

ELECTORAL JUSTICE: HERE, NOW, TOMORROW

[THE CASE OF SERBIA]



Center for Free Elections and Democracy (CeSID)
MAY 2021

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List of acronyms and abbreviations

ACA	Anti-Corruption Agency
CATI	Computer Assisted Telephone Interviewing
CAWI	Computer Assisted Web Interviewing
CeSID	Centre for Free Elections and Democracy
CRTA	Centre for Research, Transparency and Accountability
EDR	Election Dispute Resolution
ENEMO	European Network of Election Monitoring Organisations
GRECO	Group of States against Corruption
IFES	International Foundation for Electoral Systems
LA	Local authority
LEMP	Law on the Election of Members of Parliament
MoPALG	Ministry of Public Administration and Local Government
ODIHR	Office of Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PB	Polling board
REM	Regulatory Authority for Electronic Media
REC	Republic Electoral Commission
SER	Single electoral register

I. Introductory notes

Resolving electoral disputes is one of the most sensitive aspects of the electoral process and has a decisive bearing on the integrity of elections. Nevertheless, this issue has rarely commanded the attention of the broadest Serbian public due to both its opacity as a narrowly technical field and the (perhaps excessive) emphasis on other topics, primarily the role of the media and events on Election Day. Electoral justice has thus often been confined to a limited circle of lawyers or those with close knowledge of the electoral process. The topic has gained in importance given the context in which Serbian elections take place: firstly, Serbia is yet to develop and build stable electoral procedures and institutions (the country has seen a basically normalized electoral process only in the past 20 years, even though it displays traits of a deep-seated traditional political culture nurtured in socialist Yugoslavia during the time of political monism), and, secondly, electoral law remains deeply influenced by political parties and organisations (with the electoral administration particularly strongly affected), which makes it difficult to promote public trust in elections and the electoral process as a whole.¹

That is why the **primary idea behind this study** is to highlight the importance of electoral justice as a vital pillar of the electoral process, and, more specifically, to enhance knowledge about this area, familiarise the public with legal safeguards, build capacities of political parties and organisations, and identify priority areas for future strategic and practical interventions. The research approach had to acknowledge this reality and combine a variety of techniques, from a detailed legal assessment, to opinion polling and stakeholder analysis (which included lawyers, technical experts, and political party officers), to consultation with legal experts.

We believe this study will provide invaluable insights for all stakeholders and contribute to better understanding of electoral justice in Serbia, but we are even more certain that its findings and recommendations will prompt serious discussion and interventions in priority areas. The measure of success of this study will be its impact on future advocacy and key strategic and practical interventions. This paper has been produced as part of the project **‘Protecting the Vote through Effective and Transparent Election Dispute Resolution in Serbia’** implemented by CeSID with the support and partnership of the International Foundation for Electoral Systems (IFES).

Belgrade, 11 May 2021

Emilija ORESTIJEVIĆ

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¹ Serbia's first multi-party election was held on 9 December 1990, after 25 years without political pluralism of any kind. Even though a multi-party system has now existed for close on 30 years, from 1990 to the parliamentary election of 23 December 2000 polls were fraught with serious irregularities and did not deserve to be considered either free or fair. Nevertheless, the democratic changes inaugurated with the defeat of Slobodan Milošević in the autumn of 2000 did not do much to change the climate of mistrust in political institutions (particularly political parties), which had a knock-on effect on elections as well. A detailed discussion of Serbian elections since 1997 can be found in CESID's *Oko Izbora* series of papers (available at cesid.rs/izdanja/oko-izbora), whilst more research into trust in political institutions is presented in Ivona Živković i Ivo Čolović, „Istorijat poverenja u političke institucije u Srbiji od 1990. do 2020. godine“, in *Kako, koga i zašto smo birali, Izbori u Srbiji 1990-2020. godine* (2020), prir. Milan Jovanović i Dušan Vučićević, Institut za političke studije i Službeni glasnik, Beograd (Zbornik radova sa naučne konferencije).

2. About the research

2.1. Objectives

The primary intention of this study is to ensure in-depth understanding of electoral justice processes in Serbia and identify priority areas for future intervention. Simply put, the authors aim at making this topic more accessible to both the general public and political parties/organisations and facilitating medium-term improvements to the state of play in this field.

The **goal of this research** is to enhance knowledge of electoral rights and how they are safeguarded and abused, as well as how electoral justice operates in Serbia.

The **objectives** are to:

- (1) research and assess electoral abuses and electoral justice in Serbia;
- (2) initiate (longer-term and more sustainable) public dialogue and create a mechanism for consultations amongst stakeholders (media outlets and political parties and organisations);
- (3) raise awareness of electoral abuses and electoral justice; and
- (4) develop educational and advocacy materials to be used in building capacity of key stakeholders (media outlets and political parties and organisations).

2.2. Methodological approach

The significance and complexity of electoral justice required a complex and multidimensional methodological approach. It has had to take into account international electoral justice standards whilst not losing sight of the specific nature of the Serbian local context. At the same time, for the research to yield the expected results, a variety of methods and techniques had to be deployed.

The methodological approach entailed three types of research:

- (1) **desk review and review of secondary sources** (legal assessments and election monitors' reports);
- (2) **quantitative survey in the form of an opinion poll of adult Serbians** (voters);
and
- (3) **qualitative survey in the form of stakeholder interviews** – representatives of political parties and organisations, academia, the judiciary, and the community of experts.

(1) The **desk review** and review of secondary sources were used for the assessment of legal documents and practice as described in reports produced by Serbian and foreign election monitoring missions. The legal assessment looked at compliance with four principles of good practice in resolving electoral disputes, namely fairness, efficiency, effectiveness, and

transparency, and examined in detail the context in which Serbian elections take place and the legal and institutional framework.

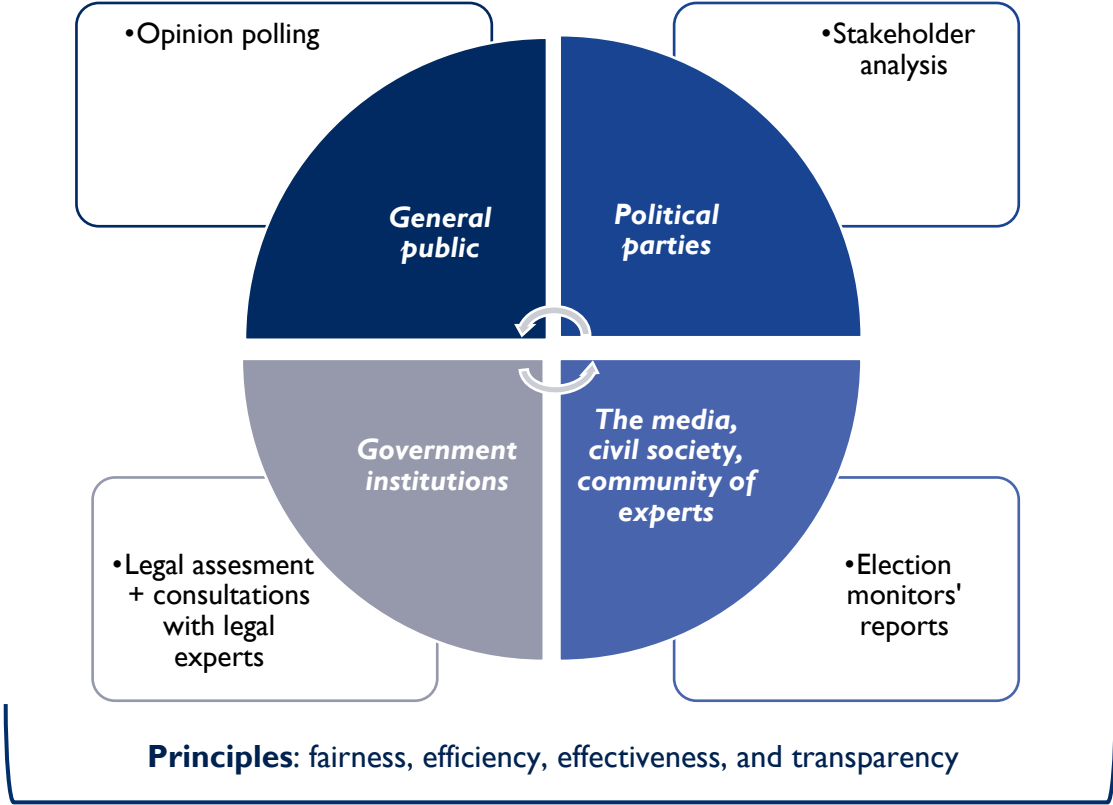
(2) The opinion poll was conducted on a representative sample of the population aged 18 and over throughout Serbia excluding Kosovo, using the CATI telephone surveying technique. The survey instrument was a 44-item questionnaire (including socio-demographic information) that covered the following topics: (1) experience with pressure and abuse of electoral rights; (2) voter experience and effectiveness of institutions in resolving electoral disputes; (3) knowledge and understanding of the electoral dispute resolution process; and (4) trust in crucial electoral institutions. Since internationally recognized standards comprise education, outreach, and information, this poll was performed mainly to ensure better understanding of public attitudes and identify priorities for future action.

** The poll did not go into details of dispute resolution for financial reporting and abuse of public resources, since neither of these topics was seen as matters of public knowledge (this is particularly true for financial reporting by political parties) but was rather confined to a narrow circle of experts or stakeholders.*

(3) The qualitative survey involved 19 different stakeholders (political parties and organisations, academia, legal experts, and the judiciary). The survey instrument here was a semi-structured questionnaire that was conceived to identify to what extent resolution of electoral disputes in Serbia was aligned with the four principles of fairness, efficiency, effectiveness, and transparency mentioned above.

** In contrast to the opinion poll, this survey did look at disputes with financial reporting and abuse of public resources, as well as the role of the Anti-Corruption Agency (ACA).*

Figure 2.2.1. Visual representation of the methodological approach



Lastly, this electoral justice study also reviewed compliance with the broader context of internationally accepted standards: (1) a right of redress for election complaints and disputes; (2) a clearly defined regimen of election standards and procedures; (3) an impartial and informed arbiter; (4) a system that judicially expedites decisions; (5) established burdens of proof and standards of evidence; (6) availability of meaningful and effective remedies, and (7) effective education of stakeholders.²

² Chad Vickery, *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections – GUARDE* (2011), IFES, Arlington.

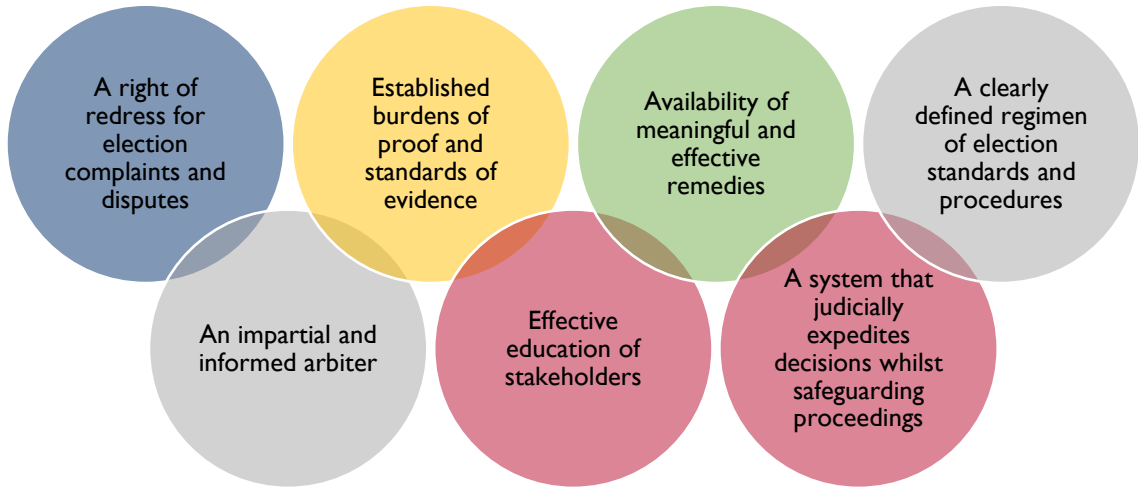
3. Resolving electoral disputes: international standards

3.1. International standards and principles for resolving disputes in elections

The state of play in Serbia was assessed with reference to international standards for resolving disputes in elections, as these draw on best practices from a variety of legal systems and, more importantly, years of comparative analysis. Obviously, each country will have its own set of electoral laws and its own specific (different) context, so the legislation will of necessity be worded differently, but it is important that **the legal framework reflect the international standards**. These standards are firm and clearly defined, and permit understanding of the areas that face challenges and that future activities ought to target. Aligning the local legal framework with the standards allows fair and equitable resolution of electoral disputes and strengthens political participation and electoral integrity.

All detailed electoral justice standards ultimately stem from umbrella human rights documents, first and foremost the Universal Declaration of Human Rights (1948) and, for Europe, the European Convention on Human Rights (1953). More specifically, reference must be made to seven key international standards.³

Figure 3.1. Visual representation of international standards for measuring the efficiency and credibility of electoral dispute resolution processes



(1) **A right of redress for election complaints and disputes.** This standard is based on the principle that the public provision of a clear means to remedy election irregularities is crucial to maintaining an election complaint adjudication system.

(2) **A clearly defined regimen of election standards and procedures.** Appropriate legislative measures must be taken in order to define a legal right to redress and to adequately implement periodic, free and fair elections. These measures must be clearly written and accessible in order to provide adequate notice and process to individuals, political parties, and civil society.

³ Ibid, pp. 11-98.

(3) **An impartial and informed arbiter.** The recognition of the universal importance of an impartial and informed arbiter is particularly relevant when it is applied to election complaints, which are generally both politically sensitive and controversial.

(4) **A system that judicially expedites decisions whilst safeguarding proceedings.** This standard speaks to the importance of expeditiousness in complaint proceedings because the legitimacy of the government may rest on the validity of election results. The importance of timing is widely recognised in international conventions and treaties, even though the language employed in national legislation may vary.

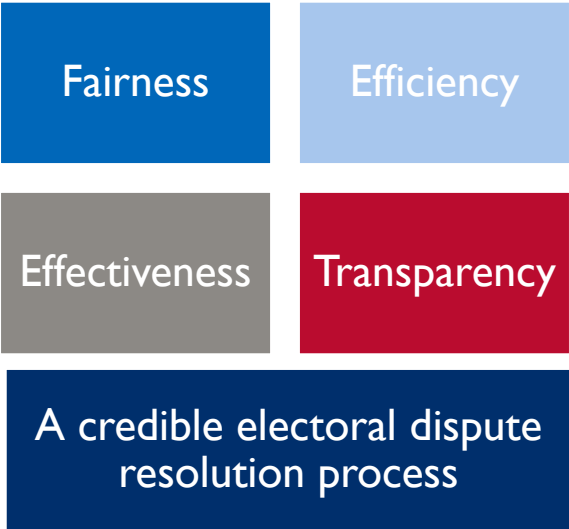
(5) **Established burdens of proof and standards of evidence.** This standard concerns a fair burden of proof and standards of evidence that must be established and known well in advance (of a complaint) to guarantee predictability, since the parties involved will have notice and a reasonable understanding of what will be required of each side in order to resolve the matter.

(6) **Availability of meaningful and effective remedies.** Remedies must be enforceable, timely, and effective.

(7) **Effective education of stakeholders.** Trust is a key element in an effective electoral process, which is why this standard requires training (delivered by the state) for participants in elections, as well as civic and educational programmes, to ensure the broadest public are aware of electoral rights and procedures.

There are **four key principles for a credible electoral dispute resolution system.** This list is not exhaustive, nor can these principles be used to examine each aspect of electoral dispute resolution. Rather, they are internationally acceptable elements that ought to be included in national systems. The principles are fairness, efficiency, effectiveness, and transparency.⁴

Figure 3.2. Visual representation of the principles underlying a credible electoral dispute resolution process



⁴ IFES, Elections on Trial – The Effective Management of Election Disputes and Violations (2018), International Foundation for Electoral Systems, Arlington.

(1) **Fairness.** Fair administration of justice includes the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defense, and the right to a fair and impartial fact-finding process, hearing, and decision.

(2) **Efficiency.** The efficient administration of justice includes the requirement for an expeditious process, with reasonable deadlines for filing and disposition of different types of electoral disputes and complaints.

(3) **Effectiveness.** The effective administration of justice includes the right to a written, reasoned decision that is not capricious, unreasonable, or arbitrary, the right to appeal/judicial review, and the right to an effective remedy.

(4) **Transparency.** The transparent administration of justice requires access to case information – ideally in real time as an electoral dispute is being investigated and adjudicated – open hearings, and decisions that are publicly available – subject to limited restrictions.

This paper will employ the above standards and principles for credible electoral dispute resolution whilst also recognizing different approaches may be possible.⁵ Nevertheless, even such alternative avenues essentially follow the same internationally accepted standards and principles.

3.2. Compliance of Serbian electoral dispute resolution arrangements with international principles: key findings

Efficient, fair, and transparent resolution of electoral disputes is of crucial importance for securing legitimacy of the electoral process. With this in mind, CeSID has employed a mix of research methods to assess to what extent Serbia's electoral dispute resolution processes comply with the four aforementioned principles, namely fairness, efficiency, effectiveness, and transparency. This assessment relied on the secondary sources (legislation, reports, and analyses by technical experts and Serbian and foreign election monitoring missions), as well as the findings of a qualitative survey of **19 different stakeholders: eight officers of political parties, three legal experts, three judicial and prosecutorial officials, and five academics/specialists in the Serbian electoral process and electoral justice.**

It is worth noting that compliance with international principles **cannot be quantified**; rather, any score can be only descriptive, in view of not only the complexity of each of the principles, but also specifics of the local context, legal tradition, and the framework of statutes not directly related to the electoral system and electoral dispute resolution.

In assessing compliance of the Serbian system with the four principles, the research team chose to follow the seven global standards already comprised within the four broader descriptive categories of fairness, efficiency, effectiveness, and transparency.

⁵ One such approach may be found in IDEA, *Electoral Justice: An Overview of the International IDEA Handbook* (2010), International Institute for Democracy and Electoral Assistance, Stockholm.

This chapter summarizes compliance with international principles, whilst detailed explanations of the statutory framework and procedures are provided, and issues and potential solutions identified, elsewhere in this paper.

3.2.1. Fairness

Fair administration of justice includes the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defense, and the right to a fair and impartial fact-finding process, hearing, and decision.

This principle is complied with only partially in Serbia due to several factors. Firstly, the right to file objections is regulated broadly and appropriately, and is granted to all voters, candidates, and entities proposing electoral lists. Objections are decided by electoral commissions in the first instance, whilst the Administrative Court rules on appeals in the second instance. Although complainants can be **notified of proceedings** before the Republic Electoral Commissions (as this body's deliberations are public), they are not informed of their **progress**: the outcome of the ruling or decision is communicated only when it is served on them or made public. This is because Serbian electoral disputes are treated as matters of **urgency**, where time limits are exceptionally short. This jeopardizes **adequate time to prepare one's defense and find facts**, since local legal tradition and administrative dispute laws **do not allow public hearings, confrontation between parties, or presentation of evidence**. This mode of operation is justified by the need for actions in an election to be fast, efficient, and prompt. Electoral commissions hearing objections **have no investigative powers or the ability to act ex officio in bringing action to safeguard electoral rights**. Instead, they rely on minutes of polling boards as the only indication of misconduct on Election Day, which certainly questions the fairness of this process. In other words, this arrangement means that the REC has to either reject or dismiss an objection made by a voter claiming their electoral rights have been violated if no such allegation is contained in the relevant polling board minutes. In the second instance, the Administrative Court relies on **documentation submitted to the court by the REC**, and no additional fact-finding takes place, once again due to the extremely tight deadlines. Conflicts of interest are also a major consideration here, since the same body rules on objections against REC decisions or rulings. Lastly, the greatest single factor affecting the fairness of the process is that **the character and composition of electoral commissions offer no guarantee of their impartiality or independence**.

The assessment of the **fairness of Serbian electoral justice** in the qualitative survey of the community of experts looked at the extent to which: (1) electoral justice procedures and provisions were clear and equally accessible to all; (2) existing procedures permitted the collection and presentation of all evidence necessary to substantiate an objection or appeal; (3) the Serbian electoral administration (the REC and local electoral commissions) resolved electoral disputes brought by election stakeholders without discrimination and in compliance with the law; (4) the Administrative Court and the Constitutional Court acted independently and resolved electoral disputes brought by election stakeholders professionally and without discrimination; and (5) institutions responsible for safeguarding electoral rights (the REC, local

electoral commissions, the ACA, the courts) reject legitimate objections on procedural grounds.

Members of the community of experts reported that **fairness in resolving electoral disputes in Serbia was not satisfactory** for several reasons. Firstly, the root of the problem lay in the **institutional design and legislative framework**, neither of which allowed the electoral administration to act in accordance with best global practice. The respondents highlighted the marked political slant of the REC and local electoral commissions, their composition, and ‘provisional’ character, which is why decisions were often made under strong political influence, and this affected the fairness of the process. Another related problem noted by the interviewees was the **lack of professional, civil, and criminal liability** of electoral administrators (especially polling board members), which frequently led to decisions and actions not following the principles of professionalism, fairness, and non-discrimination. Also mentioned were the **poor and inconsistent legislation** and the frequently **narrow interpretation of standards and rules** by the electoral administration, which often leads to appropriate protection for active or passive suffrage not being provided for purely procedural reasons. (A total of 14 of the 19 respondents agreed with this statement.)

These findings were borne out by the quantitative indicators found in the stakeholder assessment: an absolute majority (11 of the 19) of those polled **disagreed with each of the first four statements on the fairness of electoral justice**, whilst 2 to 6 respondents agreed, depending on statement (see Table 3.2.1.1).

Chart 3.2.1.1. Average agreement with statements on fairness (on a scale from 1 to 5)



Electoral justice procedures and provisions are clear and equally accessible to all (political parties and voters)	Existing procedures allow all evidence required to substantiate an objection or appeal to be collected and presented	Serbian electoral administration (NEC, city and municipal electoral commissions) adjudicates electoral disputes brought by election stakeholders without discrimination and pursuant to law	The Administrative Court and Constitutional Court act impartially and adjudicate electoral disputes brought by election stakeholders professionally and without discrimination	Electoral justice institutions (NEC, local electoral commissions, ACA, courts) reject legitimate objections on procedural grounds
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The least agreement (2 respondents) was found for the statement that ‘existing procedures allow all evidence required to substantiate an objection or appeal to be collected and presented’, but interpretation here requires some local context. According to one of the legal experts, the ability to present evidence was constrained by the **urgent nature of electoral**

proceedings, the practical unenforceability of this principle in the Serbian context, and the likelihood of abuse of the right to object.

The Chart above shows the average scores for each statement, and the following table disaggregates respondents by agreement with the statements.

Table 3.2.1.1. Agreement and disagreement with statements about fairness, absolute numbers

	Disagree	Neutral / No answer	Agree
Electoral justice procedures and provisions are clear and equally accessible to all (political parties and voters)	11	2	6
Existing procedures allow all evidence required to substantiate an objection or appeal to be collected and presented	11	6	2
Serbian electoral administration (REC, city and municipal electoral commissions) adjudicates electoral disputes brought by election stakeholders without discrimination and pursuant to law	11	4	4
The Administrative Court and Constitutional Court act impartially and adjudicate electoral disputes brought by election stakeholders professionally and without discrimination	11	2	6
Electoral justice institutions (REC, local electoral commissions, ACA, courts) reject legitimate objections on procedural grounds ⁶	1	4	14

To enhance fairness of the electoral justice process, the respondents recommended **amendments to legislation**, especially insofar as it concerned standing to lodge objections, procedures, and accountability for non-compliance with global principles. Suggestions include introducing **additional mechanisms** for monitoring the electoral administration that would be authorized to advise or make recommendations to the authorities to ensure fairness of the electoral justice process. Finally, the need was also identified to **deliver broad-based education and awareness-raising** about the importance of complying with the principle of fairness: (1) enhancing voter awareness of the body of electoral law and the processes that can be used to safeguard electoral rights to prevent their (often) unwitting participation in election fraud; (2) training political parties in electoral dispute resolution; and (3) specific training for members of local electoral commissions to ensure greater professionalism and consistency.

‘The need was identified for broad-based education and awareness-raising about the importance of complying with the principle of fairness: (1) enhancing voter awareness of the body of electoral law and the processes that can be used to safeguard electoral rights to prevent their (often) unwitting participation in election fraud; (2) training political parties in electoral dispute resolution; and (3) specific training for members of local electoral commissions to ensure greater professionalism and consistency.’

Respondent, political party officer

⁶ Negatively worded statement.

3.2.2. Efficiency

The efficient administration of justice includes the requirement for an expeditious process, with reasonable deadlines for filing and disposition of different types of electoral disputes and complaints.

The current legislative framework stipulates very restrictive and short time limits for both lodging objections and/or appeals and ruling on them in both the first and the second instance. Objections must be lodged with the REC **within 24 hours** from the time a violation is committed, whilst local electoral commissions receive objections **within 24 hours from the end of the calendar day** on which the violation was committed. Even though these bodies act highly efficiently, thereby **complying with the requirement for quick proceedings**, it seems that they do so **at the expense of fairness**, since such short time limits make it difficult to **gain understanding of the alleged violations and breaches and nearly impossible to secure evidence substantiating allegations made in objections**. Hence, **time limits for filing objections could be defined subjectively, for instance as '24 hours from learning of a violation or breach', and alignment of time limits at various levels should also be considered**. Both the REC and local commissions have **48 hours** to rule on an objection, and their ruling is then served on all parties. If an objection is upheld, the relevant decision or action is declared null and void, and if a commission does not deliver a ruling, the objection is deemed to be upheld. **Time limits for appealing are short, amounting to 48 hours**, and appeals are lodged via the REC, which must forward the objection and the required case files to the Administrative Court within 24 hours of receiving an appeal. **The Administrative Court must rule on an appeal within 48 hours of receiving it and the relevant case files**. This ruling **cannot be contested by extraordinary legal remedies** envisaged by the General Administrative Procedure Law. In practice, there is no simple system to file objections, especially since objections alleging violations at the local, provincial, and local level all follow different time limits and different procedures for filing.

As such, **the principle of efficiency is fully complied with in terms of the speed of proceedings**, but there are shortcomings when it comes to **appropriate time limits for filing objections**.

The assessment of the **efficiency of electoral justice in Serbia** in the **qualitative survey of the community of experts** looked at the extent to which: (1) time limits for filing objections with the REC were reasonable and well-regulated; (2) time limits for lodging appeals with the Administrative Court were reasonable and well-regulated; (3) time limits for ruling on objections/appeals were, in general, excessively short to allow their merits to be properly examined and for the institutions (REC, Administrative Court) to make equitable decisions; (4) a system that facilitated easy filing of complaints existed and was easy to use.

