

ELECTION DISPUTES IN SERBIA

April **2022**
elections

**SO,
WHAT
DO WE
DO
NOW?**



CeSID

Centre for Free Elections and Democracy (CeSID)
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1. Introduction

The survey *Electoral Justice: Here, Now, Tomorrow – the Case of Serbia*,¹ published by CeSID in May 2021, set out the priority areas for intervention to improve and enhance all aspects of the Serbian framework for resolving election disputes, in view especially of (1) the need for thorough reform of Serbia's electoral law and the regulation and rules of procedures on election disputes, and (2) the growing importance of the resolution of election disputes and their impact on confidence – or lack thereof – on the overall electoral system. One of the findings of this study was that stakeholders in elections, especially 'soft' political organizations, have very limited capacity and knowledge about how to address or file election disputes, so their capacity needs to be enhanced to empower them. The same was true of the general public: no more than 10 percent of voters knew how to file a complaint, and as few as 24 percent were aware they were entitled to file election-related complaints.

Following the June 2020 election cycle, election reform was initiated by the Government as a result of long-lasting protests and negative reports on quality of electoral cycle. A key outcome of the agreement reached in the two-track **inter-party dialogue** of 2021, and in response to recommendations made by the Office of Democratic Institutions and Human Rights (ODIHR), has been the **enactment of new electoral legislation**² which addressed the bulk of both priority and other recommendations. These new laws also instituted **a new election dispute resolution framework that took effect only two months before general, presidential and Belgrade city elections**. Among the key changes were revised deadlines for filing, the decentralization of the complaints process at the local level and a change in criteria to request audit, annulment, or repoll.

¹ *Electoral Justice: Here, Now, Tomorrow – the Case of Serbia (2021)*, Centre for Free Elections and Democracy (CeSID), Belgrade. Available online at cesid.rs/wp-content/uploads/2021/07/Policy-Paper_final-EN.pdf.

² An overview of the key changes relevant to election dispute management is given in the section on the new legal framework below. For a detailed discussion, see *Šta nam donosi novi set izbornih zakona (2022)*, Centar za slobodne izbore i demokratiju – CeSID, Beograd; available at cesid.rs/novosti/sta-nam-donosi-novi-set-izbornih-zakona.

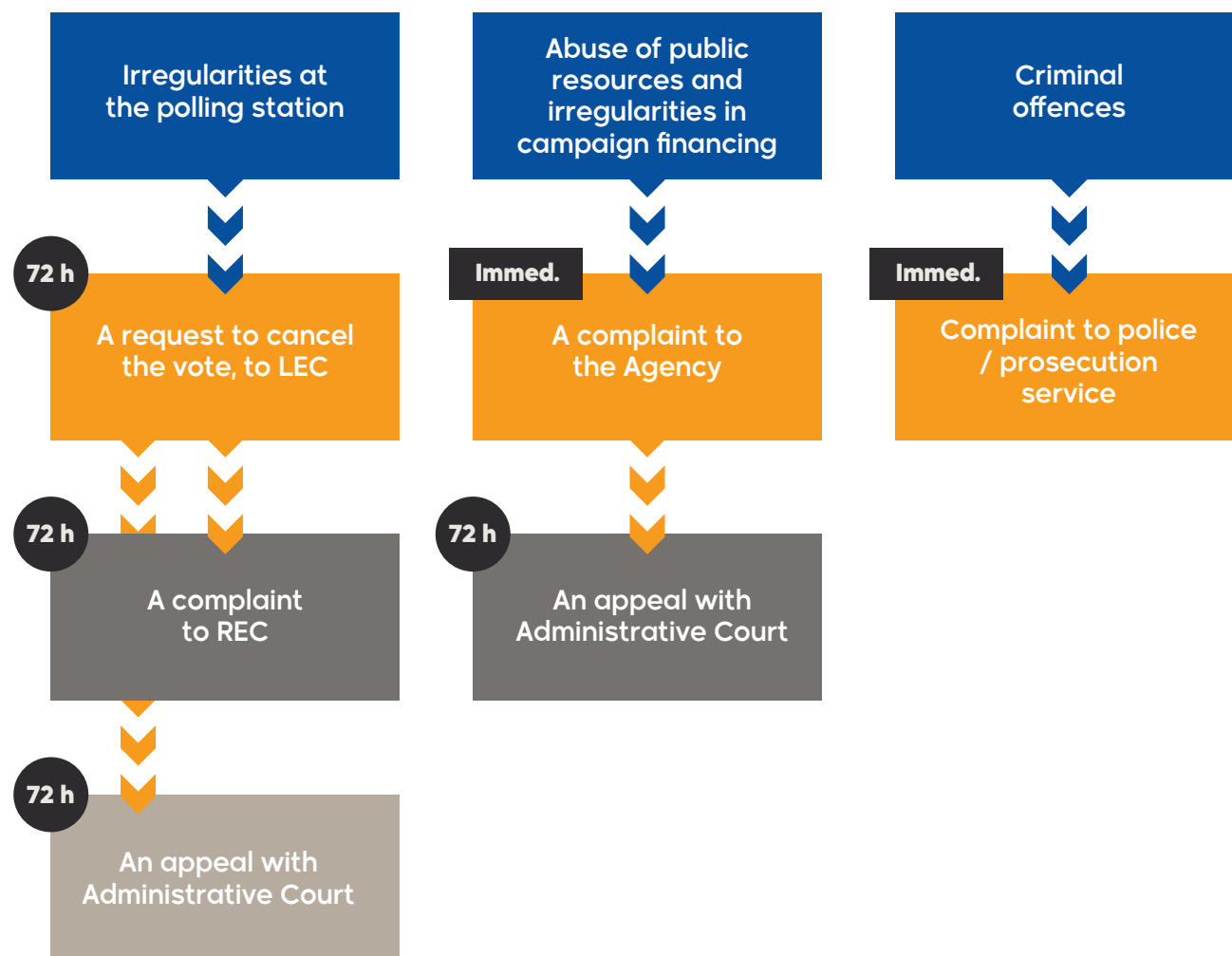
These considerations have made it crucially important to assess whether and how the new election dispute resolution framework operates, especially in the context of good practice and a principle that fundamental changes should not be introduced in a period of six months to a year prior to elections. The main objectives of this document are to:

- (1) Analyze the **efficiency, effectiveness, transparency, and fairness** of how electoral disputes are managed in Serbia following the enactment and initial implementation period of the new electoral legislation;
- (2) Highlight the **key strengths and weaknesses** of this process;
- (3) Emphasize the **long-term importance of addressing election disputes** as a vital pillar of the electoral process;
- (4) Formulate **recommendations and conclusions** and to identify priority areas for future strategic and practical interventions;
- (5) Help empower **political organizations and election stakeholders** to take part in the process, and enable the **general public and civil society** to better understand the election dispute resolution procedures and system.

The assessment is also a natural continuation and extension of CeSID's previous activities that promoted electoral justice in Serbia, and the start of **new advocacy for key strategic and practical interventions for election dispute management**.

This document also assesses the performance of local electoral commissions (LECs), the Republic Electoral Commission (REC), and the Administrative Court (AC), on the one hand since these institutions are responsible for the majority of election disputes, both administrative and those related to election day, and on the other hand the Anti-Corruption Agency (ACA), which is competent to deal with disputes related to campaign finance or abuse of state resources. The nature of disputes and jurisdiction are presented in a chart below:

Illustration 1: Nature of disputes



In addition, the document builds on the previous study to analyze the compliance of the Serbian electoral dispute resolution system with the four key principles of credible electoral dispute resolution, namely fairness, efficiency, effectiveness, and transparency.³

The assessment was produced as part of the CeSID project ‘Protecting the Vote through Effective and Transparent Election Dispute Resolution in Serbia’, which was implemented from February to September 2022.

³ *Elections on Trial - The Effective Management of Election Disputes and Violations (2018)*, International Foundation for Electoral Systems, Arlington; available at pdf.usaid.gov/pdf_docs/PA00TBPF.pdf.

2.

Methodology

In view of the complexity of the issue given the large number of institutions involved in resolving election disputes and the different types of legal instruments available to the parties, CeSID has opted to base its assessment on a mix of two key approaches.

The first approach was a **desk review** of all judgments, rulings, decisions, case law, and reports of other national and international monitoring missions. The desk review collected and processed data on the timeliness, quality, and impact of the relevant documents, and involved the **websites** of the following bodies:

- ▶ **Republic Electoral Commission**, for all data on request for annulment of voting, complaints and appeals, sessions information, polling board minutes, and the like;
- ▶ **Local electoral commissions**, in particular for the City of Belgrade, as well as Bor, Arandelovac, Bajina Bašta, Doljevac, Knjaževac, Kladovo, Kula, Lučani, Majdanpek, Medveđa, Sečanj, and Smederevska Palanka, where local elections were also held;
- ▶ **Anti-Corruption Agency**, for rulings and decisions on complaints in matters within the ACA's remit;
- ▶ **Administrative Court**, for appeals and judgments rendered on appeal.

To a somewhat lesser extent, given the specific powers of these bodies, CeSID also monitored and evaluated the transparency, efficiency, effectiveness, and fairness of the Regulatory Authority for Electronic Media (REM), Election Campaign Supervisory Committee, Interim Supervisory Body, Working Party for Electoral Register Audit, Ministry of Public Administration and Local Government, and the prosecution service.

The second approach used for this assessment was the **direct, long-term monitoring of the REC and the Belgrade Local Electoral Commission (LEC)** using accredited and trained monitors who attended more than 100 sessions of both bodies from February to July 2022. Attendance at these sessions made it possible to understand the deeper context and assess the quality of the bodies' discussions and their arguments for making particular decisions. The data were supplemented by findings collected **directly from representatives of seven political organizations** that took part in an election dispute resolution workshop organized by CeSID immediately before election day. All data were grouped by category and will be presented in the appropriate sections of this report.

To facilitate an understanding of the new framework, the assessment will first briefly introduce the new legislation, highlighting its differences from the previous rules. A separate section will be devoted to identifying recommendations and guidelines for future activities to address any non-compliance of the Serbian system with the **four key principles for a credible election dispute resolution process**:

- (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.

3.

The (new) legal framework

In Serbia, the election dispute resolution system is regulated by the latest Law on the Election of Members of Parliament (Chapter 9) and the Local Elections Law (Chapter 11). These issues are also indirectly governed by the Law on the Election of the President of the Republic and a whole host of other regulations, including the Single Electoral Register Law and its associated Single Electoral Register Instructions, the General Administrative Proceedings Law, Political Finance Law, Law on Prevention of Corruption, and numerous guidelines, regulations, and electoral commission and judicial rules. To facilitate understanding of this complex network of dispute resolution mechanisms, **this assessment will group the various proceedings by the similarity of their procedures and rules** into (1) administrative disputes and irregularities connected with voting at polling stations and (2) campaign finance disputes and abuse of public funds, together with a brief overview of (3) criminal violations of election rights, even though the last group will not be assessed in detail.⁴

The following table compares key features of legislation governing the election dispute resolution system before and after February 2022.

SUMMARY OF KEY CHANGES IN THE NEW LEGAL FRAMEWORK:

1. Decentralization of EDR process (1st instance is now LEC);
2. Increased deadlines for filing
3. Increased deadlines for decisions
4. Widen legal standing for disputes

⁴ These disputes are inherently very lengthy and as such require much time for data collection, especially on sanctions and outcomes.

Table 1. Key features of the election dispute resolution system before and after new legislation was adopted in 2022

	PREVIOUS LEGISLATION (PRE-2022)	NEW LEGISLATION (2022)
Right to initiate dispute	<ul style="list-style-type: none"> • Candidate • Voter • Promulgated electoral list 	<ul style="list-style-type: none"> • Proponents of promulgated electoral lists • Voters • Proponents of electoral lists • Political parties • Candidates/leaders of electoral lists / persons whose names appear in of electoral list names • Parliamentary groups • Monitors • Ministry of Foreign Affairs • Ministry of Justice • Mayors
Procedural position of voter	<ul style="list-style-type: none"> • Right to lodge complaints with REC in connection with any irregularities with voting at any polling station 	<ul style="list-style-type: none"> • Right to apply for annulment of voting with LEC exclusively for polling station where voter is registered, in three situations: threats to freedom and secrecy of ballot and being unjustifiably prevented from voting
Available mechanisms	<ul style="list-style-type: none"> • Complaint with REC • Appeal with Administrative Court 	<ul style="list-style-type: none"> • Request for annulment of voting with LEC • Complaint with REC • Appeal with Administrative Court • Audit based on sample (opposition parties)
Type of remedy	<ul style="list-style-type: none"> • Repeated voting 	<ul style="list-style-type: none"> • Repeated voting
Relevant authorities	<ul style="list-style-type: none"> • REC • Administrative Court 	<ul style="list-style-type: none"> • LEC • REC • Administrative Court
Election dispute resolution	<ul style="list-style-type: none"> • Two instances: complaint and appeal 	<ul style="list-style-type: none"> • Three instances: application, complaint, and appeal
Time limits to initiate dispute	<ul style="list-style-type: none"> • 24h to lodge first-instance complaint with REC • 48h to lodge second-instance appeal with Administrative Court 	<ul style="list-style-type: none"> • 72h to lodge first-instance application to annul voting with LEC • 72h to lodge second-instance complaint with REC • 72h to lodge third-instance appeal with Administrative Court
Decision-making time limits	<ul style="list-style-type: none"> • 48h for first-instance decision-making • 48h for second-instance decision-making (with additional 24h to submit case files) 	<ul style="list-style-type: none"> • 72h for first-instance decision-making • 72h to lodge second-instance complaint with REC • 72h to lodge third-instance appeal with Administrative Court
Total duration of process, from each voting day	<ul style="list-style-type: none"> • 192h / 8 days* 	<ul style="list-style-type: none"> • 528h / 22 days*

* The estimated total duration of the process does not include the time required for an application, complaint, or appeal to reach the relevant authority. The figures reflect only the time limits starting from the moment a submission is received. The law stipulates that initial action must be taken within a particular period of time, and that time limits for authorities to make decisions on the applications, complaints, and appeals involved run from the time of receipt.

3.1. Administrative disputes and irregularities connected with voting at polling stations

This group of proceedings comprises **the entire electoral process** and involves electoral commissions resolving election disputes during the nomination of party lists and/or candidates, designation of polling stations and appointment of polling boards (and other technical and logistical processes connected with an election), election day (voting, counting, and tabulation), and determination of results and election dispute resolution. As such, this category is highly complex because it in fact allows stakeholders to contest any and all decisions and actions of the electoral bodies (local or central body) and is thus the most important aspect for assessing the performance of election dispute resolution.

3.1.1. Legal standing

The *right to initiate a dispute* (lodge an application, complaint, or appeal) is held by:

- 1) Representatives of promulgated election lists**, in all types of administrative disputes, to contest decisions or actions (including those not adopted/taken), and any disputes related to irregularities at polling stations;
- 2) Voters**, due to irregularities at the polling station where they are registered to vote, if they are prevented from voting and if ballot freedom or secrecy are jeopardized. In addition, voters may lodge complaints in some administrative disputes, including with regard to the promulgation of electoral lists or determination of results;
- 3) Proponents of electoral lists**, where the REC refuses to promulgate an electoral list;
- 4) Political parties**, only in some administrative disputes, including the appointment of non-core members of polling commissions or to contest the promulgation of an electoral list;
- 5) Candidates/leaders of electoral lists/individuals whose names appear in electoral list names**, where the REC refuses to promulgate an electoral list;
- 6) Parliamentary groups**, to contest decisions on the core composition of polling boards;
- 7) Monitors**, to contest a REC decision to deny monitors the right to oversee the printing or delivery of ballot materials;
- 8) Ministry of Foreign Affairs**, to contest a decision refusing appointment of core polling board members;

- 9) **Ministry of Justice**, to contest a decision refusing appointment of core polling board members; and
- 10) **Mayors**, to contest a decision refusing appointment of core polling board members.⁵

The new rules require parties intending to lodge applications, complaints, or appeals to prove legal standing, replacing the older requirement whereby this right was enjoyed by *voters, candidates, and proponents of electoral lists*. In effect, the 2022 law restricted and limited voters' rights to take part in election disputes: unlike the previous statutory framework, under which voters could complain against irregularities at any polling station, the new rules restrict this right to three instances (where the freedom or secrecy of the ballot are jeopardized and where a voter is prevented from casting their vote) and allows complaints to be lodged only for the polling station where the would-be complainant is registered. The assumption is that the new rules are designed to discourage frivolous complaints, but it is worth mentioning that this may also prevent legitimate complaints at polling stations. However, voters are also given a possibility to file for determination of results (after the results are announced), allowing for effective protection of voting rights. At the same time, the 2022 law significantly broadened the scope of rights enjoyed by proponents of electoral lists: the latter group are now legally permitted to initiate an election dispute at all stages of the election process.

