic elections. As a result, there is a body of developing jurisprudence addressing what limitations may be imposed on the right without violating the principles of the international human rights background. This section discusses some of the cases that have addressed limitations on candidacy, political parties, and campaign spending.



In *Podkolzina v. Latvia*,<sup>44</sup> the European Court of Human Rights addressed the problem of lack of procedural and substantive legal guarantees to protect a person's right to be a candidate. Ms. Podkolzina stood as a candidate in the parliamentary elections. Based on an assessment given by an examiner from the State Language Centre, the Central Electoral Commission struck her name off the list of candidates because she had an inadequate command of Latvian. Ms. Podkolzina sought relief from the European Court of Human Rights, complaining that removal of her name from the list of candidates for the parliamentary elections infringed her right to stand as a candidate in elections, as guaranteed by Article 3 of Protocol 1 of the ECHR. The Court found that since the assessment had been left to the sole discretion of a single official, and due to the absence of any objective guarantees or procedures for challenging such an assessment, the handling of Ms. Podkolzina's candidacy was incompatible with the procedural requirements of fairness and legal certainty for determining eligibility for election. The Court held unanimously that there had been a violation of Article 3 of Protocol 1 of the ECHR.

In *Ahmed and Others v. United Kingdom*,<sup>45</sup> the Court dealt with restrictions limiting senior local government officers' involvement in certain types of political activity, including limitations on the right to be a candidate in elections. The applicants challenged the limitations as denying their rights to participate fully in the electoral process (Article 3 of Protocol 1). The Court noted that under Article 3 of Protocol 1, States may impose restrictions on an applicant's right to contest seats at elections. However, these restrictions must be seen in the context of the aim pursued by the legislature in enacting the limiting regulations. Here, the aim of securing political impartiality in certain civil service positions was considered legitimate for the purpose of restricting the exercise of the applicants' subjective right to stand for election under Article 3 of Protocol 1, especially in light of the fact that the limitation only operates for as long as the applicants occupy politically restricted posts. The Court concluded that there had been no violation of Article 3 of Protocol 1.

In *Sadak and Others v. Turkey*,<sup>46</sup> the European Court of Human Rights addressed the right to be a candidate within the context of post-election forfeiture of a mandate. A national Turkish court terminated the applicants' parliamentary mandates following the court-ordered dissolution of their political party for the statements of the party's former chairman and not as a result of the applicants' political activities as individuals. The European Court of Human Rights held that the extremely harsh penalty imposed on the applicants could not be regarded as proportionate to the legitimate aim relied on by Turkey, that the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office, and that it had infringed the unfettered discretion of the electorate which had elected the applicants.

A similar case is *Socialist Party and Others v. Turkey*.<sup>47</sup> A national Turkish court dissolved the Socialist Party, finding the objectives of the party unacceptable, and banned the founders and managers of the party from holding similar office in any other political body. The applicants claimed

---

<sup>44</sup> *Podkolzina v. Latvia*, Application 46726/99 (9 April 2002); <http://hudoc.echr.coe.int>.

<sup>45</sup> *Ahmed and others v. United Kingdom*, Application No. 65/1997/849/10562 (September 1998); <http://hudoc.echr.coe.int>.

<sup>46</sup> *Sadak and Others v. Turkey*, Application No.s 25144/94, 26149/95, 26154/95, 27100/95 and 27101/95 (11 June 2002); <http://hudoc.echr.coe.int>.

<sup>47</sup> Case of *Socialist Party and Others v. Turkey*, Application No. 21237/93 (25 May 1998); <http://hudoc.echr.coe.int>.

that dissolution of the Socialist Party and the ban placed on its leaders had infringed their right to freedom of association, under Article 11 of the ECHR.<sup>48</sup> The Court found that the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11, which applies also to political parties. The Court then considered whether the dissolution of the party could be considered to have been necessary in a democratic society. The Court reiterated that the exceptions set out in Article 11 are to be interpreted strictly when political parties are concerned. Applying a limited margin of appreciation, the Court concluded that the dissolution of the Socialist Party was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, there had been a violation of Article 11 of the ECHR.

Another relevant case in this area is *Communist Party and Others v. Turkey*.<sup>49</sup> Within 14 days of the formation of United Communist Party of Turkey (TBKP), a national Turkish court dissolved the party and banned the founders and managers of the party from holding similar office in any other political body, finding that the TBKP's objectives encouraged separatism and the division of the Turkish nation. The applicants maintained that the dissolution and the ban placed on its members infringed their right to freedom of association, as guaranteed by Article 11 of the ECHR. The Court determined that Article 11 is applicable to "political parties", even though "political parties" are not specifically listed in Article 11, because political parties are essential to the proper functioning of democracy and democracy is so important in the ECHR system. The Court concluded that a measure as drastic as the immediate and permanent dissolution of the TBKP, ordered before its activities had even started, together with a ban barring its leaders from discharging any other political responsibility, was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, the Court held that there had been a violation of Article 11 of the ECHR.

In *United Communist Party of Turkey and Others v. Turkey*<sup>50</sup> and *Socialist Party and Others v. Turkey*,<sup>51</sup> the ECHR recognized the right of citizens to participate in political deliberation and activity regarding the political questions of the day. The ECHR made clear that political parties in Turkey could not be proscribed because they advocated autonomy for the Kurdish population within a federal state. In other words, individuals and parties may not be excluded from the political debate simply because they are members of a minority group or because they espouse views or programs that are incompatible with the principles and structures of the current government. Similarly, in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*,<sup>52</sup>

---

<sup>48</sup> ECHR art. 11 reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

"2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

<sup>49</sup> *United Communist Party of Turkey and others v. Turkey*, Application No. 19392/92 (30 January 1998); <http://hudoc.echr.coe.int>.

<sup>50</sup> *United Communist Party of Turkey and others v. Turkey*, ECHR, Reports 1998-I, para. 55-7.

<sup>51</sup> *Socialist Party and Others v. Turkey*, ECHR, Reports 1998-III, para. 47.

<sup>52</sup> *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, ECHR judgment of 2 October 2001, para. 97.

the Court held that a group calling for autonomy or secession of part of a country's territory could not automatically be prohibited from the country's assemblies.

In *Refah Partisi (The Welfare Party) Erbakan, Kazan and Tekdal v. Turkey*,<sup>53</sup> however, the Court found no violation of the ECHR where The Welfare Party was dissolved. The Court held that the sanctions imposed on the Welfare Party and its leaders could reasonably be considered to meet the pressing social need protecting democracy, since, on the pretext of giving a different meaning to the principle of secularism, the leaders of the party had declared their intention to establish a plurality of legal systems based on differences in religious belief, and to institute Islamic law (the *Sharia*), a system of law that was in marked contrast to the values embodied in the ECHR. They had also left in doubt their position regarding recourse to force in order to obtain and retain power. Acknowledging the narrow margin of appreciation in the area of the dissolution of political parties, and considering that pluralism of ideas and parties is an inherent element of democracy, the Court held that a State can reasonably prevent the implementation of such a political programme, which is incompatible with ECHR norms, before it is given effect through specific acts that might jeopardise civil peace and the country's democratic regime.

*The Welfare Party* case is consistent with principles stated in international human rights instruments for limiting activities that promote hatred between different groups.<sup>54</sup> For instance, the ICCPR requires a prohibition against advocacy of national, racial, or religious hatred that constitutes incitement of discrimination, hostility, or violence.<sup>55</sup> Also, the European Court of Human Rights has repeatedly held inadmissible complaints from neo-Nazi organisations that their right to freedom of expression has been limited by such restraints.<sup>56</sup> The European Court has emphasized that it is up to States to consider what the "real policies" of a political party are, regardless of its stated objectives.<sup>57</sup>

The cases discussed above provide guidance on what general limitations may be imposed on the rights of candidates and political parties. An area that is starting to attract more attention is the one of specific limitations in a given electoral campaign, such as limitations on campaign spending in a specific election. Limitations may also include regular disclosure of audited party accounts; disclosure of sources of funding; and regulation of interest groups that may support or oppose particular candidates. A reasonable limitation on campaign spending is permissible, as is the imposition of financial penalties for violating the limitation. In *Pierre-Bloch v. France*,<sup>58</sup> the European Court of Human Rights found no violation of the ECHR where a French candidate was assessed a financial penalty for violating the statutory limit set by French law.

---

<sup>53</sup> *Refah Partisi (The Welfare Party) Erbakan, Kazan and Tekdal v. Turkey*, Application No. 41340/98, 41342/98, 41343/98 and 41344/98 (31 July 2001); <http://hudoc.echr.coe.int>.

<sup>54</sup> The UN Commission on Human Rights has made clear that "political platforms based on racism, xenophobia or doctrines of racial superiority and related discrimination must be condemned as incompatible with democracy." UN Commission on Human Rights, E/CN.4/2000/40, preamble. The General Assembly of the UN has likewise condemned such political platforms, urging states to "combat political platforms and activities based on doctrines of superiority which are based on racial discrimination or ethnic exclusiveness and xenophobia, including, in particular, neo-Nazism." GA Resolution 55.82, adopted 26 February 2001, A/RES/55/82, at para. 3.

