Strasbourg, 14 October 2019 **CDL-AD(2019)021**

Opinion No. 957 / 2019 Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

AMICUS CURIAE BRIEF FOR THE EUROPEAN COURT OF HUMAN RIGHTS

IN THE CASE OF MUGEMANGANGO V. BELGIUM

ON THE PROCEDURAL SAFEGUARDS WHICH A STATE MUST ENSURE IN PROCEDURES CHALLENGING THE RESULT OF AN ELECTION OR THE DISTRIBUTION OF SEATS

Adopted by the Council for Democratic Elections,
at its 66th meeting (Venice, 10 October 2019)
and by the Venice Commission
at its 120th Plenary Session (Venice, 11-12 October 2019)

on the basis of comments by

Ms Claire BAZY-MALAURIE (Member, France)
Mr Eirik HOLMØYVIK (Substitute Member, Norway)

I. Introduction

1. By letter dated 5 July 2019 and pursuant to Rule 44, paragraph 3(a), of the Rules of Court, the European Court of Human Rights requested an opinion from the Venice Commission on the following questions raised by the pending case of *Mugemangango v. Belgium* (Application No. 310/15):

> *What adequate and sufficient procedural safeguards must a state ensure in procedures challenging the result of an election (in particular in the event of allegations of irregularities during the electoral process) or the distribution of seats? In particular, what must be the characteristics of the body responsible for examining appeals concerning the result of an election?*

2. The Commission invited Ms Bazy-Malaurie and Mr Holmøyvik to act as rapporteurs for this opinion.

3. This opinion was adopted by the Council for Democratic Elections at its 66th meeting (Venice, 10 October 2019) and by the Venice Commission at its 120th plenary session (Venice, 11-12 October 2019).

II. Scope of the present brief

4. It is not for the Venice Commission to go into the facts of the case, or into the interpretation and application of the European Convention on Human Rights (ECHR). The questions are of a general nature and inquire into issues of general comparative constitutional law. This is the basis on which the Venice Commission will respond.

5. In order to place the issue in its context, it seems, however, of interest to report the following facts, as related in the Court's request:

> "The applicant was the president of the Workers' Party of Belgium (PTB) in the province of Hainaut. He stood as lead candidate in the Charleroi constituency in the election to the parliament of the Walloon Region on 25 May 2014. He was not elected.
>
> He lodged a complaint with the Walloon Parliament in accordance with Article 31 of the Special Law of 8 August 1980 on Institutional Reforms and requested a recount of the blank, spoilt and challenged ballot papers in the Charleroi constituency, on the grounds that many problems had arisen during the ballot opening and counting process in the constituency.
>
> The applicant's complaint was examined by the Walloon Parliament's credentials committee on 10, 11 and 12 June 2014. It ultimately proposed that the applicant's request be granted and that the credentials of the members elected in the province of Hainaut not be approved.
>
> On 13 June 2014, the Walloon Parliament voted not to follow the credential committee's recommendations and declared the applicant's complaint admissible but unfounded. It approved all the members' credentials on the same day.
>
> Relying on Article 3 of Protocol No. 1 and Article 13 of the Convention, the applicant complains in particular that the Walloon Parliament was responsible for ruling on his complaint without there being any other remedy before an independent and impartial body and that there was a lack of procedural safeguards against arbitrariness in the procedure before the Walloon Parliament."

III. Preliminary remarks

6. Before answering the questions put by the Court, a few general remarks on electoral disputes, especially before parliaments, appear useful.

7. The range of questions raised by electoral law is huge. Electoral law itself is a reflection of the obligation on states, firstly, to ensure the participation of citizens in free elections and the fairness of the ballot and, secondly, the right to stand for election and be elected in compliance with the provisions of electoral law. That involves scope for disputes. Not all states have adopted the same rules as are set out in principle today in Article 3 of Protocol No. 1 to the European Convention on Human Rights.

8. The system of electoral dispute resolution established in democratic states is usually divided into two areas: one concerning preliminary operations (registration on the electoral roll, casting of votes, etc.) and the other directly concerning the candidates (eligibility and results).

9. The latter is reflected in a mechanism which quickly came to be known as "verification of credentials". Such mechanisms in fact exist for all systems of representation for whatever purpose: this may involve the requirement to provide a proper mandate or power of attorney or to appoint by vote the person called upon to represent another natural or legal person, for instance on a management board. The process must be verifiable so as to certify the lawfulness of the acts of the individual or body taking decisions on someone else's behalf. It is a well-established mechanism that has been confirmed by extensive practice.