The experts awarded different scores to the various aspects of efficiency of electoral justice⁷ (see Table 3.2.2.1). First off, when it came to the *time limits for filing objections with the REC* (24 hours from the alleged violation or breach), 6 respondents each took opposing views. Political parties were somewhat more likely to disagree the time limits were appropriate, as they looked at this process from a practical perspective and considering the need to act quickly. whereas legal experts and academics tended to agree. Conversely, more respondents believed that *time limits for lodging appeals with the Administrative Court were reasonable and well-regulated*, whilst all those who did have an opinion agreed that *time limits for ruling on objections/appeals were, excessively short to allow their merits to be properly examined and for the institutions and for the relevant institutions to make equitable decisions*. This statement attracted agreement from 10 respondents, none disagreed, and 9 were undecided.

All those who had an opinion agreed that time limits for ruling on objections/appeals were, excessively short to allow their merits to be properly examined and for the institutions and for the relevant institutions to make equitable decisions.

Experts agreed that time limits for resolving electoral disputes ought to be extended.

Respondents who believed the time limits were inappropriately regulated agreed on the need to extend them but felt that doing so should not sacrifice the **speed at which election results could be declared**. This issue is particularly significant in local contexts where communities are highly polarized and electoral commissions often come under pressure to declare results quickly. There should be a detailed and broad-based consultation process to consider the need for extending time limits in electoral dispute processes.

With some slight variations of degree, the expert community saw authorities responsible (amongst other things) for adjudicating electoral disputes – the REC, the Administrative Court, and the ACA – as either **‘mostly’ or ‘completely’ inefficient**. For all three bodies, the primary causes of this inefficiency were identified as **political influence, lack of capacity, and unwillingness to react**. In particular, the Administrative Court was seen as lacking the requisite powers in this area, which meant that, in practice, its rulings were reversed by politically-controlled electoral commissions.

Lastly, more than one-half of those polled (10) disagreed that *a system that facilitated easy filing of complaints existed and was easy to use*. This meant the average score here was the lowest of all, at 2.33. however, respondents who did feel there was some sort of system of this type were also unanimously highly critical of its accessibility and ease of use. In this context, it seems particularly pertinent to consider the option of **introducing a secure and transparent case management system** that would provide all requisite information, explain procedures, rules, and types of redress, offer forms for download, and be used to publish decisions that would be regularly updated and available to the broadest public.

⁷ For each statement, many respondents could not answer or were neutral.

Chart 3.2.2.1. Average agreement with statements on efficiency (on a scale from 1 to 5)



Time limits for filing complaints with the NEC are reasonable and well regulated	Time limits for lodging appeals with the Administrative Court are reasonable and well regulated	Time limits for filing complaints/lodging appeals are generally too short to allow the merits to be properly examined and for the institution (NEC or Administrative Court) to make an equitable decision	A system that facilitates easy filing of complaints exists in practice
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Table 3.2.2.1. Agreement and disagreement with statements about efficiency, absolute numbers

	Disagree	Neutral / No answer	Agree
Time limits for filing complaints with the REC are reasonable and well regulated	6	7	6
Time limits for lodging appeals with the Administrative Court are reasonable and well regulated	4	7	8
Time limits for filing complaints/lodging appeals are generally too short to allow the merits to be properly examined and for the institution (REC or Administrative Court) to make an equitable decision	0	9	10
A system that facilitates easy filing of complaints exists in practice	10	5	4

According to the experts surveyed, improving efficiency would require **mechanisms to prevent frivolous objections**,⁸ which would make the REC more effective; **changes to the composition** of all political authorities and removal of party political influence on decision-making; **alignment of time limits** with those of the electoral process; **stricter sanctions** (especially in the Criminal Code); and amendment of other legislation. Particularly important suggestions were to increase the **speed and transparency** of actions by the ACA, and for the Administrative Court to designate special trained units at election time that could respond efficiently and in full compliance with the law.

3.2.3. Effectiveness

The effective administration of justice includes the right to a written, reasoned decision that is not capricious, unreasonable, or arbitrary, the right to appeal/judicial review, and the right to an effective remedy.

The Serbian electoral dispute resolution process is **effective in that it provides the right to a written, reasoned decision that is based on law, as well as the right to**

⁸ These views are clearly driven by the huge number of objections (over 6,000) filed with the NEC during the latest election.

appeal/judicial review. Serbian law also **provides remedies** in various types of disputes, but their effectiveness is significantly reduced by **inadequate implementation.** This conclusion is based on the issues explained above with safeguards as provided by electoral commissions and, consequently, the Administrative Court, as well as the lack of power by electoral commissions to act *sua sponte* when they identify violations. The exceptionally low number of charges brought for criminal violations of electoral law in recent years was also cited as an adverse influence on the effectiveness of dispute resolution and deployment of remedies.⁹ In this context, **sanctions for misdemeanors or criminal offences** could be reviewed (especially aggravated offences, which in this context means those committed by an individual with authority over the electoral process) to assess their impact on deterrence.

Political parties, prosecutors’ offices and courts, the academic community, and legal experts were polled to assess the extent to which: (1) decisions made by the relevant institutions (REC, Administrative Court, ACA) existed in writing and were easily accessible to all parties; (2) decisions made by the relevant institutions were duly justified and reasonable; (3) there were effective remedies for various types of electoral disputes; and (4) existing remedies were appropriately applied in practice.

Chart 3.2.3.1. Average agreement with statements on effectiveness (on a scale from 1 to 5)



Decisions made by the relevant institutions (REC, Administrative Court, ACA) exist in writing and are easily accessible to all parties

Decisions made by the relevant institutions are duly justified and reasonable

There are effective remedies for various types of electoral disputes

Existing remedies are appropriately applied in practice

Table 3.2.3.1. Agreement and disagreement with statements about efficiency, absolute numbers

	Disagree	Neutral / No answer	Agree
Decisions made by the relevant institutions (REC, Administrative Court, ACA) exist in writing and are easily accessible to all parties	6	3	11
Decisions made by the relevant institutions are duly justified and reasonable	7	5	7
There are effective remedies for various types of electoral disputes	5	5	9
Existing remedies are appropriately applied in practice	13	4	2

The findings revealed agreement with the above conclusions, especially with the statements that *decisions made by the relevant institutions existed in writing and were easily accessible to all parties* (where 11 respondents agreed) and that *there were effective remedies for various*

Inadequate application of existing remedies was seen as having the greatest impact on the effectiveness of electoral justice.

⁹ This issue is discussed in greater detail in the chapter dealing with criminal violations of electoral law and operation of the prosecution service.

types of electoral disputes (agreed to by 9 of those polled). Experts in the field were virtually evenly divided over the perceived clarity and appropriateness of justification for the authorities' decisions, but disagreement mainly came from political parties. Finally, only two respondents agreed that *existing remedies were appropriately applied in practice*, whilst an absolute majority held the opposing view, leading to the lowest average score of 2.22 for this statement.

According to the respondents, **removal of political influence, greater independence, and capacity-building for the relevant institutions** were the key options for enhancing the effectiveness of electoral dispute resolution.

3.2.4. Transparency

The transparent administration of justice requires access to case information (ideally in real time as an electoral dispute is being investigated and adjudicated), open hearings, and decisions that are publicly available (subject to limited restrictions).

Several factors merit consideration when assessing compliance of the Serbian arrangements with the globally recognized principle of transparency. First and foremost, even though legislation mandates electoral commissions to hold open hearings (which is largely adhered to at the national level), **there is no requirement for the electoral administration to publicize its decisions**. The REC does choose to publish all major rulings online, the last election has revealed the shortcomings of this process (primarily due to the lack of a legal publicity requirement), so the **practice ended** of releasing objections and decisions in response to them. It should also be noted that **transparency is critically low at the local level**, such that it is often very difficult or even impossible to find information about objections or decisions made on them.¹⁰ At the same time, the ongoing pandemic and restrictions on face-to-face meetings have led the REC to **rule on objections (and results of voting) online, with no public consultation or public access to information**, which is yet another argument **against full compliance with the principle of transparency**. By contrast, the Administrative Court ensures its rulings are transparent by regularly publishing anonymized judgments on a dedicated section of its web site given over to electoral cases, but **does not permit real-time access to information or hold open hearings**. Lastly, the **ACA** usually publishes its decisions and documents only with significant delay.

The **qualitative stakeholder survey** assessed **transparency of electoral justice in Serbia** by examining the degree to which: (1) parties have access to all information in real time whilst relevant institutions (REC, Administrative Court) make decisions in cases; (2) the system permits timely publication of information about the numbers and types of cases opened and adjudicated; and (3) rulings on objections/appeals are publicly available in an accessible format.

¹⁰ Since there is no central web site or standard, mandatory requirement for local authorities to publicise information about elections and electoral disputes, there is a great deal of variation amongst local governments in terms of transparency and extent of documents released.

As shown in the Chart and Table below, the vast majority of those polled disagreed that *parties had access to all information in real time while relevant institutions (REC, Administrative Court) made decisions in cases and that the system permitted timely publication of information about the numbers and types of cases opened and adjudicated*. Slightly fewer respondents (but a majority nevertheless) disagreed with the final statement.

The findings revealed that these views were principally determined by **perceptions of local electoral commissions as completely opaque**, which made it exceedingly difficult to discover the relevant facts at that level. Most respondents saw local electoral commissions as the least likely to provide parties with real-time access to information, followed by the REC and the ACA, with the Administrative Court coming in last.

'The local level is fraught with problems that reduce both procedural transparency and efficiency. Decisions are not published. A system ought to be constructed that would make it easier to file objections and notify the public of all steps in real time.'

Respondent, academia

Chart 3.2.4.1. Average agreement with statements on transparency (on a scale from 1 to 5)



Parties have access to all information in real time whilst relevant institutions (REC, Administrative Court) make decisions in cases

The system permits timely publication of information about the numbers and types of cases opened and adjudicated

Rulings on objections/appeals are publicly available in an accessible format

Table 3.2.4.1. Agreement and disagreement with statements about efficiency, absolute numbers

	Disagree	Neutral / No answer	Agree
Parties have access to all information in real time whilst relevant institutions (REC, Administrative Court) make decisions in cases	12	6	1
The system permits timely publication of information about the numbers and types of cases opened and adjudicated	12	6	1
Rulings on objections/appeals are publicly available in an accessible format	9	6	4

Transparency would be improved, the respondents felt, if **a system were introduced to make it easier to file objections and provide regularly updated progress information for each case**. Another arrangement seen as fairly easy to implement was a rule whereby **rulings on objections and judgments of the Administrative Court on appeal would be deemed served to the complainant as soon they were made public**. This would both (1) promote efficiency and (2) enhance transparency, as the authorities would be required to publish decisions within the least possible delay. Similarly,

consideration should be given to **requiring institutions to make all documents in their possession available to the public within reasonable periods of time**. This ties in with the finding of the legal review that it would be beneficial to develop **binding guidelines for local electoral commissions**, patterned after best regional or global practices, to enumerate all documents that would have to be published (such as primary and secondary legislation, decisions, activity calendars, electoral lists, summaries of meeting transcripts, election results and the like) and the time limits for doing so, and in particular emphasizing the need for **regular publication of objections filed and rulings made in response to them**.

3.2.5. Compliance of the Serbian EDR process with international principles: conclusion

For clarity, the findings showing the extent of compliance with international principles discussed in the foregoing sections are summarized in the Table below.

Table 3.2.5.1. *Compliance of the Serbian electoral dispute resolution process with international principles*

Principle	Score*	Key strength	Key weakness
Fairness	2	Broad-based, adequate right to file objections; awareness of proceedings	Political character and composition of authorities and lack of appropriate fact-finding
Efficiency	3	Efficient adjudication of objections and disputes without undue delay	Short time limits for adjudicating objections and disputes
Effectiveness	3	Broad-based, adequate right to file objections and lodge appeals / seek judicial review; availability of duly justified decisions	Inadequate application of remedies / inadequate legal regulation
Transparency	2	Public availability of decisions/rulings adopted by the REC and the Administrative Court	Inability to access all information in real time; lack of transparency of local bodies

* Compliance score on a scale from 1 to 4, where 1 meant 'not at all', 2 meant 'mostly no', 3 meant 'mostly yes', and 4 meant 'completely yes'

4. Case study: Serbia

4.1. Legal framework and key issues with administration of electoral justice

Serbia's first multi-party election took place in 1990. Prior to that year, Serbia and socialist Yugoslavia had so-called 'plebiscitary' elections, where the electorate could not choose between multiple candidates, or where any multiple candidates did not essentially stand for different political options. This approach to elections was founded on the principle that *the right to govern was not based on the will of the people expressed in an election, but rather on the historical merit of the ruling League of Communists*. After the introduction of 'socialist self-management', the electoral process in Yugoslavia was managed according to a different model from those in 'people's democracies'. Whilst these countries of 'real socialism' achieved control over the outcomes of elections by preventing more than one candidate from standing, in Yugoslavia the approach was based on multiple tiers of indirect elections: the so-called 'delegate system' resulted in the immediate connection between delegates and voters being lost in the multitude of indirect elections, so that candidates were actually selected by the senior ranks of the League of Communists of Yugoslavia (LCY). **Elections were neither free nor fair, nor were they ultimately material.** The bodies to which candidates were elected, such as the National Assembly and regional and local legislatures, were deprived of any real influence, which was instead wielded by the League of Communists, or, rather, given the ruling party's multi-faceted character, by its top echelons. The heterogeneity of the League of Communists was reflected in the fact that all other political organisations and institutions were in fact nothing more than other outward forms of the LCY and its inner governing core.

Even though elections essentially had no importance and did not permit competition between political ideas, manifestos, and parties, socialist Yugoslavia not only maintained them, but made them into a major feature of the political iconography of the 'self-managing' nation. Firstly, the results of elections were used in external propaganda to legitimize the regime, and, secondly, they created the sense in a part of the population that they could make a meaningful contribution to political life.

Some scholars believe that regimes in both the people's democracies and Yugoslavia endured not only because of repression and fear, but also with the support of a large proportion of the people. To support these claims, they cite the results of the first free elections of 1990, where the formerly communist parties in most of the region's countries were defeated but nonetheless succeeded in attracting a large share of the vote, even winning in Bulgaria and two Yugoslav republics, Serbia and Montenegro. These considerations reveal that **elections in Serbia routinely involved no political competition for an extended period of time.** When this conclusion is coupled with the fact that the regime which administered those elections was legitimate, it appears that Serbian voters see closely controlled elections as 'normal', and that a government elected in such a poll can be perceived as having legitimacy even if its electoral victory was preceded by distortion of political competition through an unfair electoral process and pressure on voters.

Nevertheless, over the past 20 years the electoral process has been improved and enhanced in accordance with international standards and principles with the aim of democratizing society

as part of Serbia's efforts to join the European mainstream. Despite these endeavors, electoral theory and law are yet to eliminate all shortcomings of this process that are often highlighted by both national and foreign observers and election stakeholders. Inadequate fairness, efficiency, effectiveness, and transparency of electoral justice are among the key shortcomings of this process.

4.1.1. Current legal framework

In addition to systemic violations of media freedoms and inequality between governing and opposition parties that severely curtail the capacity of opposition groups and their electoral results, polls are significantly affected by various legal rules. As such, this section will briefly summarize the legislative framework for administering elections.

Article 2 of the **Constitution of Serbia** stipulates that '[s]overeignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives', and that '[n]o state body, political organization, group or individual may usurp the sovereignty from the citizens, nor establish government against freely expressed will of the citizens.' The chapter of the Constitution on human rights and liberties states that **suffrage is universal and equally available to all**, and that **elections are free and direct**, with votes cast in person by secret ballot. The country's highest legal document also guarantees **active and passive suffrage** and stipulates electoral rights are to be protected by law.

The most important and most comprehensive piece of electoral legislation is the **Law on the Election of Members of Parliament (LEMP)**¹¹ which governs parliamentary elections but whose provisions also apply to other polls as well. The Constitutional guarantee of universal suffrage is in practice restricted as only adult individuals with contractual capacity have the right to vote. This limitation is

To comprehensively protect active suffrage, it would be useful to amend Article 2[2] of the Law to prohibit political activists from inviting voters to turn out and vote on Election Day.

governed by the LEMP, which stipulates that **Serbian nationals who are underage or deprived of contractual capacity do not have suffrage**. The LEMP also introduces **safeguards for electoral rights in an election** by prohibiting any form of pressure on voters, calling voters to account for having voted, and threats to ballot secrecy (Article 2[2]). **To comprehensively protect active suffrage, it would be useful to amend Article 2[2] of the Law to prohibit political activists from inviting voters to turn out and vote on Election Day.** Being telephoned or otherwise contacted in person on Election Day and invited to vote for a particular electoral list is highly likely to be perceived as **pressure** by the average voter and may give the impression that the voter's freedom of choice and ballot secrecy are both threatened.

Passive suffrage is regulated through rules that govern how individuals can stand for election to Parliament. Candidates for election to Parliament may be nominated by political parties,

¹¹ Law on the Election of Members of Parliament, *Official Gazette of the Republic of Serbia*, Nos. 35/2000, 57/2003 – Constitutional Court Ruling, 72/2003 – Other Law, 75/2003 – Other Law-Corrigendum, 18/2004, 101/2005 – Other Law, 85/2005 - Other Law, 28/2011 – Constitutional Court Ruling, 36/2011, 104/2009 – Other Law, 12/2020, and 68/2020.

coalitions of political parties, and civic groups. The electoral list of a political party, coalition, or civic group is deemed officially approved once it receives support in the form of signatures from at least 10,000 voters. The REC regulates the format and appearance of the signature form and makes it available to election stakeholders within five days from an election being called. A voter may sign in support of only one electoral list, and each signature must be notarized or certified by a municipal or city administration; in cities and municipalities where no notaries public are appointed, signatures must be certified by the local basic court, court unit, registry office of the basic court, or municipal or city administration. **Even though the Law requires that one voter can sign only in support of one list, no sanctions are envisaged for violations of this rule.** The LEMP also includes **general procedures for presentation of electoral lists** in the media, as well as rules for disseminating information about electoral manifestos and activities of electoral lists and candidates.

The **Law on the Election of the President of the Republic**¹² provides a special set of rules for presidential elections, whilst also mandating the application, *mutatis mutandis*, of the LEMP. The same as the LEMP, the Law on the Election of the President of the Republic also includes safeguards designed to **protect voters from pressure, being called to account for having voted, and threats to ballot secrecy** (Article 3). A candidate for the office of President may be nominated by political parties, coalitions of political parties, and civic groups.¹³ A candidate may be nominated if he or she receives support in the form of signatures from at least 10,000 voters. Voter signatures are collected on specially designed forms designed to capture the voter's first and last name and national identification number. A candidate is formally nominated by a person authorized by the relevant civic group, political party, or coalition.

Elections in Vojvodina follow rules set out in the Decision on the Election of Members of the Legislature of the Autonomous Province of Vojvodina adopted by the Legislature of the Autonomous Province of Vojvodina.¹⁴ This instrument regulates the election and termination of office of members of the Vojvodina Legislature. Suffrage and the electoral process are regulated nearly identically as in the LEMP, which also applies, *mutatis mutandis*, to provincial elections.

Local elections are essentially governed by the **Local Elections Law**.¹⁵ This piece of legislation sets out rules for election and termination of office of members of local legislatures. The Constitutional guarantee of universal and free active suffrage is included in Article 3 of this law, which additionally contains a special 'safeguard clause' which **prohibits**

'No one may, on any grounds whatsoever, prevent a person from voting or force them to vote, hold them to account for having voted, or require them to declare who they voted for or why they did not vote.'
Local Elections Law, Article 3

¹² Law on the Election of the President of the Republic, *Official Gazette of the Republic of Serbia*, Nos. 111/2007 and 104/2009 – Other Law.

¹³ A civic group can be set up by a written agreement of at least ten voters.

¹⁴ Legislature of the Autonomous Province of Vojvodina, Decision on the Election of Members of the Legislature of the Autonomous Province of Vojvodina, *Official Gazette of the Autonomous Province of Vojvodina*, Nos. 23/2014, 12/2020, 14/2020, and 25/2020.

¹⁵ Local Elections Law, *Official Gazette of the Republic of Serbia*, Nos. 129/2007, 34/2010, 54/2011, 12/2020, 16/2020 (Authentic Interpretation), and 68/2020.

any action that jeopardizes electoral rights: just as the LEMP, the Local Elections Law stipulates that ‘[n]o one may, on any grounds whatsoever, prevent a person from voting or force them to vote, hold them to account for having voted, or require them to declare who they voted for or why they did not vote’ (Article 3, Local Elections Law).

According to the Law on the Single Electoral Register,¹⁶ the **comprehensive electoral register** contains the integrated record of Serbian nationals who have suffrage. The government set up this single record on the eve of the 2012 election. The electoral register is maintained by the ministry responsible for public administration according to the rules of **administrative proceedings**, and authorities’ decisions about the register may be **contested before the Administrative Court**. Article 14 of this law requires the municipal or city administration charged with updating the electoral register for the local authority area to **publicly display the extract from the electoral register for that local authority area** once an election has been called, and to advertise this fact in the media. However, monitoring missions have for years warned of the underutilization of this arrangement, with the public insufficiently aware of this option.

Transparency would be promoted if current rules were applied and extracts from the electoral register were made publicly available by all local authorities. Doing so would also allow voters who are not registered or whose details in the register are inaccurate to apply for registration or seek corrections.

The set of electoral laws and the Law on the Single Electoral Register provide ‘substantive and procedural regulation’ of elections, and spell out the rules of ‘electoral mathematics and electoral techniques’.¹⁷ Moreover, some electoral rules are contained in **regulatory enactments of the REC**. The frequent changes to these regulations have prompted Serbian and foreign monitoring missions to recommend that all issues *that are not technical in nature* should be moved into primary legislation, whilst secondary legislation (instructions, rulebooks, calendars) should only be used to regulate technical aspects.

4.1.2. Electoral dispute resolution: bodies and procedures

4.1.2.1. Republic Electoral Commission

Character and composition of electoral administration bodies

A special electoral administration is created to oversee Serbian elections. Experts **disagree as to the legal nature of bodies that constitute the electoral administration**. Some see them as **public authorities sui generis**, whilst others believe the electoral administration bodies are **separate sub-units of executive bodies**.¹⁸ A third possible perspective views these bodies as **quasi-judicial** in that they rule on the rights of individual members of the public.

¹⁶ Law on the Single Electoral Register, *Official Gazette of the Republic of Serbia*, Nos. 104/2009 and 99/2011.

¹⁷ Maja Nastić, *Izborna pravila u Srbiji i evropski standardi: opšte pravo glasa*, Zbornik radova Pravnog fakulteta u Nišu, broj 69, godina 53, 2014, p. 192.

¹⁸ Dejan Milenković, *Organi nadležni za sprovođenje izbora – pojam i oblici izborne administracije (uprave) u Srbiji*, Zbornik Izbori u domaćem i stranom pravu, Institut za uporedno pravo, Beograd, 2012, p. 182.

In accordance with the LEMP, Serbia is one single constituency. This fact has shaped the **electoral administration, which is, for parliamentary elections, comprised of the REC and polling boards**. The LEMP stipulates that the REC and polling boards enjoy operational autonomy and independence, and that they are accountable to the authorities that appoint them. The National Assembly appoints the REC, which in turn appoints polling boards, at the latest ten days before Election Day. The same piece of legislation requires polling boards to be comprised of a president and at least two members,¹⁹ with this core make-up extended to include one representative of each entity contesting the election.

The REC could be said to have political accountability, as it reports to Parliament, where political considerations trump expertise. The selection of core and extended polling board members seems to show these bodies are also **predominantly political in character**. However, it is worth noting that polling boards are also tasked with scrutinizing the lawfulness of the electoral process. For polling boards to be able to exercise this oversight of elections (ensuring the lawfulness and secrecy of the ballot and determining the results of the voting at the polling station) requires them to be plural, so that, even though boards are political in nature, their extended memberships – which are plural in a political sense – benefits the oversight function. **In that sense, polling boards have political accountability, but their members may be said to also possess professional accountability to some extent**, as polling boards report to the REC, which is comprised of legal professionals²⁰ and so should be expected to use professional reasoning in its deliberations.

Even though the REC is partly a professional body on account of its composition, some authors have accurately observed that **parliamentary practice in selecting this body's core members has a decisive impact on its nature**. Tried and tested 'party cadres'²¹ are appointed to the Commission, and seasoned party officers are 'delegated' to serve on the REC as representatives of parties and groups contesting the election, making it primarily a **political entity**.

Clearly, the political affiliation of REC members is at odds with the statutory provision whereby the Commission is envisaged as independent and autonomous. If the way in which a body's complement is appointed **does not ensure independence and autonomy**, but, rather, perpetuates political influence, any declared impartiality remains a dead letter. Being packed with proven political appointees who serve relatively short terms in office (of four years), the REC certainly fits the description of an entity that is neither independent nor autonomous. **Lastly, international standards call for an independent arbiter of electoral disputes to head the electoral**

The political affiliation of REC members is at odds with the statutory provision whereby the Commission is envisaged as independent and autonomous.

¹⁹ Presidents and members of polling boards have substitutes.

²⁰ According to Article 33 of the LEMP, holding a law degree is a precondition for serving on the REC.

²¹ Dejan Milenković, *Organi nadležni za sprovođenje izbora – pojam i oblici izborne administracije (uprave) u Srbiji*, Zbornik Izbori u domaćem i stranom pravu, Institut za uporedno pravo, Beograd, 2012, p. 193.

administration. There can be no doubt that **the REC's composition and appointment procedure mean it fails to comply with this benchmark.**²²

As noted above, both the REC and polling boards comprise of core members and are extended to include representatives of parties contesting the election. This has given rise to the issue of the **decision-making majority on the REC.**

Objections to REC decisions and rulings are filed with the REC itself, which raises the issue of conflicts of interest.

According to older case law (which is still in effect), the REC 'shall make decisions by a majority of votes of its core and extended members, and, when ruling on objections that concern issues not specifically regulated by the Law on the Election of Members of Parliament, the Commission shall apply the General Administrative Procedure Law *mutatis mutandis*'.²³ This issue is regulated by applicable law, which stipulates that 'the electoral administration makes decisions by a majority of votes of its core and extended members',²⁴ and that 'a motion is rejected unless it receives the requisite majority of votes'.²⁵ Nevertheless, even though the REC nurtures a spirit of collegiality, this rule led to issues in the latest election, when one electoral list was not formally accepted even though it had met all the statutory requirements because it did not receive a majority of the members' votes. The group objected, and a repeated round of voting was held, whereupon the list did receive the requisite number of votes and was duly accepted.²⁶ These events have also raised the **question of potential conflicts of interest**, since objections to the REC's decisions are filed with the REC itself.

Since the electoral administration overseeing parliamentary elections is identical in terms of its composition and appointment to bodies fulfilling these roles in presidential, provincial, and local elections, the comments outlined above concerning provisions of the LEMP that govern the REC and polling boards in parliamentary elections are equally applicable to all other electoral administration authorities.