<sup>55</sup> Article 20(2) of the International Covenant on Civil and Political Rights.

<sup>56</sup> See, e.g., *Glimmerveen and Hagenbeek v. the Netherlands*, App. Nos. 8384/78 and 8406/78, 18 DR 187 (1979).

<sup>57</sup> See, e.g., *United Communist Party of Turkey and Others v. Turkey*, ECHR, Reports 1998-I, para. 58.

<sup>58</sup> *Pierre-Bloch v. France*, Application No. 120/1996/732/938 (21 October 2001); <http://hudoc.echr.coe.int>.

## G. MEDIA ACCESS AND PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION IN ELECTORAL CAMPAIGNS

This section discusses media access and protection of freedom of speech and expression in electoral campaigns. The developing body of jurisprudence on democratic elections has dealt more with the latter area than the former. However, as shown by election observation reports compiled by international organizations in the field, candidates and political parties must have sufficient, minimal access to media, on a fair and equal basis, in order for there to be a true expression of the will of the people in an election.

The importance of media access is indicated by Paragraph 7.8 of the Copenhagen Document, which states that there should be unimpeded access to the media on a non-discriminatory basis for all political groups and individuals wishing to participate in the electoral process. In light of this principle and based on experience in the field of election observation, international standards require that all candidates and political parties be provided sufficient access to media in order for voters to become adequately informed of views, programs, and opinions of electoral contestants. It can be expected that this issue will be brought into judicial forums as technology and media become more pervasive in electoral campaigns.

The issue of free speech and expression has been a subject of judicial consideration, especially within the context of candidate criticism. Protection of free speech and expression is important within the context of a political campaign. Case law from the European Court of Human Rights emphasizes this point.

In *Oberschlick v. Austria*,<sup>59</sup> the Court held that the applicant's conviction for insulting a politician had violated Article 10 of the ECHR. In this case, the Court reiterated that, subject to paragraph 2 of Article 10 of the Convention, freedom of expression was applicable not only to "information" and "ideas" that were favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Further, as to the limits of acceptable criticism, they were wider with regard to a politician acting in his public capacity than in relation to a private individual. In conclusion, the Court considered that the necessity of the interference with the exercise of the applicant's freedom of expression had not been shown.

Similarly, in *Lopes Gomes Da Silva v. Portugal*,<sup>60</sup> the Court found a violation of Article 10 of the ECHR. The applicant in this case was the manager of the daily newspaper *Público*. *Público* published an editorial criticising a political party's choice of a candidate. The applicant was eventually convicted on charges of criminal libel and ordered to pay a fine, damages, and costs. The applicant argued that his conviction had infringed his right to freedom of expression, contrary to Article 10 of the ECHR. Noting that freedom of expression is of particular importance with regard to the press, and that the limits of acceptable criticism are wider with regard to a politician acting in his public capacity, the Court stated that the personal tone of political invective is one of the hazards of political life and free debate. Journalists may even resort to a degree of exaggeration, or even provocation. Despite the fact that the penalty imposed had been minor, the

---

<sup>59</sup> *Oberschlick v. Austria*, No. 47/1996/666/852 (25 June 1997); <http://hudoc.echr.coe.int>.

<sup>60</sup> *Lopes Gomes Da Silva v. Portugal*, Application No. 37698/97 (28 September 2000); <http://hudoc.echr.coe.int>.

applicant nevertheless now had a conviction, a measure that was not reasonably proportionate to the legitimate aim pursued.

In *Bowman v. United Kingdom*,<sup>61</sup> the Court also found a violation of Article 10 of the ECHR. Mrs. Bowman distributed leaflets in the period immediately before parliamentary elections and was charged under a law that prohibited an expenditure of more than five pounds sterling by an unauthorised person, during the period before an election, for the purpose of conveying information to electors with a view to promoting or procuring the election of a candidate. Mrs. Bowman alleged a violation of her right to freedom of expression under Article 10 of the ECHR. Although the law did not directly restrain freedom of expression, but instead limited spending during the election period, the Court considered that the prohibition amounted to a restriction on freedom of expression, which directly affected Mrs. Bowman. The Court found that the law operated as a total barrier to Mrs. Bowman's publishing information with a view to influencing the voters in favour of a particular candidate. Accordingly, the Court concluded that the restriction in question was disproportionate to the aim pursued and that there had been a violation of Article 10 of the ECHR.

In *Incal v. Turkey*,<sup>62</sup> Article 10 was again considered. Mr. Incal was convicted under Turkish law for handing out leaflets that contained separatist propaganda capable of inciting the people to resist the government and commit criminal offences. The leaflets criticized measures taken by local authorities against small-scale illegal trading and squatters' camps. Mr. Incal argued that the criminal conviction infringed his right to freedom of expression guaranteed by Article 10 of the ECHR. The Court concluded that Mr. Incal's conviction was disproportionate to the aim pursued, and therefore unnecessary in a democratic society. The Court found that there had accordingly been a breach of Article 10 of the ECHR.

## H. BALLOTING

The election system must regulate voting, in particular establishing the rules needed for ensuring the secrecy of the vote. This requires the election system to address the form, printing, manner of casting, and manner of counting the ballot. This further requires establishing rules for polling stations and special forms of voting for persons who are unable to attend a polling station. It must also include processes for ensuring that only persons who have the right to vote can vote, and that all persons who do have the right to vote are able to vote. In sum, the election system should provide for how and when the winners are determined. The system must also provide for the circumstances under which a winner can forfeit a mandate or become a "loser".

The importance of balloting procedures is indicated by Paragraph 7.3 of the Copenhagen Document, which states that participating states will ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly. Although this appears self-explanatory, some technical procedures are better suited than others for meeting this commitment. There is little jurisprudence on balloting procedures since they are primarily of a technical nature. It can be expected that this issue will be brought into judicial forums as voting technology develops and electronic means of voting are explored. However, as shown by election observation reports compiled by international organizations in the field, there are some practices

---

<sup>61</sup> *Bowman v. United Kingdom*, Application No. 141/1996/760/961 (19 February 1998); <http://hudoc.echr.coe.int>.

<sup>62</sup> *Incal v. Turkey*, Application No. 41/1997/825/1031 (9 June 1998).

that are to be recommended, as well as practices to be avoided. These are discussed in Part IV of this paper.<sup>63</sup>

A developing issue in the area of balloting is electronic and/or mechanical voting. In an effort to make voting more accessible in the 21<sup>st</sup> Century, some countries have tested new forms of voting, including internet, telephone, and text messaging. In the world of developing technology, a major concern is the need for security with any electronic systems. Also of concern is the reliability of the system; it must have both reliable hardware and software and must be able to function even if the hardware or software should fail. Other concerns include instilling public confidence, which is closely related to the security and reliability issues; designing a ballot that will avoid confusion; creating a system that will allow voters to confirm their votes and/or correct errors in voting without the secrecy of their votes being compromised; making a back-up system available in case of failure of the electronic system, which may include the ability to print votes onto ballot papers; and ensuring that the system can be checked to determine whether it is functioning properly. For the present, additional testing and analysis must be conducted to determine the viability of these systems.

## **I. ELECTION OBSERVATION**

The election system should establish the parameters regulating the role of foreign observers and domestic observers (both partisan and non-partisan), and representatives of the media, political parties and candidates, to ensure the transparency of all electoral processes. The election legislation should identify who can observe and the conditions under which they can observe. In countries interested in election observation, domestic, non-partisan observers should have the same rights as representatives of media, political parties, and candidates.

The importance of election observation is indicated by Paragraph 8 of the Copenhagen Document, which states that participating states accept the potential of national and foreign observers to enhance the electoral process. There is little jurisprudence on the issue of election observation. However, as shown by election observation reports compiled by international organizations in the field, there are some practices that are to be recommended, as well as practices to be avoided. These are discussed in Part IV of this paper.

## **J. COMPLAINT MECHANISMS AND DISPUTE RESOLUTION**

The election system should provide effective mechanisms and remedies for the enforcement of electoral rights. Protection of the right to vote is an essential element of a democratic election system. The right to vote is a fundamental human right, as is the right to a remedy for violation of the right to vote. Thus, the election system must set forth the rules for protecting suffrage rights.

---

<sup>63</sup> The European Court of Human Rights has briefly addressed the issue of balloting procedures within the context of prison. In *Iwanczuk v. Poland*, Application No. 25196/94 (15 November 2001), the Court found that it was doubtful whether the exercise of the right to vote in parliamentary elections by persons detained in prison should be subject to any special conditions other than those dictated by the normal requirements of prison security. Specifically, the Court found that it was not appropriate to require a prisoner to strip naked in front of a group of prison guards before being given a ballot.