IV. Checks on the validity of elections by parliaments and the limits of the system

1. Verification of credentials by parliaments themselves: a traditional approach

10. Parliamentary elections adopted this system from the outset. The 1689 Bill of Rights, protesting against the practices of James II *violating the freedom of election of members to serve in Parliament*, provided that "*election of members of Parliament ought to be free"* and established the House of Commons itself as the guardian of that freedom. This can be seen as the ancestor of the constitutional rules linking electoral dispute resolution to the principle of free elections, as enshrined in Article 3 of Protocol No. 1 to the ECHR. An internal mechanism was set up in the Commons to that end. A hundred years later, Article 1, Section 5(1), of the 1787 Constitution of the United States provided that: "*Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide".* This was modelled on similar systems introduced in the first constitutions of the federate states, from 1770 to 1780.[1] In France at the same time, verification of the credentials of the members of the Third Estate in the Estates General was freed from royal jurisdiction and taken over by the members of the Estates themselves. The same was true in the various subsequent elected assemblies. Such rules were also included in the 19th-century monarchical constitutions establishing elected parliaments. It is probably no accident that – except for Italy – the countries which retain the system of oversight of elections by parliament alone have constitutions dating from the 19th century or with roots going back to it (Norway 1814, Netherlands 1815, Belgium 1831, Denmark 1849, Luxembourg 1868, Iceland 1944, with roots going back to 1874).

11. This system of verification of credentials by the elected assembly itself was therefore introduced in European countries as they moved to parliamentary systems in the course of the

[1] Maryland, Delaware, North Carolina 1776, New York and Vermont 1777, Massachusetts 1780.

19th century. This was the case in Belgium with the 1831 Constitution, Article 48 of which provided that: "*Each House verifies the credentials of its members and judges any dispute that can be raised on this matter"*. Luxembourg used the same wording in its 1868 Constitution.

12. The retention of solutions under which parliaments themselves have the power to "verify credentials" is consistent with a particular approach to the role of parliaments and the separation of powers. It is based on the theory of the omnipotence of the legislature (or at least the pre-eminence of parliament) as a sovereign body under the parliamentary system with special rights that no judicial authority may impinge upon. Many jurists in continental Europe have defended this position. In France, it was set out in detail by the great legal thinker, Carré de Malberg, in the 1920s. Although the mechanism was much older, it had not been theorised so authoritatively until then. In France, it was employed both for the initial verification of credentials and for all decisions regarding the eligibility of the relevant members of parliament, up to and including the Fourth Republic. The same system still applies in Italy, where the Constitutional Court itself has ruled that the verification of parliamentarians' credentials is not covered by the system of judicial protection concerning elections. Conversely, some scholars have said that in following this approach parliaments are acting as courts, which is an intrusion into the powers of the judiciary.

2. Identification of safeguards to prevent abuses

13. While expanding the powers of parliament, 19th and 20th-century constitutionalism placed emphasis on the separation of powers, with scrutiny of parliamentary elections moving to the judiciary. For instance, in the United Kingdom judicial review was introduced in 1868 and election courts were set up. In France, the Third and Fourth Republics retained the system of "verification of credentials" by parliament, but the Constitution of the Fifth Republic opted for a system under which the legislature has no part at all in resolving electoral disputes. In France, all electoral disputes are dealt with by the administrative courts (in the case of local elections) or the Constitutional Council (in the case of parliamentary elections). More generally, in the 20th century a need was felt to transfer electoral disputes from parliaments to independent and impartial bodies.

14. It is worth noting that in both the British and French cases, it was specific incidents and abuses that led to functions being removed from the legislature with which they could act as "judges" themselves. For instance, the United Kingdom's 1868 Parliamentary Election Act is also known as the Election Petitions and Corrupt Practices at Elections Act,[2] indicating its origin and the reasons for its adoption. Similar abuses were noted in Norway in the 1880s and 1890s.[3] At a much later date in France, a scandal resulting from the invalidation of some 20 members of the National Assembly belonging to a party that was heavily criticised by the traditional parties put paid to the old system.

15. The case of Belgium is also interesting in this connection. It was the debates concerning some of the 2014 election results which led the Walloon Parliament to call the existing system into question and in 2018 draw up new rules for the procedure to examine election results, which nevertheless leaves the verification of credentials to the legislature.