Right to object

The **REC** administers electoral justice by **ruling on objections** that allege violations of electoral rights in an election and/or irregularities in the nomination or election procedure. **There is a broad-based right to object**, with any voter being able to file an objection against an operation or action at any polling station. The right to object is also granted to entities that propose electoral lists and the candidates themselves. By contrast, **the REC cannot take action *sua sponte* without a formal objection having been filed, which**

²² Chad Vickery, Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections - GUARDE (2011), IFES, Arlington

²³ Judgment of the Supreme Court of Serbia No. UŽ. 67/2000 of 13 December 2000, available at arhiva.rik.parlament.gov.rs/latinica/pravna-shvatanja-izvodi.php (accessed on 25 March 2021).

²⁴ Article 29[3] of the LEMP, *Official Gazette of the Republic of Serbia*, Nos. 35/2000, 57/2003 – Constitutional Court Ruling, 72/2003 – Other Law, 75/2003 – Other Law-Corrigendum, 18/2004, 101/2005 – Other Law, 85/2005 - Other Law, 28/2011 – Constitutional Court Ruling, 36/2011, 104/2009 – Other Law, 12/2020, and 68/2020.

²⁵ Article 21[6] of the Rules of Procedure of the Republic Electoral Commission, *Official Gazette of the Republic of Serbia*, No. 48/2020.

²⁶ For a detailed discussion, see Junski izbori 2020: Ilustracija problema kroz nalaze domaćih posmatračkih misija, Emilija Orestijević, „Izborna administracija: nove okolnosti, stari problemi“, u: *Oko izbora 21 (2020)*, ur. Bojan Klačar, CeSID, Beograd. Available at cesid.rs/wp-content/uploads/2020/12/Oko-izbora-21.pdf.

constrains its ability to administer electoral justice. This provision ought to be reassessed in any future review of electoral law to consider allowing the REC to independently examine violations without having to rely on objections.²⁷

The REC and the courts have weighed in on the extent of voters' rights to object in the electoral process. Here, the Supreme Court of Serbia has held that all entities proposing electoral lists may object, rather than only entities whose electoral lists have been accepted with legal finality.²⁸ Local units of a political party that has proposed an electoral list may not object except unless explicitly empowered to do so by the entity proposing the electoral list.²⁹

Time limits for filing objections

Consideration should be given to aligning the LEMP, the Local Elections Law, and the Decision on the Election of Members of the Legislature of the Autonomous Province of Vojvodina to ensure time limits in electoral disputes are identical. This issue is particularly important when elections at multiple levels are held at the same time.

In parliamentary and presidential elections, the **24-hour time limit for filing objections begins to run immediately after the adoption of a decision, performance of an action, or failure to act deemed by the complainant to be an infringement of the rules.** The Administrative Court has held that

the time of **learning** about an alleged infringement that gives rise to an objection **has no bearing on the limit for objecting** (of 24 hours).³⁰ By contrast, the Local Elections Law adopts a different approach: according to this piece of legislation, **an objection due to an infringement in connection with the nomination of candidates, administration of an election, and determination and publication of election results, must be filed within 24 hours of the day on which the decision was taken or the action performed or omitted.** This means that the period begins to run at the end of the calendar day on which the infringement takes place.³¹ Lastly, the Decision on the Election of Members of the Legislature of the Autonomous Province of Vojvodina stipulates that objections are to be filed **within 24 hours of the adoption of the decision** or performance or omission of an action deemed by the complainant to be an infringement, and this provision is interpreted in the same way as the wording of the LEMP.

The primary problem with such short statutory time limits for exercising remedies could be that the brief time allotted makes it **difficult to fully grasp the nature of the infringement and nearly impossible to secure evidence to substantiate the alleged infringement or omission.** Hence, **subjective time limits for objecting could be considered, such as 24 hours from learning of**

*Consider introducing **subjective time limits, such as 24 hours from learning of an infringement or omission.** In the interests of efficiency, objective, preclusive time limits could also be contemplated.*

²⁷ This issue will be discussed in greater detail below.

²⁸ Legal opinion adopted by the Administrative Division of the Supreme Court of Serbia on 17 September 2020.

²⁹ Judgment of the Administrative Court Už 230/16 of 22 April 2016.

³⁰ Judgment of the Administrative Court Už 35/17 of 13 April 2017.

³¹ Legal opinion adopted by a meeting of all judges of the Administrative Court on 29 February 2016.

an infringement or omission. In the interests of efficiency, and to ensure the electoral process is not unduly protracted, objective, preclusive time limits could also be contemplated.

Ruling on objections

Both the REC and local electoral commissions have **48 hours** to rule on objections from the time they receive them, and the rulings are then served on all parties. Upholding an objection has the legal consequence of annulling the contested decision or action; if a commission does not adopt a ruling, the objection is deemed to be upheld.

Practice has revealed that the REC reviews **infringements of regulations from a purely formal perspective** and often takes **highly restrictive views**. In this context, **infringements are examined and considered only if they have been included in the polling board's minutes**. The Administrative Court shares the same view: in one judgment, the Court held that 'if an objection alleges irregularities in the administration of an election at a polling station or in its vicinity on Election Day, and the minutes of the polling board contain no such allegations of irregularities or protests, **it is justified to reject such objection as**

The REC's ability to administer electoral justice is constrained by its lack of power to act sua sponte, without a formal objection having been filed. Consideration should be given to allowing the REC to act on its own initiative in the event of infringements or inability to formally determine the results of a vote, especially in cases of serious violations noted in polling board minutes but not formally subject to objections by authorised persons.

unfounded'.³² This judgment was made following an objection that alleged votes were being bought outside polling places in one municipality in a so-called 'Bulgarian train' arrangement, where pre-filled ballots are distributed to willing voters. The voters cast these ballot papers and take out blank ones obtained at the polling station to give to the 'buyers' and collect their fee. The blank ballots are then used for the next round of the process. The reasoning for the judgment stated that 'inspection of polling

board minutes for all 30 polling stations in this municipality found no objections to the actions of the polling boards or any reports of irregularities at any polling station in the municipality'.

The case law adopted in parliamentary elections, whereby **an objection filed for infringements at a polling station should be rejected if the infringements are not substantiated in the minutes of the polling board**, has also been applied to presidential polls. Here, for instance, on 5 April 2017 the REC considered an objection filed by R.N., of B., which alleged infringements of the electoral process and determination of results at Polling Station No. 6 in the Municipality of Krupanj. The REC found that 'minutes of the polling board detailing the electoral process and determination of results of voting in the presidential election at Polling Station No. 6 in the Municipality of Krupanj contain no protests about the administration of the voting at that polling station.' As such, the REC ruled that 'there were no grounds to uphold the objection, as the complainant has not proven beyond any doubt, reasonable or otherwise, the allegations of the objection, especially given the absence of any protests in the minutes of the polling board'.³³

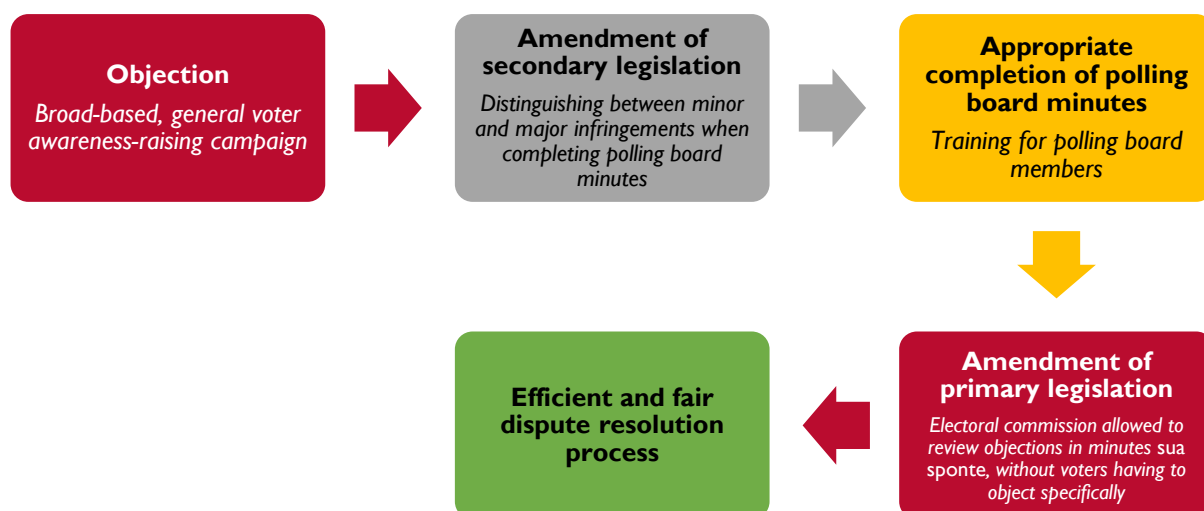
³² Judgment of the Administrative Court No. Už 318/16 of 30 April 2016.

³³ Judgment of the Administrative Court No. 14 Už 18/17 of 9 April 2017.

This consideration is particularly important given the fact that the **REC is not able to initiate an electoral dispute even if the minutes of a polling board actually do contain allegations of an infringement that may affect the outcome of the voting and carry legal consequences, but no voter has formally filed an objection.** This principle has been confirmed by the Supreme Court of Serbia, which ruled in a judgment that minutes can contain protests **that do not qualify as objections** that the REC can review on its own initiative, and that the REC is required to review and rule on all objections **filed in due time**.³⁴ In other words, this view and the exceptionally narrow interpretation of the rules means that polling board members can follow procedure and act in good faith to include in the minutes any and all protests of relevance for the course and results of voting, but that these *must* be accompanied by formal objections filed by voters (or other parties authorized to object) if they are to be taken into consideration. Since administration of electoral justice on Election Day actually **depends on the causal link between formally made objections and protests shown in polling board minutes**, at least four conclusions ought to be drawn here: (1) **voters should be targeted by a broad-based general awareness-raising campaign on electoral justice**; (2) **polling board members should be educated about the importance of entering all protests and objections into the minutes of the polling board**; (3) the polling board minutes form should clearly distinguish between **protests** (less serious infringements that do not carry legal consequences) and **objections** (serious violations that do have consequences in law); and (4) there should be clear definition of the **ability of electoral commissions to initiate electoral disputes on their own initiative pursuant to objections entered into polling board minutes**.

Administration of electoral justice on Election Day depends on the causal link between formally made objections and protests shown in polling board minutes.

Figure 4.1.2.1.1. Suggestion for improving electoral dispute resolution by electoral commissions



³⁴ Judgment of the Supreme Court of Serbia No. Už 95/02 of 9 October 2002.

Directly related to the above is the view of the Administrative Court³⁵ that, **in the event of less serious infractions (ones the law envisages no legal consequences for), the REC can reject an appeal** even if it finds omissions had occurred in the course of the election, provided that those did not materially affect decision-making. These are infringements that do not require the polling board to be dismissed and order the poll to be repeated at the particular polling place, which could affect the overall outcome of the election. The Administrative Court also held that the principle of expediency ought to be applied when assessing whether an infringement should have legal consequences. By contrast, Article 58 of the LEMP provides an exhaustive list of five **serious violations, where the electoral commission is required, following the filing of an objection by a voter, to consider whether to order the poll to be repeated at the polling station in question if:**

- not all members of the polling board (or their substitutes) are present at the polling station whilst it is open and voting is taking place;
- a separate room is not provided to serve as the polling place that can guarantee ballot secrecy;
- more voters are present in the room in which voting is taking place than there are voting positions;
- persons with no rights or duties in connection with administration of the election remain present at the polling station; and
- if law enforcement officers enter the polling station without having been invited to do so by the president of the polling board or where public order has not been violated.

In addition, serious violations are usually taken to include: voting instead of another person; infringing ballot secrecy; voting more than once (where one voter is given two or more ballot papers); presence of election advertising at a place closer than 50 meters to the polling station; voting away from a polling station without a certificate allowing the voter to do so; voting without a personal identity document; preventing a registered voter from voting; failing to circle the voter's name in the electoral register or circling the name of a different voter; members of the polling board or third parties seeking to influence a voter's choice; absence of the verification ballot in the ballot box; presence of excess ballot papers in the ballot box (in relation to voters who cast their votes); amending the electoral register on Election Day; and the like.³⁶

In each case, the **REC is required to review the electoral materials submitted by the polling board before ruling on any objection.** According to the Administrative Court,³⁷ reviewing an amended/initialled set of polling board minutes that do not indicate the legal grounds for such amendment cannot be deemed to be a complete finding of fact; **the REC's comprehensive fact-finding requirement** (including circumstances not indicated in the

³⁵ Judgment of the Administrative Court No. UŽ 512/12 of 18 May 2012.

³⁶ Vučetić Dejan, *Zaštita izbornog prava na lokalnim izborima*, u: Priručnik za sprovođenje lokalnih izbora, ur. Milan Jovanović, SKGO, Beograd, 2016, p. 213.

³⁷ Judgment of the Administrative Court No. UŽ 21/17 of 10 April 2017.

polling board minutes, if referenced by the complainant) was affirmed by the Administrative Court in 2017.³⁸

Transparency

Insufficient transparency, especially at the local level, has been identified as a major issue in electoral disputes. This is unsurprising, since some local authorities publish little information online other than basic facts concerning elections, which makes it very difficult if not outright impossible to find information about objections and related rulings. Here, regional or global best practices should be drawn on to create **binding guidelines for local electoral commissions** that would include lists of documents that **must** be made public (primary and secondary legislation, decisions, calendars, electoral lists, summaries of electoral commission meeting records, election results, and the like) and the time limits for doing so, with particular emphasis on the need to regularly publish objections and their outcomes. *For instance, in July 2020 the State Electoral Commission of Montenegro adopted its Administrative Instructions for online publication of materials by the State Electoral Commission and municipal electoral commissions, which govern the release of these documents, responsibilities of officers to be given the task of updating this information, resolution of any issues, and training for responsible individuals.*³⁹

Transparency of the electoral dispute resolution process before electoral commissions must be improved, particularly at the local level.

By contrast, the **REC** greatly improved its transparency in the latest election (of 2020) by making nearly all of its sittings open to the public. In addition to allowing both Serbian and foreign election monitors to attend the meetings, in this election it streamed its sittings live for the first time on its web site and YouTube channel. That said, the REC lost much of this transparency (and efficiency) after Election Day, as a (perhaps expected) amendment to its Rules of Procedure permitted the Commissioners to vote on agenda items by responding to online messages with 'For', 'Against', or 'Abstain' within three hours of delivery. This voting method was used to **make decisions, without public scrutiny, on both objections received by the REC** and final election results.

4.1.2.2. Administrative Court

General rules

The LEMP permits **appeals** to be lodged against any ruling of the REC. The Administrative Court is responsible for reviewing these appeals (Art. 97). **Judicial relief before the Administrative Court in disputes concerning parliamentary elections, as well as in**

³⁸ Judgment of the Administrative Court No. Už 29/17 of 9 April 2017.

³⁹ Administrativno uputstvo za objavljivanje materijala na veb sajtu Državne izborne komisije i veb stranicama opštinskih izbornih komisija, Državna izborna komisija Crne Gore, 2020. Available at dik.co.me/wp-content/uploads/2020/07/Administrativno-uputstvo-veb-site.pdf.

administrative disputes in other polls, follows the rules of the Administrative Disputes Law.⁴⁰

As such, the requirements of international standards for electoral dispute resolution,⁴¹ including the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defense, and the right to a fair and impartial fact-finding process, hearing, and decision should all be assessed against the provisions of the Administrative Disputes Law. This piece of legislation stipulates that fact-finding in administrative disputes takes place, as a rule, in public hearings, which in effect means it **does not mandate public hearings**.

Consideration should be given to mandating public hearings in some electoral disputes. Any amendments to these rules would have to make allowances for the need for the electoral process to be expeditious, fair, and efficient so as to avoid eroding the perceived legitimacy of the decisions. Any hearings would have to ensure the parties' equal rights to present facts (including the defence), which may be unviable given the (currently) short time limits.

Since the Administrative Court does not make decisions based on public hearings, compliance with some international standards could be jeopardized. As such, **consideration should be given to mandating public hearings in some electoral disputes**. Nevertheless, any amendments to these rules would have to make allowances for the need for the electoral process to be expeditious, fair, and efficient to avoid eroding the perceived legitimacy of the decisions. Any hearings would have to ensure the parties' equal rights to present facts (including the defense), which may be unviable given the (currently) short time limits.

Time limits and procedures: parliamentary elections

Appeals must be lodged promptly, within 48 hours, via the REC, which is required to forward to the Administrative Court the objection and all required case files within 24 hours of receiving the appeal (Art. 97 LEMP). The wording 'all required case files' may be a stumbling block as the REC in effect screens documents before they are forwarded to the Court and sends out only the '**required**' ones. By not providing any documents that may be relevant for the Administrative Court to make its decision, the REC

The requirement for the NEC to forward all required documents to the Administrative Court should be amended to require the NEC to provide all case files, without any vetting.

can materially affect the Court's decision-making and virtually shape the outcome of the case. **This provision ought to be amended to require the REC to forward all case files to the Administrative Court without any vetting.**

The Administrative Court is required to rule on an appeal at the latest within 48 hours of receiving the appeal and the accompanying documents. The remedies envisaged by the Administrative Disputes Law may not be used to contest this ruling. This view is corroborated by case law, which excludes the application, *mutatis mutandis*, of the

⁴⁰ Administrative Disputes Law, *Official Gazette of the Republic of Serbia*, No. 111/2009.

⁴¹ Chad Vickery, *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections - GUARDE* (2011), IFES, Arlington.

General Administrative Procedure Law and the remedies it provides. In one ruling, the Administrative Court unambiguously confirmed this view, holding that ‘in electoral disputes the remedies envisaged in administrative proceedings cannot be used’.⁴²

Individuals and organisations with experience of electoral disputes heard by the Administrative Court have noted the **need to extend time limits for appealing**.⁴³ Any extension should be considered as a means of **enhancing the effectiveness of remedies**, but this ought to be balanced by the need to avoid jeopardizing the effectiveness of elections as a whole.

Consider extending time limits for appealing to enhance the effectiveness of remedies.

Time limits and procedures: provincial and local elections

Remedies against decisions of the Provincial Electoral Commission follow slightly different rules. These decisions may be appealed with the relevant court.⁴⁴ Case law has determined that the ‘relevant court’ is here the Administrative Court. Judicial relief can be sought only **against rulings made by the Provincial Electoral Commission on objections**. This means that no appeal can be lodged for the Provincial Electoral Commission’s failure to make a decision.⁴⁵

Time limits in the administration of electoral justice ought to be aligned, in particular given the frequency of local and parliamentary elections held on the same date.

Attention should be drawn to a **key difference in the electoral dispute resolution process at the local level vs the national and provincial**. Judicial relief in local elections is governed by the Local Elections Law, which differs from the LEMP in that it requires **appeals to be lodged directly with the Administrative Court**. If the appeal seeks to contest a decision of a local legislature, the Local Elections Law **does not require a previous objection** for the appeal to be admissible. The Law also provides for a time limit for appealing of **24 hours** from service of decision,⁴⁶ whilst the local electoral commission is required to forward all required information and documents to the Court promptly, and at the latest within **12 hours**.⁴⁷ In cases related to local elections, the **Administrative Court has the legal right to employ the ‘full jurisdiction dispute’ approach, which in effect means it can resolve the underlying issue from the remit of the electoral commission**.⁴⁸ The Local Elections Law limits the extent of judicial relief available: a motion for new trial may not be made after a final court judgment is delivered in a

⁴² With regard to the use of remedies, the Administrative Court has asserted that ‘the complainant is unjustified in referencing Article 257 of the General Administrative Procedure Law, since, in the view of the Court, provisions of the General Administrative Procedure Law that envisage remedies in administrative proceedings may not apply *mutatis mutandis* to election disputes’. Judgment of the Administrative Court No. UŽ 217/16 of 9 April 2016.

⁴³ Recommendations made by monitoring missions of CeSID, CRTA, and the ODIHR following the 2020 elections.

⁴⁴ Decision on the Election of Members of the Legislature of the Autonomous Province of Vojvodina, *Official Gazette of the Autonomous Province of Vojvodina*, No. 23/14.

⁴⁵ Legal opinion adopted at the 58th plenary meeting of the Administrative Court on 29 February 2016.

⁴⁶ Unlike in parliamentary elections, where the time limit is 48 hours from receipt of decision.

⁴⁷ Unlike in parliamentary elections, where the time limit is 24 hours from receipt of appeal.

⁴⁸ Dejan Vučetić i Dejan Milenković, *Zaštita izbornog prava u upravnom sporu*, u: *Kako, koga i zašto smo birali*, Izbori u Srbiji 1990-2020. godine (2020), prir. Milan Jovanović i Dušan Vučićević, Institut za političke studije i Službeni glasnik, Beograd (Zbornik radova sa naučne konferencije)

dispute involving ‘termination of office and certification of election’ of local legislature members. To be precise, even though the Administrative Disputes Law does permit motions for new trial and applications for appellate review of a court decision, these remedies are not allowed by the Local Elections Law, which, consequently, means that no motions for new trial may be made in disputes involving the termination of office or certification of election.⁴⁹ As with parliamentary elections, time limits for inspecting electoral lists and documents and electoral materials have no bearing on the commencement of time limits for objecting against a decision, action, or omission in an election.⁵⁰

Statistics

According to the 2020 Annual Report of the Administrative Court,⁵¹ a total of **4,929 election-related cases were received** in that year. Together with the four disputes that remained outstanding from the previous reporting period, the Administrative Court heard a total of 4,933 cases.

The Administrative Court resolved **4,931 cases**, of which 4,930 by delivering judgments on the merits of the cases, whilst one case was resolved otherwise.

From 27 June to 13 July alone the Court received 4,405 cases and resolved 3,537 ones. Anonymized judgments in electoral disputes are published on the Administrative Court’s official web site **to ensure timely and complete dissemination of information.**⁵²

4.1.2.3. Judicial relief against decisions of bodies tasked with administering the electoral register

A **lawsuit** can be brought to contest decisions of bodies tasked with administering the electoral register. An applicant for amendment of the electoral register may **appeal a decision of the municipal or city administration with the Ministry of Public Administration and Local Government (MoPALG) within 24 hours of being served such decision.** The MoPALG is required to rule on the appeal **within 48 hours.**

A ruling of the MoPALG in the first instance, in cases where it has jurisdiction for amendments to the electoral register, or a ruling delivered on appeal, may be contested by a **lawsuit brought with the Administrative Court within 24 hours of the receipt of such ruling.** The Administrative Court has 48 hours to rule on such lawsuit. The Court’s decision is final and enforceable and may not be contested by an application for appellate review or motion for new trial.

⁴⁹ Judgment of the Administrative Court No. II-2 UŽ 89/17 of 12 December 2017. See *Bilten Upravnog suda* broj 8/2019, Intermex, Beograd, Sentencu sačinio: Tomislav Medved, sudija Upravnog suda

⁵⁰ Legal opinion adopted at the 58th plenary meeting of the Administrative Court on 29 February 2016.

⁵¹ Godišnji izveštaj o radu Upravnog suda po materijama, za period od 01. januara 2020. godine do 31. decembra 2020. godine. Available at up.sud.rs/uploads/useruploads/izvestaji-o-radu-suda/GODI%C5%A0NJI-IZVE%C5%A0TAJ-2020.pdf.

⁵² Anonymised election-related cases are available at up.sud.rs/latinica/izborni-predmeti.

4.1.2.4. Constitutional Court

The Constitutional Court plays a **subsidiary role** in the administration of electoral justice, as it **makes decisions in electoral disputes where no judicial or other relief is available**.

Any voter, Presidential candidate, member of a legislative body, or nominating entity can **seek a ruling** from the Constitutional Court in an electoral dispute that is not legally subject to judicial jurisdiction.⁵³ If an infringement of electoral rules is proven, and it has had a material impact on the outcome of the election, the **Constitutional Court can deliver a decision to annul an entire electoral process or a clearly indicated part of it**.

The Law on the Constitutional Court provides for a **special type of electoral dispute**, which is **initiated by an appeal against a decision certifying the election of a Member of Parliament**. This appeal can be lodged by a candidate standing for election to Parliament and the relevant nominating entity within **48 hours** of the decision having been made. The authority whose decision is being appealed is required to deliver the required documentation to the Constitutional Court **within 24 hours**.

Legal scholars believe the Constitutional Court has indirect jurisdiction over elections by being able to rule on legislation and make decisions to ban political parties.⁵⁴

When it comes to electoral justice, the Constitutional Court has to date primarily assessed the constitutionality of electoral legislation and legality of enactments adopted by the electoral administration. Here, the Court ruled on whether the Local Elections Law complied with the Constitution in particular respects (electoral rights of members of the public, right of local legislature members to freedom of opinion and expression) and ruled on applications for amendment of a number of enactments issued pursuant to contested legal provisions. In 2014, the Court also assessed whether the REC's Guidelines were compatible with other regulations after two local authority areas (Vranje and Raška) were illegally declared to be locations where results of voting in Kosovo and Metohija were to be formally certified, instead of the actual polling stations being so designated, as envisaged by law. In this case, the Court held that only the law could stipulate a specific procedure for certifying the results of voting at particular polling stations, and that the Guidelines (which are subordinate to the law) could not be used for that purpose. Ultimately, the Constitutional Court declared that two articles of the Guidelines contravened the LEMP.⁵⁵

⁵³ Law on the Constitutional Court, *Official Gazette of the Republic of Serbia*, Nos. 109/2007, 99/2011, 18/13 – Constitutional Court Ruling, 40/15, and 103/15.

⁵⁴ Maja Nastić, *Pravo na nepristrasan i nezavistan sud u kontekstu rešavanja izbornih sporova*, Zbornik Pravnog fakulteta u Nišu, godina 50, Niš, 2007, p. 185.

⁵⁵ Constitutional Court ruling No. I Uo-149/2014 (*Official Gazette of the Republic of Serbia*, No. 22/14), with dissenting opinion of one judge.

4.1.2.5. Criminal law safeguards of electoral rights

General rules

Due to the particular personal and societal significance of political rights and freedoms, **criminal offences against electoral rights form part of a separate Chapter (XV) of the Criminal Code.**⁵⁶ These are:

- **violation of the right to stand for elected office** (preventing or hindering a person from standing for elected office);
- **violation of the right to vote** (unlawful registration or prevention of registration in the Electoral Register or deletion from the Register; preventing or hindering a person from voting; coercing a person into voting or not voting);
- **giving and accepting bribes in connection with voting** (offering, giving, or promising a reward, gift, or other benefit to induce a person to vote or not vote in favour or against a person or proposition; demanding or accepting a benefit or gift with the same objective);
- **abuse of the right to vote** (voting instead of a person under the name of that person; voting more than once in the same election; using more than one ballot paper in the same election);
- **compiling inaccurate electoral registers;**
- **violating ballot secrecy;**
- **ballot and election fraud** (adding or removing ballot papers or votes during counting; altering the number of ballot papers or votes; publishing false election results); and
- **destruction of voting documentation** (destruction, confiscation, or concealment of ballot papers or other voting documentation).