Mechanisms adequate to protect suffrage rights must be in place before, during, and after elections. There must be adequate procedures for adjudicating electoral disputes and protecting electoral rights. For example, in *Podkolzina v. Latvia, supra*, the European Court of Human Rights found that the candidacy of Ms. Podkolzina had been wrongfully denied and that she had not been provided adequate procedural and substantive legal guarantees to protect her right to be a candidate.

The human rights instruments discussed in Part II of this paper are clear as to what procedural and substantive rights must be provided to protect suffrage rights.<sup>64</sup> In sum, those rights include the following:

- The right to present evidence in support of a complaint
- The right to a public hearing on the complaint
- The right to a fair hearing on the complaint
- The right to an impartial tribunal to decide the complaint
- The right to transparent proceedings on the complaint
- The right to an effective remedy
- The right to a speedy remedy
- The right to appeal to an appellate court if a remedy is denied

The above rights are critical to ensuring that the fundamental rights upon which democratic elections are based are respected and enforced.

#### **IV. BEST PRACTICES**

This section attempts to elaborate “Best Practices” that will ensure that the component parts of the election system comply with the international law and with the international human rights background for democratic elections.

##### **A. SYSTEM OF VOTING**

###### **1. System Choice**

A country’s choice for its electoral system, provided it operates in a non-discriminatory manner and facilitates the expression of the will of the people through periodic and genuine elections conducted on the basis of universal and equal suffrage and secret ballot, should be respected.

###### **2. Institutions Elected**

The best practice requires direct elections for the following legislative institutions:<sup>65</sup>

- at least one chamber of the national parliament

---

<sup>64</sup> See Articles 8 and 10 of the UDHR; Articles 14, 15, and 16 of the ICCPR; Articles 6, 13, and 17 of the ECHR. See also Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 through 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 through 21 of the OSCE 1991 Moscow Document.

<sup>65</sup> Elections for executive offices are not addressed by this Guide nor discussed herein.

- regional legislative bodies
- local legislative bodies
- any other body “sufficiently involved” in the “legislative process” so as to “constitute part of the legislature”

## **B. DISTRICTING**

Electoral units (voting districts) should be drawn in a manner that preserves equality among voters, a cornerstone of democratic elections. However, this does not preclude considering convenience and accessibility for voters, including the delineation of pre-existing administrative boundaries. Electoral units should be drawn under the following guidelines: (1) they should be drawn periodically to ensure that equality among voters is not disregarded due to population movements; (2) there should be a high degree of public participation in the process of drawing boundaries; (3) deviation from uniform populations in electoral units should be kept to a minimum where possible; and (4) they should be reviewed sufficiently in advance of elections in order to minimize the effect of new boundaries on the election results and to avoid instability and voter confusion and disappointment.

## **C. ELECTION ADMINISTRATION**

The administration of democratic elections requires that election commissions/bodies are independent and impartial. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections.

The administrative structure established by the legal framework should include a central or state election commission with authority and responsibility over subordinate election commissions. There should be a subordinate election commission for the electoral unit (voting district) in which a member of the legislature is elected. Whether intermediate election commissions are needed depends on the electoral system and geographic and demographic factors unique to the country. The lowest level of the election commission structure should be the polling station level where voting occurs. It is critical to clearly define the relationship between the central election commission and lower election commissions, and the relationship between all election commissions and executive government authorities.

Where possible, professionals familiar with the electoral framework of a country should be the persons appointed to administer elections in the country.

The state or central election commission should be a body that functions on an active basis and not for a limited time period just before elections. This means that the central election commission should continually work to improve voter registers and take other actions that improve the election process. However, it is acceptable for lower election commissions/bodies, such as polling station committees, to be temporary bodies established before an election.

The method of selecting election commission members should be impartial, open, and transparent.

The election administration should effectively ensure:



- election officials and workers responsible for the administration of the election are trained, including training to interpret and implement the law under which the officials and workers are to perform their duties
- election officials act impartially
- coherent voting procedures are established and made known to the voting public
- voters are informed and educated concerning the election processes, political parties, and candidates
- registration of voters and updating of voter registers is maintained
- integrity of the ballot is safeguarded through appropriate measures to prevent unlawful and fraudulent voting
- integrity of the process for counting and tabulating votes is safeguarded
- final election results are accurately and fairly certified

## **D. SUFFRAGE RIGHTS AND VOTER REGISTRATION**

### **1. Universal and Equal Suffrage**

There must be the guarantee of universal and equal suffrage to each adult citizen. The right to elect must be guaranteed to each citizen who reaches the age of majority, which should not be more than 18 years, as international human rights instruments clearly provide that a person obtains political rights at this age.<sup>66</sup> The right to be elected may require an age beyond that of the age of majority.

### **2. Non-Discrimination**

Every person who has the right of suffrage must be allowed to exercise his/her suffrage right in a non-discriminatory manner on the basis of equal treatment before the law. This principle requires that a person, who has the right of suffrage, be allowed to exercise his/her suffrage right without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, disability, or other status.

### **3. Scrutiny of Any Restriction of the Right of Suffrage**

Any limitation or restriction on the right to elect or be elected must be scrutinized, and any limitation or restriction must clearly be justified due to exceptional circumstances.

### **4. Voter Registration**

The right to vote is of diminished value if it is difficult for a person to register to vote or if there are an unacceptable number of inaccuracies in voter registers. Voter registration and maintenance of registers should be conducted in a fully and completely transparent process. Full and complete transparency in the process should ensure that registration is easy for a person who has the right to vote, while at the same time ensuring accuracy to prevent fraudulent voting. The method of establishing voter eligibility, including what documentation is required, should be clearly stated so

---

<sup>66</sup> See UN Convention on the Rights of the Child, art. 1, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

that the process is fully transparent, is not subject to arbitrary decision, and can be publicly monitored in an objective manner.

Transparency requires that voter registers must be public documents that are available for inspection, without cost to the requester. However, the requirement of public registers should be balanced against the need to ensure adherence to data protection principles.<sup>67</sup> Requests for changes, entries, and deletions in the voter registers should not be limited to a time period just before a given election, except where necessary to finalise registers prior to an election. A person should not be limited to making requests that relate only to that person. A person should be permitted to make a request that affects another person, provided the other person is notified of the request and permitted to respond to the request.

## **E. CIVIC EDUCATION AND VOTER INFORMATION**

The best practice is to require authorities to inform voters concerning the election processes and take necessary actions to educate voters prior to an election. Election administration bodies should provide timely information to the public on (1) candidates and political parties, (2) voting procedures, and (3) procedures for protecting electoral rights. This information should be provided in the languages of national minorities in those geographical areas where such minorities are located and through the appropriate media calculated to reach such minorities.

## **F. CANDIDATES, POLITICAL PARTIES, AND CAMPAIGN SPENDING**

### **1. Equal Treatment Before the Law**

The best practice is to ensure that all political parties and candidates are able to compete in elections with each other on the basis of equal treatment before the law. The law should create a level playing field for all political parties and candidates involved in the electoral processes

Candidates seeking office must be permitted to run as either party candidates or independent candidates. Additionally, regardless of party affiliation or lack of party affiliation, candidates cannot be discriminated against.

### **2. Ballot Access**

The grounds for rejection of a registration application should be based on objective criteria and clearly stated in law. Monetary deposits should be of a sufficient amount to discourage frivolous political parties and independent candidates, but should not be so high as to prevent legitimate political parties or independent candidates from obtaining ballot access, and should be refundable upon receiving a certain number of votes. This threshold number should be reasonable.

Deadlines for the registering authority to approve or reject registration requests should be defined. The grounds for rejection must be clearly stated in the law and based on objective criteria. The law should allow for correcting minor deficiencies within a reasonable amount of time after rejection; provide for appeal to a court of law after final rejection of registration; and clearly specify the

---

<sup>67</sup> See, e.g., Convention 108 for the Protection of Individuals With Regard to Automatic Processing of Personal Data. See also Article 8 of the ECHR, which recognizes the right to privacy.

process for appeal and require an expedited court ruling to enable ballot access where registration was improperly denied.

Once registration is approved, the question of registration or possible de-registration should not again become an issue. In order to avoid speculations and abuse connected to possible de-registration, the possibility to recall a political party or candidate's registration should be very narrow, allowing for a review of a registration only in cases of serious violations of the law and pursuant to clearly defined procedures.

### **3. Public Funding of Political Parties and Campaigns**

Public funding should be provided on the basis of equal treatment before the law. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. This only means that political parties and candidates should be provided public funding on the basis of equal treatment before the law.

Any provisions providing for public funding should be clearly stated in the law and based on objective criteria that cannot be subjectively interpreted by government authorities. Additionally, state resources should not be misused for campaign purposes and all state resources used for campaign purposes, such as state media, buildings, property, and other resources must be made available to all electoral participants on the basis of equal treatment.