16. 20th-century European constitutions generally abolished the power of parliaments to be the judge over elections, at least at the last instance. The 1920 Constitution of the Weimar Republic set up a special electoral court within parliament (*Wahlprüfungsgericht*), with jurisdiction over all electoral disputes. It comprised five members, i.e. three members of parliament and two Supreme Court judges appointed by the German President.[4] A special electoral court was also

[2] See Caroline Morris, *Parliamentary Elections, Representation and the Law* (Oxford: Hart Publishing, 2010), Chapter 4.
[3] See Rolf Danielsen, *Det Norske Storting gjennom 150 år. Tidsrommet 1870-1908.* Oslo: Gyldendal, 1964, pp. 107-110.
[4] Article 31 of the 1920 Constitution, *Wahlprüfungsordnung,* of 8 October 1920.

set up under the 1920 Constitution of the Czechoslovak Republic.[5] It was the 1920 Austrian Constitution which was the first to assign final responsibility for resolving electoral disputes to the Constitutional Court.[6]

17. Recent developments in longstanding democracies and in states with more recent constitutions almost all tend towards systems in which the rights of petitioners, in particular candidates, are recognised and dealt with according to procedures which ensure their right to the strict enforcement of electoral legislation. The standards for examining complaints in these cases are more "modern", with the involvement of bodies outside the legislature which may be either courts or non-judicial bodies that have adopted judicial methods.

18. The decision to leave the power with the legislature is therefore firmly rooted in the constitutional history of various countries. In the French case, this principle of autonomy was applied in full, as there was no organised complaint mechanism and parliament could examine any election on its own initiative, without successful or unsuccessful candidates having any particular right of review.

19. There are, however, many variants which leave the relevant parliaments themselves varying powers. For instance, while the European Parliament does exercise this power, this only comes in addition to administrative reviews and contentious proceedings conducted in the member countries: its scope is limited and is based on the explicit desire to give precedence to uniformity of treatment of cases of ineligibility and incompatibility. In Germany, final appeals against parliament's decisions may be lodged with the Constitutional Court (with the risk of delays).

20. In short, while in the 19th century, the verification of credentials by parliaments themselves was a means of asserting their position in relation to the executive, in the 20th century most European states assigned the power to a judicial body, at least at the last instance, in order to ensure the impartiality of the relevant decisions. Nevertheless, there are still great differences between the remedies in the various countries in Europe.[7]

V. Reconciling the jurisdiction of parliaments with the guarantee of the right to free elections

1. Introduction

21. While respecting traditions, any system must abide by a fundamental rule: in free elections, the choice of representatives must comply with precise rules the application of which must be verifiable and must leave no room for uncertainty or arbitrariness. Clearly, arbitrariness is to be feared all the more where competition between parties or movements is fierce, political battles are intense and they mostly play out in the legislature. Hence the mistrust of systems that give parliamentarians themselves the power to verify their fellow members' credentials.

22. Legislation passed in parliament lays down rules. Lawmakers may change the rules but, before any changes, they must usually make sure that they apply to everyone, including when the same lawmakers, in the form of their parliament, have the task of applying them directly. Accordingly, the idea that they can be the judges of the proper implementation of electoral law is not in itself absurd.

23. While the existence of an "electoral code" setting out in detail the rights of citizens and the rules governing voting and the determination of results does not necessarily call into question the

[5] See Article 19 of the Constitution of the Czechoslovak Republic.
[6] Article 141.
[7] See CDL-REF(2019)010; see also CDL-AD(2009)054, Report on the cancellation of election results, paras. 30-41. See also, European Court of Human Rights, *Grosaru v. Romania*, No. 78039/01, 2 March 2010, para. 30.

political justification for assigning the power in question to parliaments themselves, it does remove its legal justification. This actually lay behind the introduction of judicial appeal systems: the law is the law and it must be applied by all those who have the task of applying it. Any doubts in this connection contribute to mistrust and hence to the calling into question of the power of anyone who has abused it or is suspected of being able to do so. That is one of the principles of the rule of law.[8]

24. Accordingly, regardless of whether the procedure for validating election results is entirely judicial, partly judicial in terms of the relevant body or the conduct of the process or entirely parliamentary, there must be guarantees for petitioners that the rules will be complied with.