The Criminal Code envisages both **finer and terms of imprisonment** for these offences, which are deemed to be aggravated when perpetrated by a member of a polling board or any other person in the discharge of their duties in connection with voting.

Issues and recommendations for amendments to the Criminal Code

Practice to date has shown that **regulations in this area ought to be improved by legislating new criminal offences against electoral rights, broadening the scope of applicability of existing offences, introducing stricter penalties, and legislating aggravated forms of certain offences already envisaged by Serbian criminal law.**

⁵⁶ Criminal Code, *Official Gazette of the Republic of Serbia*, Nos. 85/2005, 88/2005 – Corrigendum, 107/2005 – Corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

This would help better safeguard electoral rights and create trust amongst the public in the state's readiness to prosecute any electoral violations. This chapter presents a number of controversial provisions that should be amended or replaced in accordance with the principles cited above and as part of a broad-based consultative process designed to improve electoral justice in Serbia.

To better safeguard electoral rights, regulations in this area ought to be improved by:

- *legislating new criminal offences against electoral rights;*
- *broadening the scope of applicability of existing offences;*
- *introducing stricter penalties, and*
- *legislating aggravated forms of certain offences already envisaged by Serbian criminal law.*

1) Violation of the right to stand for elected office

This offence is governed by Chapter XV, Article 154 of the Criminal Code: 'Whoever, by violation of law or other unlawful means, prevents or hinders one from standing for elected office, shall be punished by a fine or a term of imprisonment of up to one year.' This wording causes practical issues as it in effect means that **the offence captures only 'violation of law' but not of secondary legislation**, which is hugely important in Serbian elections. To **clearly stake out the scope of applicability**, the words 'violation of law' should be followed by 'or other regulations adopted pursuant to law', which would make it a criminal offence to infringe on secondary legislation that governs the right to stand for office. It is interesting to note that this offence was first introduced in 1994, when the penalty was a term of imprisonment of between six months and five years, but the penalties were made much more lenient for many offences, including this one, in the 2005 iteration of the Criminal Code, even though circumstances had not improved much for the exercise of passive suffrage in Serbia. Relaxation of the penalties does not seem to have been justified, and so **re-introducing stricter sanctions for this offence, as well as for other offences against electoral rights, ought to be considered.**

2) Violation of the right to vote

Article 155[2] of the Criminal Code envisages a **'qualified' (aggravated) form of this offence**, with the provision stating: 'Whoever, by use of force or threat, coerces another in an election, impeachment vote, or referendum, to exercise or not to exercise his voting right or to vote for or against a particular candidate or proposition, shall be punished by a term of imprisonment of three months to three years.' However, there is agreement that the current scope of this offence is neither adequate nor appropriate to the current circumstances, as it makes it an offence only to **use force or threat as means of coercion**. The **scope of applicability of the aggravated form of this offence could be extended** if the wording were recast to also include other types of coercion, such as: 'Whoever, by use of force or threat, or by any other unlawful means, coerces another (...)' Such a provision would make it an offence to exert any kind of influence on voters to cast or not to cast votes for a particular candidate or proposition, even where that influence is not based on coercion or threat, and would serve the purpose of punishment by preventing the perpetration of these offences, ensuring deterrence, providing an avenue for public condemnation, promoting public morals,

and strengthening compliance with law. In this case, as with violation of the right to stand for office, stricter penalties for the basic form of the offence were envisaged by previous versions of the Criminal Code. As such, it would seem pertinent to revisit the severity of the current sanctions along with any amendments to the wording of the aggravated offence.

3) Voting

There is some inconsistency between the Criminal Code and **criminal offences in what is generally termed ‘ancillary criminal legislation’**. Here, the LEMP envisages the criminal offence of **abuse of office in parliamentary elections** (Article 104). This offence can be perpetrated by an REC commissioner or a polling board member, or any other person who alters the number of votes cast in a parliamentary election in the course of their official duties. This offence involves adding or removing ballot papers or votes when counting, or publishing election results that do not correspond to the actual vote. There are **multiple issues** with this provision. Firstly, the characteristics of this offence overlap to a large degree with those of **ballot and election fraud** from Article 161 of the Criminal Code, with the only difference being the less strict penalty envisaged by the LEMP. This raises the issue of whether an REC commissioner suspected of having committed an election-related offence would be prosecuted under Article 161 of the Criminal Code or under Article 104 of the LEMP. According to current practice, the prosecution would choose the more serious offence (the one set out in the Criminal Code), but it ought to be noted that prosecutorial practice **is not entirely consistent** even if broadly aligned.

4) Unauthorized collection of personal data

Any consideration of criminal law safeguards should not be restricted only to offences set out in Chapter XV of the Criminal Code, since there are also other offences not directly linked with the electoral process but whose prosecution does contribute to protecting electoral rights and freedoms. To ensure compliance with global standards and properly safeguard the vote, amendments ought to be made to the offence of **unauthorized collection of personal data** (Article 146 of the Criminal Code), which is deemed to exist whenever personal data are collected or disclosed or used for a purpose other than intended. This offence is deemed to be aggravated when the personal data are collected, disclosed, or used by a public official. In the run-up to and on Election Day, political parties and other election stakeholders will often use personal data to contact voters and invite them to turn out, put pressure on them, and keep records of voters who have turned out. How these data are collected and processed is often quite controversial, especially in situations when voters have not authorized the election stakeholders to collect such data or keep records. Given the **extent of the danger posed by this criminal offence in the electoral process, stricter sanctions** ought to be envisaged **for both its forms**.⁵⁷ In addition, for both forms the Criminal Code requires civil litigation, which is at odds with prosecution provisions for other similar offences. In that

⁵⁷ The basic offence carries a term of imprisonment of up to one year, and the aggravated offence a term of imprisonment of up to three years.

regard, it would be pertinent and desirable to regulate how this offence is prosecuted and require the prosecution service to go after perpetrators of these offences *sua sponte*.

5) Introduction of new criminal offences in Chapter XV

In view of the findings and suggestions of monitoring missions, it would be pertinent to consider legislating new criminal offences to ensure **more effective protection of voting rights and enforcement of the pre-election media blackout**, as well as by making it an offence to place any sort of pressure on public-sector employees with regard to voting.

Impact of prosecution and statistical overview

According to statistics released by the National Public Prosecutor’s Office for the period from 2016 to 2020, **offences under Chapter XV of the Criminal Code are not common: they are rarely prosecuted and there are few cases in which final court judgments have been handed down.**

About one hundred individuals face criminal charges every year for election-related offences. The sole exception was 2018, when this number was 188. Moreover, **very few charges actually result in criminal prosecutions and indictments**, with most charges **rejected** by the prosecutors handling the cases. Again, 2018 was an outlier, with significantly more indictments (38) than other years in this reporting period. There have been negligibly few convictions, except in 2016. Given the relative paucity of prosecutions for offences under Chapter XV, **no particular impact on general or specific deterrence or other purposes of punishment** can be ascertained.

About 100 individuals face criminal charges every year for election-related offences.

Table 4.1.2.5.1. *Statistics of criminal offences under Chapter XV of the Criminal Code, 2016-2020*

Period	Outstanding cases from previous period	Persons charged in reporting period	Total outstanding cases	Total rejections	Total indictments	Total convictions	Total acquittals	Total exonerations
2016	62	78	140	37	8	8	2	
2017	92	11	103	23	5	1	1	12
2018	107	181	288	134	28	1		
2019	98	42	140	47			2	
2020	85	124	209	64	2	3		

Proposals for more effective prosecution of cases under Chapter XV of the Criminal Code

The above considerations seem to highlight the importance of finding ways to improve the effectiveness and efficiency of prosecution of electoral offences. One such arrangement could be the **Binding Instructions**, a feature of Serbian law envisaged by Article 25[2] of the Law on the Public Prosecution Service: ‘The National Public Prosecutor shall issue written general binding instructions for all public prosecutors so as to ensure legality, effectiveness, and consistency in their actions. General binding instructions may be issued by the National Public Prosecutor at the initiative of the College of the National Public Prosecutor’s Office’. This mechanism does not apply to any specific case, but rather regulates actions in a particular category of cases.

The Binding Instructions could be used to require **urgent prosecution of cases involving these offences and periodic public reporting of the actions taken**, which would contribute to **building public trust in how the prosecution service handle these allegations**. Additionally, a panel of prosecutors at the National Public Prosecutor’s Office could be required to hear objections against rulings rejecting criminal charges. **These decisions ought to be made promptly, by a time limit shorter than the 15 days mandated by law**. The names of Deputy Public Prosecutors at the National Public Prosecutor’s Office who hear objections should be made public, which would help allay public concerns about how objections are handled. One particularly important consideration to include in these Binding Instructions is for the **National Public Prosecutor’s Office to publish extracts from rulings on objections on its web site**.

*Prosecution of electoral offences should be made more effective and efficient. This could be done through **Binding Instructions** that would require urgent prosecution of these cases, regular public reporting, tighter time limits for decision-making, and complete transparency.*

4.1.2.6. Anti-Corruption Agency

The position, powers, organization, and operation of the Anti-Corruption Agency (ACA) are all governed by the Law on Prevention of Corruption,⁵⁸ adopted in 2019 and effective as of 1 September 2020. The ACA continues the traditions of the Corruption Prevention Agency, established under the 2008 Law on the Corruption Prevention Agency. The ACA has a broad remit on issues important for combating corruption, but in the electoral context its key powers are **scrutinizing political finance and potential abuse of public resources**.

⁵⁸ Law on Prevention of Corruption, *Official Gazette of the Republic of Serbia*, Nos. 35/2019 and 88/2019.

Political finance regulations

Political and campaign finance was regulated comprehensively for the first time by the 2011 Political Finance Law,⁵⁹ which was subsequently amended twice, first in 2014 and then in 2019 following agreement between the government and the opposition.

This piece of legislation is governed by two principles: (1) **openness**, and (2) **oversight**. Openness involves the general availability of political finance information and data, whilst oversight requires the ACA to scrutinize parties' financial statements, perform audits, and engage in field controls. Both principles have, however, faced numerous challenges in the past decade, and some of these tests, that have relevance to electoral dispute resolution, will be outlined below.

The Corruption Prevention Agency, as it then was, scrutinized the first election in 2012; the 2020 poll was the fifth time it monitored the campaigns of all election contestants. The monitoring effort lasted from 6 March to 21 June, with an interruption during the state of emergency due to public health concerns. The total revenues and expenditures of all election stakeholders in the 2020 parliamentary, provincial, and local elections are presented in the ACA's Campaign Finance Report.⁶⁰ **The total finance raised for the campaign totaled 1,373,831,981.06 dinars, whilst the expenditures totaled 1,379,426,336.40 dinars.** Sixteen political groups raised more than they spent, whilst 13 expended more than they collected. Regulations require political entities that contest an election to submit campaign finance reports with the ACA within 30 days of the publication of final election results.

In its report on the June 2020 elections, the ODIHR stated that 'the campaign finance regulatory framework and its current implementation do not ensure transparency, integrity and accountability of campaign finance' and that '[k]ey prior recommendations by ODIHR and the Council of Europe's Group of States Against Corruption (GRECO) on campaign finance remain unaddressed, including introducing lower donation limits; an expenditure ceiling; financial reporting and disclosure prior to election day'.⁶¹ These recommendations are yet to be taken into consideration by decision-makers, and were not seriously discussed during the dialogue between government and opposition that ended in late 2019.

Regulations governing abuse of public resources

Abuse of public resources is governed not only in the Law on Prevention of Corruption and the Political Finance Law, but also in the Public Enterprises Law and the Education Law (both of which are significant given opposition parties' criticisms over the use of public corporations and the education system to exert pressure on voters). Article 50 of the Law on Prevention of Corruption prohibits public officials from abusing public resources, public events and official meetings to promote political parties. One outcome of

⁵⁹ Political Finance Law, *Official Gazette of the Republic of Serbia*, Nos. 43/2011, 123/2014, and 88/2019.

⁶⁰ Agencija za sprečavanje korupcije, Izveštaj o kontroli troškova izborne kampanje u 2020, mart 2021, available at acas.rs/wp-content/uploads/2021/04/Izvestaj-verzija-V-Kampanja-konacno.pdf.

⁶¹ ODIHR Special Election Assessment Mission Final Report, Parliamentary Elections. 21 June 2020, available at osce.org/files/f/documents/a/3/466026.pdf.

the 2019 inter-party dialogue was the introduction, for the first time, of a clear definition of what a 'public resource' was: "Public resource" means real estate, movable property, or any other property that is owned publicly or otherwise and is used by a public authority of the Republic of Serbia, an autonomous province, local government, public enterprise, business, institution, or other organization owned or managed by the Republic of Serbia, an autonomous province, or a local government'.⁶² Regardless of these changes, a segment of the public and some opposition groups have persisted in their criticisms even after the new provisions were used in the 2020 election, which suggests that additional review is needed of the statutory framework designed to prevent abuse of public resources.

Amendments to the Public Enterprises Law made after agreement was reached in the 2019 talks between the government and opposition envisage that a managing director of a public company is to be dismissed if they 1) use the resources of the public company, in particular its premises, vehicles, and fixtures, without consideration, to promote a political party or political group; (2) take actions to promote political parties or political groups or participate in an election campaign during working hours; (3) exerts pressure on employees of or staff otherwise engaged by the public company to support a political group or candidate in an election; or (4) are aware that employees of or staff otherwise engaged by the public company are using resources of the public company to promote a political party or political group or exerting pressure on other employees of or staff otherwise engaged by the public company to support a political group or candidate in an election and do not take actions they are required to in order to prevent such behavior.

Submitting reports, control, and legal remedies

In general terms, **complaints about political organizations' financial reporting and misuse of administrative resources are submitted to the ACA and this institution can act *sua sponte***, since it has its own field monitoring capacity, amounting to 120 observers in the 2020 election. Thereby in 2020, the ACA - acting *sua sponte* in a case against a political organization - initiated a procedure to verify a breach of regulations and submitted a request to initiate misdemeanor proceedings, as this political organization undertook activities in the course of their electoral campaign that cannot be considered campaigning. Furthermore, the **ACA can issue warnings and initiate misdemeanor and criminal proceedings for violations of the Law on Financing Political Activities, although ACA does not prosecute directly** in line with Article 7 of the Law on Prevention of Corruption, stipulating that the law regulating general administrative procedure shall apply accordingly to any procedure enforced by the ACA. ACA's decisions can be appealed to the Administrative Court that then takes an executive (final) decision.

The participants in an election are expected to submit annual financial reports to the ACA (for regular operation) and within 30 days after verifying final results for an election campaign. Both foreign and local observers list two flaws of existing regulations: firstly, there is no deadline for the ACA to publish its report on campaign financing (hence the ACA published its last

⁶² Law on Prevention of Corruption, *Official Gazette of the Republic of Serbia*, Nos. 35/2019 and 88/2019.

report nine months after the June 2020 elections) and, secondly, there is no obligation of interim reporting, i.e., financial reporting prior to election day. Although it is clear what would be the good effects of interim reporting (primarily in terms of the transparency of the entire process), clearly there are some objective challenges in implementing this solution due to the low capacity of political organisations and, more importantly, due to possible issues with verifying the submitted data.

Of the 949 political organisations that participated in the 2020 elections (336 political parties, 373 coalitions and 203 citizens' groups), **202 did not fulfil their basic duty of submitting financial reports in due time**, meaning one in five participants in the election. The worst landscape - a testimony to their poor capacities - is among the citizens' groups, where two thirds of the participants in the election did not comply with their legal duty. Following this, the ACA pressed 144 misdemeanor charges by the end of 2020, and four convictions were made (not final).⁶³ The data indicates that citizens' groups must be addressed with a number of activities with a view to raising their capacities in the election process.

One in five participants in the 2020 election did not submit financial reports in due time, two thirds of which are citizens' groups. The ACA pressed 144

Table 4.1.2.6.1. Submitted financial reports for all election levels in 2020

Political organisations	Submitted in due time	Not submitted
Political parties	336	38
Citizens' groups	68	135
Coalitions	343	29
Total	747	202

Referring to 2019 legislative changes in terms that political organisations are not allowed to use budget funds that candidates in the election and candidate lists such as public office holders, public administration officials or directly elected persons can dispose of in the discharge of their official duties, the ACA states in its report that it issued 34 decisions as an institution pursuant to charges pressed against political organisations. A breach of regulations was established in eight cases, which led to the issue of five warnings and submitting three requests to initiate misdemeanor proceedings.⁶⁴

The Law on financing political activities incorporates legal provisions relevant to resolving complaints to the ACA related to campaign financing and utilization of public resources, however IFES stated in its assessment of Serbian elections⁶⁵ that 'individual provisions in the Law on Prevention of Corruption generally apply to complaints about corruptive behavior, and these include more detail than the provisions of the Law on financing political activities'.

⁶³ The Anti-Corruption Agency Report on the 2020 Election Campaign Finance Audit, March 2021. <https://www.acas.rs/wp-content/uploads/2021/04/Izvestaj-verzija-V-Kampanja-konacno.pdf>

⁶⁴ Ibid.

⁶⁵ IFES, Technical Election Assessment Mission (TEAM) in Serbia, 2021

This is followed by stating that ‘the Law on Prevention of Corruption includes explicit standards for complaints and the responsibility of the ACA to try to rectify faulty complaints, which is not included in the Law on financing political activities’.⁶⁶

In Chapter VI, the Law on financing political activities defined guidelines for action and decision-making in cases of violations of the law, where it is noted that the ACA has the option to act *sua sponte* but that this procedure can also be initiated by natural persons or legal entities, whereby the procedure to determine whether there were violations of this law in election campaigns can also be initiated pursuant to reports from political parties, coalitions of political parties or citizens’ groups that are submitters of candidate lists or proponents of candidates in the election.⁶⁷ The ACA notifies that the procedure has been initiated within 24 hours from receiving the report and the institution has five days to investigate and issue a decision confirming whether there was a violation of this law in the election campaign or not. The ACA must publish these decisions on its webpage within 24 hours from their issue. Everything not regulated by this law is regulated by the Law on General Administrative Procedure.⁶⁸ IFES highlights that, ‘although using an internal complaint management procedure based on its own practice, the ACA would benefit from coding its processes and procedures in written form’.⁶⁹ The ACA notified the local observer mission (CRTA) about receiving a total of 39 reports from natural persons and legal entities regarding the 2020 election campaign (four reports were related to circumstances indicative of suspicion regarding a violation of the provisions of the Law on financing political activities during an election campaign), while 32 proceedings were initiated and 31 decisions made pursuant to other reports.⁷⁰

When it comes to penal provisions, they are accurately regulated in the Law on financing political activities. However, according to the ODIHR report after the July 2020 elections, legal sanctions ‘are not graduated and allow for inconsistent implementation’, stating that the ACA denied as unfounded the majority of 25 received complaints for abuse of public resources and irregularities in the financing of election campaigns.⁷¹

Fines for violations of Article 50 of the Law on Prevention of Corruption that regulates membership and office holding in a political organization were raised in 2019 and now are between 100 and 150 thousand Dinars, while the Law on Public Enterprises stipulates fines for responsible individuals if they utilize, or have knowledge of utilization of public enterprise resources for political purposes contrary to the ban, without taking preventative action.

⁶⁶ *Ibid.*

⁶⁷ The Law on financing political activities, Official Gazette of the Republic of Serbia, No. 43/2011, 123/2014 and 88/2019

⁶⁸ *Ibid.*

⁶⁹ IFES, Technical Election Assessment Mission (TEAM) in Serbia, 2021

⁷⁰ CRTA, 2020 parliamentary elections, Final report with recommendations, 2021 <https://crtars/wp-content/uploads/2020/10/Parlamentarni-izbori-2020-Crta-Zavrzni-izvestaj.pdf>

⁷¹ ODIHR Special Election Assessment Mission Final Report, Parliamentary Elections. 21 June 2020: <https://www.osce.org/files/f/documents/a/3/466026.pdf>

4.2. Observer missions and findings in the process of administration of justice

4.2.1. ODIHR findings and recommendations

Within its mandate and pursuant to an official invitation from the state, the OSCE Office for Democratic Institutions and Human Rights - ODIHR has observed **practically all election cycles in Serbia since 1997**. Mission size and scope varies depending on the circumstances and capabilities - from limited missions to full-fledged, long standing missions, which was mostly in earlier times. Bearing in mind the importance of this body and the Charter for European Security⁷² (OSCE, Istanbul 1999) member signatory parties' duty to **agree to follow up promptly the ODIHR's election assessment and recommendations**, in this Chapter we will briefly reflect on this body's findings and recommendations in terms of how fulfilled they are in the context of administration of justice.

Firstly, during 2020 ODIHR evaluated how many of the priority and other recommendations issued after the 2012, 2014, 2016 and 2017 elections were fulfilled⁷³. **ODIHR evaluated 56 from a total of 121 recommendations - 40 of which were priority and 71 were other⁷⁴**, giving them one of the following grades: not implemented, partially implemented, mostly implemented, and fully implemented. **Among the 56 evaluated recommendations, 48 have not implemented status; 6 have partially implemented status, and a total of 2 recommendations have mostly implemented status.** None were evaluated as *fully implemented*.

The following text presents an overview of the evaluation status for all ODIHR recommendations issued after the **2017 and 2016** elections, distributed by fields, whereas recommendations issued after the June 2020 elections (not evaluated) will be briefly presented in text form.

Table 4.2.1.1. *An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, legal framework field, according to ODIHR⁷⁵*

Election cycle	Recommendation	Priority / Other	Status *
2016	#1 The electoral legislation would benefit from a comprehensive review to address legal loopholes and unclear provisions. To ensure legal certainty, substantial regulations should be included primarily in the law, while only those related to technical matters and details should be included in REC instructions	Priority	

⁷² Charter for European Security, Istanbul, November 1999; OSCE Istanbul Document 1999. Paragraph 25.

⁷³ Recommendations issued after the June 2020 elections have still not been evaluated by ODIHR. More on ways, reasons, and goals of the evaluation available at: <https://paragraph25.odihr.pl/about/>. An overview of all recommendations issued since 2012 and evaluation status of each recommendations available at: <https://paragraph25.odihr.pl/home-page-countries/serbia/>

⁷⁴ Some recommendations reoccur in identical or remarkably similar form in various reports. This presents a summary of all recommendations in all reports, regardless of their reoccurrence.

⁷⁵ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odihr.pl/home-page-countries/serbia/>

2016	#8 In line with good practice, the REC should have authority sua sponte to rectify or overturn decisions taken by polling boards/lower electoral commissions, to annul elections if irregularities affect the outcome, and to order repeat voting to avoid disenfranchising affected voters.	Priority	
2016	#19 Measures should be taken, including clear criteria established by law, to prevent the abuse of provisions for candidate lists to obtain the status of national minority.	Other	
2017	#1 The electoral legal framework should be subject to a comprehensive and inclusive review to regulate all essential aspects, address gaps and loopholes, and empower institutions to implement necessary control and oversight over the electoral process.	Priority	
2017	#11 The Election administration could consider implementing comprehensive training covering all stages of Election day procedures in a standardized and more effective format for all PB members.	Other	

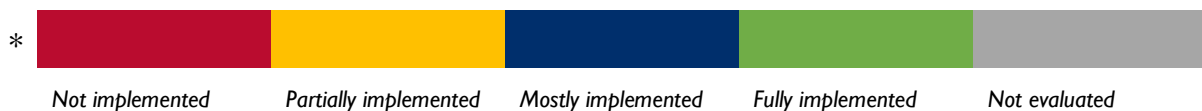


Table 4.2.1.2. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **election administration field**, according to ODIHR⁷⁶

Election cycle	Recommendation	Priority / Other	Status *
2016	#9 To ensure that voters are fully informed of their rights and responsibilities, the REC could intensify its efforts and undertake comprehensive voter education activities sufficiently in advance of the elections.	Other	
2016	#10 Consideration could be given to conducting standardized training on electoral procedures for all PB members.	Other	

⁷⁶ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odhr.pl/home-page-countries/serbia/>

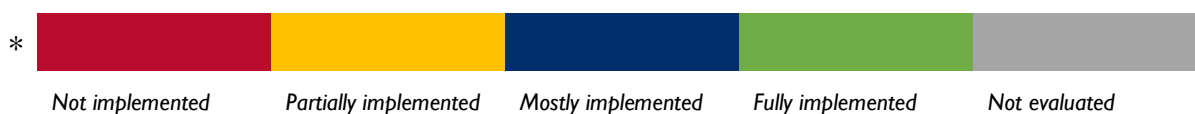
* OSCE/ODIHR Election Assessment Mission Final Report, Presidential Elections, 2 April 2017: https://www.osce.org/files/f/documents/a/5/322166_3.pdf; OSCE/ODIHR Limited Election Observation Mission Final Report, Early Parliamentary Elections, 24 April 2016: https://www.osce.org/files/f/documents/c/a/256926_0.pdf

2016, 2017	#25, #9 To enhance the transparency and trust in the electoral process, the law should provide for the publication of elections results by polling station and results protocols, including those corrected later in the process	Priority	
2017	#10 Consideration could be given to amending the law to formally create an intermediate level of electoral administration and clearly delineate tasks and responsibilities of the different levels.	Other	
2017	#18 The positive example of establishing PBs with equitable representation of national minorities could be replicated as good practice in other regions with significant minority populations.	Other	



Table 4.2.1.3. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **complaints, and appeals field**, according to ODIHR⁷⁷

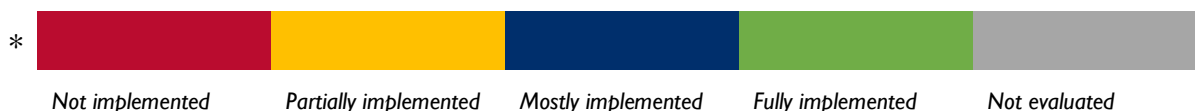
Election cycle	Recommendation	Priority / Other	Status *
2016	#7 The law should prescribe a simple, accessible, and effective legal redress for election day irregularities and provide for challenges of election results. All complaints should be reviewed with due process.	Priority	
2016	#18 The effectiveness and transparency of the dispute resolution process could be improved by introducing a legal requirement for the applicant's right to a hearing involving both parties, publishing information on complaints and decisions in a timely manner and extending the 24-hour deadline.	Other	
2017	#8 The law should provide for effective legal redress mechanisms for electoral violations, including a possibility to challenge all REC acts. Legal deadlines to submit and review election-related complaints should be extended in line with international good practice	Priority	



⁷⁷ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odhr.pl/home-page-countries/serbia/>

Table 4.2.1.4. An overview of the evaluation of candidate relevant to the administration of justice process issued after the 2016 and 2017 elections, **voter and list/candidate registration field**, according to ODIHR⁷⁸