### **4. Private Funding of Political Parties and Campaigns**

Any restriction on private funding of political campaigns must be reasonable. Any unreasonable restriction or limitation on private funding is a violation of a person's rights to free association and expression. Reasonable limitations on the amount of private contributions are permissible, depending on the type of election and factors unique to the particular country, such as geography, demographics, and relative costs of media and other campaign materials.

It is also acceptable to limit the total amount of expenditures of the electoral contestants in a given campaign. However, electoral contestants should be permitted to expend sufficient resources to convey a political message.

### **5. Reporting and Disclosure Requirements**

Legitimate limitations on campaign expenditures are meaningless without reporting and disclosure requirements. Thus, the best practice should require periodic reporting in reasonable time intervals; disclosure of all contributions received, the source of those contributions, and the amount and type (cash or in-kind) of the contributions; and disclosure of expenditures made by an electoral contestant, the identity of the recipient of the expenditure, and the amount expended.

## **G. MEDIA ACCESS AND PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION IN ELECTORAL CAMPAIGNS**

### **1. Equal Treatment and Access**

Political parties and candidates should be provided access to media and equal treatment in media owned or controlled by the state so that voters can be informed of political platforms, views, and goals in a fair and unbiased manner. This covers all forms of the media, including radio, television, newspapers, and evolving forms of media such as the internet.

A practice that ensures this standard is to require provision to political parties of the right to free time on radio and television on a permanent basis, and not only during electoral periods. A legal framework that provides that all political parties are guaranteed an established number of minutes of broadcasting per month may ensure this practice. This broadcast access is guaranteed in addition to the free time available during electoral periods. During electoral campaigns, political parties and candidates should also have the right to additional free time in order for them to disseminate information about their candidatures.

Additional free time during election periods should be allotted under an established formula that can be applied objectively. Objective application is ensured if the law specifies: (1) the percentage of broadcast time to be distributed to political parties and candidates according to the number of seats held in the parliament, and (2) the percentage to be distributed to political parties and candidates on an equal basis, regardless of parliamentary strength. It is also recommended that the amount of broadcast time distributed on an equal basis be sufficient to enable all political parties and candidates to compete effectively in the elections.

The issue of paid political advertising also presents an issue of access and equal treatment. In the area of paid political advertising there should also be a guarantee of access and equal treatment. An inequality is created in the area of paid political advertising if there is no requirement that the same commercial rate for such ads be offered to all political parties and candidates, and that the times and location of the advertising be on similar terms. Alternatively, it is permissible to prohibit all paid political advertising.

The standard of equal treatment and access to media is undermined if state owned or controlled media are able to favour a political party or candidate in news coverage, political coverage, forums, or editorials. Biased coverage or treatment should be prohibited and authorities should be required to act immediately upon any violation.

### **2. Protection of Freedom of Speech and Expression during Electoral Campaigns**

A democratic election is not possible where governmental authority inhibits or chills campaign speech and expression. Limitations on free expression during election campaigns violate international human rights law. Additionally, such provisions usually violate free speech guarantees found in a country's constitution. This standard, however, is not applicable to prohibitions on inflammatory speech that is calculated to incite another person to violence. Nor

does this standard prohibit reasonable restrictions related to opinion polling, exit polling, or the reporting of results.

The best practice, as stated in clear terms by the European Court of Human Rights, is for a government to “display restraint” and accept that even offensive, shocking, and disturbing speech can contribute to pluralism and must usually be tolerated in a democratic society. This is especially true during electoral campaigns and of speech that “targets” government authorities, elected officials, and candidates for office.

## **H. BALLOTING**

### **1. Secrecy of the Vote**

The best practice is to provide for ballot security, while at the same time ensuring that no individual ballot can be identified as being marked by a specific voter.

Under no circumstances, except for counting of ballots after close of the polling, should a polling station committee member or other person be allowed to see a voter’s marked ballot. Obviously, this prohibition does not apply to a person legally authorised to assist a blind voter or a voter requiring assistance due to physical infirmity. However, it is unacceptable for a member of a polling station committee to handle or control the voter’s marked ballot before it is placed in the ballot box.

The principle of secrecy of the vote requires that election regulations underline that secret voting is not only a right on the part of the voter, but an absolute obligation. Election officials have an obligation to provide adequate facilities to ensure that voters have the space and time necessary to cast their vote in secret.

### **2. Voting Procedures**

Voting procedures should ensure that voters are adequately identified and that other mechanisms are in place to prevent fraudulent or double voting. However, voting procedures should not be cumbersome or complicated so as to hinder the voting process. Voting procedures should ensure that all ballots and voting materials are adequately safeguarded before, during, and after voting.

### **3. Mobile Voting**

Postal or mobile voting may be available to a voter. Both types of voting may be available to a single individual, such as a person who is abroad on business, or for an entire community, such as refugees and/or displaced persons. In the case of mobile voting, it may be available to a single voter homebound due to physical incapacity, or to an entire community, such as a hospital or institution. It is also permissible to provide for special voting provisions for members of the military.

The voter accommodation principle underpinning the concept of mobile voting is commendable. However, procedures must be in place to prevent voting fraud.

If mobile voting is allowed, it should require the following safeguards:

- A procedure must be in place to identify mobile voters to prevent double voting.
- Mobile voting should be used only in cases where it is physically impossible for the voter to travel to the polling station to vote. This fact must be established by the voter making a written application to the polling station committee explaining why it is physically impossible for the voter to travel.
- Observers of all categories should be permitted to accompany the mobile ballot box.
- The number of ballot papers taken out for mobile use and the number later returned should be formally recorded.
- The number of ballot papers taken out should accord with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot papers.
- The number of persons who have used the mobile box should be recorded in polling stations and successive protocols. This makes it possible to identify particular areas where the proportion of votes cast using mobile boxes is unusually high, which may point to fraud.
- At least two members of the polling station committee should administer mobile voting jointly within the geographical territory covered by a polling station.

#### **4. Military Voting**

The best practice is to ensure that members of the military are permitted to vote and are not disenfranchised simply because they are posted to a military installation. It is common to have special provisions ensuring that a member of the military is able to exercise the right to vote while on active duty. Although protecting the right to vote of a member of the military is recommended, such provisions must be written carefully as voting by the military can be subject to abuse. Often it is necessary to set up special polling stations within military units located in remote areas far from any centre of population. While this may be unavoidable, it should be done only in strictly exceptional circumstances. Wherever possible, military voters should vote in ordinary civilian polling stations. When local elections are involved, a member of the military should vote a ballot of the constituency of the member's permanent place of residence.

#### **5. Counting of Ballots**

Regardless of whether ballots are counted at the polling station or a central counting location, votes must be counted and tabulated in the presence of observers, and the entire process by which a winner is determined must be fully and completely transparent. Whether manual, mechanical, or electronic counting is used, procedures for audit and inspection to ensure accuracy and reliability must be in place. Procedures must also be in place to allow objections to counting procedures, including objections to criteria used to determine the validity of ballots. The best practice is to permit observers to make copies, or be given copies, of all protocols, tabulation, and tally sheets.

#### **6. Tabulation of Results**

The best practice is to provide, in clear and objective language in the law, the procedures for transferring the protocol results of counting, ballots, and election materials from lower election commissions to intermediate and higher election commissions for tabulation and safekeeping. All

tabulations of results should be available in tables or a similar format that allows observers to trace the results of each counting location or polling station up through all levels of aggregation to the final results. The tabulations should contain detailed information, including the number of voters, the number of ballots used and unused, the number of invalid ballots, and the number of votes for each political party or candidate. This information should also be broken down for alternative methods of voting, such as postal or mobile voting. This degree of detail is necessary to enable observers to track results and locate specifically where fraud has occurred if the numbers are unlawfully changed during the tabulation processes.

## **7. Public Announcement and Publication of Counting/Tabulation of Results**

The best practice is to require that *all* relevant electoral documents be publicly accessible, including election protocols, tabulation and tally sheets, and decisions determining or affecting election results. Such electoral documents should be publicly posted at *all* levels of election administration, including polling, municipal, and state election commission levels. Detailed tabulations of overall results, including the voting results in each polling station, should be posted at each election commission. These detailed tabulations should also be published in state owned or controlled print media as soon as the results are certified.

### **I. ELECTION OBSERVATION**

Transparency of the electoral process is essential to ensure democratic elections. The best practice is to provide for the presence of observers, domestic and foreign, and representatives of the media, political parties and candidates, to ensure the transparency of all electoral processes. Observers should be allowed to observe the entire election process and should be given access to all election-related documents and information.