3.1.2. Grounds / Remedy Sought & Jurisdiction

Under the new legislative framework, the *legal instruments available* are **requests for annulment of voting**, which is lodged with the newly-established LECs in the event of irregularities at a polling station; **complaints**, lodged with the REC to contest decisions and actions of the REC and LECs (including where a request for annulment of voting is denied, rejection of acceptance of candidate/list registration etc.), and **appeals with the Administrative Court** to contest decisions of the REC to reject or dismiss complaints. The introduction of LECs, which are now responsible for ruling on applications to annul voting instead of the REC, demonstrate that the Serbian election dispute resolution procedures have moved to a three-instance instead of a two-instance system. Here, in a general election, the REC rules on complaints in administrative disputes in the first instance, and, in the second instance, on complaints to LEC decisions on irregularities at polling stations. In addition, the Administrative Court is able to make decisions in the second or the third instance, depending on the dispute and the type of election.

⁵ The Ministry of Foreign Affairs can complain against a decision on the core composition of a polling board abroad, the Ministry of Justice can complain against a decision on the core composition of a prison polling board, and mayors can complain only if it was they who appointed polling board members (if the parliamentary groups have for any reason not done so).

The **type of election** is crucial here because the procedures differ: in a local election, dispute resolution remains a two-instance process, so an LEC decision to reject or dismiss an application to annul voting is automatically appealed with the Administrative Court. These changes have made the dispute resolution process highly complicated, since filing a complaint relating to the same violation on election day may differ whether it relates to a presidential election, general election, or local elections for 13 local authorities.

3.1.3. Filing Deadlines

The *time limits* for filing have been partially extended in accordance with an ODIHR priority recommendation after the June 2020 election⁶ to **72 hours** in each case instead of the previous 24 or 48 hours.⁷ This means that a first-instance complaint or an application to annul voting have to be lodged with an LEC within 72 hours after polling stations close or after a decision is published (or from the moment it should have been published). The same limit applies to second-instance complaints and appeals with the Administrative Court.

Exceptions are provided by several types of administrative disputes, where the time limit for lodging complaints has remained 48 hours: these are complaints to decisions appointing non-core members of electoral commissions or polling board members, denials of access to ballot paper printing and transfer, aggregate electoral lists, and decisions on applications to audit a sample of polling board minutes.

3.1.4. Decision making Deadlines

Decision-making time limits for electoral commissions and the Administrative Court have also been extended to **72 hours**, with additional limits applicable to the delivery of all case files to the second- or third-instance decision-making body. This has radically increased the time available for the resolution of election disputes, from a total of 8 days to as much as 22 days, not counting the time needed for the files to reach the decision-making authorities. This increased timeline is in line with good practice and aims at ensuring quality investigation and adjudication process without compromising the expediency of the process.

⁶ ODIHR Special Election Assessment Mission Final Report, Parliamentary Elections. 21 June 2020 (2020), available at osce.org/files/f/documents/a/3/466026.pdf.

⁷ The rules in force before 2022 envisaged 24 hours for filing a complaint and 48 hours to make a decision on one. Appeals with the Administrative Court could be lodged within 48 hours from publication of the contested ruling.

3.1.5. New mechanism and powers

Apart from these key changes, the new legislation also prescribes a set of new rules and mechanisms available to election stakeholders that are relevant for assessing the performance of the election dispute resolution system. They can be grouped in two categories: requests/applications made by stakeholders & ex officio powers of LEC.

- ▶ Application to audit a sample of PS minutes, filed by stakeholders: a **challenge mechanism** in the form of an **application to audit a sample of polling board minutes**, which is available to opposition electoral lists that have won more than 2 percent of the vote each (according to preliminary results) and ethnic minority opposition lists with more than 1 percent of the vote. This application can be filed for no more than 5 percent of polling stations in an LEC area and may lead to the LEC adopting decisions to correct polling board minutes for minor issues, or a repeat of the voting if the irregularities are severe enough to warrant it.⁸
- ▶ Annulment, as an ex officio power of LEC: LEC is required to adopt a **decision finding that the results of voting for a particular polling station cannot be determined** where: (1) no voting took place at the polling station or was interrupted and not resumed;⁹ (2) the LEC does not receive the polling board minutes; (3) a polling board minutes that has been received has not been signed by at least three polling board members; and (4) there are major errors in the vote tally that cannot be corrected following an audit of all ballot papers from the polling station concerned. In addition, the LEC will rule to **automatically annul voting** at a polling station where: (1) the number of ballots found in a ballot box exceeds the number of voters who turned out to vote; (2) the polling board allowed a person not registered to vote to do so; (3) the control ballot is missing from the ballot box or is not completed or not signed by the first voter to cast their ballot and at least one polling board member; and (4) the sum of unused ballots and ballots found in the ballot box exceeds the number of ballots received by the polling board. It ought also to be noted that the new Law on the Election of Members of Parliament stipulates that any **request for annulment of voting and any complaint** must include several mandatory elements, including a statement of the allegations and **evidence**,¹⁰ but does not clarify what evidence is admissible or acceptable. Here it has to be noted that automatic annulment of voting can lead to lead to unreasonable cancellation of voting, thus ignoring will of the voters. There is a need to carefully consider that some of the criteria should instead trigger investigation and

⁸ The challenge mechanism was used in the Belgrade election, as discussed in greater detail below.

⁹ The law stipulates that the polling station has to be open without interruption. If order is disturbed at the polling station, the polling board may interrupt voting until order is restored. The reasons and duration of the interruption of voting are entered in the record of the work of the electoral committee. If voting is interrupted for more than one hour, it is extended by the amount of time that the interruption lasted.

¹⁰ Articles 149 and 151 of the Law on the Election of Members of Parliament, Official Gazette of the Republic of Serbia No 14/2022.

require proceedings and not to lead directly to annulment – whilst annulling voting can be legitimate in some circumstances, especially where anomalies affect the overall results of an election, **the effectiveness of this legal remedy can be questionable where the anomaly was caused by negligence on part of the polling board or a voter, or where it does not affect the overall outcome.** As an illustration only, it is questionable whether it is reasonable to annul the voting at the polling station where only one voter out of 1.500 had a complaint, if this complaint had no impact on the overall result of the elections.

The new regulations also govern the right of election monitors to **complete and sign monitor minutes**, which identifies monitors who observed the polling board and details any protests they may have (Article 168 of the new Law on the Election of Members of Parliament).

3.1.6. Standardized forms

To facilitate the procedure, the REC has also published **application and complaint forms**,¹¹ and its website now also includes a ‘complaints’ section containing key information. Although CeSID advocated for dissemination of printed forms at polling stations (to be easily available to citizens), the forms were available only online and as the analysis has shown, they were used dominantly by registered electoral lists and not by citizens.

3.1.7. Distinction from general and local elections

For easier understanding, here it is important to note that there are differences in EDR process depending on the level of elections. In case of general (presidential and/or parliamentary elections), the EDR is threefold and goes through LEC, REC and Administrative court. On the other hand, if the **local elections are held separately from the national ones**, the EDR will remain twofold: the complaint will be submitted to the (local) election commission within 72 hours of illegal action or decision, and the appeal will be submitted to the higher court. The provision that appeals are filed with the higher court instead of the Administrative Court will take effect one year after the law is passed –in February 2023. Until that moment, appeals will be filed with the Administrative Court.

¹¹ *Instructions on the filing of requests for annulment of voting at polling stations and abroad and decision-making by the Republic Electoral Commission on such applications (2022)*, Republic Electoral Commission, available online at rik.parlament.gov.rs/extfile/sr/files/additionalDocuments/996/48/Uputstvo%20-%20prigovori.pdf

3.2. Campaign finance and abuse of public funds disputes

The legal status, powers, organization, and operation of the Anti-Corruption Agency are all governed by the **Law on Prevention of Corruption**, adopted in 2019 and amended on multiple subsequent occasions, most recently in February 2022. The law entered into effect on 1 September 2020. The ACA, established under the 2008 **Law on Combating Corruption** as the Agency for Prevention of Corruption, continued operating under the name of ACA. The ACA enjoys broad powers in areas relevant for preventing corruption, but the most important ones for electoral dispute resolution pertain to political finance and possible abuse of public resources. Political and campaign finance are also regulated by the **Political Finance Law**, the first piece of legislation to comprehensively regulate political finance, adopted in 2011 and amended in 2014 and 2019, only to be replaced by a completely new law in February 2022.¹² In addition to these two umbrella laws, abuse of public resources is also indirectly governed by other legislation, including the Public Enterprises Law (a very important regulation given criticisms levelled by opposition parties over possible undue influence on voters) and the Education Law (with regard to possible abuses in the education system).

As it follows, the resolution of election disputes involving issues of campaign finance and abuse of public funds by election officials, candidates, parties, or any citizen is directly and indirectly governed by the same laws.

3.2.1. Legal standing

February 2022 saw the adoption of the new Political Finance Law and minor amendments to the Law on Prevention of Corruption. The new and amended rules did not have a major impact on election rights dispute resolution, with any natural or legal person being able to initiate a dispute for violation of the Law on Prevention of Corruption, and the ACA can also do so *proprio motu*, as earlier. This broad access to remedy is very positive, allowing citizens to seek remedy when violation of campaign finances rules or misuse of public resources occur during the pre-election period.

3.2.2. Deadline for filing and deciding

The relevant complaint must be in writing and contain all information required for a decision to be made – name, last name and the address of the submitter of complaint, details on the body/person who committed the irregularity, the facts and the signature. Complaints should be submitted as soon as possible, i.e., just after the irregularity was observed.

¹² See the New legal framework sections for the new rules set out in this piece of legislation.

The ACA has five days from the moment the procedure is initiated to render its decision, and the process involves two instances, so an ACA decision can be appealed with the Administrative Court.

The ACA is also required to act on written reports alleging corruption filed with the ACA by natural or legal persons. According to the Political Finance Law, the ACA opens proceedings to decide whether this piece of legislation has been violated and impose measures either *proprio motu* or at the application of a natural or legal person (which includes political parties, coalitions, or civic groups that have proposed electoral lists or have nominated candidates in an election). The ACA is required to rule on violations of laws during an election campaign within five days of notifying an entity of a report being lodged, and the sanctions it can impose include reprimands, if the violation can be remedied, and bringing misdemeanor charges, if the entity in question fails to comply with the reprimand.

The law doesn't stipulate anything on types of evidence that could be used in proceedings and does not make evidence as a mandatory part of complaints, unlike with LEC and REC complaints and requests. When it comes to proceedings, there are no closed or public hearings – the official or a representative of the body accused can provide a statement about the facts and evidence against him and present the facts and evidence in his favor. All decisions have to be published on ACA website – 24 hours after the decision has been made in case of violation of the Law on financing of political activities, while there is no deadline for publishing the decisions in case that the Law on prevention of corruption was violated.

3.3. Criminal offences against election rights

Criminal offences against election rights form part of a separate Chapter (15) of the Criminal Code.¹³ These criminal offences may relate to:

- ▶ **violation of the right to stand for elected office** (intentionally 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 favor or against a person or proposition; demanding or accepting a benefit or gift with the same objective);

¹³ *Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia Nos. 85/2005, 88/2005 – Correction, 107/2005 - Correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.*

- ▶ **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 **finances 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. Here it is important to note that there can often be some overlapping jurisdiction between criminal offences and other types of EDR issues: multiple voting/using more than one ballot in the same election leads to cancelation of vote according to the Law on the Election of Members of Parliament, but also represent a criminal offence according to Criminal Code. In order to assure effectiveness of EDR process, it is important in these cases to identify the nature of allegation and to determine jurisdiction adequately so that an appropriate remedy could be sought. Depending from the type of proceedings, the standard of evidence may also differ – additional evidence may be needed to result in a guilty verdict.

According to the National Public Prosecutor's Office, very few of these criminal offenses were prosecuted between 2016 and 2019 and few final court judgments have been handed down.¹⁴

¹⁴ For a detailed assessment of issues with criminal offences against electoral rights, see *Electoral Justice: Here, Now, Tomorrow – the Case of Serbia (2021)*, Centre for Free Elections and Democracy (CeSID), Belgrade. Available online at cesid.rs/wp-content/uploads/2021/07/Policy-Paper_final-EN.pdf

4.

Key findings: administrative disputes and irregularities at polling stations – performance of electoral commissions and the Administrative Court

To perform a comprehensive and in-depth assessment of the fairness, efficiency, effectiveness, and transparency of electoral commissions and the Administrative Court, which are responsible for making decisions in administrative disputes and on requests for annulment of voting, an analysis was performed of all decisions, rulings, and judgments adopted from the calling of the election to the official declaration of results on July 5, 2022. This entailed **looking at 709 first-instance disputes** (before electoral commissions at the local and national level), **541 second-instance disputes** (before the REC or the Administrative Court, depending on the type of election¹⁵ and subject-matter of the dispute) and **45 third-instance disputes** (before the Administrative Court) **for a total of 1,295 decisions and judgments.**

¹⁵ To reiterate, election rights dispute resolution at the local level involves a two-instance procedure: after an application to annul voting is dismissed or rejected by an LEC the applicant can appeal the LEC's decision directly with the Administrative Court. For a general or presidential election, a complaint against the LEC's decision must first be lodged with the REC, followed by lodging an appeal with the Administrative Court.

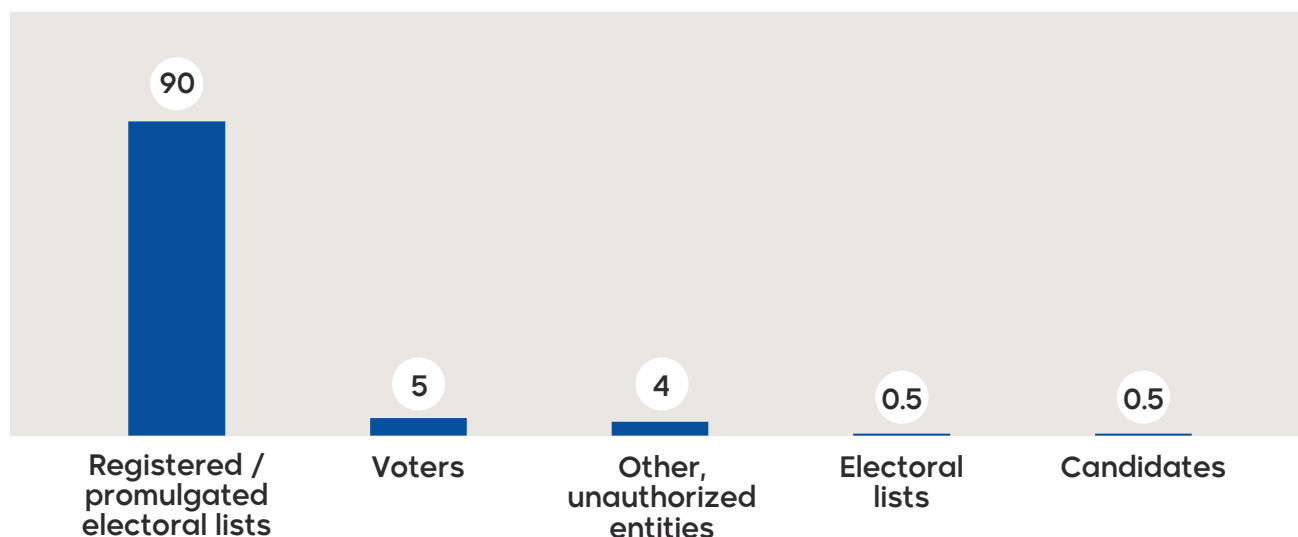
Some notes on the methodology are in order here. The analysis encompassed judgments and decisions that were publicly available on the websites of the REC (in the complaints section, where for the first time all decisions made by all LECs and REC were available) and the Administrative Court as of 05 July 2022. The figures of 709 first-instance applications and complaints and 1,295 such actions in total do not imply this was the final count of all disputes initiated or completed, since some may not have been published on the REC website in due time or at all, which meant they could not be included in the data collection and analysis. Moreover, these figures do not imply that 709 polling stations were covered, since the proceedings included administrative disputes, some of which relate to multiple polling stations, with some polling stations also cited in multiple different disputes.

Of the 709 first-instance cases, **541 were brought for irregularities with local elections**, of which as many as 97 percent were lodged in Belgrade. The remaining cases involved the presidential and/or general election (the national level), where it should be noted that, in many situations, **it was exceptionally difficult to determine which election** (presidential, general, or both) **a case pertained to**.

4.1. Applicants / parties to election dispute resolution proceedings

 **Most applications and complaints were lodged by representatives of promulgated electoral lists, whereas individual voters were not active in election disputes.**

Figure 1. First-instance applicants and complainants (%)



Of the 709 first-instance disputes initiated for all types of elections, as many as 636, or 90 percent, were **initiated by representatives of promulgated electoral lists**.