Election cycle	Recommendation	Priority / Other	Status *
2016, 2017	#2, #13 To enhance public trust in the voter register, consideration could be given to publishing the partial data from voter lists for public scrutiny in line with the law and international good practice.	Priority	Not implemented
2016	#3 Rules on candidate registration, including procedures for the verification of supporting signatures, should be clarified to ensure transparency at all stages, consistency, and legal certainty.	Priority	Mostly implemented
2016, 2017	#11, #12 The blanket restriction on suffrage rights of persons declared mentally incompetent should be removed or decided on a case-by-case basis by the court, depending on specific circumstances.	Other	Not implemented
2016	#12 Legislation should be amended to give an opportunity to individual citizens to stand as independent candidates.	Other	Not implemented
2016	#13 To make the candidate registration process more inclusive, the restriction that voters may support only one candidate list could be reconsidered.	Other	Not implemented
2016	#14 The LEMP should include provisions regarding the deadlines and conditions for the withdrawal of registered candidates.	Other	Not implemented
2016	#15 Deadlines for candidate registration could be reconsidered to allow for more thorough verification of registration documents, to ensure an effective redress in case of appeals and to provide sufficient time for ballot printing.	Other	Partially implemented
2017	#7 Concerted efforts are required to address persistent issues with voter list accuracy. Consideration could be given to re-organising voter lists in a more practical manner.	Priority	Partially implemented



⁷⁸ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odihr.pl/home-page-countries/serbia/>

Table 4.2.1.5. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **campaign (funding) field**, according to ODIHR⁷⁹

Election cycle	Recommendation	Priority / Other	Status *
2016	#4 To promote a level playing field among contestants and ensure the separation of state and party interests, consideration should be given to introducing campaign regulations including on preventing the misuse of administrative resources and abuse of office. Compliance should be monitored by a competent and independent body and violations should be punished with proportionate and dissuasive sanctions.	Priority	
2016	#5 To enhance the transparency of campaign finances, previous OSCE/ODIHR and Venice Commission recommendations should be addressed, including introducing an expenditure ceiling, a requirement to submit interim financial reports as well as the timely publishing of the financial reports and ACA conclusions. The law should prescribe proportionate and dissuasive sanctions, and irregularities should be sanctioned.	Priority	
2017	#2 To guarantee a level playing field among contestants, the separation between party and state activities needs to be strictly abided by.	Priority	
2017	#3 Party and campaign finance provisions stand to be further improved in line with previous OSCE/ODIHR recommendations with a view to tighten regulation and enhance transparency.	Priority	
2017	#4 The ACA should exercise its mandate fully by proactively monitoring and investigating any non-transparent activities in the context of elections.	Priority	
2017	#14 To make candidate registration process more inclusive, consideration may be given to lifting the restriction for voters to support only one candidate.	Other	
2017	#15 Authorities should take decisive action to prevent pressure on voters, including employees of state or state-affiliated institutions. Cases of alleged coercion need to be investigated and individuals responsible held accountable.	Other	

*

Not implemented

Partially implemented

Mostly implemented


Fully implemented

Not evaluated

⁷⁹ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odihr.pl/home-page-countries/serbia/>

Table 4.2.1.6. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **election day field**, according to ODIHR⁸⁰

Election cycle	Recommendation	Priority / Other	Status *
2016	#21 Authorities could consider reviewing voting screen design and polling station layout, to ensure the secrecy of the vote and consider requiring badges for all PB members.	Other	
2016	#22 Procedures governing the inspection of materials should be clearly established allowing for a meaningful and uniform review. Measures should be taken to secure election materials during inspection	Other	
2016	#23 To enhance the transparency and integrity of the electoral process, the law should prescribe a detailed tabulation process that is conducted by the election administration.	Other	
2016	#24 Measures should be taken to enhance the accuracy of PBs' work including on counting and drafting of PB protocols. Proportionate sanctions should be imposed for irregularities.	Other	
2017	#20 Additional efforts should be made by the REC to ensure the secrecy of the vote. This should be explicitly addressed during training, with clear and uniform instructions provided.	Other	

* 

 Not implemented Partially implemented Mostly implemented Fully implemented Not evaluated

Table 4.2.1.7. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **media field**, according to ODIHR⁸¹

Election cycle	Recommendation	Priority / Other	Status *
2016	#6 Consideration should be given to clarify the REM's competences in investigating and sanctioning breaches of legislation in a timely manner. In addition, the REM should act upon its own initiative, based on systematic monitoring election coverage and compliance with established regulations.	Priority	

⁸⁰ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odhr.pl/home-page-countries/serbia/>


⁸¹ Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odhr.pl/home-page-countries/serbia/>

2016	#16 The independence of the public media could be further strengthened by setting up a mechanism that would provide for sufficient funding and reduce their dependency upon the state budget.	Other	
2016	#17 Consideration should be given to regulate media coverage of officials who are also candidates, in order that they do not enjoy an unduly privileged position compared to other contestants.	Other	
2017	#5 Authorities should refrain from interference in the activities of media and journalists, who should operate free from intimidation or pressure, administrative actions or other types of undue influence.	Priority	
2017	#6 Oversight by the REM should be explicitly extended to all aspects of media coverage of elections. The REM could take a more pro-active approach in the performance of its duties, including through timely action based on findings of systematic media monitoring. Amendments to the LEM could be considered to provide for more effective sanctions, including expedited timely remedies during the election campaign.	Priority	
2017	#16 Comprehensive steps should be taken to strengthen the financial and editorial independence of public broadcasters. Adequate funding mechanisms could be considered to reduce dependency on the state budget. Media laws should be fully implemented with the aim of ensuring greater transparency in ownership and funding of the media.	Other	
2017	#17 Media, especially the public broadcaster, should consider adopting self-regulatory measures to ensure fair and impartial editorial policies for campaign coverage, including emphasizing a clear distinction between official activities of candidates and their campaign appearances and to ensure that coverage of governmental activities does not unduly disadvantage other candidates.	Other	



Table 4.2.1.8. An overview of the evaluation of recommendations relevant to the administration of justice process issued after the 2016 and 2017 elections, **election observation field**, according to ODIHR⁸²

Election cycle	Recommendation	Priority / Other	Status *
2016	#20 In line with OSCE commitments, the law should include provisions on access of citizen and international observers to all stages of the electoral process and clearly define their rights and obligations.	Other	
2017	#19 As previously recommended, the legislation should be amended to explicitly provide for the presence of both citizen and international observers in line with the OSCE commitments. It should unambiguously provide for observers access to all stages of the electoral process and clearly define their rights and obligations	Other	

* 

 Not implemented Partially implemented Mostly implemented Fully implemented Not evaluated

After the **June 2020 elections**, ODIHR defined 11 priority and 18 other recommendations, the majority of which are repeating and include the necessity to amend the regulatory framework, harmonize regulations, undertake measures to prevent abuse of office and misuse of administrative resources, prevent pressure on voters, improve media coverage and media balance, strengthen capacities of independent bodies etc⁸³. The following are listed among measures **strictly related to the process of administration of justice**:

- **Priority recommendation #8:** To ensure effective dispute resolution, in line with good practice, the deadlines for filing complaints and for taking decisions by the REC and the Administrative Court could be extended. Deadlines for submission should run from the moment when the irregularity came to the attention of the complainant;
- **Priority recommendation #9:** In line with good practice and in order to ensure the integrity of the electoral process, the REC could be assigned with rectifying or overturning decisions taken by lower-level election commissions, and with annulling elections entirely or in one or more polling stations if it determines that irregularities affected the outcome;

⁸² Final reports for 2016 and 2017: <https://www.osce.org/files/f/documents/0/e/259021.pdf> and <https://www.osce.org/files/f/documents/c/6/330296.pdf>. Evaluation status of each recommendation is available at: <https://paragraph25.odihr.pl/home-page-countries/serbia/>

⁸³ Final report from the ODIHR Special Election Assessment Mission, Parliamentary elections, 21 June 2020. Available at: <https://www.osce.org/files/f/documents/6/e/467232.pdf>

* ODIHR Special Election Assessment Mission Final Report, Parliamentary Elections. 21 June 2020: <https://www.osce.org/files/f/documents/a/3/466026.pdf>

- **Other recommendations #25:** To further enhance the transparency of the dispute resolution process, the REC could consider publishing its complaints register on its website in a timely manner.
- **Other recommendations #29:** An effective system should be established for stakeholders to file complaints on election-day irregularities. To facilitate such a process, a standardized complaints form could be made available at polling stations and instructions on handling such complaints could be included in the manual on election-day procedures.

These recommendations were based on the **following observer mission findings**⁸⁴:

- Whereas the dispute resolution mechanism is generally in place for complaints prior to election day, the law falls short of ensuring effective legal redress for complaints on voting, counting and challenges of election results;
- Moreover, the actual implementation of the dispute resolution process does not fully ensure effectiveness and transparency;
- Complaints against REC decisions are filed with the REC itself, which entails a risk of conflict of interest;
- The deadlines for filing complaints and rendering decisions are not sufficiently long, contrary to international good practice;
- The lack of public hearings does not provide an opportunity for the parties to present and defend their cases and does not ensure due process.

ODIHR recommendations are the subject for the Government Working Group on cooperation with OSCE/ODIHR and the Working group for the validation of the electoral register. Recommendations are also one of the frameworks for inter-party dialog that has been taking place with some intermissions since 2019 in Serbia, with an aim to improve electoral conditions. As it was announced that the Working group will start working on implementing priority recommendations alongside continuing regular consultations with OSCE/ODIHR, it remains to be seen how and to what extent the recommendations will be implemented and what evaluation status these will receive after assessment by ODIHR.

4.2.2. June 2020 elections: Issues through the findings from local observer missions

Bearing in mind that procedural and formal issues or shortcomings of the administration of justice process in Serbia were explained in detail in previous chapters, these will now be illustrated by examples that the local organisations reported on during and after the June elections.

⁸⁴Chapter XII of the Final report, Complaints and Appeals: <https://www.osce.org/files/f/ff/documents/6/e/467232.pdf>

4.2.2.1. Administration of justice process before REC and the Administrative Court⁸⁵

The entire election process was encumbered with a number of complaints – after obtaining insight into the website of the REC⁸⁶, it is estimated that the total number of complaints is **approximately 6,000**, which is a precedent in electoral practices. Of all 6,000 complaints **only three were adopted, and all others were denied, rejected, or suspended**⁸⁷.

In the first portion of the election process, the bulk of the complaints (not less than two and a half thousand) was declared against the Decision to continue with election activities (adopted 11 May), and they were all rejected as untimely, in line with regulations and procedures. Considering that identical complaints were coming in simultaneously from different sources and based on the same factual situations, the REC decided to combine them all into a single procedure and rule on them together, rather than individually. Hence, for example, 909 complaints were rejected in two sessions on 9 June.

909 complaints were rejected in two sessions of the REC on 9 June 2020.

One candidate list was not registered because most REC members did not vote for its registration although it complied with all legal requirements. The majority of members voted in favour of registration when deciding on the complaint.

Apart from the so-called *complaint pandemic*, in one case REC caused legal uncertainty in terms of **protecting the passive suffrage**, i.e. The right to stand for election, considering one candidate **list was not registered although it met all legal requirements**. Namely, the decision to register candidate list *Pokret Levijatan – Živim za Srbiju*, (Leviathan movement - Living for Serbia) was rejected at 144th session of the REC, although they rectified all previously perceived shortcomings in a timely manner. An insufficient number of REC members voted to register the

list: 18 was needed for a majority vote and 15 members of 23 present voted in favor of the registration. Since it is regulated, that *bodies conducting the election shall decide by majority vote in the core or extended membership*⁸⁸ and that *the motion shall be rejected if it does not receive the required majority vote*⁸⁹, the decision to register was rejected. Right after the rejection the submitter of the candidate list lodged a complaint with the Republic Electoral Commission, after which the candidate list *Pokret Levijatan – Živim za Srbiju*, was indeed registered, but this situation opened an avenue for criticism against the REC because of the **possibility of arbitrary decision-making in situations that are legally completely clear and unambiguous**. Simultaneously, this also opened the issue of a possible conflict of interest,

⁸⁵ CeSID findings: Around the June 2021 elections: cesid.rs/wp-content/uploads/2020/12/Oko-izbora-21.pdf.

⁸⁶ Sections on the website: Decisions on complaints, session broadcasts, information on sessions held Complaints that the observers were familiarised with via email over the several previous electronic sessions were also analyzed in addition to the REC website.

⁸⁷ Procedures were suspended in cases of complaints against the operation of polling boards that were disbanded by the Republic Electoral Commission, ordering a new vote.

⁸⁸ Article 29 para 3 of the Law on the Election of Members of Parliament, Official Gazette of the Republic of Serbia, No. 35/2000, 57/2003 - CCRS ruling, 72/2003 - oth. law, 75/2003 - oth. law amended, 18/2004, 101/2005 - oth. law, 85/2005 - oth. law, 28/2011 - CC ruling, 36/2011, 104/2009 - oth. law, 12/2020 and 68/2020. Available at: https://www.paragraf.rs/propisi/zakon_o_izboru_narodnih_poslanika.html

⁸⁹ Article 21 para 6 of the Rulebook of the Republic Electoral Commission, Official Gazette of the Republic of Serbia, No. 48/2020. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/izbornakomisijalodluka/2020/92/1>

considering the complaint against the Republic Electoral Commission is submitted to the same body.

In addition to all of the above, **a process protecting the suffrage of submitters of candidate lists for similar reasons unfolded before the Administrative Court** that ruled on the complaint made by the Russian party (a national minority political party). Namely, REC first rejected the motion to confer upon the Russian party the status of a national minority political party as the necessary majority of all REC members did not vote for adopting this decision, and then the REC rejected a complaint from the Russian party representative for the same reason - no members of the Republic Electoral Commission voted for its adoption⁹⁰. **This kind of decision-making, without providing the legal grounds to reject the complaint** and/or without providing the factual situation that caused the legal grounds for the decision **was contested by the Administrative Court that adopted the Russian party representative's complaint and reverted the REC decision**⁹¹. REC again rejected the complaint in the repeated procedure, this time referring to its **arguable competence to verify the position of the national minority political party in the electoral process**, although the party was already registered in the Political Party Registry with such a position⁹². The Russian party as the submitter of the candidate list 'Russian Party - Slobodan Nikolić' was found to have the position of the national minority political party only after the Administrative Court ruling after the appeal to the decision in the repeated procedure⁹³. Because of these issues reoccurring throughout multiple election cycles, it is necessary to clearly stipulate provisions that will facilitate **efficient, fair, and effective protection of suffrage for submitters of candidate lists, particularly in terms of national minority political parties and coalitions participating in the elections.**

On the other hand, after election day ended REC faced an **enormous number of complaints of irregularities in the work of the polling boards** and other election activities as well, such as the delay in announcing the results, introducing electronic sessions, and announcing overall results before the expiration of the deadlines for administration of justice. Specifically, after gaining insight into a total of four bags with voting materials and claiming they exposed a systemic forgery of the polling board minutes, representatives of the *Suverenisti* (Sovereignists) list - CG *Dosta je bilo* – Saša Radulović - filed as many as 2,700 identical complaints against the irregularities in the work of the polling boards. Complainants claimed there were manipulations with voting materials and that there are discrepancies between the voting materials and the number of votes for this list against official the polling board minutes and hence requested the elections to be reverted in one third of the poll stations. In case of these 2,700 complaints the REC again merged all procedures into a single procedure

⁹⁰ Decision rejecting the complaint from the Russian party representative from 10 June 2020, available at: <https://www.rik.parlament.gov.rs/tekst/2171/resenja-po-prigovorima.php>

⁹¹ Verdict adopting the complaint from the Russian party representative, III-11 Už 95/20, as of 14 June 2020, available at: <https://www.rik.parlament.gov.rs/tekst/2171/resenja-po-prigovorima.php>

⁹² Please refer to the following source for a detailed explanation of the issue: Emilija Orestijević, „Osvrt na rad izbore administracije na parlamentarnim izborima 2016. godine i na predsedničkim izborima 2017“. godine, (Emilija Orestijević, Reflections on the operation of the electoral administration in the 2016 parliamentary elections and 2017 presidential elections) in: *Around the elections #20* (2018), ed. Bojan Klačar, CeSID, Belgrade. Available at: <http://www.cesid.rs/wp-content/uploads/2018/09/Oko-izbora-20.pdf>

⁹³ Verdict adopting the appeal from the Russian party representative and reverting the Republic Electoral Commission decision, III-10 Už 107/20, as of 19 June 2020, available at: <https://www.rik.parlament.gov.rs/tekst/2171/resenja-po-prigovorima.php>

(gradually), due to their identical factual situation and rejected them all as unfounded. **After this was appealed, the Administrative court adopted the appeals and repealed REC's decisions⁹⁴ due to inadequate legal explanation, i.e., the lack of the factual situation and clear arguments on which the decision was based, which was incorrectly interpreted in some parts of the public as reverting the vote and 'taking down the forged elections'⁹⁵.** In the repeated ruling the Republic Electoral Commission confirmed its previous decisions (in joined procedures) and again, as in earlier election cycles, *took the position that the election cannot be reverted in those polling stations where irregularities were not noted in the polling board minutes and/or if this form did not note that there were objections or that an event which may have affected voting happened.* In addition, the Republic Electoral Commission determined that voting results in disputed polling stations were logical and accurate and that no objections were made against the results by any members of the extended polling board membership. The Administrative court made the last verdicts connected to this topic after a little under two months from the announcement of the results - rejecting the Sovereignists' complaints and confirming the REC decisions.

This manner of REC insisting on the polling board minutes as the only documents to be used as basis for assessments whether or not there were any irregularities in the polling stations somewhat **limits the range of complaints expressed by voters and/or observers, with consideration to their capabilities and 'authority' at the polling stations.** Therefore, if the polling board does not note a complaint or event of importance for voting in the polling board minutes, irregularities cannot be proved and therefore administration of justice cannot be fully achieved as well.

*The public attention in Serbia was greatly attracted to footage from a polling station in Ub, showing a female who is introducing a group of voters to the polling station and telling them who to vote for, assisting them with voting, checking ballots and inserting them into the ballot box. In addition to clearly violating the secrecy of the vote as one of the main principles of elections in Serbia, it is certain that the present case was about the crime of giving and receiving bribes in connection with voting and/or suffrage abuse. **However, as the polling board minutes did not specify any irregularities occurring at polling stations, the elections were not reverted.***

*Of the approximately 6000 cases, the vote was repeated at a total of **one** polling station in the process of administration of justice per complaint from voters.*

All other complaints were denied or rejected in the same or similar way - as untimely or ungrounded, with the exception of three in total: the first concerned a complaint in connection with the *Zavetnici* (Oathkeepers) list and was adopted following a ruling of the Administrative Court; the second adopted objection related to the *Levijatan* list and their registration and the third - final - **was also the only one adopted due to irregularities in the work of the polling board.** In fact, at a polling station in Belgrade a voter was denied the right to vote because another person had signed in their place in the

⁹⁴ All verdicts available at: http://www.up.sud.rs/pages/view_cases_search/cirilica

⁹⁵ See: <https://dostajebilo.rs/blog/2020/07/01/djb-sa-2700-prigovora-oborio-izbore-jos-samo-da-nateramo-rik-da-to-i-prizna/?0=cir>

voter list, after which the polling board was dissolved, and the voting was repeated at that polling station.

This led to an interesting situation – **with a record low number of adopted complaints, the elections were annulled and repeated in a total of 234 polling stations and some 203,000 voters respectively.** It is important to note here that a new rule was first implemented in this election cycle, under which the REC has a duty *to annul and repeat the vote at polling stations* from which the polling board minutes were not submitted or where it was impossible to determine the results of the vote⁹⁶, which led to the cancellation of the vote in as many as 233 polling stations. This change indirectly - and to a limited extent - introduced the possibility of REC acting *sua sponte* to protect the electoral will of the voters.

4.2.2.2. The process of administration of justice before the Anti-Corruption Agency⁹⁷

In the first part of the campaign (before the state of emergency was declared), the ACA **did not issue any decisions regarding the amended provisions of the Law on financing political activities or the Law on the Anti-Corruption Agency**, although public has seen information of reports coming from civil society. There were some indications of the Agency's decisions through online searches, but **there was no publicly available information on the institution's website (although there is a part dedicated to the 2020 election campaign).** In the first part of the campaign (until the introduction of the state of emergency), the Agency only released information on legal provisions and on the beginning of the implementation of the election campaign monitoring methodology.

After the election process continued, after 11 May 2020, the Anti-Corruption Agency made decisions by 21 July 2020 regarding a total **of 35 reports** filed against various candidate lists or individuals. As for the measures of **recommendations for removal from public office**, this measure was made in four cases during the election campaign, where the Agency found that certain public resources were used to promote political organisations as participants in the elections. The other 31 reports concerned violations of the provisions of the Law on financing political activities in the field of **election campaign spending**: In **25 cases the Agency issued a decision establishing that there is no basis for deciding on violations of the Law**, and **warnings** were issued in the remaining 6 cases.

In most cases where it was found that there was no basis for deciding on the existence of an infringement of any paragraph of Article 23 of the Law on financing of political activities, such a decision was made because these has been found to be broadcasts of news already published on some of the political parties' official communication channels against whom reports were filed. It was also stated that there were no political party identifiers in the disputed news stories or photographs. Based on everything above, **it seems political entities are still able to 'circumvent' clear violations of the provisions of the Law on financing political activities in some ways**, and that further legislation in this fields is necessary. It

⁹⁶ Article 87 of the Instructions on conducting the elections.

⁹⁷ CeSID findings: Around the June 2021 elections: <http://www.cesid.rs/wp-content/uploads/2020/12/Oko-izbora-21.pdf>

should also be noted that most reports were filed due to **suspicious of violations of the law observed on social networks**.

According to the findings of the CRTA observer mission⁹⁸, the Agency ruled in a number of cases that reports against officials for violations of the Law on the Anti-Corruption Agency were unfounded, but these **were not made public** since there is no legal obligation to publish them. Aside from this, there were allegations that many examples of abuse of public office for party political purposes and abuse of public resources in this election campaign, both by officials and political entities remained unpunished, due to certain inconsistencies in the Agency's conduct, which can primarily be seen in **the uneven enforcement and disputable interpretations of legal provisions in deciding on filed reports**. Even in cases where the law has been found to have been violated, the Agency has shown **inconsistency when imposing sanctions on different political entities**. According to the report, on three occasions where it found that violations of the law, the Agency cited a measure of warning to one political party, while at the same time filed a request for the initiation of misdemeanor proceedings against another party, which is a more severe sanction.

In March 2021, the Agency issued a report on the election campaign finance audit, nine months after the elections⁹⁹.

4.3. The public opinion on administration of justice

4.3.1. Methodological notes

A public opinion survey regarding the perception and understanding of the administration of justice process and (in)direct experiences of citizens with the pressures and abuse of suffrage was conducted from **16 to 25 April 2021** in a random **nationally representative sample of 1,002 respondents across the territory of Serbia** (without Kosovo and Metohija). The research tool used was a questionnaire developed in cooperation with the IFES team, consisting of **44 questions**. The interviews were conducted by **CATI** (*Computer Assisted Telephone Interviewing*) technique, while the selection of respondents in households was done using the method of nearest birthday after the day of the survey. The rule of first birthday excluded the possibility of interviewing only those citizens who answer the pollsters' calls, thereby ensuring gender, education, and age representativeness of the respondents.

4.3.2. Sample description

Based on the methodology established during the conduct of this survey, the following categories of respondents were covered:

⁹⁸ Final report with recommendations, election 2020, CRTA. Available at: <https://crt.rs/parlamentarni-izbori-2020-završni-izveštaj-sa-preporukama/>

⁹⁹ Campaign finance audit report, Anti-Corruption Agency, 2021 Available at: <https://www.acas.rs/wp-content/uploads/2021/04/Izveštaj-verzija-V-Kampanja-konacno.pdf>

Sex	Male: 49% Female: 51%
Interviewee age:	18 - 29 18% 30 - 39 17% 40 - 49 17% 50 - 59 16% Over 60 32%
Education structure	Primary school and lower: 33% Vocational Education and Training School (2–3-year courses): 17% Four-year-long high school: 33% College/University: 17%
Region	Vojvodina: 27% Belgrade: 24% Western Serbia and Šumadija: 28% Southern and Eastern Serbia: 21%
Place of residence	City: 60% Village: 40%

4.3.3. Context

It is important to understand the context in which the research was carried out.

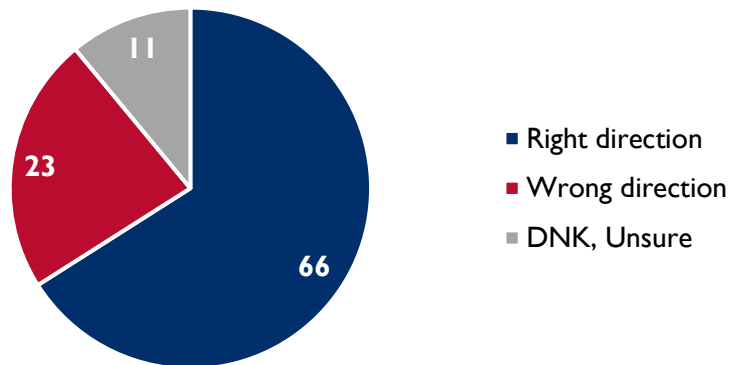
Politically, it is hampered by strong tension and a hypersensitive narrative as well as by the lack of communication between crucial political actors. This tension has permeated all of public life, as it did not remain confined to the partisan realm, but it spread to most other areas, with a powerful spotlight in the media. The survey was carried out in an atmosphere of efforts to manage the Corona virus crisis, in a complex epidemiological situation and with the citizens' concerns directed primarily to health and then the economic priority package. The survey was conducted ten months after the election, which is a sufficiently long period for cold and rational judgment, but not too long so that important details would not be forgotten.

Two questions were used to better understand the context in this survey: the first concerned the direction that Serbia was moving in and the second treated how the respondents and their families assessed their standard of living.

The country's direction is an important indicator of the general atmosphere in society and as such is a good framework for understanding the possible behavior of the electorate. In present-day Serbia two out of three respondents said Serbia was moving in a good direction and that was only a continuation of the trends going back several years. Dissatisfaction with the direction that the country was moving in was expressed by 23% of citizens while one in nine was without a position. Above average, the country is seen as taking good course by men older than 50, with primary education, from Belgrade, Southern and Eastern Serbia. The country taking a wrong course is largely cited by younger people (18-29 years and 30-39 to a

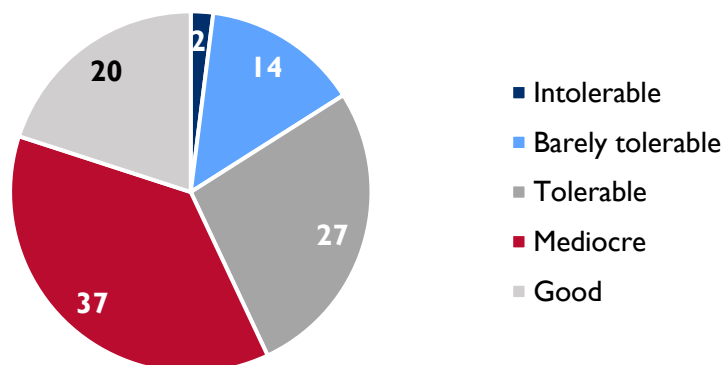
lesser extent), with a college or university degree, from Vojvodina and Western Serbia with Šumadija.