### **J. COMPLAINT MECHANISMS AND DISPUTE RESOLUTION**

There must be effective mechanisms and remedies in place for the enforcement of electoral rights. The best practice requires that the election system include the following rights for a person complaining of violation of the suffrage right:

- The right to present evidence in support of a complaint
- The right to a public hearing on the complaint
- The right to a fair hearing on the complaint
- The right to an impartial tribunal to decide the complaint
- The right to transparent proceedings on the complaint
- The right to an effective remedy
- The right to a speedy remedy
- The right to appeal to an appellate court if a remedy is denied

**ANNEX I - SUMMARY TABLE OF STANDARDS AND BEST PRACTICES**

<b>STANDARDS</b>	<b>SYSTEM COMPONENT AND BEST PRACTICES</b>
<p><b>Right:</b></p> <p>To Choose Legislature by Direct, Periodic Elections</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> <li>• Article 23 of ACHR</li> <li>• Article 13 of ACHPR</li> <li>• Article 3, Protocol 1 of ECHR</li> <li>• Paragraphs 7.1 and 7.2 of Copenhagen Document</li> </ul>	<p><b>Component: Election System</b></p> <p><b>Best Practices:</b></p> <ul style="list-style-type: none"> <li>• Direct elections held for at least one chamber of the national parliament</li> <li>• Direct elections held for regional legislative bodies</li> <li>• Direct elections held for local legislative bodies</li> <li>• Direct elections held for any body “sufficiently involved” in the “legislative process” so as to “constitute part of the legislature”</li> <li>• Electoral formula for converting votes to mandates that reflects the free expression of the will of the people in the choice of legislature and is clearly stated in law</li> <li>• Elections held at regular intervals as established by law</li> <li>• Elections held for legislative bodies at intervals not to exceed five years</li> <li>• Election system established sufficiently in advance of elections to enable candidates, political parties, and voters to become informed of the rules</li> <li>• Fundamental principles should not be changed within the twelve months preceding an election, except in exceptional or unavoidable circumstances</li> <li>• The election system should be stated in statutory and constitutional provisions, with basic electoral rights safeguarded by constitutional protections</li> <li>• All provisions regulating the election system should be understandable, published, and made public</li> </ul>



<p><b>Right:</b></p> <p>To Equal Suffrage</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> <li>• Article 23 of ACHR</li> <li>• Article 13 of ACHPR</li> <li>• Article 14, and Article 3, Protocol 1 of ECHR</li> <li>• Articles 4 and 15 of the ECFPNM</li> <li>• Paragraph 7.3 of Copenhagen Document</li> </ul>	<p><b>Component: Districting</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• Electoral units (voting districts) should be drawn with a view to equality of voting power</li> <li>• Electoral units must be drawn on the basis of objective criteria, primarily population, but also geography and tradition</li> <li>• Existing geographical, historical, and administrative boundaries should be considered when drawing electoral boundaries</li> <li>• Electoral boundaries should be periodically reviewed, no less than every ten years</li> <li>• Electoral boundaries should be reviewed sufficiently in advance of elections in order to minimize the effect of new boundaries on the election results</li> <li>• Electoral boundaries could be drawn in a manner that facilitates the representation of minorities</li> </ul>
<p><b>Right:</b></p> <p>To Fair Elections Which Guarantee the Free Expression of the Will of People</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> <li>• Article 23 of ACHR</li> <li>• Article 13 of ACHPR</li> <li>• Article 3, Protocol 1 of ECHR</li> <li>• Paragraph 7.4 of Copenhagen Document</li> </ul>	<p><b>Component: Election Administration</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• Establishment of a permanent national election commission or similar administrative body</li> <li>• Appointment of qualified and impartial members to all election commissions</li> <li>• Appointment of members to election commissions must be done in a transparent manner</li> <li>• All election commissions must operate in an independent and impartial manner</li> <li>• All election commissions must operate in a transparent manner and observers must be permitted to observe meetings and have access to election commission documents and decisions</li> <li>• The procedures for election disputes must include mechanisms for challenging decisions of election commissions</li> <li>• Members of election commissions must be protected from arbitrary removal</li> </ul>

<p><b>Right:</b></p> <p>To Universal and Equal Suffrage</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"><li>• Article 21 of UDHR</li><li>• Article 25 of ICCPR</li><li>• Article 23 of ACHR</li><li>• Article 13 of ACHPR</li><li>• Article 14, and Article 3, Protocol 1 of ECHR</li><li>• Article 6 of ECPFLLL</li><li>• Paragraphs 7.3 and 7.4 of Copenhagen Document</li></ul>	<p><b>Component: Suffrage rights</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• The right to vote must be acquired by the age of 18 years</li><li>• The minimum age to stand for election may be set at an age greater than 18 years</li><li>• The rights to vote and be elected must be granted on a non-discriminatory basis, without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, disability, or other status</li><li>• Citizenship may be required, but foreigners could be permitted to vote in local elections after a certain period of residency</li><li>• There should be no residency requirement for citizens to vote in national elections</li><li>• Residency requirements for local and regional elections should be reasonable</li><li>• Deprivation of the right to vote and to be elected may occur only under limited circumstances expressly stated in law, and in accordance with the proportionality principle</li><li>• Deprivation of suffrage rights may be based on mental incapacity</li><li>• Deprivation of suffrage rights based on a criminal conviction requires that the criminal offense be a serious offense; the right may be restored automatically on satisfaction of the penalty</li><li>• The deprivation of suffrage rights or finding of mental incapacity may only be imposed by express decision of a court of law</li></ul> <p><b>Component: Voter Registration</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• The voters register must be maintained on a permanent basis</li><li>• The voters register must be periodically updated, at least on an annual basis</li><li>• The voters register must be published, maintained in a transparent manner, and open for public inspection</li><li>• Although the voters register must be a public</li></ul>
---	--

	<p>document, voters must be protected from the disclosure of personal data or information – such as nationality, ethnic origin, religion, or political affiliation - that is not necessary for the protection of electoral rights</p> <ul style="list-style-type: none"> <li>• Mechanisms must be in place to provide for registration of voter who is omitted from the voters register</li> <li>• Mechanisms must be in place to provide for requests to correct inaccuracies in the voters register</li> <li>• Mechanisms must be in place to register persons who have moved or reached statutory voting age since final publication of the voters register</li> <li>• The procedures for election disputes must include mechanisms for challenging the accuracy of the voters register and for seeking the addition or deletion of names as necessary for accuracy</li> </ul>
<p><b>Right:</b></p> <p>To Receive Information</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> <li>• Article 23 of ACHR</li> <li>• Article 13 of ACHPR</li> <li>• Article 3, Protocol 1 of ECHR</li> <li>• Paragraph 7.7 of Copenhagen Document</li> </ul>	<p><b>Component: Civic Education and Voter Information</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• Election administration bodies must provide timely information to the public on candidates and political parties taking part in elections</li> <li>• Election administration bodies must provide timely information to the public on the manner of voting and any information necessary for a voter to cast a valid ballot</li> <li>• Election administration bodies must provide timely information to the public on procedures for protecting electoral rights</li> <li>• Public information should be provided in the languages of national minorities in those geographical areas where such minorities are located and through the appropriate media calculated to reach such minorities</li> </ul>
<p><b>Right:</b></p> <p>To Universal Suffrage</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> </ul>	<p><b>Component: Candidates and Political Parties</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• All candidates and political parties must be treated equally before the law and on a non-discriminatory basis</li> <li>• Candidates must be permitted to stand individually or as representatives of political parties</li> </ul>

<ul style="list-style-type: none"><li>• Article 23 of ACHR</li><li>• Article 13 of ACHPR</li><li>• Article 3, Protocol 1 of ECHR</li><li>• Paragraphs 7.5, 7.6, 7.7, 7.8, and 7.9 of Copenhagen Document</li></ul>	<ul style="list-style-type: none"><li>• The presentation of individual candidates or lists of candidates may be made conditioned on the payment of a reasonable monetary deposit, or on the collection of a reasonable minimum number of signatures, in order to establish sufficient electoral support to justify participation in the elections</li><li>• Verification of signatures must be regulated by clear legal provisions stated in law</li><li>• Once registration is approved, de-registration or checking of remaining signatures should not be allowed</li><li>• Candidates and political parties should be permitted to correct minor deficiencies that result in denial of certification</li><li>• All monetary deposits should be refunded if a candidate or political party receives a minimum percentage of the valid votes</li><li>• The procedures for election disputes must include mechanisms for challenging the registration or denial of registration of a candidate or political party</li><li>• Candidates must be protected from wrongful termination of their mandates</li></ul> <p><b>Component: Funding of Candidates and Political Parties</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• Public funding of candidates and political parties should be done in a manner that treats them equally before the law and on a non-discriminatory basis</li><li>• Private funding of candidates and political parties should be permitted</li><li>• Reasonable limitations on private funding are permissible</li><li>• Reasonable limitations on campaign expenditures are permissible</li><li>• Reporting and disclosure requirements on contributions and expenditures are desirable</li></ul>
--	--