25. In democratic systems, free elections entail the recognition of two fundamental individual rights: the right to vote and the right to stand for election. Such rights are political, not "civil" within the meaning of Article 6§1 of the ECHR, so disputes concerning their exercise – such as those concerning candidates' obligation to limit their electoral expenses – are outside the scope of Article 6. The European Court of Human Rights confirmed this in 1997 in relation to an electoral dispute which had previously been brought before the French Constitutional Council.[9] It has since reasserted the point several times, in spite of discussions among legal theorists.[10]

26. The particular nature of electoral disputes may therefore lead to the retention of specific features such as high specialisation, or exclusivity, of certain courts or other bodies responsible for ensuring the lawfulness of voting and the results of elections.

27. Nevertheless, as it is a matter here of an individual right that is an indicator of democracy, it is vital to ensure procedural rights such as the existence of an effective remedy and a method of dealing with complaints that is based on the principles of a fair trial.

2. The work of the Venice Commission

a. General work

28. The Code of Good Practice in Electoral Matters drawn up by the Venice Commission includes guidelines on the subject under the heading "An effective system of appeal",[11] which the UK Electoral Commission has taken up in a recent document concerning the entire electoral process in the UK.[12] The concept of *effective* appeal corresponds to the principle of effective examination adopted by the European Court of Human Rights in its case-law on Article 3 of Protocol No. 1[13] and also to Article 2.3 of the International Covenant on Civil and Political Rights.

---

[8] The prevention of abuse of powers and arbitrariness is one of the pillars of the rule of law: Rule of Law Checklist, CDL-AD(2016)007, II.C.

[9] *Pierre-Bloch v. France*, No. 24194/94, 21 October 1997, §50, *Reports of Judgments and Decisions* 1997-VI.

[10] See for example, *Namat Aliyev v. Azerbaijan*, 8 April 2010, No. 18705/06, §98-99.

[11] CDL-AD(2002)023rev2-cor, II.3.3.

[12] The Electoral Commission: Challenging Elections in the UK – September 2012, available at https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Challenging-elections-in-the-UK.pdf, paras. 20-27.

[13] Cf. *Namat Aliyev v. Azerbaijan*, No. 18705/06, 8 April 2010, §81, *Uspaskich v. Lithuania,* No. 14737/08, 20 December 2016, §93; *Gahramanli and others v. Azerbaijan*, No. 36503/11, 8 October 2015, §69; *Davydov and others v. Russia,* No. 75947/11, 30 May 2017, §274.

The following points in the guidelines should be highlighted:

> 3.3. An effective system of appeal
>
> a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.
>
> b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.
>
> …
>
> e. The appeal body must have authority to annul elections where irregularities may have affected the outcome.
>
> f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.
>
> g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
>
> h. The applicant's right to a hearing involving both parties must be protected.

29. The clarifications provided by the Code of Good Practice in Electoral Matters regarding the content of the concept of "effective system of appeal" show that the mere existence of a remedy does not satisfy the principle of effective examination. The principle of the rule of law includes the principle of legality, which itself includes supremacy of the law and compliance with the law.[14] These can be implemented solely if the international standards for a fair trial, which are not confined to the scope of Article 6 of the ECHR, are complied with. The Rule of Law Checklist drawn up by the Venice Commission therefore promotes on a general basis the ability of individuals to challenge a public (or private) act that interferes with their rights.[15]

30. The Code of Good Practice in Electoral Matters does not prevent appeals being made in parliaments concerning their own election, but final appeals to a court must be possible (II.3.3.a). More broadly, this means that a legislature may rule on the election of its members (even in the absence of disputes), subject to judicial appeal. The court concerned may be ordinary, administrative, special (electoral court) or constitutional (as in Germany). What matters is for the decision to be taken by a "body … that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature"[16] and therefore affords sufficient institutional and procedural safeguards against arbitrary and political decisions.[17] Where electoral appeals do not concern political issues outside the supervision of the courts, the protection of the right to free elections, as enshrined in Article 3 of Protocol No. 1 to the European Convention on Human Rights, implies the existence of a judicial remedy.

31. The involvement of constitutional courts or their equivalent is becoming increasingly frequent, given the political nature of the disputes, yet their decisions are not subject to appeal. As stated above, in France, only the Constitutional Council deals with disputes concerning parliamentary

[14] Rule of Law Checklist, CDL-AD(2016)007, II.A.1 and 2.
[15] CDL-AD(2016)007, II.E.2.a.i.
[16] UN Human Rights Committee, General Comment No. 32, §18 (implementing Article 14.1 of the ICCPR); cf. Article 6 of the ECHR.
[17] See explanatory report, CDL-AD(2002)023rev2-cor, §§93-94.

elections and therefore has the first and last word. The confidence resulting from experience is probably the best test of the acceptance of a system of this kind.