Chart 4.3.3.1. *The country's direction* (in %)



One in five citizens has a good **standard of living** older than 18, while 37% say their lives are mediocre. 27% of respondents reported a tolerable standard, while the population of extremely vulnerable citizens is at 16% (14% hardly tolerable and 2% intolerable). Citizens with lower education, coming from Western Serbia with Šumadija are predominantly among citizens whose lives are hardly tolerable or intolerable.

Chart 4.3.3.2. *Standard of living* (in %)



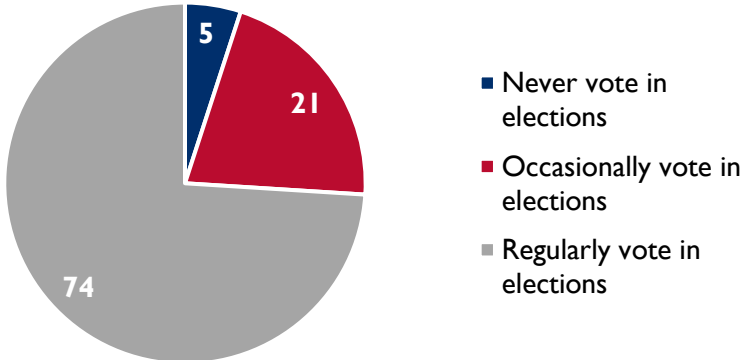
4.3.4. A general overview of the election process

The general relationship to the election process was gauged through two questions: **how often Serbian citizens vote** and **how they would evaluate the entire election process**, given all its aspects.

74% of respondents regularly participate in the elections, one fifth of the population voting occasionally (21%), while 5% of citizens never go to the polls. If these figures are looked at more closely, it can be seen that the percentage of citizens who regularly vote is higher than the average official turnout in the elections after 2000 (56,78%), but it is important to note here that the electoral register also includes citizens with the right of vote residing abroad.

The assessments of the polling agencies are that there are less than 6 million actual voters in Serbia (the electoral register exceeds 6.5 million).

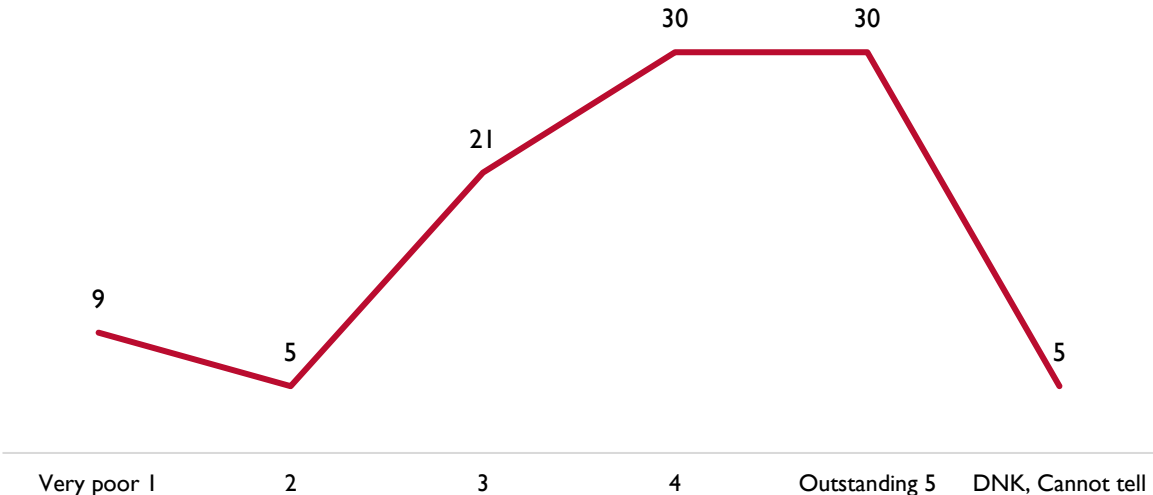
Chart 4.3.4.1. Voting (in %)



The elderly (over 60 years of age) from Southern and Eastern Serbia and with lower education levels (primary school or less) are regular voters above average, as are citizens who maintain that Serbia is moving in the right direction.

The satisfaction with the quality of the electoral process in general outweighs dissatisfaction: the score of four or five is given by 60% of citizens (30% each), while the score of one and two is given by 14% of citizens. 21% of respondents said that the electoral process is in the middle (neither too good nor too bad) with an average score of three. Groups that vote above average turnouts (previous question) also assess the election process as very good or excellent in a percent higher than average. As expected, the electoral process is assessed as better by citizens who maintain that the direction taken by the country is good and who are happier with their own standard of living.

Chart 4.3.4.2. Assessment of the election process (in %)



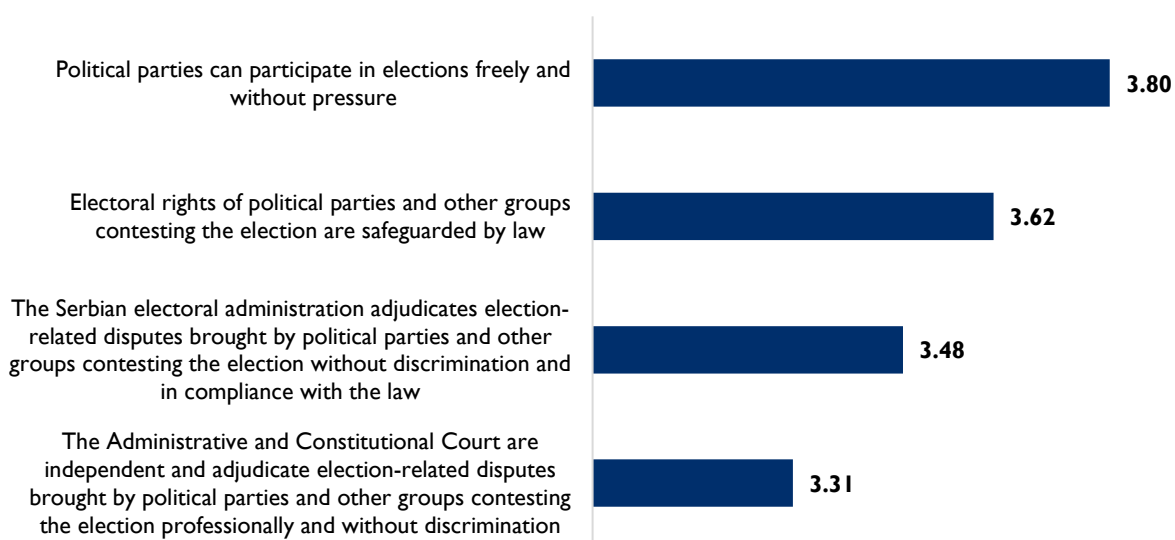
4.3.5. Protecting the vote and election dispute resolution in passive suffrage

Election dispute resolution in passive suffrage was gauged through four claims. The descriptive replies to these four claims were presented first (through grade averages and satisfaction percentages) and then through a synthetic indicator composed of these four claims ('items').

These four claims were placed under the 'funnel' principle, from the broadest to the most narrowest and said: (1) *Election participants may participate in the election process freely and without pressure;* (2) *Election rights of political parties and other participants in the election are protected by legal order;* (3) *Election Administration in Serbia (Republic Electoral Commission, City and Municipal electoral commissions, polling boards) solve election disputes initiated by participants in the election without discrimination and in accordance with the law and* (4) *the Administrative and Constitutional courts act independently and solve election disputes initiated by participants in the elections professionally and without discrimination.*

Generally speaking, **citizens have shown moderate satisfaction with election dispute resolution in passive suffrage because the average score ranges from 3.31 to 3.80 while some segments among them, such as the freedom to stand for election, were assessed as good** as nearly two-thirds of respondents gave a score of four or five. Also, 61% of respondents thought that the candidates' suffrage is well protected and 17% of respondents assess the administration of justice as poor or very poor. Satisfaction is reduced as the questions are increasingly specific, so 55% of citizens are satisfied with the work of the election administration, with one in five citizens giving it ones or twos. The results are even worse for the Administrative and Constitutional Court, where the percentage of satisfied citizens was below 50% with 22% of citizens who considered their role as bad (8% of citizens did not respond to this question).

Chart 4.3.5.1. *Evaluation of protecting the vote and election dispute resolution in passive suffrage* (average score)



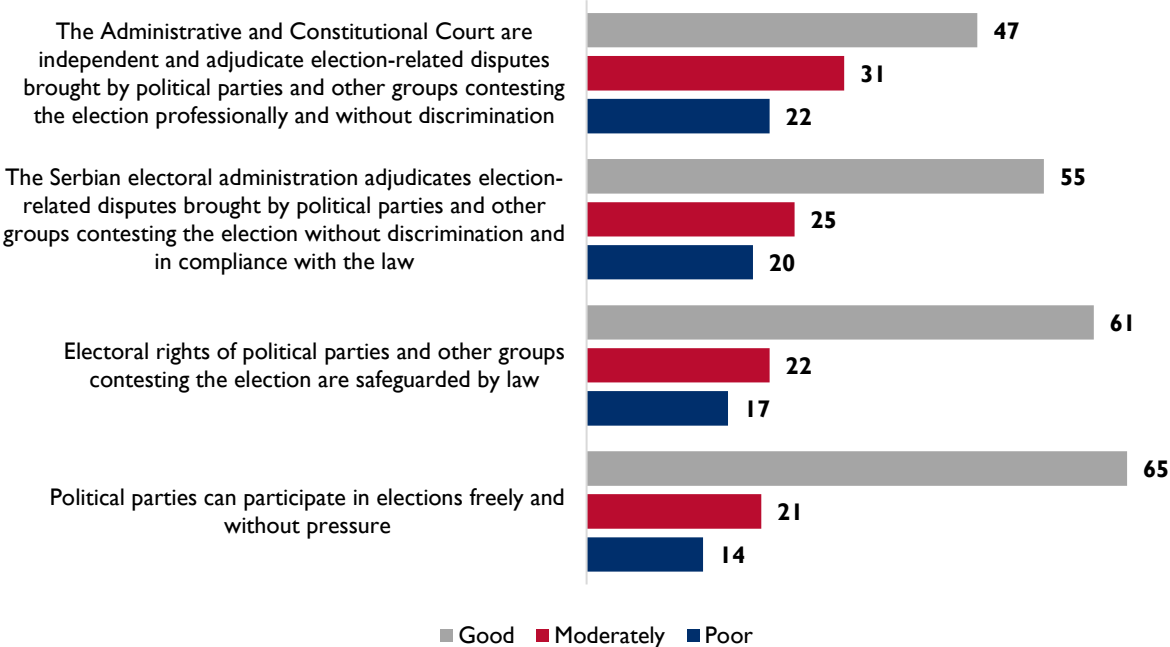
(1) the average score on a scale of 1 to 5 for the claim ‘participants in the elections can participate freely and without pressure’ is 3.80 or, as a percentage, 65% of citizens gave it a score of four or five, as opposed to 14% of citizens who gave it a one or two.

(2) the average score on a scale of 1 to 5 for the claim ‘suffrage of political parties and other participants in the elections are protected by legal order’ is 3.62 or, as a percentage, 61% of citizens gave it a score of four or five, as opposed to 17% of citizens who gave it a one or two;

(3) the average score on a scale of 1 to 5 for the claim ‘Election Administration in Serbia (Republic Electoral Commission, city and municipal electoral commissions, polling boards) solve election disputes initiated by election contestants without discrimination and in accordance with the law’ is 3.48 or, as a percentage, 55% of citizens gave it a score of four or five, as opposed to 20% of citizens who gave it a one or two;

(4) the average score on a scale of 1 to 5 for the claim ‘Administrative and Constitutional courts act independently and solve election disputes initiated by participants in the elections professionally and without discrimination’ is 3.31 or, as a percentage, 47% of citizens gave it a score of four or five, as opposed to 22% of citizens who gave a one or two.

Chart 4.3.5.2. Evaluation of protecting the vote and election dispute resolution in passive suffrage (in %) ¹⁰⁰

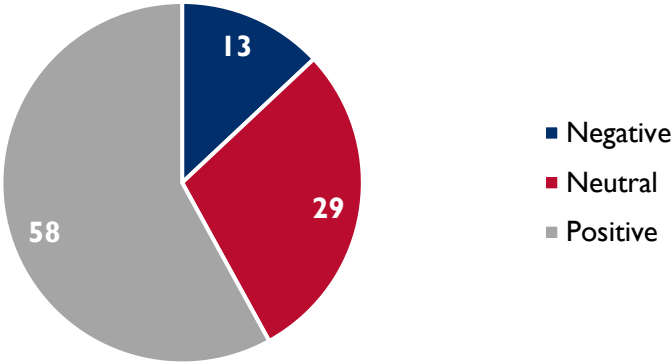


The synthetic indicator is made of four above-mentioned claims, and based on the findings obtained, it can be concluded that the majority of the population holds the view that the process of election dispute resolution in suffrage is good, while 13% of citizens have a negative view, alongside 29% of citizens with a neutral attitude to this process. Citizens over 50, with primary school education, coming from Belgrade, satisfied with their standard and the

¹⁰⁰The responses from those citizens who had an attitude were presented; there were between 93% and 97% of them respectively, depending on the claim.

country’s direction have a more positive attitude, while citizens aged 30-39, with a university degree, coming from Vojvodina, are predominantly dissatisfied with their standard and direction that Serbia is moving in.

Chart 4.3.5.3. Evaluation of protecting the vote and election dispute resolution in passive suffrage (synthetic indicator)

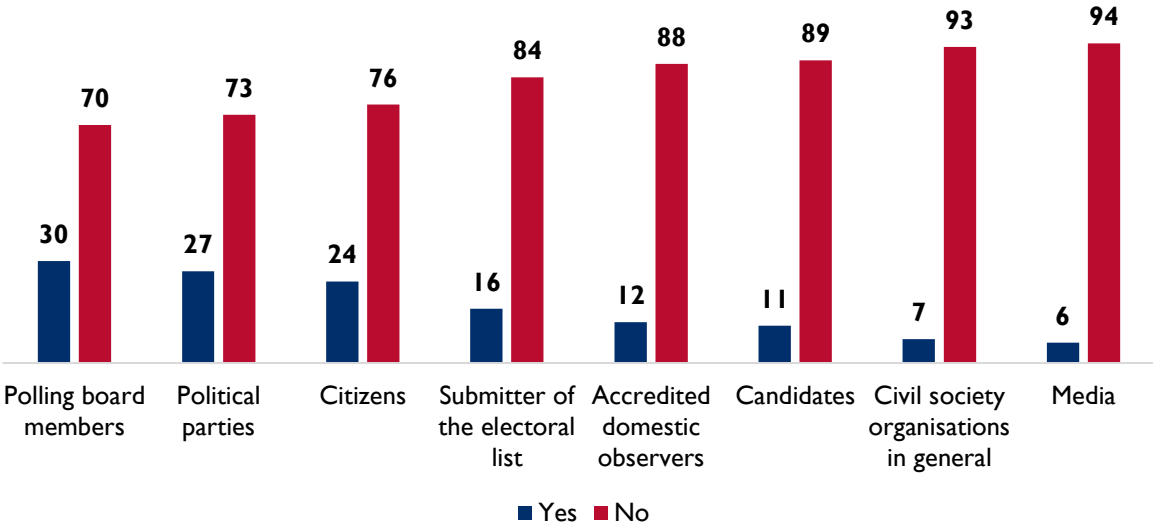


4.3.6. Filing complaints

An important segment in election dispute resolution is the awareness of who has the right to file a **complaint because of election irregularities**. Serbian legislation says these can be citizens (voters), candidates and submitters of candidate lists. The results from the survey indicate that 43% of citizens were initially unable to answer this question or could not make an assessment, so the answers by 57% of the citizens who answered were presented.

The data is not encouraging and provides ample room for future interventions.

Chart 4.3.6.1. Who has the right to file complaints? (in %)

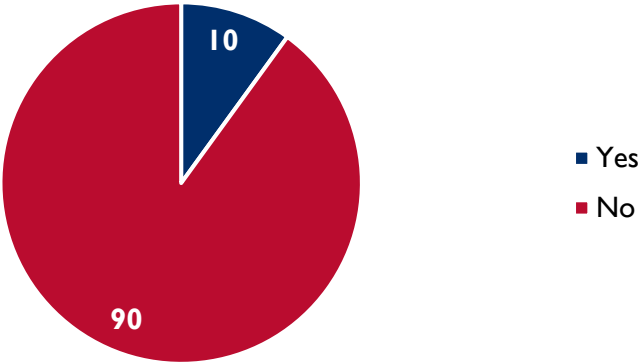


24% of the respondents know that citizens have the right to file complaints; 16% know that submitters of candidate lists also have the right to complain and one in nine respondents knew that candidates can submit complaints. In neither case can we talk of any satisfactory

percentages. Confusion apparently occurs with members of polling boards and political parties, as 30% and 27% of citizens respectively believe they also have the right to file complaints. Our interpretation is that citizens find it logical and expected for polling board members to have this right while the parties are clearly identified with submitters of candidate lists or candidates. On the other hand, 12% of citizens think that this right belongs to accredited observers, 7% of citizens believe that civil society in general has this right and 6% that the media can do it.

The logical outcome is that citizens do not know how to file a complaint to a great extent as this was confirmed by as many as 90% of respondents. One in ten know this, but this is not sufficient or encouraging data.

Chart 4.3.6.2. Do you know how to file a complaint? (in %)

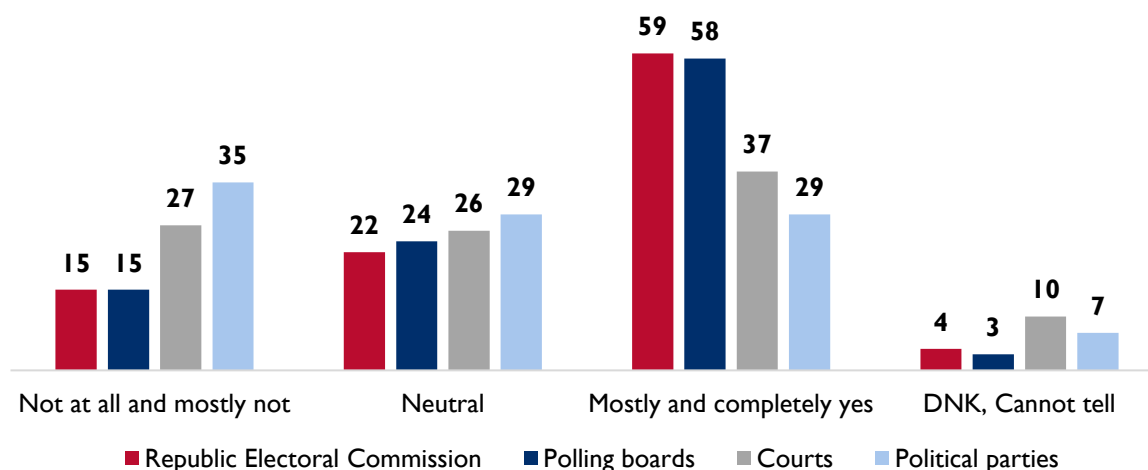


4.3.7. Trust in the institutions

Trust in institutions is a social psychological category and trust was gauged for four institutions in this survey -- the REC and polling boards that are election administration bodies, for political parties as key stakeholders in elections and for courts, whose role is important in the last instance in resolving election disputes.

Confidence is relatively high for the election administration bodies (REC and polling boards) and is 59% and 58%, respectively, while it is relatively low for courts and political parties (37% and 29%, respectively). On the other hand, 35% show distrust in political parties, 27% do not trust courts, while 15% of respondents do not trust the REC and polling boards, respectively. Summing up these findings, we conclude that confidence in the electoral bodies is at a level that can guarantee basic legitimacy of the electoral process with a note that there is ample room for improvement. Distrust in the courts reflects a general lack of trust in the judiciary, while parties have been at the bottom of such lists for years and changes cannot be expected within a short timespan or through *ad hoc* responses. One of the reasons of relatively high trust can also be the effects of priming where respondents would answer questions aware that this survey covers a narrow topic and that it is focused rather than an omnibus research. Another reason is the transfer of citizens' trust to the ruling party, which also applies to the bodies where the ruling party's representatives hold the majority or exert a dominant influence.

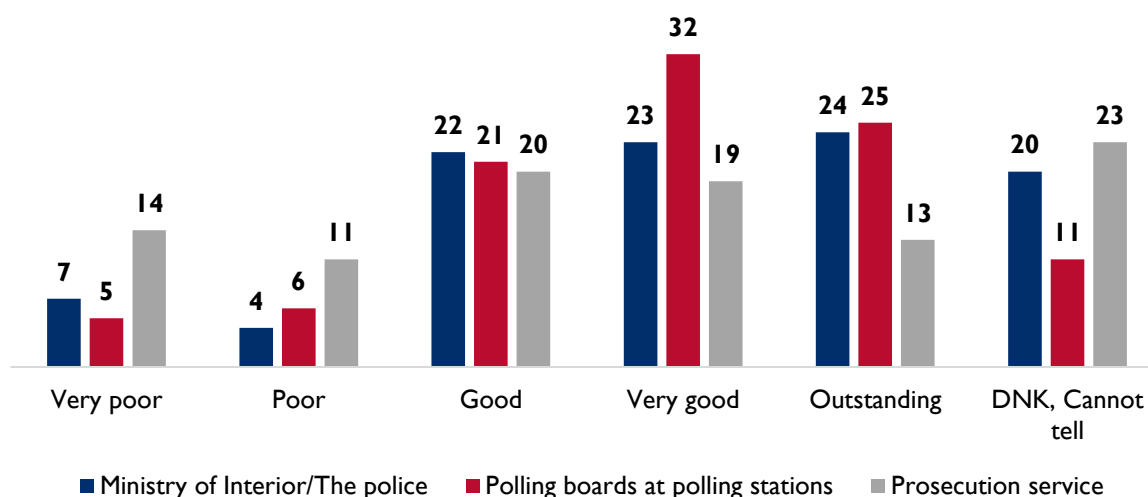
Chart 4.3.7.1. *Trust in the institutions (in %)*



4.3.8. Assessment of the institutions' performance

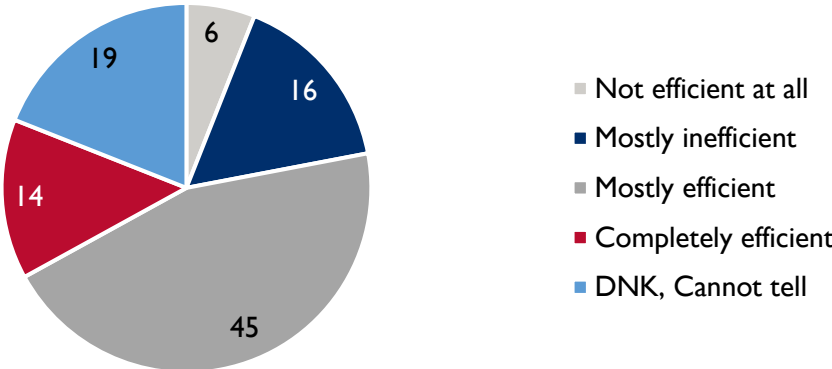
The performance of three institutions was evaluated on a scale of 1 to 5 (with five being the highest score): The Ministry of Interior (MUP), polling boards and prosecutors. Nearly half of the respondents (47%) were satisfied with the work of the MUP (very good and excellent scores), while 13% of the respondents expressed dissatisfaction by giving them ones or twos for their work. Findings almost identical to those for trust were obtained in the case of polling boards: satisfaction surpasses dissatisfaction by far since 57% of citizens said they were satisfied with the work of polling boards versus 11% of citizens who were not. Finally, 32% of respondents were satisfied with the prosecution's work, whereas one quarter of the respondents were not. Unlike questions of trust in institutions, the performance assessment included a relatively high percentage of people who did not know how or were unable to assess their performance, especially in the case of prosecutors where nearly one in four persons had no attitude or was unaware of their work.

Chart 4.3.8.1. *Are you familiar with the role of the following institutions/organisations in the administration of justice and if so, how do you assess their performance in this field? (in %)*



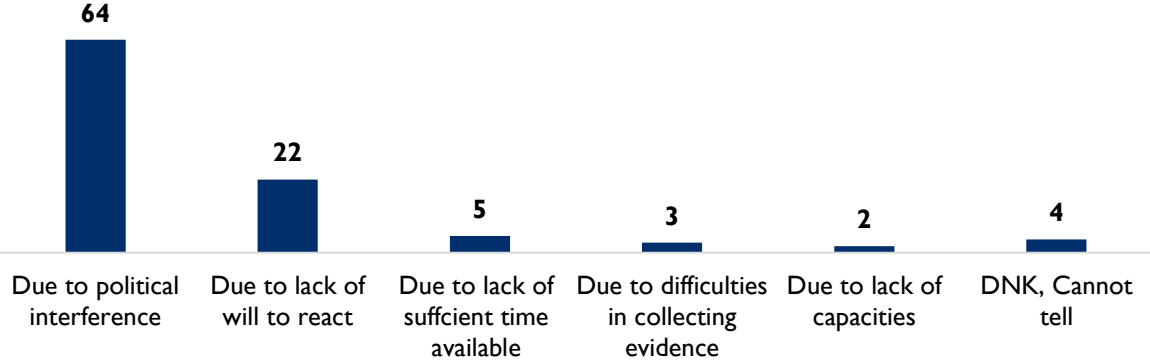
59% of respondents were satisfied (mostly + fully) with the effectiveness of the REC in election dispute resolution, which is consistent with the findings obtained in terms of trust in this institution. Just over one in five citizens (22%) were not satisfied with the efficiency of the REC. The strongest and clearest distinction in the answers can be seen when cross-referencing this question with the country's direction because it can be seen that citizens who say Serbia is moving in the right direction are more satisfied REC's efficiency in election dispute resolution, and vice versa. Also, citizens living in intolerable or hardly tolerable circumstances are predominant in the group of citizens who maintain that the REC is inefficient in resolving electoral disputes.