<p><b>Right:</b></p> <p>To Equal Treatment To Free Expression To Free Assembly To Free Association</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"><li>• Articles 18, 19, and 21 of UDHR</li><li>• Articles 18, 19, 20, and 25 of ICCPR</li><li>• Articles 18, 19, and 23 of ACHR</li><li>• Articles 13, 15, and 16 of ACHPR</li><li>• Articles 10, 11, and 14, and Article 3, Protocol 1 of ECHR</li><li>• Paragraphs 7.5, 7.6, 7.7, and 7.8 of Copenhagen Document</li></ul>	<p><b>Component: Media Access</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• All candidates and political parties must be provided sufficient access to media in order for voters to become adequately informed of views, programs, and opinions of the electoral contestants</li><li>• The formula for allocating media access among candidates and political parties must be fair, understandable, and capable of objective application</li><li>• Coverage by state supported or sponsored media must be neutral, unbiased, and on non-discriminatory basis</li></ul> <p><b>Component: Human Rights Protection</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• No unreasonable limitations may be placed on the right to freedom of speech or expression</li><li>• No unreasonable limitations may be placed on the right to freedom of assembly</li><li>• No unreasonable limitations may be placed on the right to freedom of association</li><li>• All candidates, political parties, supporters, and voters must be treated on a non-discriminatory basis</li><li>• Neither candidates nor voters should be asked to declare their nationality</li></ul>
---	---

<p><b>Right:</b></p> <p>To Universal Suffrage To Equal Suffrage To Secret Ballot To Fair Elections Which Guarantee the Free Expression of the Will of the People</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"><li>• Article 21 of UDHR</li><li>• Article 25 of ICCPR</li><li>• Article 23 of ACHR</li><li>• Article 13 of ACHPR</li><li>• Article 3, Protocol 1 of ECHR</li><li>• Paragraphs 7.3 and 7.4 of Copenhagen Document</li></ul>	<p><b>Component: Balloting</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"><li>• Voting procedures must be understandable so that voters are able to vote without difficulty</li><li>• Voting should take place in a polling station; however, other means of voting are permissible for voters who are physically unable to attend a polling station, but only where there are safeguards in place to prevent fraudulent voting</li><li>• Observers and representatives of candidates and political parties must be permitted to observe the delivery of election materials, preparation of the polling place, voting, and counting of ballots</li><li>• Members of the military should vote in the place of their permanent residency, or in a polling station near their duty station</li><li>• Voting must be in person, by secret ballot</li><li>• Voters must present adequate identification information and sign register in order to vote</li><li>• Only the voter may mark a ballot, except that a voter who requires assistance for physical reasons may be assisted by another voter who is not a member of the election administration or an observer</li><li>• Ballots and voting materials must be securely maintained before, during, and for a sufficient period of time after an election</li><li>• The entire counting process must be conducted in a transparent manner in the presence of observers and representatives of candidates, political parties, and the media</li><li>• There must be procedures for, in the presence of observers, independent verification of all elements of the counting and tabulation</li><li>• All results of voting, tabulations, and protocols must be publicly posted at the polling station and copies given to representatives of observers, and transmitted to higher levels of election commissions in a transparent manner</li><li>• Intermediate tabulations and protocols must be publicly posted at intermediate election commissions and copies given to representatives of observers</li><li>• All final voting results must be published in media as soon as possible after elections in such a manner that voters are able to check results at their polling places</li><li>• Legal measures must be in place to deter electoral fraud in the voting, counting, and tabulation processes</li></ul>
---	--

<p><b>Right:</b></p> <p>To Universal Suffrage              To Equal Suffrage              To Secret Ballot              To Fair Elections Which Guarantee the Free Expression of the Will of the People</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Article 21 of UDHR</li> <li>• Article 25 of ICCPR</li> <li>• Article 23 of ACHR</li> <li>• Article 13 of ACHPR</li> <li>• Article 3, Protocol 1 of ECHR</li> <li>• Paragraph 8 of Copenhagen Document</li> </ul>	<p><b>Component: Election Observation</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• Domestic and foreign observers should be permitted to observe electoral processes</li> <li>• Representatives of candidates and political parties should be permitted to observe electoral processes</li> <li>• Representatives of the media should be permitted to observe electoral processes</li> <li>• Clear and objective criteria for the requirements for registration as an observer should be stated in law</li> <li>• Rights of observers should be clearly stated in law</li> <li>• A balance between the rights of observers and the orderly administration of elections should be achieved</li> <li>• Observers must have the right to observe the delivery of election materials, preparation of the polling place, and all counting and tabulation processes</li> <li>• Observers must have the right to copies of all voting results, tabulations, and protocols at all levels of election administration</li> <li>• An expedited process for protection of the rights of observers should be available for observers who have been denied the right to observe electoral activities or who have been denied registration as an observer</li> </ul>
<p><b>Right:</b></p> <p>To Universal Suffrage              To Equal Suffrage              To Secret Ballot              To Free Association              To Fair Elections Which Guarantee the Free Expression of the Will of the People</p> <p><b>Basis:</b></p> <ul style="list-style-type: none"> <li>• Articles 8, 10, and 21 of UDHR</li> <li>• Articles 14, 15, 16, and 25 of ICCPR</li> <li>• Articles 6, 13, and 17, and Article 3 of Protocol</li> </ul>	<p><b>Component: Resolution of Election Disputes</b></p> <p><b>Best Practices</b></p> <ul style="list-style-type: none"> <li>• There must be a body of first instance, which can be a local court or tribunal for handling administrative disputes or an election commission, where complaints may be filed regarding electoral violations and the protection of electoral rights</li> <li>• The procedure for filing complaints must be understandable so that candidates, political parties, and voters can seek relief without difficulty</li> <li>• The procedure for filing complaints must be clearly stated in law</li> <li>• The body which adjudicates complaints must have power to grant an effective and expeditious remedy, including the power to annul the results</li> </ul>

<p>1 of ECHR</p> <ul style="list-style-type: none"><li>• Paragraph 7.1 of Copenhagen Document</li></ul>	<p>in a polling station, electoral unit, or entire election where necessary to protect electoral rights</p> <ul style="list-style-type: none"><li>• Notice of the complaint must be given to all parties who could be affected by any relief granted</li><li>• There must be the right to present evidence in support of a complaint</li><li>• There must be the right to a fair and public hearing on the complaint</li><li>• There must be the right to an impartial tribunal to decide the complaint</li><li>• The proceedings on the complaint must be conducted in a transparent manner</li><li>• There must be the right to appeal to an appellate court for parties aggrieved by the remedy granted or by failure to grant a remedy on the complaint</li><li>• The appellate court must have the power to grant an effective and expeditious remedy in the event of an appeal, including the power to annul the results in a polling station, electoral unit, or entire election where necessary to protect electoral rights</li><li>• All deadlines for complaints, appeals, and decisions should be short so that election results do not remain uncertain for an unreasonable period of time</li></ul>
---	--



## ANNEX II - SUMMARY OF ECHR CASES

### ***Ahmed and others v. United Kingdom, Application No. 65/1997/849/10562 (September 1998)***

III.F. Candidates, Political Parties, and Campaigning: For valid reasons, States may restrict the right to stand for election.

In *Ahmed and Others v. United Kingdom*, the Court dealt with restrictions limiting senior local government officers' involvement in certain types of political activity, including limitations on the right to be a candidate in elections. The applicants challenged the limitations as denying their rights to participate fully in the electoral process (Article 3 of Protocol 1). The Court noted that under Article 3 of Protocol 1, States may impose restrictions on an applicant's right to contest seats at elections. However, these restrictions must be seen in the context of the aim pursued by the legislature in enacting the limiting regulations. Here, the aim of securing political impartiality in certain civil service positions was considered legitimate for the purpose of restricting the exercise of the applicants' subjective right to stand for election under Article 3 of Protocol 1, especially in light of the fact that the limitation only operates for as long as the applicants occupy politically restricted posts. The Court concluded that there had been no violation of Article 3 of Protocol 1.

### ***Bowman v. United Kingdom, Application No. 141/1996/760/961 (19 February 1998)***

III.G. Media Access and Protection of Freedom of Speech and Expression in Electoral Campaigns: The right of free expression must be balanced against the right to free elections.

In *Bowman v. United Kingdom*, the Court found a violation of Article 10 of the ECHR. Phyllis Bowman was the executive director of the Society for the Protection of the Unborn Child, an organisation of approximately 50,000 members opposed to abortion and human embryo experimentation. After distributing leaflets in the period immediately before the parliamentary elections in April 1992, Mrs. Bowman was charged with an offence under section 75 of the Representation of the People Act 1983, which prohibited expenditure during the period before an election of more than five pounds sterling on conveying information to electors with a view to promoting or procuring the election of a candidate. Bowman alleged a violation of her right to freedom of expression under Article 10 of the ECHR.