Table 2: Initiators of proceedings in the 1st instance – promulgated electoral lists, absolute numbers (total: 636)

PROMULGATED ELECTORAL LISTS	#
Marinika Tepić – Ujedinjeni za pobedu Srbije ('United for Serbia's Victory') list (Party of Freedom and Justice, People's Party, Democratic Party, VMDK, Party of Macedonians of Serbia, Movement of Free Citizens, Sloga Trade Union Federation, Monument for Reversal, Free Serbia Movement, and Wallachian Party) ¹⁶	350
Boris Tadić – Ajmo ljudi ('Let's Go People') – Social Democratic Party – New Party – 1 of 5 Million – Tolerance Serbia – United Green Movement of Serbia – Bosniak Civic Party – Montenegrin Party coalition ¹⁷	218
Moramo ('We Must') – Action – Environmental Rebellion – Ćuta – Don't Let Belgrade D(r)own – Nebojša Zelenović coalition ¹⁸	40
Other promulgated lists: Dveri – Kingdom of Serbia Renewal Movement, Russian Minority Alliance, Albanian Coalition of the Valley, Oathkeepers, Democratic Party of Serbia – Kingdom of Serbia Renewal Movement, Enough, Alliance of Vojvodina Hungarians, Socialist Party of Serbia and a number of local civic groups and lists	<30

No more than **one in 20 applicants or complainants were voters** (5 percent, 34 disputes), which suggests voters were not sufficiently aware of their election rights or the procedures and steps involved in election dispute resolution. In effect, this conclusion aligns with the findings of the 2021 opinion poll, where only 24 percent of those surveyed reported being aware they were entitled to lodge complaints, and as many as 90 percent did not know how to lodge a complaint.¹⁹ At the time of the survey, the statutory election dispute resolution system had been in place for more than ten years. Given that context, it is unsurprising to see limited public participation in resolving election disputes, especially since the new legislation had come into force a mere two months before the election and was completely unknown (even though some progress had been made to facilitate public involvement in the process). To illustrate this point, no more than four cases brought by members of the public included some evidence, whilst 30 cases were based **exclusively on voters' allegations** that an action or decision had been illegal. As many as 26 cases were

¹⁶ Referred to as *United for Serbia's Victory* throughout.

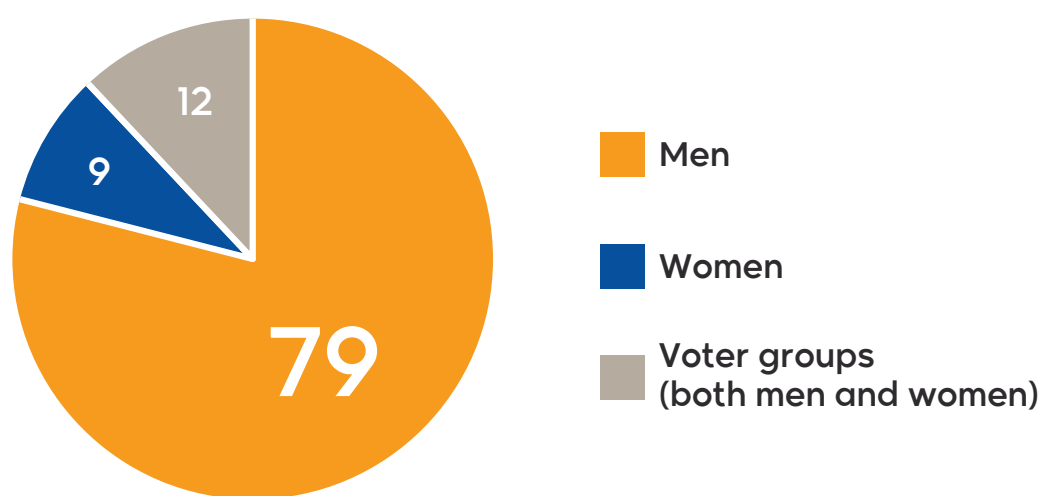
¹⁷ Referred to as *Let's Go People* throughout.

¹⁸ Referred to as *We Must* throughout.

¹⁹ *Electoral Justice: Here, Now, Tomorrow – the Case of Serbia (2021)*, Centre for Free Elections and Democracy (CeSID), Belgrade. Available online at cesid.rs/wp-content/uploads/2021/07/Policy-Paper_final-EN.pdf.

rejected in the first instance, most because the documentation was incomplete and as the actions had been brought by parties without standing. The remaining eight applications and complaints were rejected on grounds of lacking merit. In other words, none of the cases brought by voters actually succeeded in having a decision or action overturned or repeated, which demonstrates the abovementioned conclusion that voters have limited knowledge of procedures, rules, and their own rights and duties in the electoral process. Attention should also be drawn to the **disproportionately low number of women who took part in electoral disputes**. Of the total of 34 applications or complaints lodged with electoral commissions in the first instance, as many as 27 (80 percent) were submitted by men, four were lodged by voter groups (11 percent), and as few as three (9 percent) were lodged by women.

Figure 2. Structure of voters taking part in election disputes, by gender (%)



Apart from promulgated electoral lists and voters, a total of nine applications and complaints were also lodged by **MP candidates and electoral lists**, both of which formally had standing to do so.

Lastly, **30 actions before electoral commissions were brought by parties that lacked standing**. Most of these were polling board members (17), followed by election monitors (7), with three cases each brought by members of LECs and members of political parties or parties' local organizations. It ought to be noted that some of these cases were actually initiated by electoral commissions, *in breach of regulations*, based on submissions from polling board members or monitors and accompanied by ballot materials, but the commissions treated these as having been submitted by parties without standing. This finding is important because it underscores the limited awareness of procedures and regulations and highlights the need for concerted long-term improvements, especially in setting up a procedure to allow REC to initiate complaints ex officio.

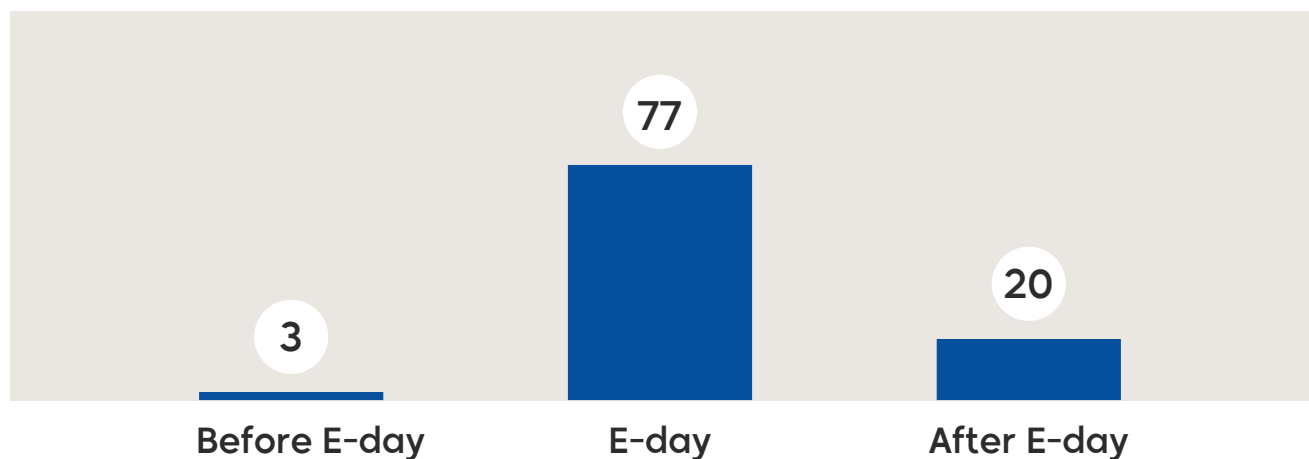
4.2. Subject-matter of applications and complaints



Generic and mass requests for annulment of voting, complaints, and appeals were lodged across all instances. There was little understanding of procedures and rules by the applicants and complainants.

Most applications and complaints alleged irregularities at polling stations on election day: this was the case in as many as 548, or 77 percent, of all cases. One-fifth, or 142, of all complaints were related to the period following voting, and contested decisions amending minutes in the Belgrade election, whilst the fewest (19) pertained to the pre-voting period and concerned appointments of commission and/or polling board members and promulgation of electoral lists and/or candidates.

Figure 3. Number of cases, by stage of electoral process (%)



As such, the subject-matters of the applications and complaints can be grouped as follows:

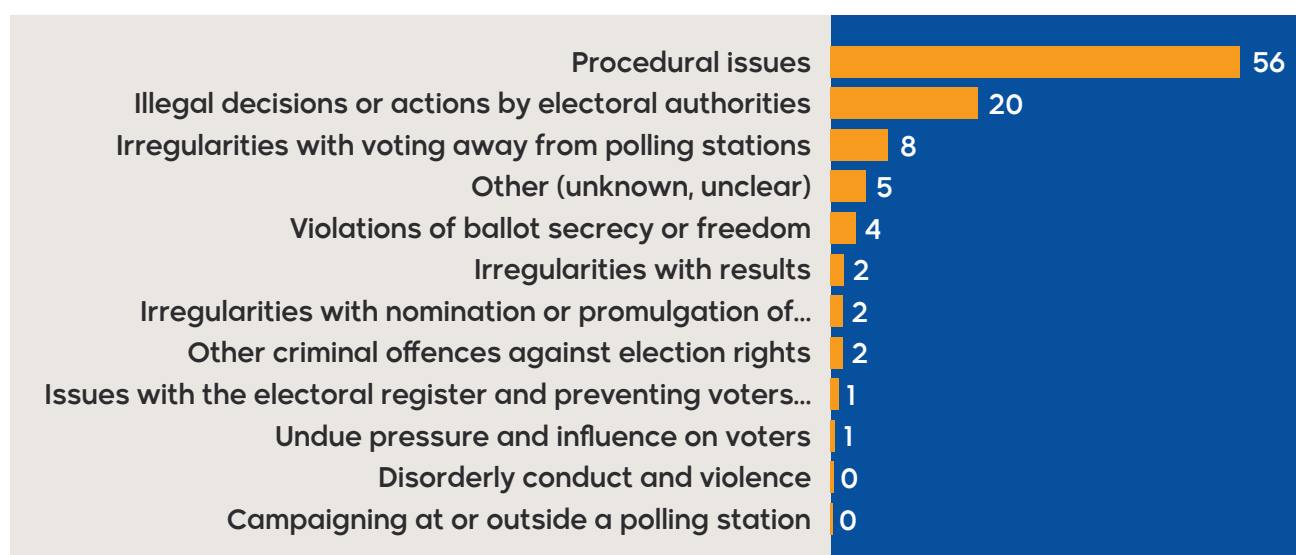
- ▶ Most applications and complaints, 397 or 56 percent, were lodged due to **procedural violations relating to voting or counting**. These cases alleged breaches of rules governing the organization and conduct of voting, such as sealing the ballot box closed or failing to properly complete the control ballot, as well as failing to properly complete various forms and certificates or failing to provide them with the ballot materials. Most of these complaints were lodged by Let's Go People, which filed some 200 identical or highly similar complaints alleging procedural violations at polling stations,²⁰ and by United for Serbia's Victory, which alleged no protests were provided with polling board minutes (some 150 cases);

²⁰ Each complaint alleged the control ballot was missing and that certificates of voting away from the polling station were missing or not completed properly.

- ▶ Complaints alleging **illegal decisions or actions by electoral authorities** constituted the second largest group (142, or 20 percent). Most of these were filed by United for Serbia's Victory contesting decisions amending minutes in Belgrade;
- ▶ The third most common subject-matter of requests for annulment of voting and complaints was **irregularities with voting away from polling stations** (56 cases, or some 8 percent). These cases alleged abuses with registrations for voting away from a polling station and with the conduct of voting away from a polling station;
- ▶ The final large group of cases involved **violations of ballot secrecy or freedom** (25, or 3 percent). The allegations included keeping a parallel tally of the vote, taking photographs of the voting process, 'Bulgarian train' vote-rigging, and other similar irregularities.

All other grounds were far less represented. They included **irregularities with results** (poorly completed minutes, serious errors in polling board minutes, and the like), other **criminal offences against election rights** (blackmail, threats, allowing unregistered individuals to vote), **abuses with the nomination and/or promulgation of electoral lists** (and designation of minority electoral lists), **issues with the electoral register and preventing voters from casting ballots, disorderly conduct, campaigning at a polling station, and instances of undue pressure or blackmail**. In addition, in some 5 percent of the cases the relevant electoral commission published only the ultimate decision without specifying the subject-matter of the application or complaint, which made it impossible to determine the grounds on which the cases were brought. It ought to be noted that the assessment found the initiating parties often **failed to describe the alleged irregularities in detail, instead only referencing 'allegations made in the minutes'**, which made it difficult to identify the subject-matter of the complaint.

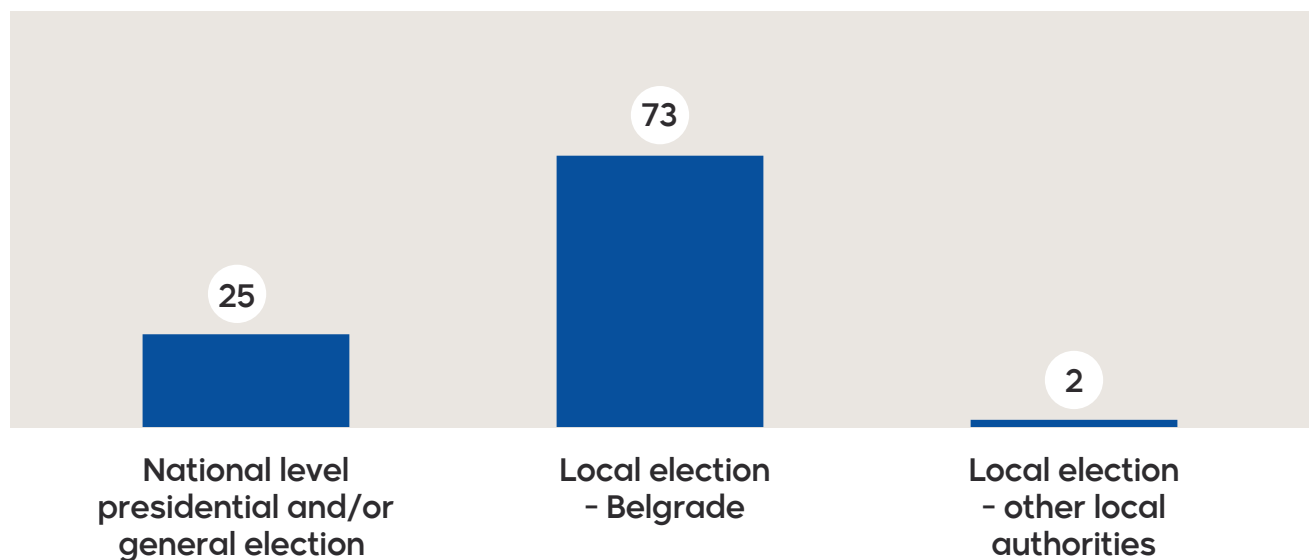
Figure 4. Grounds for bringing cases before electoral commissions (%)



Of the 709 first-instance cases, **541 were brought for irregularities with local elections**, of which as many as 97 percent were lodged in Belgrade. The remaining cases involved the presidential and/or general election (the national level), where it should be noted

that, in many situations, **it was exceptionally difficult to determine which election** (presidential, general, or both) **a case pertained to**. The **process seems to have been politicized to some extent** as many requests for annulment alleged serious irregularities that could affect the entire electoral process, yet the applicants sought only annulment of voting in the general election and not in the presidential poll (which had been decided in the first round). This is borne by the extremely high percentage of cases filed in Belgrade, where the preliminary results announcement resulted in both the governing coalition and a broad group of opposition parties at 55 seats in the local legislature each. Here, the **Belgrade Electoral Commission dealt with 73 percent of all first-instance election disputes**. This is an important finding as such practice jeopardizes the basic principles an election dispute resolution framework should be based on, namely fairness, efficiency, and effectiveness.

Figure 5. Applications and complaints lodged by type of election (%)



Another major finding is that **complaints and applications were generic and were lodged en masse on several occasions**: United for Serbia's Victory filed more than 140 complaints at the local level (in Belgrade) after its audit of ballot materials found no protests had been provided with polling board minutes, as well as some 140 complaints contesting decisions to amend polling board minutes. At the same time, Let's Go People filed more than 200 virtually identical complaints alleging irregularities at a number of polling stations, also in Belgrade.

Similar patterns were also observed in **second-instance disputes**, where generic, mass lawsuits were lodged with the Administrative Court on the basis of delays in decision-making by the LEC.²¹ This meant that, as in the previous election, both the LECs and the Administrative

²¹ As will be shown below, the LEC was late in ruling on complaints as specific commissions had been appointed to audit polling board minutes. This audit was launched at the application of United for Serbia's Victory under the new rules.

Court again faced **numerous disputes they had to address simultaneously**. Moreover, this approach also **led to many errors** on the part of the applicants, such as lodging multiple complaints alleging the same type of irregularity at one polling station or appealing one decision and referencing a completely different decision, which introduced additional issues in the process. The latter had a major impact on **time limits in election disputes**, with the Administrative Court allowing additional time for corrections and supplements to appeals (for instance, ordering complainants to reference the appropriate decision).²² These actions were commendable and in line with best global practice, where complainants are given an opportunity to correct or amend their appeals, which affects the EDR process positively. Unfortunately, neither the REC nor the LECs have this practice.²³ Lastly, some complainants lodged their appeals with the Administrative Court through the REC, rather than directly with the Court, which resulted in their dismissal as untimely.²⁴ This could be a consequence of voters' lack of knowledge on how to file complaints, as well as of recently changed laws and bylaws.

Lastly, some election disputes clearly revealed the **applicants were insufficiently familiar with the procedures and rules involved**. Two practices were identified in this regard: (1) using improper terminology by lodging complaints instead of requests with LECs, which in some cases led to automatic, summary dismissal;²⁵ and (2) lodging applications that contested procedures lawful under the new regulations.