Chart 4.3.8.2. Efficiency of the Republic Electoral Commission (in %)



What are the reasons for the REC's inefficiency in resolving election disputes, taking into consideration only the answers from those citizens who previously stated that the REC is inefficient? Two-thirds of citizens (64%) quoted political reasons and said the REC is not efficient because of political influence. One fifth of citizens (22%) are of the position that the REC as a body lacks the will to react, while all other reasons take up 5% (such as short deadlines for dispute resolution) or under 5% (difficulties in collecting evidence and low capacity).

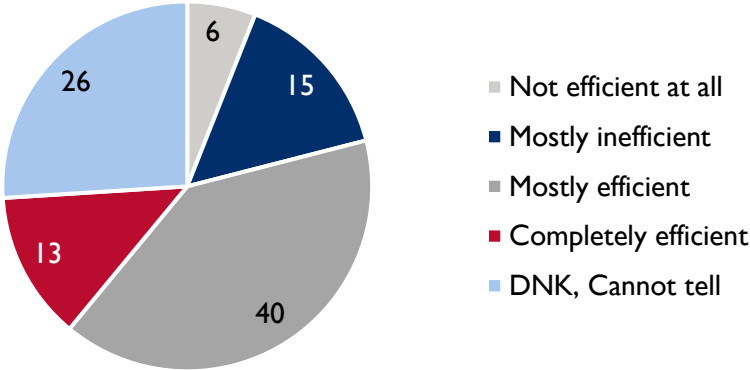
Chart 4.3.8.3. Reasons for the inefficiency of the Republic Electoral Commission (in %, of the citizens who said it was inefficient)



When analyzing data on the efficiency of the Administrative Court as the second instance in election dispute resolution, it can be concluded that the perception of citizens reflects their general attitude toward the dispute resolution process, as the results obtained indicate a strong correlation with the results obtained in the previous question, regarding the efficiency of the REC. Namely, 53% of citizens say that the Administrative Court is efficient in election dispute resolution (as with the REC, the prevailing attitude is that it is *mostly efficient*), while 21% of citizens consider the Administrative Court inefficient. The difference when compared to the REC is a higher percentage of citizens who do not have an opinion, but this is expected because the level of interaction between citizens and the REC is much higher, as is the media visibility of the REC as a central institution in the conduct of the elections.

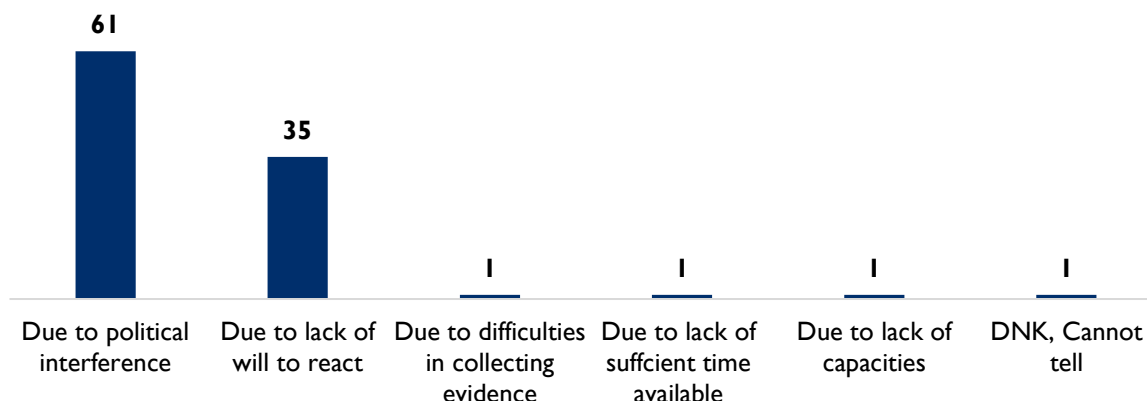
Citizens between 30 and 39 years of age are more critical to the work of the Administrative Court, and a similar trend was observed in the REC’s efficiency assessment. Similarities exist also when it comes to the perception of the work of the Administrative Court and the assessment of the citizens in terms of the direction that Serbia is taking and their standard of living – citizens who say Serbia is going in a bad direction or that their lives are intolerable/hardly tolerable are also more critical – but the gaps are smaller when compared with REC.

Chart 4.3.8.4. Administrative Court Efficiency (in %)



Political influence is a key reason for inefficiency in resolving election disputes by the Administrative Court, as stated by 61% of respondents which is, again, consistent with how REC efficiency is perceived. However, the percentage of citizens who say that the main reason for the inefficiency of the Administrative Court is the lack of will to react is 35%, which is higher if compared to the REC. All the other reasons are negligible in this case.

Chart 4.3.8.5. *Reasons for the inefficiency of the Administrative Court (in %, of the citizens who said it was inefficient)*

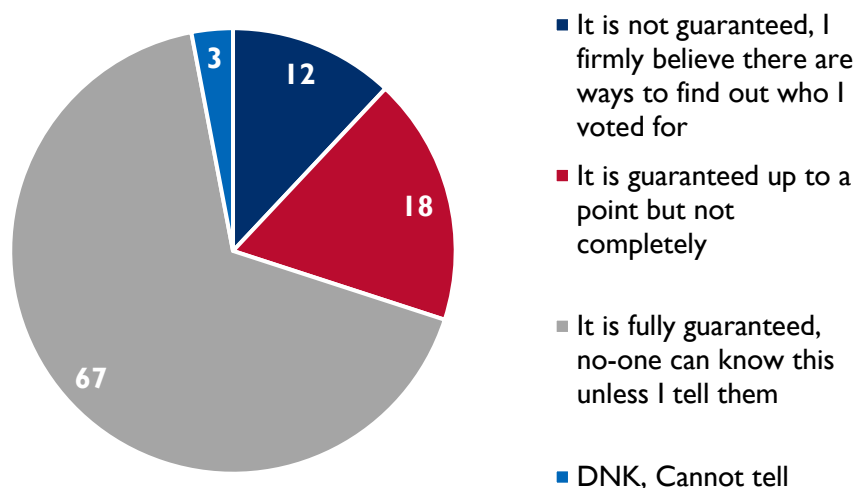


4.3.9. Secrecy of the ballot

The secrecy of the ballot belongs to recurring problems that crop up from one election to the other and is often highlighted as important by the opposition, but also by international and domestic observers. In parallel, there is also doubt in the public whether the secrecy is guaranteed, and it is often seen through a colloquial sentence: ‘they can definitely know how I voted.’ This claim is proven by this survey because as much as 67% of citizens (two out of three) say the secrecy is not guaranteed and there is a chance to find out who they voted for. On the other hand, there are 12% of citizens who have no doubt that secrecy is fully guaranteed, while 18% of respondents are of the opinion that the secrecy of the ballot is somewhat guaranteed. These figures very clearly point to future courses of action that must be linked to additional efforts in the layout of the polling stations, but within an awareness raising campaign for citizens explaining they have a right to ensure the secrecy of the ballot.

As with most of the previous questions, the watershed in the answers is made of questions about the direction in which Serbia is moving and their living standard. Those who believe Serbia is moving in the right direction or who are satisfied with the standard of living are also predominantly confident that secrecy is guaranteed and vice versa. This, in fact, tells us that the general dissatisfaction with the trends in the direction taken by Serbia is equal to the dissatisfaction with the Serbian government and that these views spill over in the answers regarding the quality of the election process in general. Dissatisfaction with government is the crucial reason and it does not necessarily have to be accompanied by objective indicators of their standard of living, i.e., citizens dissatisfied with the government individually state their standard is above average.

Chart 4.3.9.1. *Guaranteed secrecy of the ballot (in %)*



4.3.10. Pressure on voters and (in)direct citizen experience

The pressure on voters implies all those *unauthorized activities that the participants in the elections are focusing on (potential) voters with the goal of maximizing their election potential*. These occur in a variety of scopes and forms in virtually every election cycle and have a significant impact on the perception of electoral integrity and confidence in institutions dealing with the implementation and organization of the electoral process, but also in the institutions that are competent to implement the administration of justice efficiently and in accordance with the law.

As explained in previous sections of the analysis, the local legislative framework provides for **criminal offenses against suffrage**¹⁰¹, thus prohibiting violations of the right to stand for election and vote, and stipulating jail time and/or fines for giving and receiving bribes in connection with voting, abuse of the right to vote, drafting of false voter lists, preventing the vote from being held, violating the secrecy of the ballot, falsifying election results and destroying voting documents. In other words, it is absolutely forbidden to promise and/or to receive awards, gifts, or benefits in exchange for (non-)voting, as well as voting repeatedly or on behalf of another person¹⁰², to draw up inaccurate voter lists and to make unlawful changes to it and to infringe the secrecy of the ballot in any way. All sanctions shall be tightened in the event that any of these acts are made a member of the polling board or other person in the performance of the voting-related duties. In addition to the Criminal Code, other regulations clearly prohibit any **pressure on employees and persons engaged on other grounds in public enterprises** regarding the support of political entities or candidates in the elections, or **the unlawful use of public resources in the election campaign**¹⁰³.

¹⁰¹ Criminal Code, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 - corr, 107/2005 - corr, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019. Chapter 15, Articles 154-162.

¹⁰² Except in the case of the assisted voting.

¹⁰³ The Law on Public Enterprises, Official Gazette of the Republic of Serbia, No. 15/2016 and 88/2019, Article 49, Law on the Anti-Corruption Agency, Official Gazette of the Republic of Serbia, No. 97/2008-42, 53/2010-13, 66/2011-48 (CC), 67/2013-13 (CC), 112/2013-3 (authentic interpretation), 8/2015-88 (CC), 88/2019-4, Articles 2 and 29

Apart from activities prohibited by the Criminal Code and other regulations governing election processes, there is a set of activities in practice that are **not prohibited** and are often interpreted in public as illegal due to the circumstances under which they are taking place. This primarily implies the so-called **safe vote databases** (*capillary votes*), namely the databases of supporters/members that participants in the elections make to contact them more often and motivate them to go to the polls. This is closely linked to **contacting supporters and members by telephone or in some other way and the door-to-door campaign** – as basic and direct ways of contacting voters and supporters to promote policies, programs and ideas and to attract voters to vote for these programs. However, it is particularly important to point out here that there are many indications that **these activities often cross the limit of what is allowed and become illegal**. This mostly involves the following cases:

- 1) Data collection and contacting voters based on **copies of voter lists**, i. e. on the basis of **parallel voter records**. the legislative framework prohibits the possession of copies of voter lists, as the legally binding *Instructions for implementing the Law on the Single Electoral Register*¹⁰⁴ stipulate that the electoral register and voter lists are used exclusively for the purpose of conducting elections or a referendum. In addition to this provision, possession of parts of the electoral register is contrary to regulations governing personal data protection.
- 2) Unlawful or unauthorized **collection of personal data** without the express consent of the citizens, contrary to regulations governing personal data protection. This data collection may be the result of purchasing databases from companies or legal entities that have collected personal data for other purposes but may also be a result of misuse of administrative resources.
- 3) Re-contacting voters **who requested that their data be deleted from the database**, or those voters who have not given their consent to be contacted;
- 4) The collection of **safe votes in public enterprises** and the misuse of other administrative resources or positions.

Given the different forms and scope of the activities described in this and previous chapters, we examined to what extent have citizens been exposed to authorized and unauthorized activities of political parties and movements during the **June 2020 elections**, or how they perceived the pressures and abuses of voting rights. In addition to perception and exposure to pressures, we also investigated the citizens' relationship to bodies responsible for the administration of justice.

4.3.10.1. *Citizens' exposure to party activities during the June 2020 elections*

Firstly, we measured the citizens' exposure to (1) telephone calls from a political party; (2) telephone calls during election day, insisting that they go to the polls; (3) visits by party activists in their home; (4) visits by party activists in their workplace and (5) stopping by party activists in the

¹⁰⁴ *Instructions for the implementation of the Law on the Single Electoral Register, Official Gazette of the Republic of Serbia No. 15/2012, 88/2018 and 67/2020, Chapter III: The manner of using the electoral register, excerpts from the electoral register (voter lists) and insight into the voter register.*

street/square. As stated above, by their nature, these activities are not unauthorized unless they imply illegally obtained data, misuse of administrative resources or contacting those citizens who do not agree with it or have not given their consent.

The lowest percentage of citizens claiming to have been exposed to such activities once or more during the 2020 parliamentary elections is found in the case of *party activists visiting the workplace* – **2.7 %**. This was followed by *visits by party activists in the house/apartment*, experienced by eight times more respondents – **22.1%** and then *a stop by party activists on the street*, confirmed by **26.5%** of the respondents. The largest number of citizens experienced *telephone calls before or during the election day with a push to vote* – **27.2 %**, or telephone calls from a political party that participated in the election process – **34.1 %**.

Chart 4.3.10.1.1 during the June elections, were you... (in %)

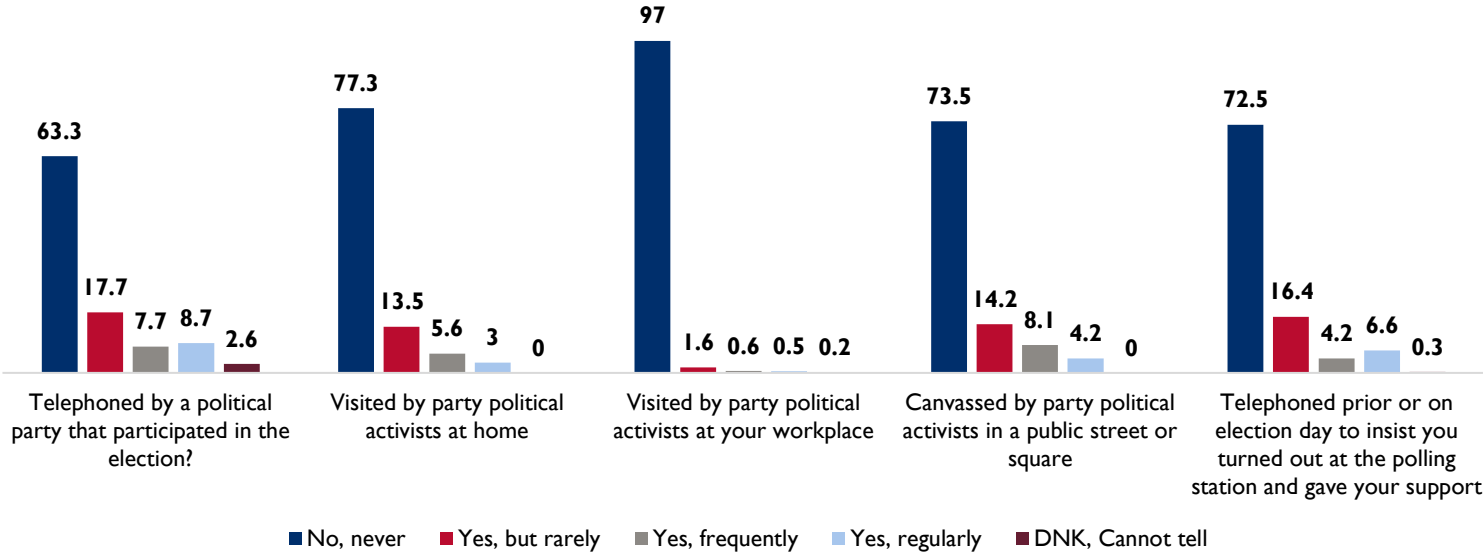
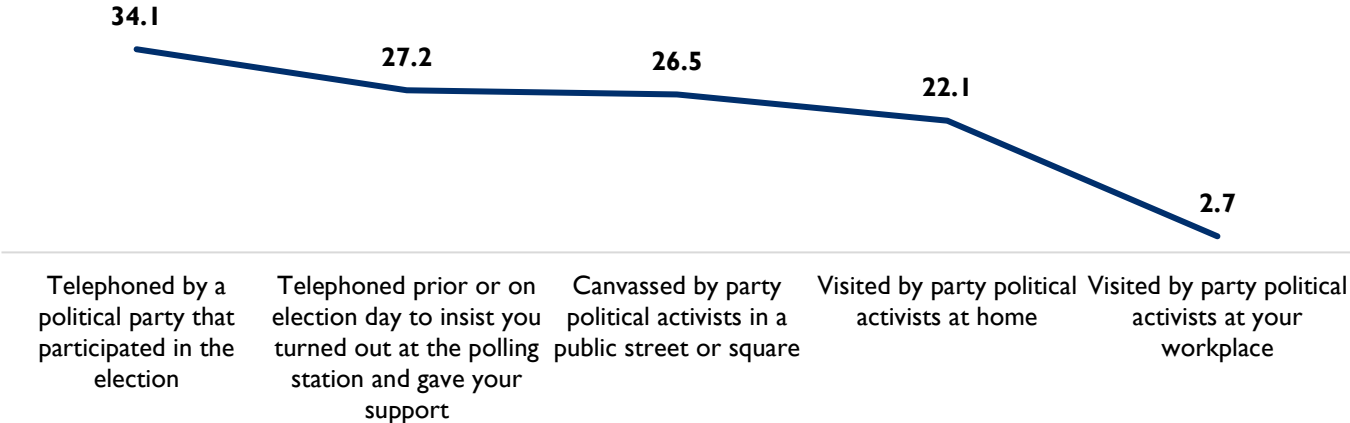
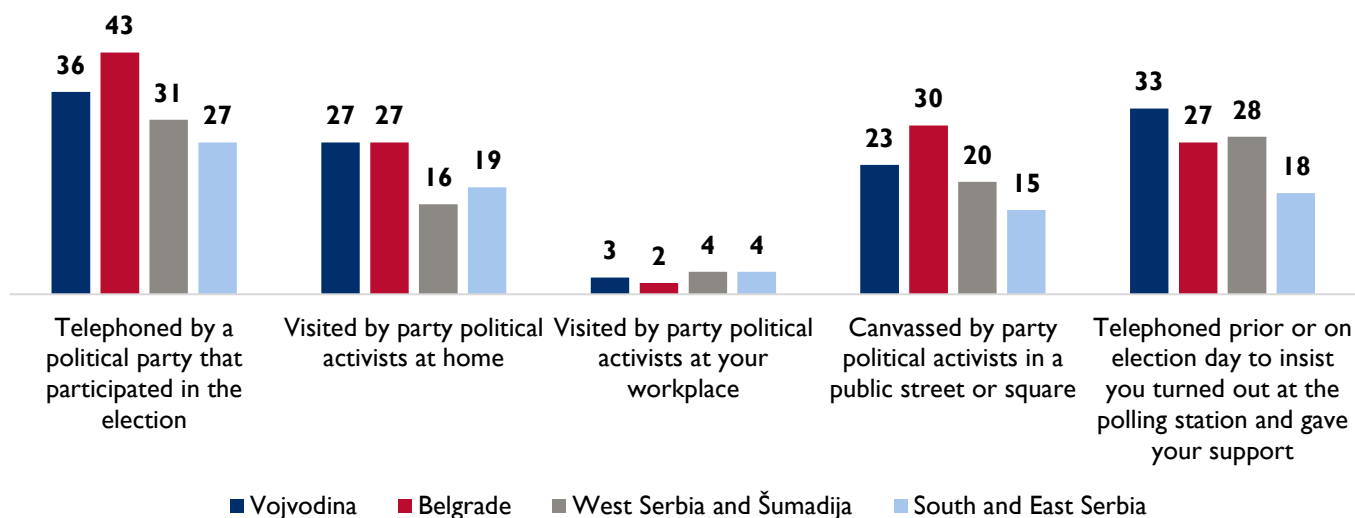


Chart 4.3.10.1.2. During the June elections, were you... (the answers are presented in summary, but rarely + yes, often + yes, regularly) in %



Differences in the frequency of responses can be observed owing to the region that the respondents come from, so Belgrade residents are called by telephone and stopped on the street/square more often than other regions during the election process, and they were exposed to visits by party activists in households as much as residents of Vojvodina. On the other hand, Vojvodina respondents were more frequently called by telephone during election day when compared to citizens from other regions. More detailed differences are presented in the following chart.

Chart 4.3.10.1.2. *Exposure to party activities during June elections, according to region (in %)*



If the above percentages of respondents who were *regularly contacted* or visited by political parties during the election cycle are reflected on the total electorate in Serbia, taking into account two criteria - (1) **the total number of voters registered in the single electoral register** in the June 2020 elections - 6,584,376 and (2) **the 2019 adult population estimate**, according to the Statistical Office of the Republic of Serbia - 5,736,716, we get the following data on *the maximum projected range of citizens regularly exposed to some of these party activities during the June 2020 election cycle* - table 4.3.10.1.1.

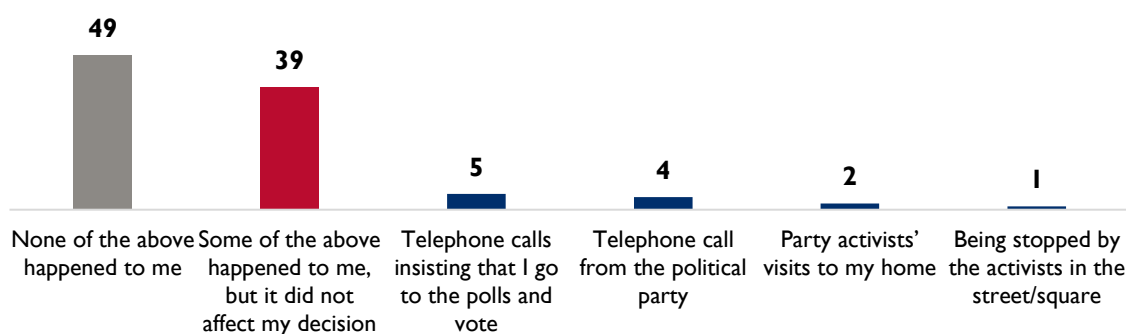
According to these projections, the maximum number of voters who received a call from a political party during the June elections ranges between ≈ 499 and ≈ 573 thousand, with no more than ≈ 434 thousand being invited to vote. Between ≈ 240 and ≈ 276 thousand citizens had a meeting with party activists, up to ≈ 197 thousand were visited in the household and up to ≈ 32 thousand were visited at the workplace.

Table 4.3.10.1.1. The maximum projected range of citizens *regularly* exposed to some of these party activities during the June 2020 election cycle.

Claim (June 2020 elections)	% of respondents (reply: 'they did, regularly')	Absolute number compared to the total number of registered voters (REC, 2020) ¹⁰⁵	Absolute number compared adult population estimate (SORS, 2019) ¹⁰⁶
I got a phone call from a political party during the election cycle	8.7	572,840	499,094
I got a call from a political party during or before the election day, insisting that I go out and vote for them	6.6	434,569	378,623
I was visited by party activists in my house	3	197,531	172,101
I was visited by party activists in my workplace	0.5	32,920	28,684
I was stopped by party activists in the street/square	4.2	276,544	240,942

In summary, **51% of respondents** were contacted by political parties in some way – by telephone, door-to-door campaign or by being stopped on the street. **As many as 39% of citizens said that such contact (whether it happened once or several times) did not affect their decision regarding the elections**, while 12% reported that some of the activities listed above did affect their decision. 5% of the respondents were most affected by the telephone calls insisting that they go to the polls, 4% were affected by the call from a political party during the election cycle, 2% were affected by the party activists' visits to their home, and 1% was affected by being stopped by activists in the street/square.

Chart 4.3.10.1.4. If any of the above happened to you, what affected your decision about the elections the most? (in %)

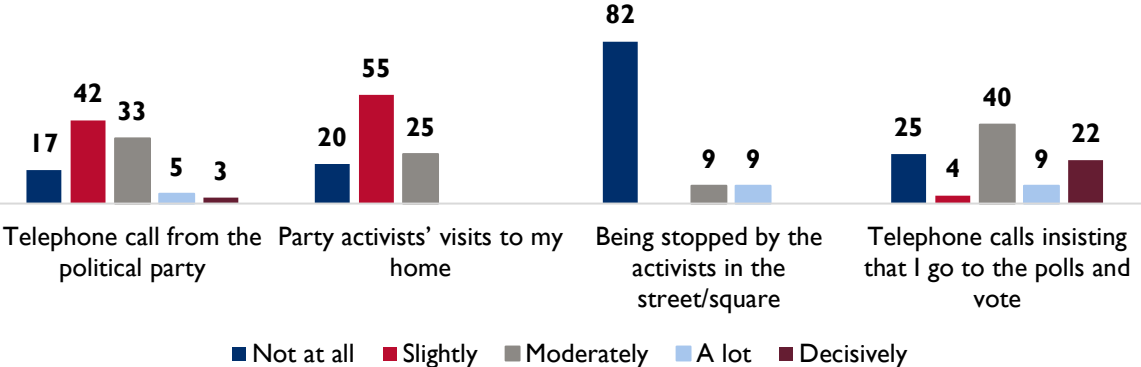


¹⁰⁵ Report on the overall results of the Elections for MPs to the National Assembly, REC, 2020 Available at: <https://www.rik.parlament.gov.rs/tekst/9386/ukupni-rezultati-izbora-za-narodne-poslanike-narodne-skupstine-2020-godine.php>

¹⁰⁶ 2021 Statistical calendar of the Republic of Serbia, Statistical Office of the Republic of Serbia, page 34. Available at https://publikacije.stat.gov.rs/G2021/Pdf/G2021_17014.pdf

The findings show that the greatest impact on the decision about the election, when measured on the not-at-all/critical scale can be attributed to **being urged over the telephone to go to the polling station and vote for a particular party during or before the election day** – 31% of respondents exposed to this type of contact indicated that this affected them much or that it was crucial (9 + 22) – Chart 4.3.10.1.5. By the extent of impact, the runner-up activity is being stopped by activists in the street/square (9%), and then getting a call from the political party during the election cycle (8%). At the same time, most of the respondents stated that precisely these encounters with party activists were an action that had little to no impact on them – as many as 82%.

Chart 4.3.10.1.5. *To what extent did the activity you mentioned previously affect your election decision in the June elections? (in %)*



Finally, when we cross-reference exposure to these activities with the attitude towards the direction taken by Serbia, we see that these are experienced significantly more frequently by those respondents who believe Serbia is moving in the wrong direction, as opposed to those who believe the direction is right. The difference is triple in some cases: for example, 14% of those who believe Serbia is going in the right direction claimed that they were visited by party activists in their home, as opposed to 43% of those who have the opposite belief.

Table 4.3.10.1.3. *Exposure to partisan activities during the June elections (one or several times, in %), according to the attitude toward the direction in which Serbia is moving*

The attitude towards the direction in which Serbia is moving→	Serbia is moving in the right direction	Serbia is moving in the wrong direction
Exposure to partisan activities ↓		
I got a phone call from a political party during the election cycle	27.5	50.7
I got a call from a political party during or before the election day, insisting that I go out and vote for them	20	48.5
I was visited by party activists in my house	14.3	42.9
I was visited by party activists in my workplace	1	6.6
I was stopped by party activists in the street/square	18.2	46.2

4.3.10.2. *Citizens' exposure to unauthorized pressure during the June 2020 elections*

Thus far we dealt with activities that are allowed in theory and which by definition do not represent direct pressure on voters, with a note that very often in practice such actions do get the **illegal character** – either due to the way data are obtained or because of how the data are processed. However, a special battery of questions measured how often (and whether) citizens and their family members **encountered illegal pressures and how they were affected**.