Although section 75 of the 1983 Act did not directly restrain freedom of expression, but instead limited spending during the election period, the Court considered that the limitation amounted to a restriction on freedom of expression, which directly affected Mrs. Bowman. The Court first noted that the purpose of section 75 of securing equality between candidates pursues the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate. Nevertheless, the Court considered it necessary to weigh the right to freedom of expression under Article 10 against the right to free elections protected by Article 3 of Protocol 1 of the ECHR.

The Court acknowledged that, sometimes, it may be considered necessary, in the period preceding or during an election, to place certain restrictions, which would not usually be acceptable, on freedom of expression in order to secure the right to free elections. However, the Court found that

section 75 of the 1983 Act operated as an unacceptable total barrier to Mrs. Bowman's publishing information with a view to influencing the voters in favour of an anti-abortion candidate. The Court held that it was not necessary to set the limit on expenditure as low as GBP 5 to achieve the legitimate aim of securing equality between candidates. Accordingly, the Court concluded that the restriction in question was disproportionate to the aim pursued and that there had been a violation of Article 10 of the ECHR.

***United Communist Party of Turkey and others v. Turkey, Application No. 19392/92 (30 January 1998)***

III.F. Candidates, Political Parties, and Campaign Spending: States may not automatically restrict the formation of a political party simply because its activities are regarded by the national authorities as undermining the constitutional structures.

In *Communist Party and Others v. Turkey*, the Constitutional Court dissolved the United Communist Party of Turkey (TBKP) within 14 days of its formation and banned the founders and managers of the party from holding similar office in any other political body. The Constitutional Court held that the TBKP unacceptably encouraged separatism and the division of the Turkish nation. The applicants, two officers of the TBKP, maintained that the dissolution and the ban infringed their right to freedom of association, as guaranteed by Article 11 of the ECHR.

The Court first determined that Article 11 is applicable to "political parties". The Court considered that, even though "political parties" are not specifically listed in Article 11, they are essential to the proper functioning of democracy and, because democracy is so important in the ECHR system, the political parties fall within the scope of Article 11. The Court noted that an association, including a political party, is not excluded from the protection of the ECHR simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State. The Court concluded that a measure as drastic as the immediate and permanent dissolution of the TBKP, ordered before its activities had even started, together with a ban barring its leaders from discharging any other political responsibility, was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, the Court held that there had been a violation of Article 11 of the ECHR.

***Incal v. Turkey, Application No. 41/1997/825/1031 (9 June 1998)***

III.G. Media Access and Protection of Freedom of Speech and Expression in Electoral Campaigns: The means taken to legitimately restrict political debate must be proportionate to the aim pursued.

In *Incal v. Turkey*, Mr. İbrahim Incal, a Turkish lawyer, was a member of the executive committee of the İzmir section of the People's Labour Party ("the HEP"). In July 1992, a judge of the National Security Court issued an injunction ordering the seizure of HEP's leaflets, because they contained separatist propaganda capable of inciting the people to resist the government and commit criminal offences. The leaflets criticized measures taken by local authorities against small-scale illegal trading and squatters' camps. In February 1993, the National Security Court convicted the applicant of the offences charged and imposed a prison sentence and a fine, confiscated the leaflets, restricted driving privileges, debarred Incal from civil service, and banned him from participating in a number of political activities.

Mr. Incal argued that the criminal conviction infringed his right to freedom of expression guaranteed by Article 10 of the ECHR. The Court first held that Mr. Incal's conviction pursued at least one of the legitimate aims set out in Article 10, namely "the prevention of disorder". However, acknowledging that a State may subject the right to political debate to certain "restrictions" or "penalties", the Court noted that the limits of permissible criticism are wider with regard to criticism of the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities, but also of public opinion. Furthermore, the dominant position, which the government occupies, makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. The Court concluded that Mr. Incal's conviction was disproportionate to the aim pursued, and therefore unnecessary in a democratic society. There had accordingly been a breach of Article 10 of the ECHR.

***Iwanczuk v. Poland, Application No. 251196/94 (15 November 2001)***

III.H. Balloting: Restrictions on exercising the right to vote in prison should be limited to restrictions necessary to security.

The European Court of Human Rights has briefly addressed the issue of balloting procedures within the context of prison. In *Iwanczuk v. Poland*, the Court found that it was doubtful whether the exercise of the right to vote in parliamentary elections by persons detained in prison should be subject to any special conditions other than those dictated by the normal requirements of prison security. Specifically, the Court found that it was not appropriate to require a prisoner to strip naked in front of a group of prison guards before being given a ballot.

***Labita v. Italy, Application No. 26772/95 (6 April 2000)***

III.D. Suffrage Rights and Voter Registration: States may not prevent persons from voting after they have been acquitted of criminal charges.

In *Labita v. Italy*, the Court found a violation of Article 3 of Protocol 1 of ECHR where an innocent person experienced a loss of rights as a voter due to legal provisions aimed at controlling criminal activity. In this case, Benedetto Labita was arrested on suspicion of being a member of the Mafia, but was later acquitted. However, during the interim, he was removed from the voters register and lost his voting rights due to his imprisonment. Mr. Labita sought judicial relief, complaining *inter alia* that the loss of his voting rights as a result of the imposition of the preventive measures violated Article 3 of Protocol 1 of the ECHR.

Acknowledging that temporarily suspending the voting rights of persons against whom there was evidence of Mafia membership pursues a legitimate aim, the Court observed that, when Mr. Labita's name was removed from the electoral register after he was acquitted, there was no concrete evidence on which a "suspicion" that Mr. Labita belonged to the Mafia could have been based. The Court could not regard that measure as proportionate.

***Lopes Gomes Da Silva v. Portugal, Application No. Application No. 37698/97 (28 September 2000)***

III.G. Media Access and Protection of Freedom of Speech and Expression in Electoral Campaigns: To promote the idea of free political debate, the press receives wide latitude to criticize the government and politicians.

In *Lopes Gomes Da Silva v. Portugal*, the Court found a violation of Article 10 of the ECHR. The applicant in this case was the manager of the daily newspaper *Público*, one of the biggest selling papers in Portugal. *Público* published an editorial criticising the People's Party's choice of a candidate, asserting in particular: "... a more grotesque and clownish candidate from the ideological point of view could not be found anywhere, or such an incredible mixture of reactionary coarseness, fascist bigotry and vulgar anti-Semitism..." In the same edition, *Público* also noted numerous allegedly inflammatory extracts from the potential candidate's recent articles. The applicant was eventually convicted on charges of criminal libel and ordered to pay a fine, damages, and costs. The applicant argued that his conviction had infringed his right to freedom of expression, contrary to Article 10 of the ECHR.

Noting that freedom of expression is of particular importance with regard to the press, and that the limits of acceptable criticism are wider with regard to a politician acting in his public capacity, the Court stated that the personal tone of political invective is one of the hazards of political life and free debate. Journalists may even resort to a degree of exaggeration, or even provocation. By reproducing a number of extracts from recent articles by the potential candidate alongside his editorial, the applicant had complied with the rules of journalism, a matter to which the Court attached considerable importance. Lastly, despite the fact that the penalty imposed had been minor, the applicant nevertheless now had a conviction, a measure that was not reasonably proportionate to the legitimate aim pursued. The Court concluded, unanimously, that there had been a violation of Article 10.

***Mathews v. United Kingdom, Application No. 28433/94 (18 February 1999)***

III.D. Suffrage Rights and Voter Registration: Persons who are affected by supranational legislative bodies must be allowed to vote in elections for those bodies.

A European citizen is entitled to vote and stand as a candidate for the European Parliament in his or her member state country of residence. In *Mathews v. United Kingdom*, the European Court of Human Rights held that this was the right of everyone who was directly affected by the impact of European Law. This case involved a resident of Gibraltar who had been denied the right to vote in an election to the European Parliament on the grounds that the United Kingdom had not extended all the provisions of the accession treaty to Gibraltar. In this case, Mathews, a British citizen and resident of Gibraltar, argued that the absence of European Parliament elections in Gibraltar violated her rights under Article 3 of Protocol 1 of the ECHR.

The Court first determined that the United Kingdom was responsible for securing the rights guaranteed by Article 3 of Protocol 1, regardless of whether the elections were purely domestic or European. The Court then carefully considered whether Article 3 of Protocol 1 was applicable to an organ such as the European Parliament and whether this body had the characteristics of a

“legislature” in Gibraltar. The Court observed that the word “legislature” in Article 3 did not necessarily mean the national Parliament and that elections to the European Parliament could not be excluded from the ambit of Article 3 merely on the ground that it was a supranational, rather than a purely domestic representative organ. The Court examined the powers of the European Parliament in the context of the European Community and concluded that the Parliament was sufficiently involved both in the specific legislative processes leading to the passage of certain types of legislation and in the general democratic supervision of the activities of the European Community to constitute part of the legislature of Gibraltar for the purposes of Article 3 of Protocol 1.