Practical example – complaint vs application: a disabled voter **lodged a complaint** with their LEC alleging they were not permitted to vote because the polling board did not provide transportation to the polling station. The voter did not exercise their right to vote away from the polling station.²⁶ The LEC found this was actually a request for annulment of voting by a voter believing they were unlawfully prevented from voting, treated it as such, and, as expected, ruled to reject the application.



²² Some of the appeals were not corrected and were therefore dismissed by the Administrative Court.

²³ For more on this issue, see Vickery, Chad and Ellena, Katherine, *Election Investigations Guidebook*, International Foundation for Electoral Systems (2020), Arlington, pp. 26-27.

²⁴ This inconsistency may create a perception of bias and mistrust in the adjudication process.

²⁵ Although meeting the basic criteria of a request (in terms of content and mandatory elements), the fact that the requests for annulment were wrongly titled as complaints resulted in the summary dismissal of these cases. A detailed discussion of this issue is available in the Performance and effectiveness of electoral commissions section below.

²⁶ According to the Law, voting away from the polling station refers to voters who are unable to vote at the polling station due to a serious illness, age or disability. They can vote outside the polling station, within the area covered by the polling station, if they notify LEC thereof no earlier than 72 hours before the day of voting and no later than 11 a.m. on the day of voting, or the polling board on the day of voting, no later than 11 a.m.

4.3. Performance of electoral commissions and Administrative Court



The assessment revealed considerable variation in the performance of electoral commissions in election disputes and a marked formalism in decision-making, which hindered the effectiveness of these procedures.

Local electoral commissions were established in all local authorities immediately before the April elections. One of the LEC responsibilities is to rule on requests for annulment of voting at a polling station due to irregularities in the conduct of the voting. The commissions were, in effect, electoral commissions at the municipal or city level, or, in the case of Belgrade, at the level of each of the capital's constituent urban municipalities, that operated for national-level and local elections and were comprised of core and non-core members. Faced with a completely new statutory framework, **the LECs were for the first time required to make immediate decisions in election disputes in national elections**, which decreased their performance in the April polls. The data provide multiple indications of there being **considerable variation in the performance of LECs in election disputes**. Three examples will be illustrated here: (1) Confusion between grounds for filing; (2) Admissible evidence; (3) Investigations launched by LECs.

Confusion between protest to polling board minutes and annulment request: The first example to illustrate this conclusion involves the **interpretation of protests to polling board minutes**. The new rules require the polling board minutes (the key document substantiating actions taken at the polling station and events of election day) may be accompanied by **protests of polling board members**, which may include allegations of any irregularities that may have occurred, facts relevant for the course or results of the voting, and the like. The main minutes form must indicate whether any protests are included. Here, quite surprisingly, some LECs interpreted **protests to polling board minutes as requests for annulment of voting** and dismissed them, as a rule, as being made by parties without standing or as incomplete. Three LECs construed the protests as requests for annulment of voting, an inappropriate practice since in doing so the LECs **assumed authority for bringing election disputes *proprio motu***, in complete contravention of the law.²⁷ At the same time, these actions introduced another layer of difficulty into the electoral process, because they involved making decisions on applications that were automatically dismissed as incomplete and lodged by parties without standing. By contrast, the vast majority of LECs did follow regulations in admitting the protests as evidence where formally correct requests for annulment of voting had been lodged. On the opposite side of the spectrum, a different LEC never even received protests with a number of polling board minutes, even though the minutes did indicate protests were available. In its explanatory statement, the LEC stated that 'the fact that the ballot materials are missing protests from

²⁷ This practice should not be confused with annulment of voting *proprio motu*, as described in the foregoing sections.

polling board members, which the Minutes indicate are available, is therefore not deemed to be a violation’ and that ‘the fact that the “Yes” option is checked in the Minutes to indicate a polling board member had lodged a protest [...] does not mean that the protest was in fact produced as a separate addendum or provided to the Commission’. Without assessing the correctness or legitimacy of this explanation, it is important to note that **diametrically opposite actions taken by electoral commissions in these cases do introduce an element of legal uncertainty, leading to inconsistency and potentially creating perception of bias**, as one group of authorities construed protests as grounds for launching a dispute and others as possible evidence, whilst yet others never even took them into consideration or viewed them as part of the ballot materials.

Practical example – protests as grounds for initiating a dispute *proprio motu*: one LEC found a set of polling board minutes including protests from a non-core polling board member. Even though the protests are part of the ballot materials, this municipal LEC launched an election dispute *proprio motu* and treated the protests as requests for annulment of voting. Since the document lacked all the elements required by law, meaning evidence and the applicant’s contact information (because it was never intended to be an application for annulment), the LEC deemed it incomplete and made by a party without standing, because it had ostensibly been lodged by a polling board member who lacked standing to make requests for annulment of voting.



Consideration for evidence: Similarly, variation was also found in **monitors’ minutes**, which include information on the election monitors who observed the polling board and any protests lodged made by these monitors. Some commissions chose to ignore these documents, whilst others interpreted them as grounds to initiate disputes.

Legal standing and *proprio motu*: As with protests to polling board minutes, the electoral commissions here also took it upon themselves to open and make decisions in election disputes *proprio motu* in contravention of the law, based on monitors’ minutes. Interestingly, instead of simply dismissing these disputes, one LEC actually reviewed the subject-matter of the complaints and dismissed them as lacking merit, since no evidence had been provided to corroborate the allegations. In this regard, in multiple cases the LECs **made decisions on the merits of cases, even though the applications had been made by parties with no standing and, as such, could not be subject to such decision-making**. Here, some commissions dismissed applications or complaints lodged by polling board members or monitors, whilst others rejected them. Even though the procedural distinction had no impact on the final outcomes of these disputes, it is nevertheless important to ensure full compliance with standards, regulations, and legislation, as well as uniformity and fairness in decision-making by electoral commissions.

Practical example – quote from an LEC decision on a ‘complaint’ made by a voter alleging voting irregularities: ‘In view of the provisions of article 151 of the Law on the Election of Members of Parliament, it is clear that a complaint is a formal protest that can be lodged solely with the Republic Electoral Commission, and as such in this case the complaint is inadmissible in view of the fact that it has been lodged with the Municipal Electoral Commission.’



Lastly, the final example of the inconsistent practice of electoral commissions is an LEC that used what can only be described as an **investigation procedure** when ruling on electoral disputes, which are generally considered urgent in all procedures (LEC, REC, ACA and Administrative Court) and as such preclude the use of public hearings, interviews, or presentation of evidence. In deciding on a request for annulment of voting made by a promulgated electoral list, the LEC served the chairperson of the polling board with a formal ‘request for explanation’, and the chairperson responded. This lack of investigation is not in line with good practice, nor with the European Court of Human Rights jurisprudence. The LEC based its decision on the explanation and the polling materials. Even though the decisions were later upheld in the second and third instance, inconsistent actions by commissions in election disputes introduced legal uncertainty into these disputes, which is why it is important to ensure uniform interpretation of rules by LECs and the effective administration of justice, including the right to a written, reasoned decision that is not capricious, unreasonable, or arbitrary.

The Administrative Court worked efficiently and in line with the time limits stipulated by the Law. Although some of the Court’s decisions were disputed by the public (especially the one connected to defining the status of a national minority to one of the electoral participants), the analysis shows that all decisions were based on the law, following strict and narrow formal approach. As the judicial relief before the Administrative Court in electoral disputes follows the rules of the Administrative Disputes Law, the requirements of international standards for electoral dispute resolution, 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 this 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. As such, the Administrative Court **does not provide access to information in real-time nor holds open hearings, but regularly publishes anonymized judgments on the section of its website dedicated to election cases.**

4.4. Efficiency of decision-making and compliance with time limits



The new election dispute resolution framework includes appropriate time limits for guaranteeing the right to respond, collecting evidence and ensuring fact finding, which has had a positive impact on fairness, but challenges at the same time balance with efficiency

A total of 36 days elapsed from election day, 3 April 2022, for final results to be officially promulgated in the Belgrade election on 9 May. The final results of the presidential poll were declared one day later, whereas it took more than three months (94 days) to determine the final outcome of the general election. These unprecedented delays were the consequence of several factors:

- 1) **Following the new legal provision that the LEC shall ex officio issue a decision establishing that the voting results cannot be determined due to technical and administrative issues** (such as gross logical-computational errors in completing the result protocols, the number of ballot papers in the ballot box higher than the number of voters who turned out, etc.), **voting was annulled *proprio motu*** at all levels: in Belgrade, voting was repeated at four polling stations on 16 April and at two more on 21 April; in the presidential poll, repeated voting took place at 35 polling stations on 16 April; and in the general election 54 polling stations saw repeated voting on the same day.²⁸
- 2) **Sacks containing polling materials** were opened by the LEC members in the Belgrade election due to a large number of requests for annulment of voting alleging inaccurately determined results or tampering with ballot papers - besides “regular” complaints received just after E-day, two opposition electoral lists (Ajmo ljudi and Ujedinjeni za pobedu Beograda) submitted a request for audit of ballot materials following the publishment of preliminary results on a sample of 5% of polling stations. For this purpose, a Commission for audit of ballot materials was formed after which an inspection was launched.²⁹ This introduced delays in making decisions on these applications and also made the dispute resolution process more complicated, with the applicants lodging complaints with the Administrative Court over the delays³⁰ and subsequently also filing appeals contesting rulings made on those complaints.

²⁸ Unlike presidential elections, where annulment of votes did not influence an overall result, repeated voting at Belgrade and parliamentary elections impacted the final mandate distribution.

²⁹ This resulted in amendments of 15 polling board protocols, due to gross logical-computational errors in completing the result or due to other administrative irregularities.

³⁰ Article 85 of the latest Local Elections Law stipulates that ‘an appeal for failure to rule on a complaint within the statutory time limit can be lodged within 72 hours from the expiry of the time limit within which the complaint should have been ruled on’. This is a change from the previous wording, where a complaint was sustained if the commission did not rule on it within the statutory time limit. Local Elections Law, Official Gazette of the Republic of Serbia No. 14/2022.

3) Lastly, applications to annul voting and the subsequent complaints and appeals meant that, at one polling station in Bujanovac, voting in the general election took place **no fewer than five times**: on the original election day, 3 April, then on 28 April, 27 May, 23 June and finally 30 June 2022.

- ▶ Voting on election day was annulled following an application by the Albanian Coalition of the Valley since the control ballot had been signed by a polling board member. The LEC and the REC dismissed the application and the complaint respectively, whereas the Administrative Court sustained the appeal, overturned the decision, and ordered a repeat of the voting. *Here, the Albanian Coalition did not win a seat in parliament as it was some 400 votes short (254 votes cast, 226 for the Albanian Coalition of the Valley).*
- ▶ The 28 April vote was annulled at the application of the Socialist Party of Serbia as the polling board had allowed an individual to vote without having valid identity documents. The LEC rejected the application, the REC sustained the subsequent complaint, and the Administrative Court rejected the Albanian Coalition's appeal and upheld the REC ruling. *Here, the Albanian Coalition won a seat in parliament and the Socialist Party of Serbia lost one (697 votes cast, 677 for the Albanian Coalition of the Valley).*
- ▶ The third vote at this polling station took place on 27 May, and, according to the official results, *the Albanian Coalition was 12 votes short of winning a seat (618 votes cast, 598 for the Albanian Coalition of the Valley)*, whereas the Socialist Party of Serbia won an additional seat. The Albanian Coalition launched an election dispute alleging numerous irregularities, including voting by the same person who was the cause of the previous annulment (the applicant provided official confirmation from the police proving that the individual did not possess a valid personal identity card or passport). The LEC and the REC rejected the application and complaint, respectively, on grounds of lacking merit, whilst the Administrative Court sustained the appeal and reversed the commissions' decisions.
- ▶ The fourth vote (on June 23) was not held – the polling station was not opened because the members of the polling station could not agree on the division of roles and on the organization of voting. As reported, the main issue was control over the excerpt from the voters' registry, which was not resolved even after mediation of REC members – none of confronted political parties wanted to leave the management of the voter list and document verification to the other party. In addition to this, at one point, there was a report that a bomb had been planted in the school premises, where polling station was located. After all these happenings, the decision was made that the voting will not be held at all. The fifth vote was scheduled for June 30.

- The fifth vote was held successfully on June 30, with no objections made by the polling board members or requests for annulment of voting. *The Albanian Coalition won a seat in parliament and the Socialist Party of Serbia lost one (725 votes cast, 698 for the Albanian Coalition of the Valley).*

All of these considerations meant the **electoral system was perceived as sluggish and inefficient**, since it took over three months to declare the results and begin constituting the various legislatures, creating instability and tarnishing trust in the process. At the same time, the assessment revealed that **all decisions, rulings, and judgments had been adopted and published in due time: all institutions had complied with decision-making time limits at all instances of election dispute resolution and published them within 72 hours of their receipt**. One exception is provided by Belgrade, where it was decided to open sacks containing ballot papers for a recount due to the large number of challenges alleging inaccurate tallying of the votes. In the capital, the LEC in effect postponed its ruling on these complaints and did so on average **five days after receiving them**. Even though this practice can be justified by the need to audit the ballot papers, the time needed to make decisions was in contravention of the Law on Local Elections, which requires electoral commissions to rule on a complaint **within 72 hours** of receiving it and publish the ruling online. Failures to adopt these rulings within the statutory time limits prompted many appeals with the Administrative Court, which rejected them as unmerited since no rules prescribe any consequences for this omission.

Practical example – extract from Administrative Court judgment in connection with decision-making time limits: ‘When reaching this decision, the Court considered the fact that the City Electoral Commission of Belgrade had ruled on the complaint after the expiry of the time limit stipulated in the aforementioned provision of Article 57(3) of the Law on Local Elections,³¹ but found that this did not affect decision-making in this case as neither the Law on Local Elections nor any other legislation that applies as appropriate by virtue of that Law **provided for any legal consequences of ruling on a complaint after the expiry of the statutory time limit.**’

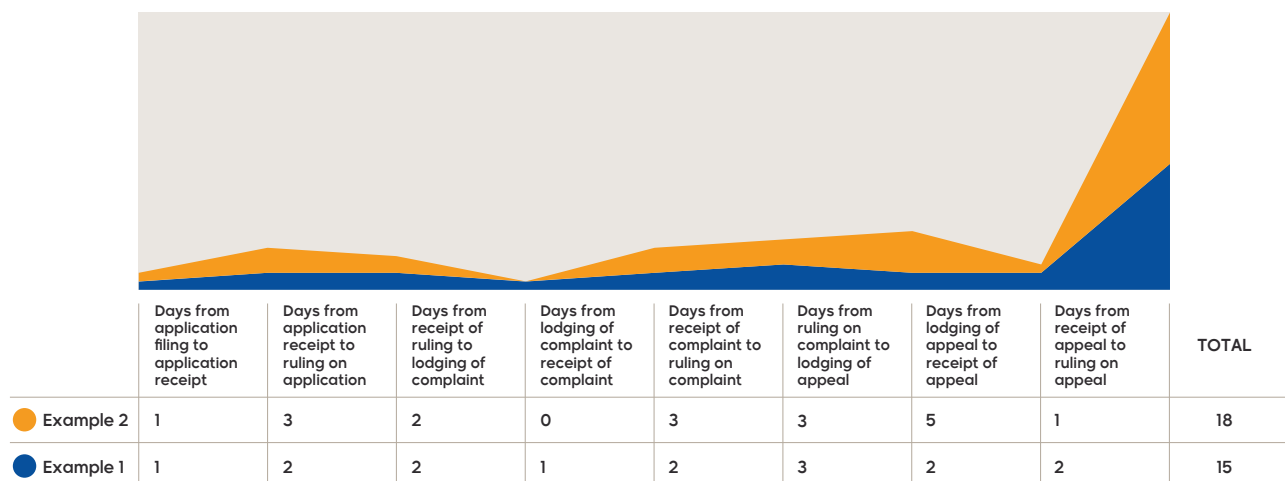


The total time required to complete the various procedures across all three instances of election disputes was **some 15 days**, less than expected.³² It seems this efficiency was primarily due to the promptness with which the lower-instance bodies delivered case files to higher-instance ones.

³¹ Electoral commissions are required to rule on complaints to voting at a polling station within 72 hours and to publish their rulings online.

³² See Table 1 and time limit counts.

Figure 6. Duration of electoral disputes in a three-instance procedure, practical examples



By contrast, some variation in the total duration of these disputes was due to factors such as **how the applications, complaints, and appeals had been lodged and the authorities' workload at the time a dispute was initiated**. Where the filings were lodged directly with the relevant bodies, the cases took less time to complete, and, conversely, where the submissions were mailed in, it took more time to resolve the disputes.

Practical example – time limits and case duration: one appeal was sent to the Administrative Court by registered mail on 12 May, but the Court received it only on 17 May. This meant it took an additional five days to adopt the final ruling.