32. Obviously, it is not only at first instance that the "judges" must be impartial, including in the case of political assemblies or non-judicial bodies such as electoral commissions. The composition of the relevant body and the voting rules must leave as little scope as possible for partisan decisions, in keeping with the requirement for objective impartiality that applies in judicial proceedings.[18] Direct opponents must be excluded in each case. The rules on majorities required for decisions must ensure fair representation. Clearly, it is within this set of rules that the greatest risk of lack of objectivity in purely parliamentary systems lies. The issue is not, however, that much different from that of partisan electoral commissions (whose members are appointed by political parties), which are very often appeal bodies. It is therefore possible to draw on the recommendation in the Code of Good Practice in Electoral Matters, which considers it at least "desirable that electoral commissions take decisions by a qualified majority or by consensus".[19]

33. The need for a procedure that is simple and devoid of formalism (II.3.3.b) also means that the cost of the procedure should be very low: as all (or almost all) voters may stand for election, complaints must not be the privilege of a few.

34. A contradictory procedure is vital (II.3.3.h), at least where the slightest doubt could remain, whether as regards the application of a rule or the results of the vote. The rules of evidence must be established to ensure the maximum objectivity. On the other hand, blatant unlawfulness or a major difference in votes between opponents for the same seat may justify a very swift adversarial procedure.

35. The reasons given must be explicit, as it is the voters who will ultimately be called upon to decide the matter at the next election. They must be aware of the reasons for the challenge and the outcome.[20]

36. The last procedural requirement, which is very specific to the processing of electoral complaints, is that processing times must be as short as possible, in response to time-limits for complaints which are necessarily short. It must not be possible for the assembly concerned to be destabilised by potential late challenges which could have consequences for the formation of majorities during votes (II.3.3.g).

b. <u>The opinion on the electoral legislation of Norway</u>

37. The Venice Commission has already examined a system for verifying the credentials of parliamentarians by the parliament itself which is quite similar to that in Belgium in a joint opinion with the OSCE/ODIHR on the electoral legislation of Norway.[21]

38. Norwegian law provides that the newly elected parliament is the sole body for deciding appeals on parliamentary elections, including verifying the result of the elections.[22] Norwegian electoral legislation also does not provide for any specific procedural safeguards regarding electoral disputes, such as the principle of adversarial hearings, the giving of reasons for decisions or guarantees of impartiality. The decisions are prepared by the National Electoral Committee appointed by the government and composed of representatives of the political

[18] CDL-AD(2016)007, II.E.1.c, in particular para. 89.
[19], CDL-AD(2002)023rev2-cor, II.3.1.h.
[20] With regard to the requirement to provide reasons in general, see the Rule of Law Checklist, CDL-AD(2016)007, II.C.iv, and para. 68, and II.E.2.c.vi.
[21] CDL-AD(2010)046.
[22] Articles 55 and 64 of the Constitution and §§ 13-1(4) and 13-3(1) of the 2002 Norwegian Election Act.

parties.[23] Election results are first examined by a preparatory credentials committee appointed by the previous parliament, which provisionally examines any appeals concerning the results. The newly elected parliament then elects a new credentials committee from among its members to issue a final recommendation on the results and any appeals or complaints. Lastly, the newly elected parliament approves or rejects the result of the elections, and hence its own credentials, by simple majority.[24] It is clear that its impartiality is an issue because its individual members and the political parties are directly or indirectly affected by the decisions concerned.

39. The Venice Commission and the OSCE/ODIHR therefore found that "the system of appeals in electoral matters does diverge from international commitments and standards, as well as good practice".[25] They added that "international standards and commitments call for the final right of appeal to a court from decisions on all electoral matters made by the National Election Committee and Parliament of Norway, in the case of national elections, or the Ministry, in the case of local elections". It does not matter whether the appeal body is an ordinary court or a specialised or other body.[26]

40. Although Norway has a long tradition of having parliament as the arbiter or its own elections (since 1814) and the system appears to enjoy public confidence, the opinion therefore deemed it necessary that a judicial remedy be introduced. On this basis, Norway has undertaken to reform its electoral dispute system with a view to introducing appeals to an independent and impartial judicial body.