The Court then concluded that the absence of European Parliamentary elections in Gibraltar was incompatible with Article 3, because the complainant Matthews had been denied any opportunity to express her opinion in the choice of members of the European Parliament, despite the fact that, as the Court had found, legislation that emanated from the European Community formed part of the legislation in Gibraltar and Matthews was directly affected by it. The very essence of Denise Matthews’ right to vote to choose the legislature, as guaranteed under Article 3 of Protocol 1, had been denied.

***Oberschlick v. Austria, Application No. 47/1996/666/852 (25 June 1997)***

III.G. Media Access and Protection of Freedom of Speech and Expression in Electoral Campaigns: The press is given wide latitude in expressing information and ideas, even those that may be offensive, shocking, and disturbing.

In *Oberschlick v. Austria*, the Court held by seven votes to two that the applicant's conviction for insulting a politician had violated Article 10 of the ECHR. In this case, the Court reiterated that, subject to paragraph 2 of Article 10 of the Convention, freedom of expression was applicable not only to “information” and “ideas” that were favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. These principles are of particular importance with regard to the press. While it should not overstep the bounds set, *inter alia*, for “the protection of the reputation of others”, its task is nevertheless to impart information and ideas on political issues and on other matters of general interest. Further, as to the limits of acceptable criticism, they are wider with regard to a politician acting in his public capacity than in relation to a private individual. In conclusion, the Court considered that the necessity of the interference with the exercise of the applicant's freedom of expression had not been shown. There had therefore been a violation of Article 10.

***Podkolzina v. Latvia, Application No. 46726/99 (9 April 2002)***

III.F. Candidates, Political Parties, and Campaign Spending: When applying legitimate requirements to the right to stand for election, such as a national language requirement, States must apply them fairly and objectively.

In *Podkolzina v. Latvia*, the European Court of Human Rights addressed the problem of lack of procedural and substantive legal guarantees to protect a person’s right to be a candidate. Ingrida Podkolzina, a Latvian national and member of Latvia’s Russian-speaking minority, stood as a candidate in the parliamentary elections. Ms. Podkolzina’s candidacy papers included a copy of a certificate, issued by the appropriate government body, attesting to the fact that she knew the

official language – Latvian. Language proficiency in the official language was a prerequisite to candidacy. This requirement was renewed subsequently. Based on a report and an examination given by an examiner from the State Language Centre, the Central Electoral Commission struck her name off the list of candidates because she had an inadequate command of Latvian.

Ms. Podkolzina sought relief from the European Court of Human Rights, complaining that removal of her name from the list of candidates for the parliamentary elections, on the ground that she had an inadequate command of Latvian, infringed her right to stand as a candidate in elections, as guaranteed by Article 3 of Protocol 1 of the ECHR. The Court found that the legitimate purpose of the legislation on parliamentary elections, barring citizens without an advanced degree of proficiency in the national language from standing for election, was to ensure the proper functioning of the Latvian institutional system. The Court therefore had to decide whether the measure removing Ms. Podkolzina's name from the list of candidates had been proportionate to the aim pursued. The Court noted that Ms. Podkolzina held a valid language certificate in due form that had been issued by a standing committee following an examination. Although the Latvian authorities had not contested the validity of that document, Ms. Podkolzina had nonetheless been required to sit for a further language examination. Furthermore, the assessment had been left to the sole discretion of a single official, whose discretionary powers the Court considered to be excessive. Consequently, the Court considered that, in the absence of any objective guarantees, the procedure followed in Ms. Podkolzina's case was incompatible with the procedural requirements of fairness and legal certainty for determining eligibility for election. The Court accordingly held unanimously that there had been a violation of Article 3 of Protocol 1 of the ECHR.

***Refah Partisi (The Welfare Party) Erbakan, Kazan and Tekdal v. Turkey, Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (31 July 2001)***

III.F. Candidates, Political Parties, and Campaign Spending: States may restrict the formation of political parties that use unlawful and undemocratic means or propose changes that are incompatible with fundamental democratic principles.

In *Refah Partisi (The Welfare Party) Erbakan, Kazan and Tekdal v. Turkey*, the Constitutional Court dissolved the Welfare Party on the ground that it had become a “centre of activities against the principle of secularism”. It also banned RP's leaders from sitting in Parliament or holding certain other forms of political office for a period of five years.

The European Court on Human Rights considered that, when campaigning for changes in legislation or to the legal or constitutional structures of the State, political parties enjoy the protection of the provisions of the ECHR and of Article 11 in particular, provided they comply with two conditions: (1) they use means that are lawful and democratic from all standpoints, and (2) they propose changes that are compatible with fundamental democratic principles. It necessarily follows that political parties whose leaders incite others to use violence, support political aims that are inconsistent with one or more rules of democracy, or seek the destruction of democracy and the suppression of the rights and freedoms it recognises cannot rely on the ECHR to protect them from sanctions imposed as a result.

The Court held that the sanctions imposed on the Welfare Party and its leaders could reasonably be considered to meet the pressing social need of protecting democracy, since, on the pretext of giving

a different meaning to the principle of secularism, the leaders of the party had declared their intention to establish a plurality of legal systems based on differences in religious belief, and to institute Islamic law (the *Sharia*), a system of law that was in marked contrast to the values embodied in the ECHR. They had also left in doubt their position regarding recourse to force in order to obtain and retain power. Acknowledging the narrow margin of appreciation in the area of the dissolution of political parties, and considering that pluralism of ideas and parties is an inherent element of democracy, the Court held that a State can reasonably prevent the implementation of such a political programme, which is incompatible with ECHR norms, before it is given effect through specific acts that might jeopardise civil peace and the country's democratic regime.

***Sadak and Others v. Turkey, Application Nos. 25144/94, 26149/95, 26154/95, 27100/95 and 27101/95 (11 June 2002)***

III.F. Candidates, Political Parties, and Campaign Spending: States may not deprive properly elected legislators of their offices for actions taken by their party but not by themselves individually.

In *Sadak and Others v. Turkey*, the European Court of Human Rights addressed the right to be a candidate within the context of post election forfeiture of a mandate. The applicants were members of the Turkish Grand National Assembly and a political party, the DEP (the Democracy Party – *Demokrasi Partisi*). The Constitutional Court dissolved the DEP and terminated the applicants' parliamentary mandates. The applicants were accused of separatism and undermining the integrity of the state, and convicted under domestic law aimed at the prevention of terrorism.

The European Court of Human Rights found that the deprivation of the applicants' parliamentary mandates violated Article 3 of Protocol No.1. The Court reiterated that Article 3 of Protocol 1 enshrined a characteristic of an effective political democracy and played a major role in the ECHR system. It noted that the applicants had been automatically deprived of their parliamentary mandates following the dissolution of the DEP by the Constitutional Court for comments made abroad by the former chairman of the party and a written statement issued by its central committee, not as a result of the applicants' political activities as individuals. The Court further noted that, following a constitutional amendment in 1995, only members of parliament whose words or deeds cause the dissolution of a party lose their parliamentary mandates.

The Court held that the extremely harsh penalty imposed on the applicants could not be regarded as proportionate to the legitimate aim relied on by Turkey, that the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office, and that it had infringed the unfettered discretion of the electorate which had elected the applicants. It therefore held that there had been a violation of Article 3 of Protocol 1.

***Socialist Party and Others v. Turkey, Application No. 21237/93 (25 May 1998)***

III.F. Candidates, Political Parties, and Campaign Spending: States may not prohibit formation of a party merely because it stands for ideas and opinions that may be considered offensive, shocking, or disturbing.

In *Socialist Party and Others v. Turkey*, the Constitutional Court dissolved the Socialist Party, finding the objectives of the party unacceptable, and banned the founders and managers of the party from holding similar office in any other political body. The applicants claimed that dissolution of the Socialist Party and the ban placed on its leaders infringed their right to freedom of association, under Article 11 of the ECHR.

The Court noted that the Socialist Party's dissolution constituted an interference with the applicants' right to freedom of association, but was "prescribed by law", as the decision was based on the Constitution and statutory law on the regulation of political parties. Also, the dissolution of the party pursued at least one of the legitimate aims set out in Article 11: the protection of "national security". Nevertheless, as the Court reiterated, Article 11 must be considered in light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11, which applies also to political parties. The freedom of expression as enshrined in Article 10 is also applicable, subject to paragraph 2 of Article 10, to ideas and opinions that could be offensive, shocking, or disturbing.

The Court then considered whether the dissolution of the party could be considered to have been necessary in a democratic society. The Court reiterated that the exceptions set out in Article 11 are to be interpreted strictly when political parties are concerned. Applying a limited margin of appreciation, the Court concluded that the dissolution of the Socialist Party was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, there had been a violation of Article 11 of the ECHR.



## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created in 1990 as the Office for Free Elections under the Charter of Paris. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](#), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR. In addition, ODIHR's Legislationline, accessible from its website, includes the most comprehensive and up to date database on election legislation and case law from some 40 participating States within the OSCE region.