It may be appropriate here to note that the instructions on the filing of requests for annulment of voting at polling stations and abroad and decision-making by the REC on such applications of 22 February 2022 stipulate that a complaint may be lodged with the Commission by being (1) delivered directly to the Commission's registry office, and (2) mailed to the Commission's address and marked as a complaint. The instructions **do not allow applications, complaints, or appeals to be lodged electronically**, even though doing so would greatly accelerate decision-making and facilitate communication between the various parties to the proceedings. This consideration is especially important since the Electronic Documents Law stipulates that 'the validity, evidentiary power, or quality of being in writing cannot be denied to an electronic document solely due to it being in an electronic format',³³ whereas the General Administrative Proceedings Law (which applies, as appropriate, to election disputes) permits parties to **communicate with public authorities by electronic means**.³⁴

³³ Article 7 of the Electronic Documents Law, Official Gazette of the Republic of Serbia Nos. 94/2017 and 52/2021.

³⁴ Articles 56 and 57 of the General Administrative Proceedings Law, Official Gazette of the Republic of Serbia Nos. 18/2016 and 95/2018 – Authentic Interpretation.

As such, it seems appropriate to consider **aligning the REC's instructions with this legislation since this would doubly improve the electoral dispute resolution process, firstly by accelerating it whilst still providing fairness and transparency, and secondly by enhancing the quality of communication between the parties.**

All of the above bears the previously stated conclusion that the new electoral dispute resolution system (1) provides appropriate time limits for building cases and (2) introduces additional options for resolving electoral disputes, **thereby enhancing fairness.** However, **the new framework has also had an adverse impact on the systemic efficiency of the electoral process as a whole**, because, when coupled with other factors,³⁵ it has led to a three-month delay in determining the final results, which made it impossible to constitute the newly elected institutions. Therefore, **even though it is effective at the micro level** (all disputes are resolved in due time and efficiently, with greater rapidity than expected, less cost), at the macro level the dispute resolution system causes **inefficiencies for the electoral process in general.** Notably, though, any changes to this process to increase systemic efficiency in existing framework would actually **directly hurt the fairness and effectiveness of dispute resolution.** Here it must be ensured that a genuine effort is made to address this defect and to design the EDR system where key rights will be balanced and adequately implemented and protected, not one at expense of the other.

³⁵ Such as the unique situation in which gaining a seat in Parliament hinged on the outcome of the vote at one single polling station, where voting was consequently repeated 4 times; criteria to request annulment; audit requirements etc.

4.5. Burden of evidence and case outcomes



Inconsistent evidentiary practices of electoral commissions due to lack of training, ignorance of procedures, and statutory limitations together make it exceptionally difficult to prove election irregularities. This meant only 22 cases resulted in annulments of decisions or reversals of actions.

Of the 709 first-instance disputes, **129, or 18 percent, were initiated only on grounds of applicant allegations, with no evidence whatsoever having been submitted.**

Figure 7. Evidence submitted in election disputes (%)



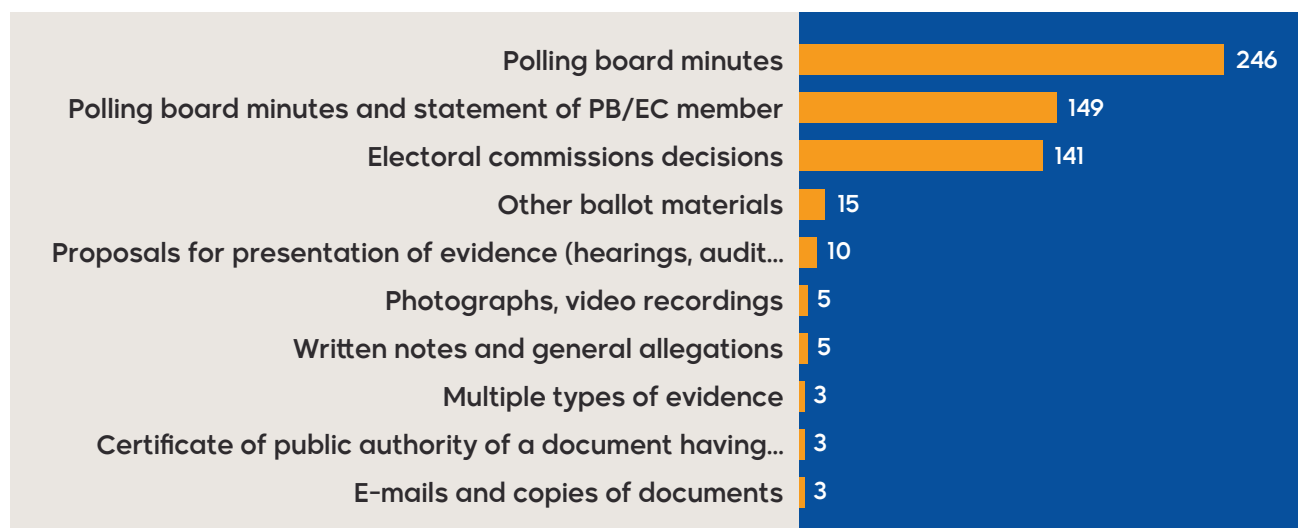
Of these, as many as 72 disputes were brought by promulgated electoral lists, 30 by voters, 6 by MP candidates or electoral lists, and 21 by other parties without standing. The remaining 582, or 82 percent, of the disputes did provide some evidence or at least proposed evidence for presentation.

In more than 40 percent of the disputes subject to the assessment (246 cases), the applicants sought to substantiate their allegations **only by providing polling board minutes**, whilst in another 149 cases (some 26 percent) the minutes were accompanied by **statements made by polling board members or LECs**. Minutes were provided as the sole evidence in virtually all disputes launched by Let's Go People that alleged the absence of control ballots or certificates of voting away from polling stations or inaccurately completed certificates, as well as in cases alleging abuses with voting away from polling stations. The third most commonly provided type of evidence were **electoral commissions' decisions or rulings**, which were generally used in cases (totaling some 140, or 24 percent) where decisions were contested, primarily after election day (such as in all disputes brought by United for Serbia's Victory over failures to provide protests to polling board minutes).

In addition to the above, the various applicants also proposed other types of **ballot materials** as evidence, including photocopies of control forms, protests by polling board members,

copies of certificates of voting away from a polling station, copies of control ballots, and the like (15 cases, some 3 percent), as well as **photographs and video recordings** (5 cases, 1 percent), **written notes** (5 cases, 1 percent), and **official certificates of public authorities, e-mails, copies of documents**, and the like. In a final 10 disputes the applicants sought formal **presentation of evidence** involving polling board members or voters.

Figure 8. Types of evidence used in the disputes assessed (total counts)



Practical example – evidence used in disputes: one complainant accompanied their complaint to the promulgation of an electoral list no fewer than 37 pages of text alleging a presidential candidate was mentally and physically unfit for assuming the office of President of Serbia. The allegations included criminal offences, violations of the Constitution, state capture, and the like. This complaint was rejected on grounds of lacking merit.



Practical example – evidence used in disputes: one complainant accompanied their application by a certificate from a local police station attesting that a voter indicated in the electoral register extract as having voted did not possess a valid personal identity card or passport. This application resulted in annulment and repeat of voting.



However, as suggested by the assessment of the statutory framework and practices of institutions involved in election dispute resolution, simply **referencing the minutes** or **providing evidence of irregularities not mentioned in the minutes** is not sufficient reason for an application or complaint to be sustained.

The local legal tradition and provisions of administrative dispute laws mean that legal procedures currently in force **do not require public hearings, confrontation of parties to a dispute, or presentation of evidence**. Ostensibly, this is due to the need for **rapid, efficient, and prompt** electoral procedures. Electoral commissions ruling on appeals and

complaints **lack investigative powers** or the ability to initiate election disputes *proprio motu*, instead using **polling board minutes** to rule on complaints as an indicator of whether irregularities may have occurred on election day. In other words, this arrangement means that an electoral commission must dismiss or reject the application of a voter alleging a violation of their electoral rights if no such violation is recorded in the polling board minutes.

When making decisions in the second and third instance, the REC and the Administrative Court rely on case files provided by the LEC to the REC or by the REC to the Court, where **no additional fact-finding actions take place**, again due to tight decision-making time limits.

The above contradicts best global practice, where electoral dispute regulation bodies base their decisions on investigative actions and procedures in which they find facts appropriately whilst guided by four principles:³⁶

- 1) **Prompt investigation** – Important because election processes and results are time-bound and evidence may be time-sensitive;
- 2) **Thorough investigation** – Important for ensuring that any action taken in response to a dispute or allegation is based on sound evidence.
- 3) **Effective investigation** – directly linked to the fact that individuals must have accessible and effective remedies in place; this right can be undermined if the investigation process is not effective; and
- 4) **Impartial and independent investigators** – fundamental to the credibility and legitimacy of the investigation process and outcome.

Examples of these practices can also be found in judgments of the European Court of Human Rights (ECtHR). For instance, in *Davydov and others v. Russia*,³⁷ the ECtHR found that Russian authorities had **failed to ensure effective review of allegations about serious irregularities** claimed by the complainants, which constituted a **violation of the right to free elections** enshrined in the European Convention on Human Rights (Article 3 of Protocol No. 1).³⁸ In numerous judgments, the ECtHR also found that a national system for **effective investigation of each individual allegation** was fundamental to free and fair elections and the exercise of both active and passive franchise.

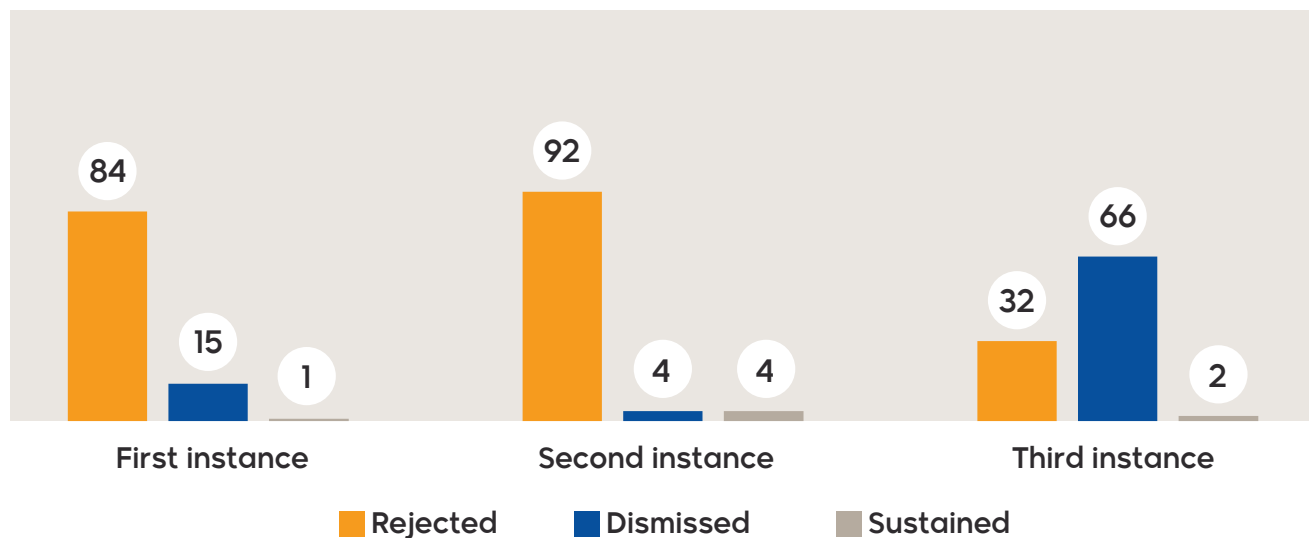
³⁶ Vickery, Chad and Ellena, Katherine, *Election Investigations Guidebook*, International Foundation for Electoral Systems (2020), Arlington, p. 37.

³⁷ *Case of Davydov and others v. Russia*, Application no. 75947/11, available online at [hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-173805%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-173805%22]}); abbreviated version (ECHR press release) available at eods.eu/elex/uploads/files/592dbe21b042c-Judgment%20Davydov%20and%20Others%20v.%20Russia%20-%20allegations%20of%20election%20irregularities%20in%202011.pdf.

³⁸ European Court of Human Rights, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights*, available online at echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf.

The assessment has revealed **the current framework does not facilitate the proving of irregularities, even though the time limits for initiating disputes (and decision-making) have been significantly extended.**³⁹ To reiterate, extending these limits was recommended by the ODIHR after the 2020 election:⁴⁰ ‘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.’ Nevertheless, the statistics suggest **complainants won very few disputes**: of the 709 applications and complaints in the first instance, only six (1 percent) were sustained by electoral commissions, with 15 percent dismissed and 84 percent rejected; of the 546 second-instance complaints, 92 percent were rejected, 4 percent dismissed, and only 20 (4 percent) sustained; and, finally, of 44 appeals in the third instance before the Administrative Court, 32 percent were rejected, 66 percent dismissed, and 2 percent (only one) sustained.

Figure 9. Outcomes of election disputes in each instance (%)



No more than 22 of the nearly 1,300 disputes reviewed resulted in the overturning of a lower-instance (REC or LEC) decision or the reversal of a previously taken action.

³⁹ An additional problem with proving irregularities is the fact that laws and byelaws do not stipulate what constitutes evidence in electoral disputes.

⁴⁰ ODIHR Special Election Assessment Mission Final Report, Parliamentary Elections. 21 June 2020 (2020), Office of Democratic Institutions and Human Rights, Warsaw, available at osce.org/files/f/documents/a/3/466026.pdf.

Irregularities at polling stations were proven only in two cases in the first instance, both over control ballots, whilst the evidence was a copy of the polling board minutes in one case and an unsigned control ballot in the other.⁴¹ The remaining four disputes involved electoral commission decisions made illegal by procedural issues, where the evidence submitted was copies of those decisions. In all other cases the applications and complaints **were rejected on grounds of lacking merit**, with the exception of untimely submissions or those lodged by parties without standing. Here it should be noted again that the new legal framework requests evidence to be submitted as a mandatory element of a request to annul the voting, but it doesn't list or define what makes evidence acceptable or sufficient. In that sense, there are no prescribed criteria on evidence that could be used in the EDR process.

Practical example – proving irregularities and outcomes: more than 140 complaints were lodged in Belgrade, with a review of polling board minutes finding polling board members had made comments but these had not accompanied the ballot materials. The complainants referred to the minutes and accompanied their complaint with a statement signed by three members of the electoral commission. The Belgrade LEC rejected each of the complaints claiming that the circumstances 'did not constitute an irregularity or omission in the Minutes', and that 'the fact that the "Yes" option is checked in the Minutes to indicate a polling board member had lodged a protest [...] does not mean that the protest was in fact produced as a separate addendum or provided to the Electoral Commission together with the Minutes'. The Commission deemed that **the complainant had failed to produce evidence that the alleged protests had actually been submitted together with the Minutes.**



This interpretation, later also upheld by the Administrative Court, can pose a problem as it **effectively questions the allegations made in the polling board minutes**, the key document indicating how election day proceeded. At the same time, it also raises the question of how to prove that a particular document had been delivered as part of the ballot materials, and whether additional evidence is required apart from signatures of polling board members, since the polling board is responsible for the conduct of the voting. Lastly, this view raises the question of criminal liability of those who may have tampered with the ballot materials (if the allegations in the minutes and any protests are to be seen as truthful), and requires a re-assessment of why the prosecution service has failed to follow up on any allegations of abuse.

⁴¹ In mentioned cases, administrative irregularity was proven simply by providing a copy of official PB protocols where an omission is visible, available to all participants and citizens as well.

Practical example – proving irregularities and outcomes: at one polling station, an applicant lodged a request for annulment of voting due to a breach of ballot secrecy and undue influence on voters. The applicant sought to prove this allegation by providing a video recording published on local news websites, which clearly shows the acts alleged in the application, and by referencing polling board protests accompanying the minutes. The LEC rejected the application on grounds of lacking merit, citing that, after a review of the video recording, it could not determine beyond reasonable doubt that polling board members had advised voters how to vote, as well as because ‘it was eminently clear the **video recording had been obtained in contravention of the provisions of Article 98(3)(2) of the Law on the Election of Members of Parliament,**⁴² and as such cannot be used as evidence in this dispute.’



One interesting feature of this case is that the second and third instance bodies rendered a ruling and judgment with the same outcome but for different reasons, namely because the applicant lacked standing to lodge a request for annulment of voting. Here, the applicant had accompanied the application with an ‘authorization to lodge a complaint or appeal’ issued to them by a promulgated electoral list, claiming that ‘authorization covered all types of complaints and appeals. The second and the third instance (REC and the Administrative Court) nevertheless interpreted that this authorization *did not extend to applications*, since the electoral list had not strictly indicated the entitlement conferred this ability. It is questionable here whether this **narrowly formal interpretation by the Electoral Commission was justified** and whether it **was contrary to the principle whereby parties to proceedings should be offered assistance** and should not suffer consequences for their own ignorance or unsophistication.⁴³

A whole different set of problems with proving irregularities is created by the **political composition of electoral commissions and polling boards** and the fact that political parties themselves are those that make decisions on the interests of political parties. This issue can be illustrated by the example of how polling board minutes are used in local authorities where ethnic minority languages are in official use.⁴⁴ For instance, at one polling station (a hotly contested one, as it turned out), the **polling board minute versions**

⁴² ‘It shall be deemed a breach of order at a polling station to, at a polling station or immediately outside a polling station: [...] 2) Make unauthorized recordings or take photographs of events at the polling station.’