41. In addition to Norway, Luxembourg has also undertaken to abolish the system that makes parliament the arbiter of its own election. In the 2018 draft constitution, this power is assigned to the Constitutional Court.[27]

VI. Reply to the question

> *What adequate and sufficient procedural safeguards must a state ensure in procedures challenging the result of an election (in particular in the event of allegations of irregularities during the voting process) or the distribution of seats? In particular, what must be the characteristics of the body responsible for examining appeals concerning the result of an election?*

42. The Code of Good Practice in Electoral Matters and the Venice Commission's opinions indicate a number of adequate and sufficient procedural safeguards which a state must ensure in procedures challenging the results of an election.

43. These safeguards include a mechanism for "verification of credentials" which may not always be purely judicial in the institutional sense of the term but must incorporate the principles of the rule of law by transposition in the processes for dealing with electoral challenges.

44. The first requirement is for the appeal body to be *impartial* and sufficiently *independent* of parliament and the executive for the impartiality of its decisions not to be questioned. The requirement for impartiality concerns both the composition of the appeal body and the procedural and institutional safeguards against interference by other public or private players. Electoral appeals cannot be examined effectively and electoral law cannot be implemented properly unless the appeal body is impartial and independent.

---

[23] Election Act, §§4-4 and 13-1(4).
[24] See the Rules of Procedure of the Norwegian Parliament, §3.
[25] CDL-AD(2010)046, §43.
[26] §45.
[27] See the proposed revision introducing a new constitution of 6 June 2018 (CDL-REF(2019)001), Article 68.3. See also the opinion on the proposed revision of the constitution (CDL-AD(2019)003), §82.

45. The procedure *must be simple and devoid of formalism*, in particular concerning the admissibility of appeals.[28] The problematic issues identified in the Venice Commission's opinions include, for example, the imposition of excessive costs and pointless or opaque formal requirements that result in high rates of inadmissibility.[29]

46. In addition, *time-limits for lodging and deciding appeals must be short* (three to five days for each at first instance).[30]

47. In terms of procedural rights, the applicants' *right to a hearing involving both parties* must be protected.[31] More specifically, the following rights must be guaranteed:

> "a. The right to present evidence in support of the complaint [appeal at first instance] after it is filed;
> b. The right to a fair, public, and transparent hearing on the complaint;
> c. The right to appeal the decision on the complaint to a court of law".[32]

48. *The hearing must be public*, as the *transparency* of electoral dispute procedures is very important to ensure trust in the electoral process.[33] *Decisions* must be *well-reasoned* and *made public.*[34]

49. The above-mentioned procedural requirements are similar to those of Article 6 of the ECHR, but account must be taken of the specific context of elections. For example, a balance must be struck between the length and scope of hearings and the need to resolve electoral disputes promptly.

50. The legal framework applicable to electoral disputes concerning parliamentary elections in Belgium is based on Article 48 of the Constitution, Article 31 of the Special Law of 8 August 1980 on Institutional Reforms and the Rules of Procedure of both Houses of the Federal Parliament, as well as of Parliaments of communities and regions. It does not provide for judicial appeals. Appeals are dealt with by committees composed of members of the House concerned, while votes on their conclusions and hence decisions on the validity of elections are taken by plenary sittings of Parliament. Unless they have been introduced in practice, there would not appear to be hearings by an independent and impartial body or any procedural requirements such as a public and adversarial procedure.

---

[28] CDL-AD(2002)023rev2-cor, II.3.3.b.
[29] See CDL-AD(2009)001, joint opinion on the Election Code of Georgia as revised up to July 2008, §§109, 115, 117.
[30] CDL-AD(2002)023rev2-cor, II.3.3.g.
[31] CDL-AD(2002)023rev2-cor, II.3.3.h.
[32] CDL-AD(2006)013, joint recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia, §65.
[33] See CDL-AD(2009)028, Joint Opinion on the draft law No. 3366 about Elections to the Parliament of Ukraine, §43; CDL-AD(2006)002rev, Opinion on the Law on Elections of People's Deputies of Ukraine, §94; CDL-AD(2008)012, Joint Opinion on amendments to the Election Law of Bosnia and Herzegovina, §33; CDL-AD(2013)016, Joint Opinion on the draft amendments to the Laws on Election of People's Deputies and on the Central Election Commission and on the draft law on Repeat Elections of Ukraine, §100; CDL-AD(2016)032, "The former Yugoslav Republic of Macedonia" – Joint Opinion on the Electoral Code, as amended on 9 November 2015, §58.
[34] CDL-AD(2016)007, II.E.2.c.v-vi.