Firstly, as shown in the table and on the Chart below, the percentage of respondents who felt pressured to vote in a certain way once or several times ranges between **0.2% in cases of threats of physical attack if they do not support a certain political party** and **up to 11.5 % in case of promises to clean up the respondents' neighborhood or part of town if a certain political party is supported**. Promises of a workplace (6.5%) as well as insisting on providing safe votes (6.6%) also go above 5%. Promises of compensation in terms of food/firewood or other non-pecuniary form was given to 4.2% of the respondents in the sample, promises of a financial prize was received by 3%, and 1.3% of the respondents were threatened that they will lose their jobs if they did not vote for a particular party. Finally, 0.8% of voters were requested to vote publicly and thus confirm who they voted for, and 0.5% were required to photograph their ballot.

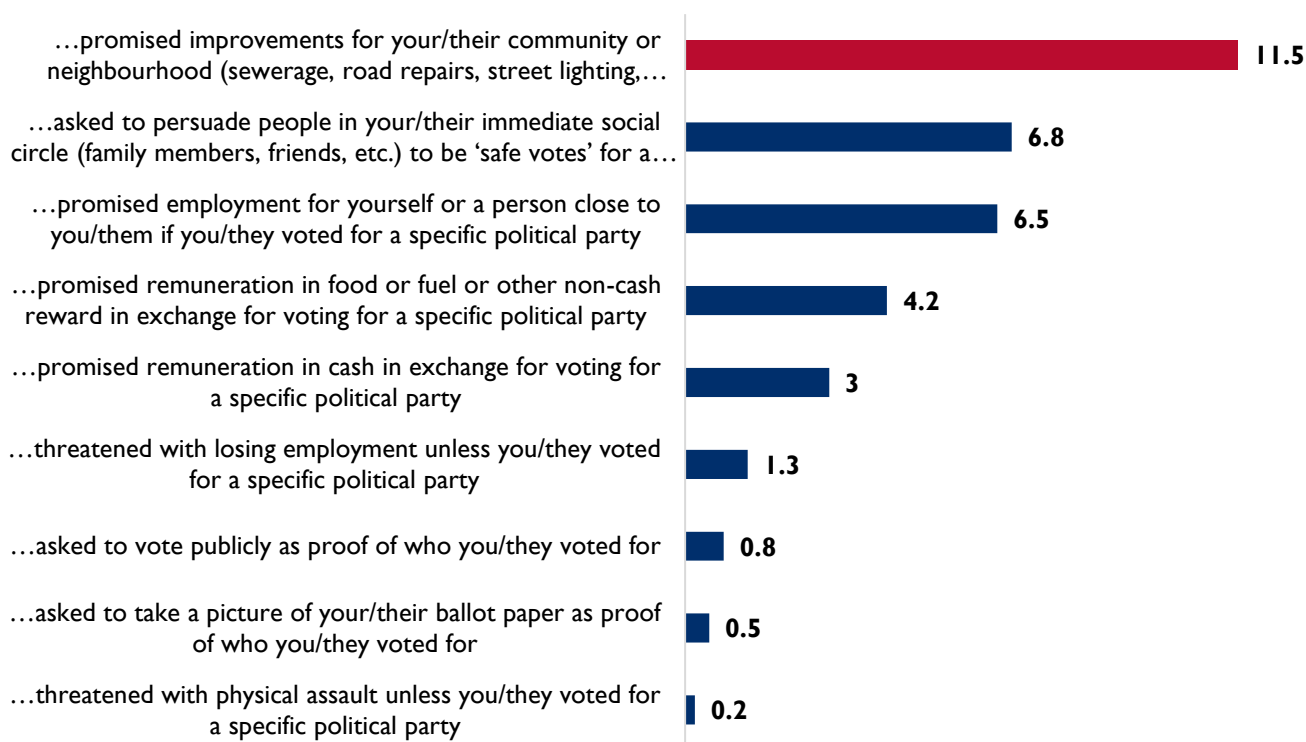
On average, not more than 1% of respondents did not want to answer questions about exposure to pressures.

Table 4.3.10.2.1. *Did this happen to you or any of your immediate family members in the June 2020 elections... (in %)*

	No, never	Yes, once	Yes, several times	No reply
...were you promised that you or someone close to you will get a job if you support a political party	93	3	3.5	0.4
...were you promised that you will receive financial compensation if you support a political party	96.7	2.4	0.6	0.3
...were you promised or given compensation in the form of food, firewood, or other non-pecuniary compensation if you support a political party	95.7	2.7	1.5	0.2
...were you promised a clean-up of the neighborhood or part of town you live in (introduction of sewage lines, paving, introduction of street lighting...) if you support a political party	87.3	5.8	5.7	0.9
...were you threatened that you will lose your job if you do not support a political party	98.7	0	1.3	0
...were you threatened that you will be physically attacked if you do not support a political party	99.8	0.2	0	0

...were you asked to photograph the ballot to confirm who you voted for	99.5	0.4	0.1	0
...were you asked to vote publicly and thus confirm who you supported	99	0.5	0.3	0.2
...were you asked to get people close to you (relatives, friends...) to vote for a political party, i.e., to be a 'sure vote'	92.2	2.2	4.6	1

Chart 4.3.10.2.1. Respondent exposure to pressures (the answers 'one + several times' are presented in summary), in %



A more detailed analysis of the socio-demographic profile of citizens who were more frequently subject to illicit pressures showed no relevant statistical differences compared to the majority of the criteria. Exceptions are respondents aged 30 to 39 who predominantly confirmed that they were asked to vote publicly or were promised financial compensation in exchange for their vote, as well as subjects who graduated/did not graduate from primary school, who predominantly said they were promised non-pecuniary compensation in exchange for their vote.

As with the previous set of claims, it can also be seen here that **those respondents who believe Serbia is moving in a bad direction or are undecided about this issue are more often or more strongly exposed to pressures.** In addition, a more detailed analysis shows a rule (with occasional exceptions) that the above-average exposure to pressures is shown **by respondents who assess their quality of life as intolerable or hardly**

tolerable, but also those who are not regular voters or **who do not come out to vote or do it only occasionally**.

This can be interpreted in multiple ways. Firstly, one explanation can be that voters who do not support the direction taken by Serbia (traditionally belonging to the body of voters dissatisfied with policies and the situation in society, vote for the opposition and generally distrust institutions¹⁰⁷) more often identify or recognize certain actions as unauthorized pressures, or reflect their general dissatisfaction on the electoral process to a greater extent. On the other hand, considering the specific circumstances under which the previous elections were held, it can also be interpreted as if those voters who are generally dissatisfied with political goings-on or who lack clear political affiliation were more often targeted and encouraged to make a certain decision in the elections. Finally, and in relation to what was previously stated, since there was virtually no uncertainty about the results in the last elections, but the greater focus was on the turnout¹⁰⁸, it is certain that voters who traditionally do not support the direction Serbia is moving in felt more pressured to act in a certain way and to make an election decision accordingly.

If percentages of those respondents who said that they or their immediate family members had been subjected to pressure *several times* during the June 2020 elections, taking into account two criteria - (1) **the total number of voters registered in the single electoral register** in the June 2020 elections - 6,584,376 and (2) **the 2019 adult population estimate**, according to the Statistical Office of the Republic of Serbia - 5,736,716, we get the following data on the *maximum possible range of respondents exposed to pressures at least once* - table 4.3.10.2.2.

Table 4.3.10.2.2. *The maximum projected range of citizens exposed several times to pressures during the June 2020 election cycle*

Claim (June 2020 elections)	% of respondents (reply: 'yes, several times')	Absolute number compared to the total number of registered voters (REC, 2020) ¹⁰⁹	Absolute number compared adult population estimate (SORS, 2019) ¹¹⁰
...were you promised that you or someone close to you will get a job if you support a political party	3.5	230,453	200,785
...were you promised that you will receive financial compensation if you support a political party	0.6	39,506	34,420

¹⁰⁷ Based on previous CeSID surveys.

¹⁰⁸ In the context of a major part of the opposition political parties and movements boycotting the election.

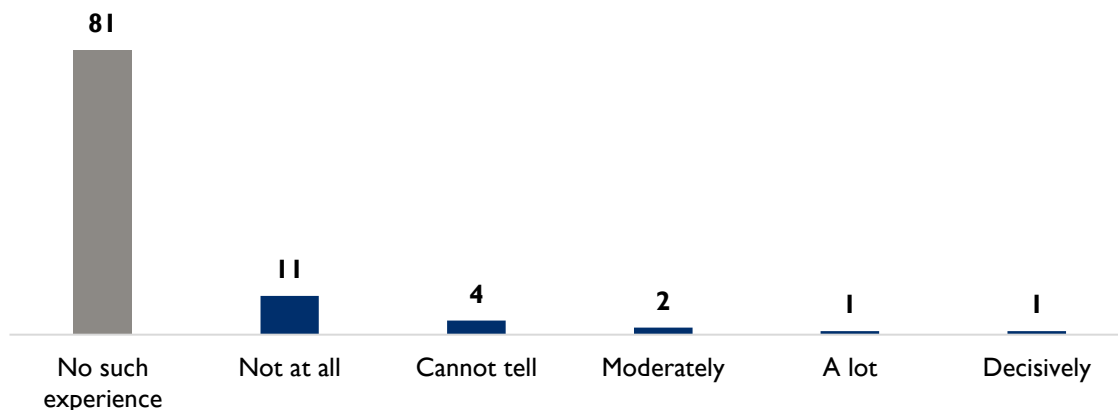
¹⁰⁹ Report on the overall results of the Elections for MPs to the National Assembly, NEC, 2020 Available at: <https://www.rik.parlament.gov.rs/tekst/9386/ukupni-rezultati-izbora-za-narodne-poslanike-narodne-skupstine-2020-godine.php>

¹¹⁰ 2021 Statistical calendar of the Republic of Serbia, Statistical Office of the Republic of Serbia, page 34. Available at <https://publikacije.stat.gov.rs/G2021/Pdf/G202117014.pdf>

...were you promised or given compensation in the form of food, firewood, or other non-pecuniary compensation if you support a political party	1.5	98,765	86,050
...were you promised a clean-up of the neighborhood or part of town you live in (introduction of sewage lines, paving, introduction of street lighting...) if you support a political party	5.7	375,309	326,993
...were you threatened that you will lose your job if you do not support a political party	1.3	85,597	74,577
...were you asked to photograph the ballot to confirm who you voted for	0.1	6,584	5,736
...were you asked to vote publicly and thus confirm who you supported	0.3	19,753	17,210
...were you asked to get people close to you (relatives, friends...) to vote for a political party, i.e., to be a 'sure vote'	4.6	302,881	263,889

Overall, 81% of respondents felt no undue pressure during the June elections. What is encouraging is that the highest number of respondents still claim that the pressures they experienced **did not affect their decision in the elections – 11 %**. About 4% of respondents could not assess whether the pressure on them had an impact, 2% believed the impact was medium, and 1% believe that the pressure affected them a lot or very much/critically. In other words, **4% of the respondents made their decision in the elections under the influence of certain pressures exerted on them.**

Chart 4.3.10.2.2. *To what extent did the pressures affect your election decision in the June elections? (in %)*



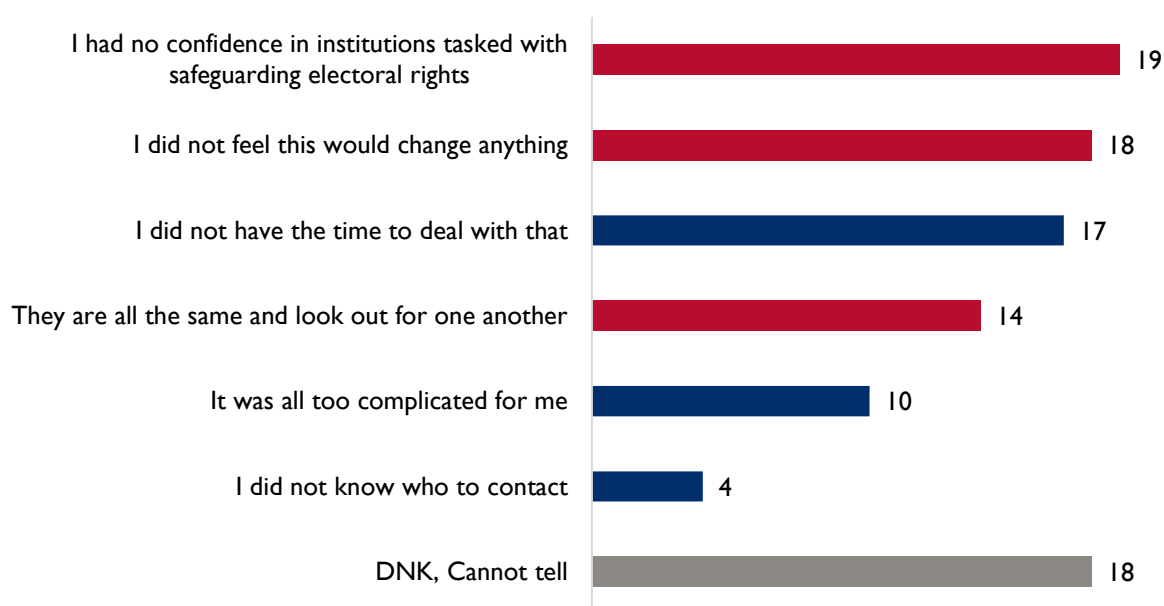
4.3.11. Reporting threats or pressures to the competent institutions

Filing complaints for election irregularities, i.e., reporting to competent authorities, was a key element of administration of justice. This is particularly important when bearing in mind that some institutions do not have the authority to act *sua sponte*, and that some institutions do not have the capacity or ability to act without previous initiative.

However, among 195 respondents (19%) from the sample who experienced some pressure in the June election cycle, only 1 subject reported it to an NGO. This suggests that there is exceptional room to raise awareness and knowledge of citizens about the ways and mechanisms for administration of justice, especially considering that only on in ten respondents know how to file complaints for election irregularities. In this respect, an extensive information campaign is necessary to inform citizens about (1) the ways, procedures, and mechanisms to file complaints/initiate proceedings, (2) the competencies of various institutions responsible for the administration of justice (both active and passive suffrage), but also (3) the system of electoral rights, including these key principles of suffrage – that it is free, general, equal, direct, and secret, and (4) forms of illicit pressures.

The reasons why citizens did not report pressures are expected in the overall context and can be sorted into two groups by their causes: (1) relation to institutions and (2) procedural and technical reasons. **The first group is picked by 51% of the respondents**, and it implies a **lack of trust** in the institutions dealing with the administration of justice (19%), the belief that **nothing will change** even if a complaint is filed/ procedure is initiated (18%) and the belief that representatives of bodies protect each other and that they are **'all the same'**. The second group of reasons (31%) contains a **lack of time to deal with the complaint** – 17%, **the complexity of the process** (10%) and the answer **'I didn't know who to turn to'** – 4%.

Chart 4.3.11.1. Why didn't you report threats or pressures to the institutions? (in %)



5. Conclusions and strategic interventions: looking to the future

The credible election dispute resolution is a precondition for building confidence in the electoral process. This field has been on the sidelines of public interest in Serbia for many years and has remained outside of reform processes conducted sporadically after 2000 (2004, 2008-2009 and 2020). That is why it is not surprising to see the findings of a public opinion poll showing that citizens are not aware of who are the officials to whom complaints can be lodged - for example, only 24% of the respondents know that citizens/voters have the right to file complaints.

If we compare how election dispute resolution is regulated in Serbia with internationally accepted standards, we conclude **that the highest levels of compliance exist with the principles of efficiency and effectiveness, while regulatory framework compliance is low regarding the principles of fairness and transparency.** The study showed that there is an effective resolution of disputes and appeals with a broad and adequately set right to complaints, appeals/judicial resolution, and the availability of reasoned decisions. However, legal analysis and research with stakeholders suggest the risks of short deadlines for resolving appeals and disputes and inadequate implementation of remedies. When it comes to the fairness of the regulatory framework, the broadly and adequately set right to submit complaints and be notified of the procedure is an advantage, but it is a major challenge in terms of the *de facto* political character and composition of the election administration and the inability to adequately identify all facts. The political character of the election administration reduces the independence of the arbiters in the of election dispute resolution process. Decisions of the Republic Electoral Commission and the Administrative Court are public, but transparency is not complete due to the lack of access to all information in real time and the lack of transparency of electoral commissions.

This study shows that the participants in the elections, particularly 'soft' political organisations, have exceptionally low capacities and knowledge of the of election dispute resolution process and that capacity building is necessary to strengthen them. The citizen awareness raising campaign should include the introduction to legal mechanisms in the complaint filing process, but also the promotion of the principle of secrecy of the ballot and vouching for it at polling stations.

Defining priority areas for intervention should include practical interventions that can improve the process in the short term, but it is necessary to open room for change in the broader legal and institutional framework. There are two reasons for major and systemic changes: firstly, Serbian electoral legislation requires serious reform in almost all relevant areas and election dispute resolution would have to follow these changes and secondly, the growing importance of the election dispute resolution process and its impact on broader (dis)trust of the overall electoral process.

Interventions will be divided into four segments - 1) institutional model for electoral dispute resolution, 2) rules and procedures for investigation and resolution of complaints and disputes, 3) legal remedies and sanctions and enforcement of decisions and 4) information and education

of the public - with a listed institution competent for initiating and implementing it, priority level (with regard to the importance of the election process and possible consequences to that process) and the time frame in which it can be adopted and implemented. The priority will be set on the following scale: Low (L)-medium (M)-high (H). The time period will be set on the following scale: short-term (S) -medium-term (M) -long-term (L).

5.1. Institutional model for election dispute resolution

Participants in the elections (especially those directly involved in the elections) must know which institution is competent for certain types of disputes, as well as all procedural and substantive rules and procedures to manage the appeal decision-making process.

Recommendation	Institution	Prioritization*	Time frame
<p>ZERO RECOMMENDATION</p> <p>Implement a participatory, systemic, and coherent reform of the legal and institutional frameworks for election administration in order to remove non-harmonized legal solutions and ensure consistency in their implementation.</p>	National Assembly, public consultation process	H	M
<p>#1 Implement a participatory, systemic, and coherent reform of the election administration - at national, provincial, and local levels - with the ultimate goal to professionalize them, provide financial stability, a clear legal status and permanent functioning.</p>	National Assembly, REC, public consultation process	H	M
<p>#1.1 Introduce provisions for the REC to determine violations on its own initiative (<i>ex officio</i>) at all stages of the electoral process (irregularities and results determination), without prior complaints.</p>	REC	H	S
<p>#1.2 Introduce national-level inter-bodies to replace the REC working bodies; these would have autonomous positions and their own competencies.</p>	REC	H	S
<p>#2 Establish a secure and transparent case management system, with all necessary information, defined procedures and rules of procedure, forms, legal remedies, and decisions.</p>	REC, ACA	M	L
<p>#3 Define extreme cases in which inactivation of permanent residence addresses can affect citizens' data in the single electoral register and exercise of voting rights in order to prevent legal uncertainty</p>	MoPALG	M	M

<p>and ensure proclaimed equal suffrage and make statistics on the number of citizens deleted from the voter list on the basis of address inactivation available and accessible to the units of local self-government.</p>			
<p>#4 Review and amend the legal framework to prevent the misuse of public resources, including pressure on public institution employees and including regulations to prevent the abuse of office, with a view to providing equal opportunities for all participants in the election and ensuring separation of state and partisan interests. Offenses against the law should be regulated in such a way that penalties are proportionate to the effect of deterrence from repeating the offense.</p>	ACA	H	S
<p>5 Introducing General Instruction governing the actions in certain, special types of cases (pursuant to Article 25, paragraph 2 of the Law on Public Prosecution) by the National Public Prosecutor at the proposal of the National Public Prosecutor's Office professional board. The General Instruction mechanism could be a way to regulate a specific and efficient manner of public prosecutors' actions on criminal charges filed on grounds of suspicion that any of the criminal offenses referred to in the Chapter of the 15 Criminal Code (<i>Criminal Offenses Against Electoral Rights</i>) have been committed. The binding instructions could provide for urgent treatment of these criminal charges and periodic information to the public about the actions taken, which would contribute to the public gaining trust in the work of public prosecutors in these cases. In addition, it could be provided that the National Public Prosecutor's Office acts on complaints against decisions to dismiss criminal charges in their professional board capacity. Decisions should be taken without delay within a period shorter than legally required (15 days).</p>	National Public Prosecutor's Office	H	S
<p>#6 Amend the Criminal Code by providing for a specific criminal offense to incriminate any pressure on employees in public institutions regarding voting.</p>	Ministry of Justice, Prosecutor's Office, State	L	L

	Prosecutorial Council	
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5.2. Rules and procedures for investigations and complaint and dispute resolution

The regulations must provide clear guidelines on all legal matters in election dispute resolution, burden of proof, precisely defined types of evidence, legal remedies, and deadlines in the proceedings. Global standards dictate that these procedures must be established in time, before the elections start and all stakeholders must be thoroughly familiar with them.

Recommendation	Institution	Prioritization*	Time frame
#1 Consider the possibility to set the deadline for filing complaints in a different way than in the existing legal framework, by providing for the deadlines of subjective nature - 24h from the learning of a violation or omission. Due to the need for the electoral process to run efficiently, the introduction of objective, mandatory deadlines could also be considered (for example, up to seven days).	National Assembly, REC, Administrative Court	M	M
#2 Stipulate in more detail situations in election disputes in which public hearings must be held so as to comply with internationally accepted standards, including the right to receive reasonable notice of the lawsuit, a reasonable opportunity to prepare the defense and the right to a fair and impartial process of determining facts, hearings and decisions. When considering an alternate standardization of this issue, the efficiency and speed of the election process must be taken into account.	Administrative Court	L	S
#3 Define that the REC, through which an appeal is lodged to the Administrative Court (the deadline is 48 hours) and which is obliged to submit an objection within 24 hours of receiving the appeal, is obligated to submit all documents to the Administrative Court, instead of 'all necessary documents' as the current legal solution is worded. This avoids possible triage of documents submitted to the court, which is a way for the REC to affect the	REC	L	S

court's decision if it fails to submit some of the documents to the administrative court relevant to decision-making.			
#4 The Law on Local Elections (amending Article 54, paragraph 1) and the Law on the Election of Members of Parliament should be harmonized, so that in local elections the deadline for filing complaints with the Administrative Court is extended to 48 hours from the delivery of the decision, as already provided for in Article 97 of the Law on the Election of Members of Parliament.	National Assembly, local electoral commissions	M	S
#5 Amend the provisions of the Law on Prevention of Corruption in order for the ACA to commit to publish its decision on the official website of the ACA within 24 hours of its adoption in the procedure for violating the Law on Prevention of Corruption, i.e., when deciding on an application related to violations of the provisions of the election campaign. An identical obligation already exists in the Law on Financing Political Activities.	ACA	H	S



5.3. Legal remedies and sanctions and enforcement of decisions

Legal remedies must be known in time, before the election process and at the end of the process there must be mechanisms to ensure their safe execution. Only with remedies defined in this way can there be any word of a credible and efficient of election dispute resolution process.

Recommendation	Institution	Prioritization	Time frame
#1 Consider and implement participatory, systemic, and coherent reform of the Criminal Code in the part treating crimes against suffrage (Chapter 15, <i>Criminal Offenses Against Electoral Rights</i>).	Ministry of Justice, the prosecutor's office, State Prosecutorial Council	H	M
#2 Change the Article 155, paragraph 2 from the existing solution 'Whoever, by use of force or threat, coerces another in an election, impeachment vote, or referendum, to exercise or not to exercise	Ministry of Justice, the prosecutor's office, State	H	S

his voting right or to vote for or against a particular candidate or proposition, shall be punished by a term of imprisonment of three months to three years' to 'whoever by use of force, threat or by any other unlawful means, coerces another in an election, impeachment vote or referendum to exercise or not to exercise his voting right or to vote for or against a particular candidate or proposition, shall be punished...'	Prosecutorial Council		
# 3 It is necessary to review the stipulated penalties for both forms of the criminal offense referred to in Article 155 of the Criminal Code (<i>violation of the right to vote</i>) with a view to fight this crime, considering the last amendments to the Criminal Code, according to which the purpose of punishment is not only general and special prevention, but also achieving social condemnation and reinforcing the obligation to punish.	Ministry of Justice, the prosecutor's office, State Prosecutorial Council	H	S
# 4 Consider reintroducing a criminal offense providing for the punishment of the polling board members to the criminal justice system, considering the fact that they are the bodies for the conduct of the elections and that the quality of election day depends greatly on their role.	Ministry of Justice, the prosecutor's office, State Prosecutorial Council	M	M
# 5 Consider amending Article 146 of the Criminal Code in the section on <i>Unauthorized Collection of Personal Data</i> with an aim to protect the voter's freedom in the elections. Given the intensity of the threat this criminal offense poses during the election process, stricter sanctions should be imposed for both forms of this criminal offense.	Ministry of Justice, the prosecutor's office, State Prosecutorial Council	M	M
# 6 Consider amending Article 153 of the Criminal Code, which regulates the manner of prosecution and review the introduction of <i>ex officio</i> prosecution by the public prosecutor instead of the existing solution that provides for prosecution of private lawsuit for both forms of the criminal offense referred to in Article 146.	Ministry of Justice, the prosecutor's office, State Prosecutorial Council	M	M



5.4. Informing and educating the public

Informing and educating the public should ensure that all election stakeholders and the general public are well aware of their rights and duties originating from them.

Recommendation	Institution	Prioritization	Time frame
# 1 Develop an annual training plan <u>for election administration</u> at all levels - national, provincial, local - and regularly conduct training sessions aimed at increasing the capacity of electoral commissions on determining circumstances and adequate actions when decision-making on complaints and appeals.	REC, local electoral commissions	H	S
#2 Create an annual training plan <u>for political parties and organisations</u> at all levels - national, provincial, local - and regularly conduct training sessions aimed at increasing the capacity of political parties and organisations on being informed on mechanisms in the election dispute resolution process and the way of using them.	Political parties and organisations, civil society	H	S
# 3 Develop an annual training plan for the representatives of the <u>Administrative Court</u> at all levels - national, provincial, local - and regularly conduct training sessions (annually or before the elections) aimed at increasing the capacity on determining circumstances and adequate actions in decision-making on appeals.	Administrative Court	M	M
# 4 Organise and conduct educational campaigns for <u>voters</u> and inform the public about how to use mechanisms in administration of justice and how to access the decision-making process on appeals.	Civil society	H	S
# 5 Prepare forms for submitting complaints to the election process and make them available at polling stations in a sufficient number of copies. These should contain all necessary information, instructions on how to fill and submit them.	REC, local electoral commissions	H	S

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