⁴³ Article 8(1) of the General Administrative Proceedings Law: ‘An authority shall proprio motu ensure that the ignorance or unsophistication of a party or other participant in a proceeding does not jeopardize their exercise of the rights they are entitled to.’

⁴⁴ In municipalities where an ethnic minority language is in official use on election day, in addition to polling board minute forms printed in Serbian Cyrillic, a separate minutes form is produced in the language and script used by the ethnic minority that employs a font and size identical to those in the Serbian Cyrillic version.

completed by the various political groups, one in Serbian and the other in the local ethnic minority language, differed. Even though, as a rule, the two documents ought to be **identical** as they are considered constituent parts of the ballot material, one included protest, and the other denied any irregularities had taken place. In addition, in another local authority some polling board minutes lodged protests to the minutes, whilst other members refuted those allegations in the same document. **The legitimacy and accuracy of these documents are therefore questionable,** even though election commissions rely on the minutes to understand the events that took place at the polling station and, consequently, use them as evidence in election disputes.

As noted above, one issue with proving irregularities is the fact that electoral commissions **lack investigative powers** and must base their decisions on the ballot material and evidence submitted by complainants. Second- and third-instance authorities also lack the ability to investigate and find facts, and **base their decisions on materials and case files provided by lower-instance bodies.** The difficulty of proving irregularities is underscored by the statistics of second- and third-instance disputes: as already noted, a total of **22 disputes were won by the complainants and resulted in previous decisions being overturned.** Of these, **17 were overturned on procedural grounds,** because the Belgrade LEC had wrongly amended minutes after an audit by a special commission, and because, in two cases, the electoral commission was wrongly assigned jurisdiction. Minutes of sessions and ballot materials were used in these disputes as evidence. Reversals in the final four cases were due to substantive reasons: four because an electoral list did not indicate ethnic minority status (in the Belgrade and the general election), and three because procedural violations at polling stations were proven – one where the control ballot was signed by a voter who was also a polling board member (proven by an audit of the ballot materials), and two where an individual was allowed to vote without proper identification (both proven by certificates provided by the relevant authorities). It ought to be noted that all three situations took place at the same polling station in Veliki Trnovac, which suggests the problem lay in the highly complex situation where two political parties competed for a seat in parliament, which would be one's first and only MP, and the other's 32nd. The evidence used in these disputes illustrates the issues well:

- ▶ After the first vote, the applicant (Albanian Coalition of the Valley) substantiated the allegation that the control ballot had been signed by a polling board member rather than a voter by referencing the polling board minutes and the decision appointing polling board members. The LEC and the REC did not admit this piece of evidence (claiming the irregularity was 'minor'), whereas the Administrative Court overturned their decisions and ruled the event was a violation of the law that merited an annulment of the voting.

- ▶ Following the second vote, the applicant (Socialist Party of Serbia) alleged that a person marked as having voted in the extract from the electoral register did not attend the polling station, which was substantiated by a certificate issued by Surdulica police station attesting that the person did not have a valid personal identity card or passport. The REC sustained the complaint and overturned the decision. This ruling was appealed by the Albanian Coalition of the Valley, which used the Albanian-language polling board minutes as evidence of irregularities.⁴⁵ The appeal was rejected by the Administrative Court.
- ▶ After the third vote, the Albanian Coalition of the Valley alleged a person shown as having voted did not in fact attend the polling station (this was the same person that was the cause of issues with the previous vote), producing a certificate from Bujanovac police station as evidence. In addition, the applicant requested to be able to audit the ballot materials due to irregularities with voting away from the polling station. The LEC rejected this application on grounds of lacking merit, as did the REC, which relied on statements of some polling board members, delivered to the REC immediately before it was due to rule in the case, which alleged the irregularities took place after voting ended on election day. This controversial decision, which the REC made using evidence not submitted as part of the original complaint, was overturned by the Administrative Court, which rejected the REC's decision and found that irregularities had occurred at the polling station that did have an impact on the results, especially with regard to voting away from the polling station.

Several suggestions can be drawn from this practice. Firstly, the election dispute resolution process can be subject to **politicization and abuse** since representatives of political parties manage voting at polling stations and they tend to prioritize party political interests. Secondly, there was little consistency in the LEC's decisions, which rendered identical decisions with regard to two applications, only to have the first decision reversed. Here, the actions of the REC were particularly controversial as its audit of the ballot materials⁴⁶ failed to find irregularities subsequently identified by the Administrative Court. Finally, these cases also raise the issue of **what evidence is considered admissible**, as the REC admitted evidence submitted separately from the remainder of the case file.

Procedures for granting ethnic minority status to electoral lists also provide a useful illustration of the shortcomings of Serbia's election dispute resolution system, and as such will be described in greater detail.

⁴⁵ The Serbian-language polling board minutes did indicate irregularities.

⁴⁶ During the decision-making process, REC may audit electoral materials and go through all protocols, minutes and documents in order to obtain all facts. Here REC failed to find that some confirmations for voting away from polling station were not signed and that they were unacceptable as such, although they were treated as acceptable and legitimate by PS board.

One issue emerged with the granting of ethnic minority status list to the **Russian Minority Union** – Milena Pavlović, Pavle Bihali Gavrin (Serbian-Russian Movement, ‘The Wolves’ Serbian-Russian Party, and Srbiza Greek Movement). Here, the proponents of the electoral list requested ethnic minority status, which was denied by both electoral commissions **in the first instance in which new rules designed to prevent sidestepping the law were used**.⁴⁷ The electoral commissions found that the purpose of the electoral list was to circumvent the law so as to give the list a privileged position in the electoral process, as corroborated by findings that the list’s leaders and most candidates were not registered with the separate ethnic minority electoral list and the fact that one of the leaders was a person publicly known to be an outspoken advocate of animal welfare and not an ethnic minority activist.⁴⁸ Seeking to contest these rulings, the representatives of the electoral list provided **evidence** that they advocated the interests of the Russian and Greek ethnic minorities, including a decision to organize two events at the Russian Centre in Jagodina, photographs from events and meetings such as *Rusija je moja druga otadžbina* (‘Russia is My Other Homeland’) and *Srbija nikad u NATO* (‘Serbia Never in NATO’), photographs from meetings with the First Secretary of the Russian Embassy, and photographs of other similar events.⁴⁹ The final decision was made by the Administrative Court, which reversed the rulings of the REC and Belgrade LEC and granted ethnic minority status to the electoral lists. In its explanatory statement, the Court stated that the electoral commissions wrongfully concluded the case warranted the application of the law’s anti-circumvention provisions and rejected as inappropriate the argument referencing the separate minority electoral register and the conclusion that the list did not intend to represent the interests of an ethnic minority.⁵⁰ The Court ruled that an **electoral list cannot be interpreted separately from its proponents, in this case a coalition of parties whose articles of registration, charters, and manifestos prove they are ethnic minority parties.**



⁴⁷ Article 138 of the Law on the Election of Members of Parliament: ‘The Republic Electoral Commission shall rule to reject a proposal to grant the position of ethnic minority electoral list to an electoral list if the leader of the list or a candidate for Member of Parliament from that electoral list is a person who is generally known to be a member of a different political party that is not an ethnic minority political party or if other circumstances are found that indicate, beyond reasonable doubt, an intention to circumvent the law.’

⁴⁸ Pavle Bihali is best known as the founder of Levijatan (‘Leviathan’), a ‘group protecting the welfare of animals, especially the most threatened ones’. See levijatan.org.

⁴⁹ The full text of the complaint, with supporting evidence, is available online at rik.parlament.gov.rs/ext-file/sr/112683/Prigovor_Pavle_Bihali-spojeno_cir.pdf.

⁵⁰ Judgment 18 UŽ 31/22 of the Administrative Court of 21 March 2022, available online at rik.parlament.gov.rs/extfile/sr/114246/Presuda%20Ruski%20manjinski%20savez%20.pdf.

This judgment, coupled with ample evidence of previous abuses of ethnic minority status to gain easier entry to parliament,⁵¹ reignited **public debate about the fairness and effectiveness of the election dispute resolution process in this regard**. A detailed review has revealed, first and foremost, significant differences between the approaches taken by the various authorities: whilst electoral bodies espoused the view that ethnic minority list status can be granted exclusively to electoral lists (based on criteria set out in the Law on the Election of Members of Parliament) rather than the political parties that are their proponents, the Administrative Court made no distinction between the two, taking as its key argument evidence of minority-oriented actions of the political parties. At the same time, this Administrative Court judgment, even though formally founded on the Political Parties Law and case law first established in 2016⁵² (and in this regard the REC's and LEC's inadequate reasoning must also be taken into consideration), in effect leads to the conclusion that **it is impossible to prove, beyond a reasonable doubt, the intention of an electoral list to circumvent the law**. Put differently, this means that **ultimately, any electoral list whose proponent is an ethnic minority party will be granted ethnic minority list status in elections, regardless of its leaders, candidates, or representatives**. As such, these lists will be able to benefit from positive discrimination in elections, such as being entitled to lower public support requirements, exemption from the vote threshold for entering parliament, and vote weighting, even though their leaders may have previously stood in elections on other, non-ethnic-minority lists. Since the issue of how ethnic minority status is granted is exceptionally complicated, additional steps need to be taken to build an appropriate practice and **ensure the rights of legitimate minority lists and the integrity of the electoral process are safeguarded, whilst the principles of fairness and effectiveness are adhered to**.

⁵¹ See 'Izborna administracija: nove okolnosti, stari problemi', in *Oko izbora 21 – Parlamentarni izbori juna 2020. godine (2020)*, Centar za slobodne izbore i demokratiju (CeSID), Beograd.

⁵² One Administrative Court judgment, III-10 UŽ 107/20 of 19 June 2020, deviates from this case law, stating: 'the decision as to whether a political party enjoys the position of an ethnic minority political party in electoral procedures is not to be based solely on whether that political party is registered with the Political Parties Register as an ethnic minority political party nor solely on the objectives set out in the byelaws of that political party, but also on the bases of evidence that the general political activities of the political party actually entail the attainment of the declared objectives.'

One peculiarity of the Serbian electoral dispute resolution process ought to be mentioned here: there are no degrees of severity to the sanctions used in electoral disputes, and these **sanctions are to some extent disproportionate to the seriousness of the irregularities in question**: there are no fines or other administrative penalties that can be imposed for irregularities at polling stations, regardless of whether they affect the results of an election or whether or not they are intentional, the only option available to the authorities is **to annul the voting at the polling station in question**. This legal remedy can be out of proportion to an irregularity that can occur at a polling station, in particular to irregularities that can be prevented by direct intervention. Whilst annulling voting can be legitimate in some circumstances, especially where anomalies affect the overall results of an election, **the effectiveness of this legal remedy can be questionable where the anomaly was caused by negligence on part of the polling board or a voter, or where it does not affect the overall outcome**.⁵³ In that regard, it seems important to **consider the ability of providing for more granular legal remedies in electoral disputes** in the Serbian system, with some global approaches proposing grouping disputes by priority (given their impact on results, seriousness, and whether or not they require further investigation, and the like) and adjudicating them together.⁵⁴ Here, the ECtHR has ruled that a 'mere mistake or irregularity in the electoral process, and in particular at the more technical stages of it, would not, *per se*, signify unfairness of the elections, if the general principles of equality, transparency, impartiality and independence of the electoral administration were complied with. The concept of free elections would be put at risk only if (i) there is evidence of procedural breaches that would be capable of thwarting the free expression of the opinion of the people, for instance through gross distortion of the voters' intent; and (ii) where such complaints receive no effective examination at the domestic level.' There is a need to review the criteria for annulment, threshold of annulment and the types of admissible evidence. Moreover, there should be a review of the range of remedies available to the LEC and REC during post-election disputes but also pre-election disputes to deter violations and reduce impunity.

⁵³ *European Court of Human Rights, Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights*, available online at echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf.

⁵⁴ See Vickery, Chad and Ellena, Katherine, *Election Investigations Guidebook*, International Foundation for Electoral Systems (2020), Arlington, p. 41.

5.

Key findings: performance of the Anti-Corruption Agency and other watchdog bodies

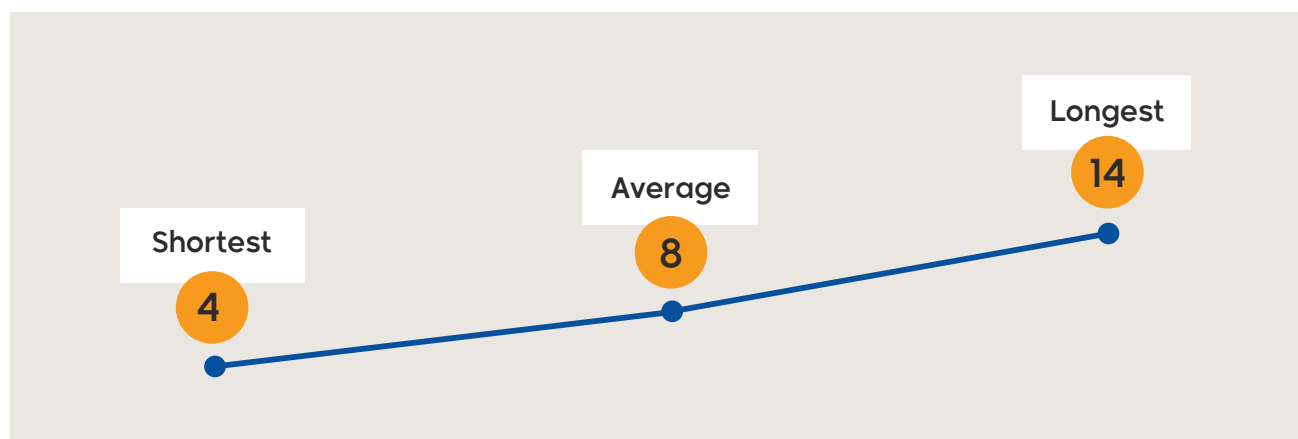
5.1. Anti-Corruption Agency

According to records available from the ACA website,⁵⁵ for the April 2022 election this institution made a total of **16 decisions** (from February to June 2022), where all of the decisions were based on petitions connected with the pre-election period and complaints lodged against the Serbian Progressive Party. The complaints alleged abuse of public institutions and resources in campaign videos, abuse of official websites of public authorities for political party campaigning, and abuse of profiles on social media (such as Twitter and Facebook). **There are no records of the ACA acting *proprio motu*, meaning taking action on its own initiative to address any irregularities.** There is a need to review its rules to enhance its transparency of both its proceedings and its decisions. Since the ACA publishes only its decisions and not the complaints they are based on, the complainants could not be identified – in published decisions, ACA doesn't state whether the complainants are natural or legal persons, their gender, age or any other information that could be useful for detailed analysis.

⁵⁵ Decisions made by the ACA based on complaints are available online at acas.rs/odluka-agencije-po-prijavama.

On average, it took **eight days** from the time a complaint was lodged to the ACA publishing a decision on its website. The shortest disputes took four days (two cases), and the longest one lasted for as much as 14 days (14 to 28 March). As expected, where the ACA found no grounds to act, the disputes took less time to complete, whilst other cases were extended by the need for party officers to respond to notifications of legal action.

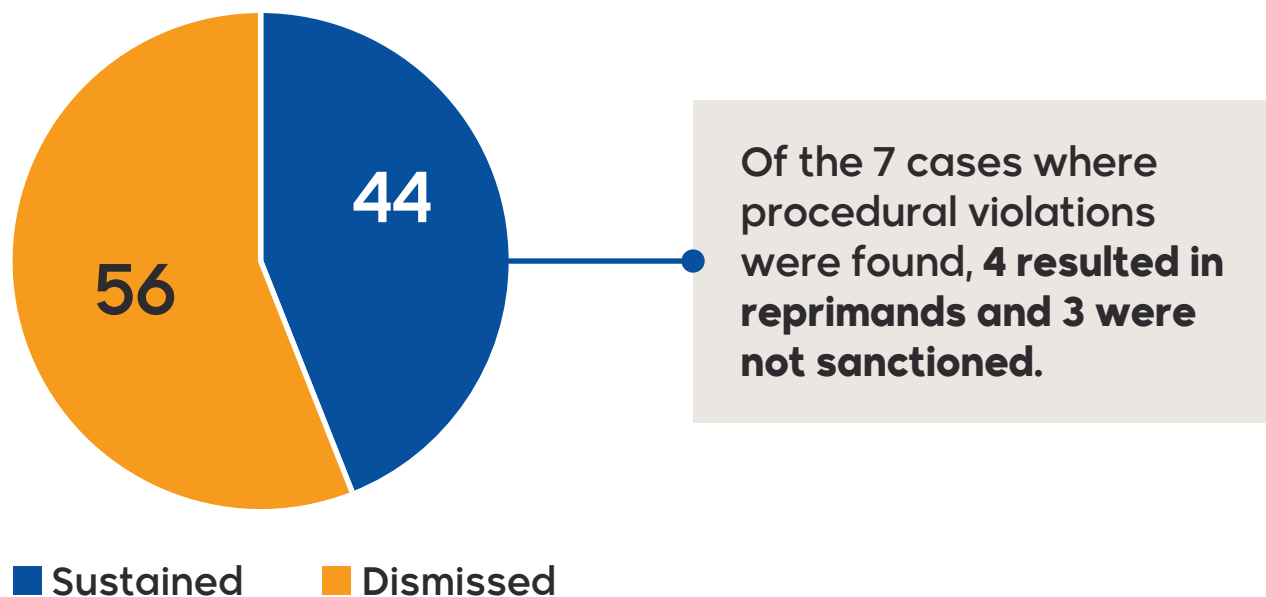
Figure 10. Duration of disputes before the ACA (days)



Violations of laws were found in seven of the 16 disputes (44 percent), whilst nine complaints were rejected on grounds of lacking merit. **The evidence used to substantiate allegations in these disputes** constituted exclusively of Facebook, Twitter, and Instagram links, which could have been expected given the nature of the complaints lodged (as explained above, complaints alleged abuse of public institutions and resources in campaign videos, abuse of official websites of public authorities for political party campaigning, and abuse of profiles on social media (such as Twitter and Facebook)). The complainants submitted no evidence in two cases. During the decision-making process and in line with legal framework **there are no closed or public hearings, confrontation between parties to a dispute, or presentation of evidence** – the public official or a representative of the body accused can only provide a statement about the facts and evidence against him and present the facts and evidence in his favor, if any. There is no information on capacity-building efforts or training implemented with ACA staff to increase their capacities to resolve complaints faster and more transparently.

A particularly interesting aspect of disputes handled by the ACA is that, in three out of the seven cases where it found violations, the ACA **imposed no sanctions nor brought misdemeanor charges**, even though the Political Finance Law clearly requires penalty measures. In the remaining four cases, the ACA imposed reprimands, and there is no publicly available information as to whether the ACA brought misdemeanor charges in any case.

Figure 11. Outcomes of disputes before the ACA (%)



This raises the **justified issue of the effectiveness and transparency** of election disputes handled by the ACA. The assessment revealed there are **no effective legal remedies** that could induce political groups to change their behavior or prevent illegal actions, especially as there have been a number of highly controversial decisions that admit breaches of rules had taken place but stop short of sanctioning them as permitted by law. By contrast, even though the ACA has formally complied with statutory time limits for making and publishing decisions, in common with electoral commissions, parties to disputes lack real-time access to information and there are no open hearings, **which adversely affects the institution's transparency**. Notably, despite being allowed to, **the ACA has failed to initiate disputes *proprio motu***. There is a need to review its rules to enhance its transparency of both its proceedings and its decisions.

Publicly available records show no proceedings took place in the reporting period before the Administrative Court to contest decisions adopted by the ACA.

5.2. Other institutions and watchdog bodies

The role of other institutions and watchdog bodies in election dispute resolution was limited to non-existent, due in part to limited opportunities for action and in part to a lack of initiative:

- ▶ The **Regulatory Authority for Electronic Media** acted opaquely and sluggishly in ruling on the 11 complaints lodged against media outlets for alleged violations of rules requiring all parties, coalitions, and candidates to have equal airtime, without discrimination, during the election campaign. As of the time of writing, the **REM has not made**

any of its rulings public, even though all complaints had been lodged in March 2022.⁵⁶ Although the REM is only involved in election dispute resolution (in that it imposes sanctions on stakeholders that deny equal treatment to all stakeholders during a campaign), its lack of initiative and transparency have had a considerable negative impact on how the election was perceived.

- ▶ The **Ministry of Public Administration and Local Government (MoPALG)** was tainted by issues over the accuracy of the electoral register, with large-scale allegations of tampering with voter records and news reports about members of the public receiving invitations to vote addressed to individuals not living at those addresses. **The MoPALG was not sufficiently proactive** in addressing these concerns, which adversely affected trust in the electoral process.
- ▶ To resolve issues with the electoral register, before the election was called, the Serbian government set up a **Working Party for External Audit of the Single Electoral Register**, comprised of representatives of political parties that had taken part in the Inter-Party Dialogue under the auspices of the Speaker of Parliament, the government, MoPALG, and REC, as well as three representatives of other interested opposition parties. Actions of the Working Party were **completely opaque and did not yield any particular results**: the public were notified about its operations only through sporadic statements of some of its members, and no official statements were published on the websites of the government, the REC or any ministry. No specific efforts were made to audit the electoral register or assess the accuracy of the data contained in it, and there was no complaint process made available for voters.
- ▶ This study was unable to assess the performance of the **prosecution service**, since it takes more time to bring proceedings and raise indictments for criminal offences against election rights and these actions generally are not, and cannot be, made public. The prosecution service should be subject to a performance assessment at a future date; currently, the only conclusion that can be drawn is that as noted in previous elections, **the prosecution service has shown a lack of initiative and efficiency**.

⁵⁶ Complaints were submitted in the period from March 7 to March 31, and the largest number of applications (six of them) related to the violation of the obligation to provide political parties, coalitions and candidates with representation without discrimination during the election campaign. One application related to the violation of the prohibition of covert or indirect advertising of election lists or candidates by showing an entertainment program. In addition to the violation of the obligation to represent without discrimination, three applications also focused on exceeding the allowed duration of advertising within one full hour, and one on the showing of an election program by a media service provider that did not foresee in its program elaboration that it will broadcast news and current events. All eleven applications were submitted by natural persons.

6.

Compliance of Serbian election dispute resolution arrangements with international principles

As noted in the methodology section above, this assessment endeavored to identify the extent to which the new Serbian election dispute resolution framework complies with the four principles of a credible dispute resolution process, namely fairness, efficiency, effectiveness, and transparency.⁵⁷

By way of a reminder, CeSID conducted a similar assessment in 2021,⁵⁸ when the score for fairness and transparency was ‘mostly non-compliant’, or two (2) out of four (4), whereas a one tier higher score, ‘mostly compliant’, was awarded to efficiency and effectiveness. That being said, given the major changes introduced by the new legislative framework, the application of the new rules in the April 2022 elections, and the strengths and weaknesses identified, the findings of the 2021 assessment ought to be reviewed to identify fresh options for improvement.

⁵⁷ *Elections on Trial - The Effective Management of Election Disputes and Violations (2018)*, International Foundation for Electoral Systems, Arlington; available online at pdf.usaid.gov/pdf_docs/PA00TBPF.pdf.

⁵⁸ *Electoral Justice: Here, Now, Tomorrow, The Case of Serbia (2021)*, Centar za slobodne izbore i demokratiju – CeSID, Beograd; available online at cesid.rs/wp-content/uploads/2021/07/Policy-Paper_final-EN.pdf.

6.1. Fairness



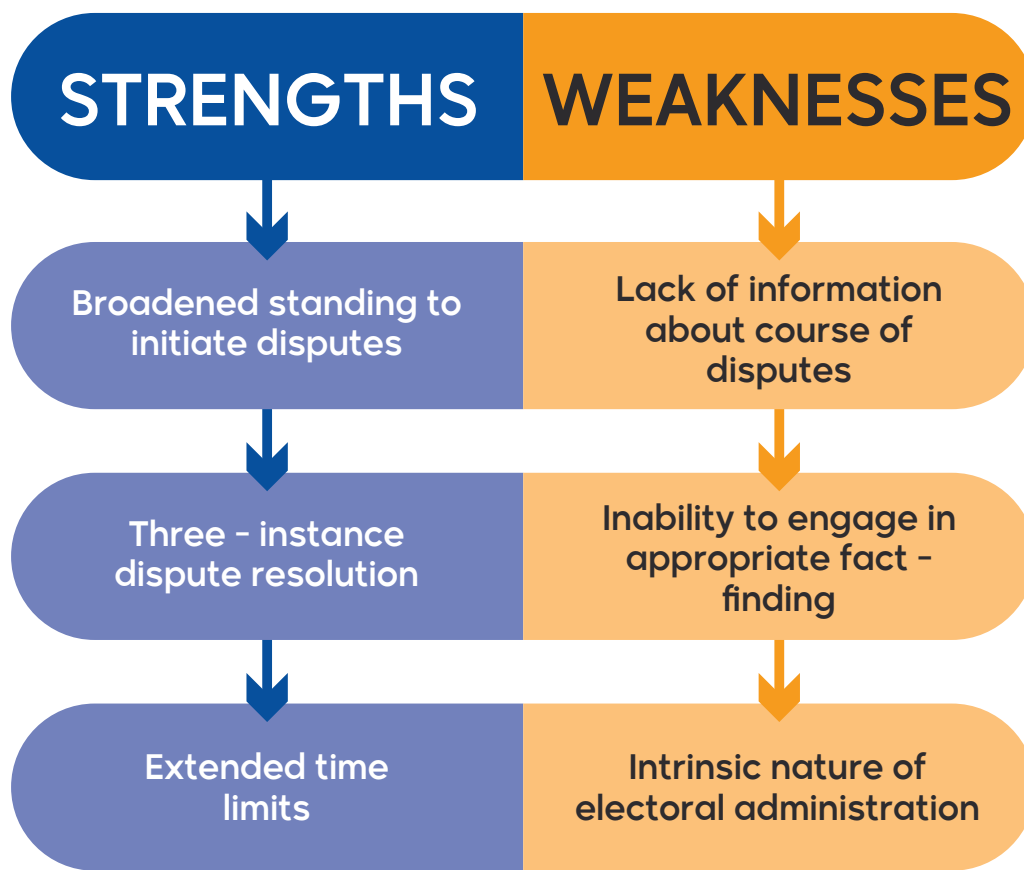
Fair administration of justice includes the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defense, and the right to a fair and impartial fact-finding process, hearing, and decision.

The new legislation has **enhanced compliance with the fairness principle** in a variety of ways. Firstly, **10 categories of stakeholders, instead of the previous three, are now able to lodge complaints**. Even though this right has to some extent been restricted when it comes to the electorate, it has been comprehensively broadened for proponents of electoral lists, the key stakeholders in the electoral process, who now have standing to take part in election dispute resolution procedures in all stages of the electoral process and are able to contest all decisions and actions and take steps over any irregularities at polling stations. In addition, the electoral dispute resolution process has been extended to comprise **three tiers instead of the previous two**, with the involvement of LECs, the middle tier of electoral administration. Even though this may have come at the expense of timeliness/ efficiency, it has enhanced fairness, since stakeholders are now able to seek redress first from LECs which is more accessible, less intimidating, and less costly, and only if not satisfied, then escalate their claims to the REC and the Administrative Court, which has improved legal predictability. Lastly, time limits for taking actions and making decisions have been extended considerably, from 24 to 72 hours, to allow parties to **appropriately prepare their cases and the authorities to engage in fact-finding**.

Conversely, the weaknesses of the system have remained the same: even though complainants are able to remain **informed of the proceedings** before the REC (which guarantees public access), they cannot access information about its **course**: complainants are notified of the outcome of a ruling or decision at the time these are served to them or made public. This practice is because under Serbian regulation, election disputes are treated as **urgent**, which entails exceptionally short time limits. At the same time, notwithstanding the extension of the time limits, fairness is jeopardized by the fact that local legal tradition and administrative law mean current statutory procedures **do not require public hearings, investigation, the confrontation between parties to a dispute, or presentation of evidence**. Ostensibly, this is due to the need for rapid, efficient, and prompt electoral procedures, but is also due to the fact that electoral commissions **lack investigative powers or the ability to initiate election disputes *proprio motu***, as well as proper training. Instead, electoral commissions rely on **polling board minutes** and any evidence submitted to rule on complaints, whereas the second and third instance bodies base their decisions on materials forwarded by lower instance authorities. Lastly, but most importantly, fairness is also diminished by the **intrinsic nature and composition of electoral commissions and polling boards, which do not guarantee their impartiality and independence of the arbiter**.

An important related issue is the **lack of professional, civil, and criminal liability** for electoral administration officials (in particular polling board members), owing to which their actions often do not comply with the principles of professionalism, fairness, and non-discrimination.

Figure 12. Compliance of Serbian electoral dispute resolution arrangements with the fairness principle



6.2. 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.

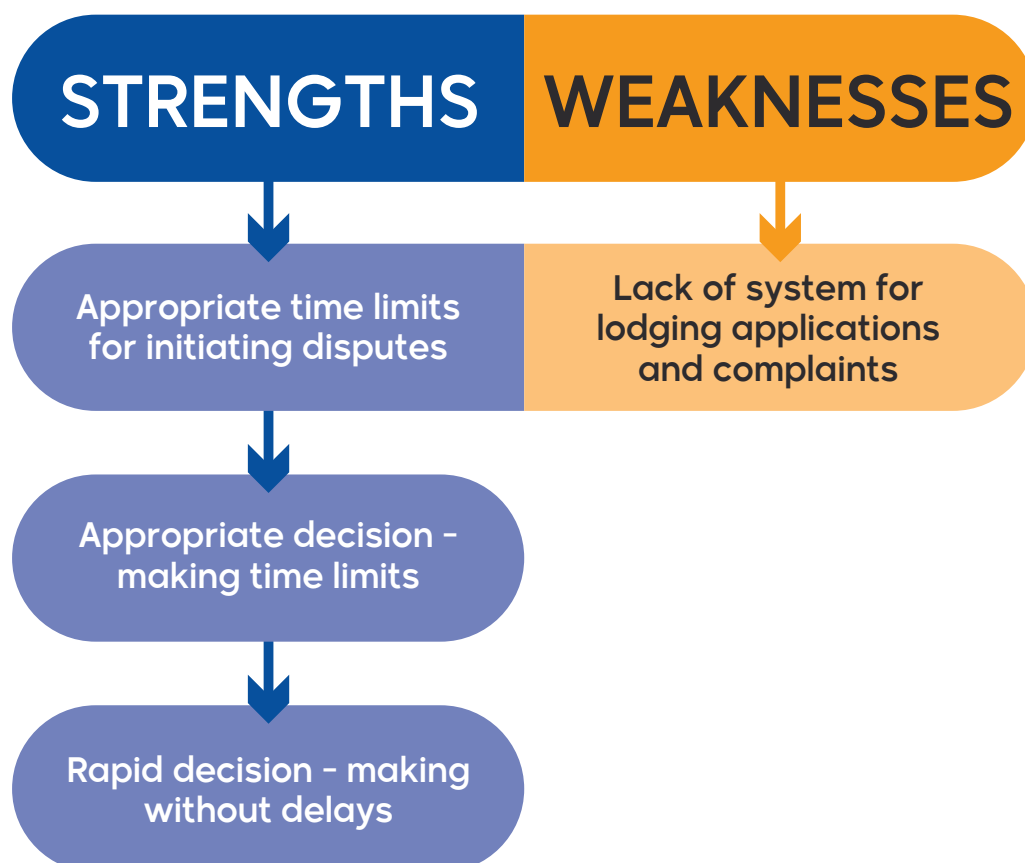
Compliance with the efficiency principle has dramatically improved relative to the previous assessment since the **new legislation has considerably extended time limits for lodging applications, complaints, and appeals**, in most cases from 24 to 72 hours. Notably, the 2021 assessment identified time limits as a major issue with election dispute resolution since they did not leave sufficient time for parties to build their cases properly, but suggested that, when reviewing the time limits, it was particularly important to ensure any extension **did not come at the expense of promptness in publishing election results**.⁵⁹ However, **the new framework has had an adverse impact on the systemic efficiency of the electoral process as a whole**, because it has led to a three-month delay in determining the final results, which made it impossible to constitute the newly elected

⁵⁹ This issue is especially important in the local context where society is highly polarised and where electoral commissions are often under pressure to declare results as quickly as possible.

institutions (exactly due to election dispute resolution, (where voting was repeated multiple times at the same polling station), as well as due to criteria for annulment, criteria for audit of electoral materials and other procedures. However, **the efficiency of the process according to the above definition is undisputed**, as all electoral bodies had taken all actions quickly, without undue delay and with greater rapidity than expected. This view is additionally borne by the fact that the average duration of the electoral process, which can run to a maximum of 22 days (as calculated in the preceding sections, counting only days from which decision-making deadlines run), stood at **some 15 days**, and that in ordinary circumstances the electoral process would have ended at the latest in mid-May. In this context and as evidenced during the 2022 elections, it must be ensured that a genuine effort is made to address this defect of the system in which fairness was improved at the expense of efficiency, instead of taking a balanced approach and assuring that all principles are implemented equally.

An inherited issue with efficiency is the **lack of a simple and easily accessible system for lodging applications and complaints to LECs and REC**, making it difficult for members of the public and other stakeholders to take part in the process (case management system). Such a system would be a major boost to the efficiency of the election dispute resolution framework, since it would aggregate in one place all information, procedures, rules, legal remedies, downloadable forms, and decisions that would be regularly updated and made available to the broadest public.

Figure 13. Compliance of Serbian electoral dispute resolution arrangements with the efficiency principle



6.3. Effectiveness

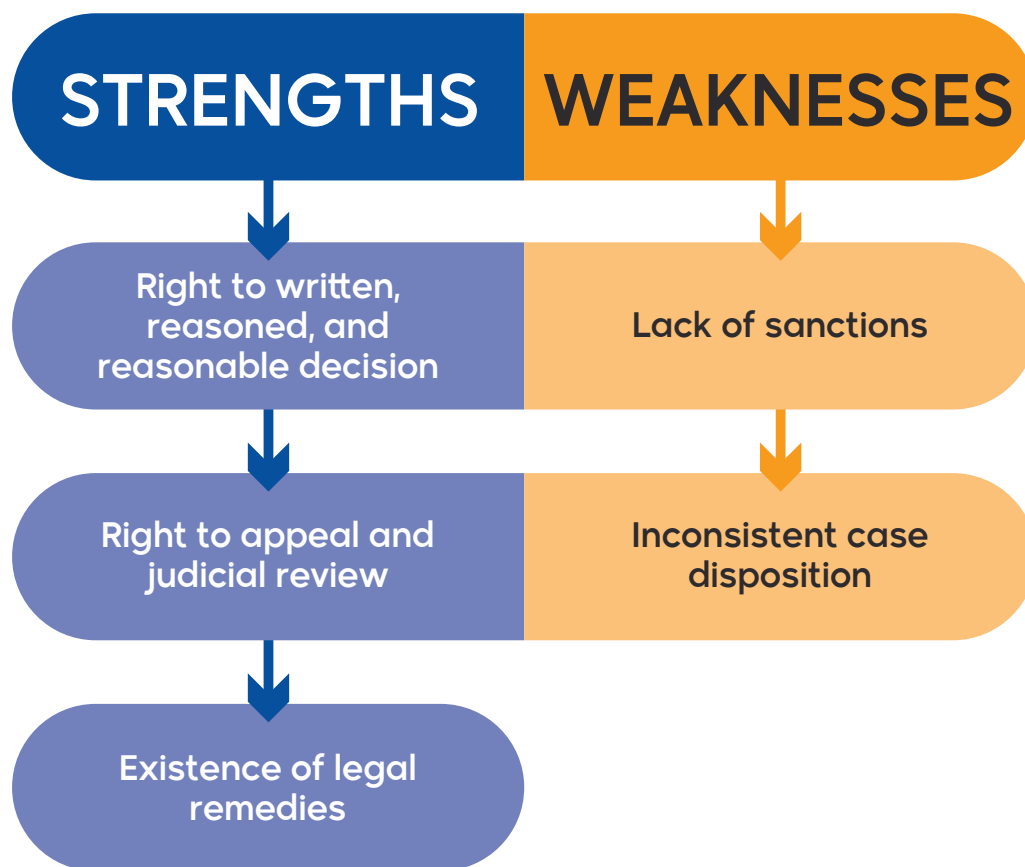


The effective administration of justice includes the right to a written, reasoned decision that is not capricious, unreasonable, or arbitrary, the right to appeal/judicial review, and the right to an effective remedy.

Effectiveness considerations have remained virtually unchanged relative to one year previously, with important note that 2022 elections have shown that additional efforts should be put in place to analyze and **review current criteria for audit of electoral materials, annulment and repeated voting at polling stations**. This implies also the need to carefully consider that some of the criteria should instead trigger investigation and require proceedings and not to lead directly to annulment, so that instability and distortion of the will of voters (interest of the public) are avoided. The Serbian election dispute resolution process is **effective insofar as it includes the right to a written, reasoned, and reasonable decision, and the right to appeal and judicial review**. Local legislation also **provides for legal remedies** in various types of disputes, but effectiveness in general is hindered by the **application of these legal remedies**. This conclusion is based on issues detailed above in connection with obtaining relief in election disputes before electoral commissions, and, consequently, before the Administrative Court as well, coupled with the fact that electoral commissions are not empowered to act on their own initiative where they identify irregularities. A special issue that greatly reduces the effectiveness of disputes and hinders the application of legal remedies is the extremely small number of criminal cases brought in recent years for offenses against electoral rights, as a result of several factors, including here the slowness of the system, lack of voter education and lack of trust in the system and institutions. One option to consider may be to **review existing misdemeanor and criminal penalties**, especially for aggravated offences (those committed by individuals who exercise public authority in the electoral process), and their deterrent effect.

Lastly, **inconsistent case disposition by LECs** has also partly contributed to the assessment of effectiveness. This lack of uniformity is due to the recent enactment of the new legal framework, which took effect two months before the election and did not allow for comprehensive training of arbiters and judges. As this was the first time that these bodies exercised their election dispute resolution powers, uneven performance came as no surprise, but it does indicate **the need for active, long-term engagement with these bodies to enhance their knowledge and capacity**.

Figure 14. Compliance of Serbian electoral dispute resolution arrangements with the effectiveness principle



6.4. Transparency



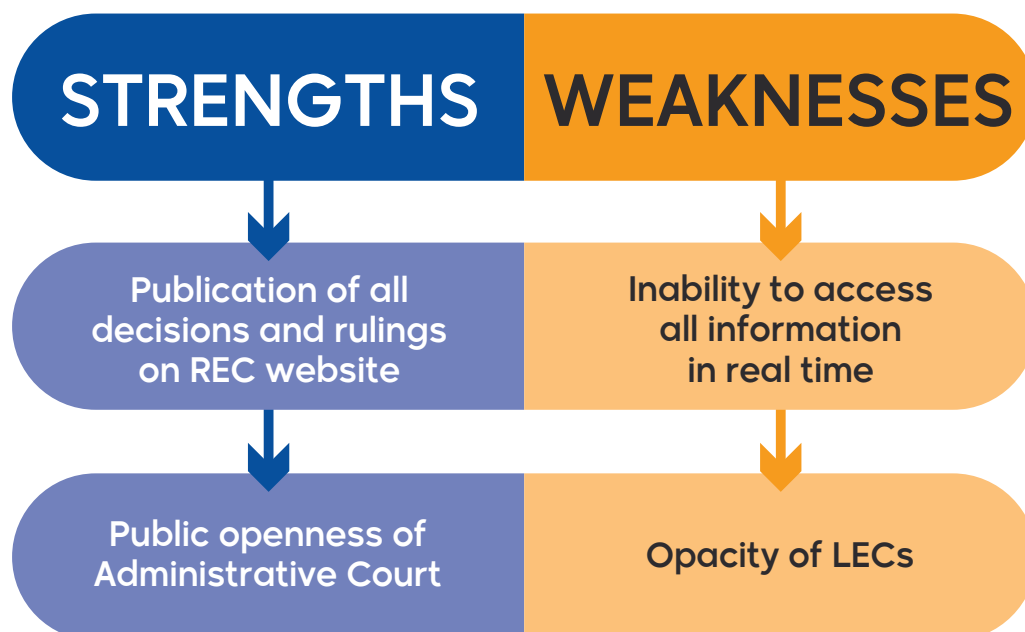
The transparent administration of justice requires access to case information (ideally in real time as an electoral dispute is being investigated and adjudicated), open hearings, and decisions that are publicly available (subject to limited restrictions).

Compliance with the transparency principle was significantly enhanced in the April 2022 election, primarily due to the **statutory requirement for full transparency and openness of electoral commissions in election disputes**. All requests for annulment of voting, complaints, and appeals, together with all rulings, decisions, and judgments, were published by the REC in a special section of its website for the first time. Moreover, all REC sessions were broadcast live. This allowed public access to information about election disputes, but this was guaranteed only at the stage where the proceedings had been completed and the decisions had been published: election stakeholders **were unable to follow the course of a dispute in real time**. One issue in this regard is the **critically low transparency at the local level**, which often makes it exceedingly difficult or even impossible to find local rulings and decisions, activity calendars, electoral lists, session summaries, results, and

the like. Since these documents could constitute grounds for initiating election disputes, it would be appropriate, in line with regional and global best practices, to develop **binding guidelines for LECs** that would include lists of documents that ought to be made public and time limits for doing so. Besides binding guidelines, additional efforts should be invested to develop an annual plan and program training for LEC members – including here supporting staff as well.

By contrast, the **Administrative Court mostly** met the transparency requirement by regularly publishing anonymized judgments on the section of its website dedicated to election cases, but **did not provide access to information in real-time nor hold open hearings (due to legal framework limitations)**, whilst the **ACA** generally published its decisions and documents with a considerable delay. Transparency of the EDR proceedings is crucial to ensure trust in the overall election process.

Figure 15. Compliance of Serbian electoral dispute resolution arrangements with the transparency principle



6.5. Scores

The table below provides a visual summary of compliance by the Serbian election dispute resolution framework with international principles and standards.

Table 2. Assessment of compliance by Serbian election dispute resolution arrangements with international principles

PRINCIPLE	SCORE 2021	SCORE 2022	KEY STRENGTH (2022)	KEY WEAKNESS (2022)
Fairness	Mostly non-compliant	Mostly non-compliant	Broad, appropriately regulated right to lodge complaints; access to dispute information Broadened standing to initiate disputes Three-instance election dispute resolution framework Extended time limits	Difficulties with appropriate fact-finding Criteria for annulment and repolling Political character and composition of electoral administration
Efficiency	Mostly compliant	Compliant	Appropriate time limits for initiating disputes Appropriate time limits for decision-making Rapid decision-making without delays	Lack of system to facilitate lodging of applications and complaints Late notification allowing for little time to prepare a response No timeline for prosecution
Effectiveness	Mostly compliant	Mostly compliant	Right to written, reasoned, and reasonable decision Right to appeal and judicial review Existence of range of legal remedies	Lack of sanctions Inconsistent case disposition Lack of inter institutional cooperation (absence of referral) Lack of information about course of disputes (ACA, electoral commissions, Administrative Court)
Transparency	Mostly non-compliant	Mostly compliant	Publication of all decisions and rulings on REC website Public openness of Administrative Court	Nemogućnost pristupa svim informacijama u realnom vremenu Netransparentnost lokalnih izbornih komisija

7.

Conclusions and recommendations

The reform of electoral legislation conducted in early 2022 had a major impact on the election dispute resolution framework and procedure: LECs were introduced as a first instance body for the resolution of disputes, authorities' competencies were reformed, time limits were extended, more stakeholders received standing to lodge complaints, and procedures and rules on *proprio motu* action by electoral commissions were amended. Although some efforts have been made (trainings for election officials organized by REC, trainings for party lawyers and party representatives on EDR organized by CeSID, preparation of voter education materials and outreach campaign(s)⁶⁰), the election stakeholders and election authorities themselves may not have had sufficient time to properly familiarize themselves with these completely new arrangements, and this fact may have had an impact on election dispute resolution.

⁶⁰ CeSID launched small-scale outreach campaign on EDR using Facebook, Instagram and Twitter accounts, as well as official website: <http://www.cesid.rs/category/izbori-2022/>.

A comparison between election dispute resolution mechanisms in Serbia and globally accepted standards reveals **local arrangements are generally compliant with the efficiency principle, somewhat less so with the effectiveness and transparency principles, and not very compliant with the fairness principle.** Efficiency and transparency are areas in which progress has been registered compared to the 2021 assessment, since time limits for initiating disputes and making decisions have been extended in line with international standards, and as information about the dispute resolution system is tangibly better accessible directly on the website of REC and of the Administrative Court. By contrast, the assessed lack of compliance with the principles of **effectiveness and fairness** was mainly due to the composition and intrinsic nature of the Serbian electoral administration, inconsistent case disposition, lack of accountability of election officials, and inadequate or absent fact-finding practices by all institutions, and criteria for annulment of results without consideration for the potential impact on the results. All of these are inherited problems and remain generally unresolved even in view of the new legislation, meaning they ought to be reviewed as part of future efforts to improve the system, notably through training of election officials and stakeholders empowered to file complaints.

Any definition of priority areas for intervention should comprise **practical interventions** that can improve the process in the short term, but **changes to the broader legal and institutional framework** must also be raised. Following the logic of the 2021 assessment, the proposed interventions will be divided into four areas:

- 1) Institutional model for election dispute resolution;
- 2) Rules and procedures for investigations and complaint and dispute resolution;
- 3) Legal remedies, sanctions, and enforcement of decisions; and
- 4) Informing and educating the public.

Each recommendation will cite the institutions responsible for its initiation and execution, priority (in terms of its significance for and possible impact on the electoral process), and timeframe in which it can be adopted and implemented (short, medium, or long term).

7.1. Institutional model for election dispute resolution

All stakeholders (especially electoral participants – parties, lists and coalitions) must know which institution is responsible for which type of dispute, and must also be familiar with all procedural and substantive rules that will govern the dispute resolution process and what to expect.

RECOMMENDATION	STAKEHOLDER	PRIORITY*	TIMEFRAME
ZERO RECOMMENDATION Implement a participatory, systemic, and coherent reform of the electoral administration – at the national, provincial, and local levels – to professionalize these authorities and ensure they enjoy access to stable funding, a clear legal status, and permanence to build their capacity	Parliament, public consultations	High	Long term
#1 Introduce provisions for the REC to act on its own initiative at all stages of the electoral process where it detects violations, without formal filing of a complaints by a party (similarly to the ACA)	Parliament, LECs, REC, public consultations	High	Short term
#2 Establish a secure and transparent case management system that contains all necessary information, duly explained procedures and rules of procedure, forms, legal remedies, and decisions. Case management system should import all cases filed with LECs, REC, Administrative Court and ACA, to allow e-filing, and to allow easy and accurate access to real-time information to all cases.	LECs, REC, ACA	Medium	Long term
#3 Review and amend the legal framework to prevent the misuse of public resources, including pressure on public institution employees and including regulations to prevent abuse of office, with a view to providing equal opportunities for all election stakeholders and ensuring separation of state and party-political interests.	ACA	High	Short term
#4 Amend provisions of the Criminal Code governing criminal offences against electoral rights and require public prosecutors to prosecute perpetrators of criminal offences directly or indirectly related with electoral rights <i>proprio motu</i> and within a certain timeline after the elections. Provide for special magistrates in charge of election offenses / special registry or special unit at the prosecutor's office to prioritize these cases.	Ministry of Justice, prosecution service, State Prosecutorial Council	Medium	Long term

7.2. Rules, procedures and capacity building for investigations and complaint and dispute resolution

Regulations must provide clear guidance on all legal issues in election dispute resolution, including burden of evidence, clearly defined types of evidence admissible in these disputes, legal remedies, and procedural time limits. Global standards call for these procedures to be introduced in good time, ahead of an election, and for all stakeholders to be fully familiarized with them.

RECOMMENDATION	STAKEHOLDER	PRIORITY*	TIMEFRAME
#1 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 a lawsuit, a reasonable opportunity to prepare a defense, and the right to a fair and impartial process of fact-finding, hearings, and decisions. Considerations of election efficiency and speed must be taken into account when considering alternate rules for these matters.	Administrative Court	Low	Short term
#2 Harmonize regulations and allow disputes to be initiated by electronic filings with electoral commissions and Administrative Court, in compliance with the Electronic Signature Law and the General Administrative Proceedings Law. Clearly regulate electronic means of communication with parties to proceedings.	REC, LECs	Medium	Medium term
#3 Revise the statutory framework to mandate that polling board minute templates are printed as single documents in both the Serbian language and other ethnic minority languages in official use to prevent electoral commissions having to review different versions of these documents.	REC, LECs	Medium	Short term
#4 Revise by-laws to stipulate that the document containing protests of polling board members is a mandatory part of the ballot materials to ensure that all facts of election day are properly ascertained.	REC	High	Short term
#5 Review the criteria to request audit and annulment of voting at polling stations, as well as criteria for automatic annulment, to avoid continuous instability due to low standards of cancelation and repeated voting.	REC, LECs	High	Short term

7.3. Legal remedies, sanctions, and enforcement of decisions

Legal remedies must be known in good time, ahead of the electoral process, and at the close of the process there must be mechanisms that will ensure they are duly enforced. Only if legal remedies are so defined can the election dispute resolution process be considered credible and effective.

RECOMMENDATION	STAKEHOLDER	PRIORITY*	TIMEFRAME
#1 Consider and implement participatory, systemic, and coherent reform of the section of the Criminal Code treating crimes against suffrage (Chapter 15, Criminal Offences Against Electoral Rights). ⁶¹	Ministry of Justice, prosecution service, State Prosecutorial Council	Medium	Medium term
#2 Ensure the prosecution service is more proactive in increasing the use of sanctions against members of polling boards and electoral commissions who fail to perform their duties in conformity with the law. Consider setting a deadline for prosecuting and appoint special magistrates to deal with election offences to reduce impunity.	Ministry of Justice, prosecution service, State Prosecutorial Council	High	Medium term
#3 In compliance with best practice, amend statutory rules that govern the granting of ethnic minority status to electoral lists and harmonize the relevant provisions of the Law on the Election of Members of Parliament, Local Elections Law, and Political Parties Law. Launch broad-based public consultations on this issue and ensure the process is fair.	Parliament, Ministry of Human and Minority Rights, Ministry of Public Administration and Local Government, LECs, REC, public consultations	Medium	Medium term
#4 Consider amending the legislative framework to provide more granular legal remedies in electoral disputes.	Parliament, LECs, REC, public consultations	High	Medium term

⁶¹ For a detailed discussion of the proposed amendments to the Criminal Code, see *Electoral Justice: Here, Now, Tomorrow, The Case of Serbia (2021)*, Centar za slobodne izbore i demokratiju – CeSID, Beograd; available online at cesid.rs/wp-content/uploads/2021/07/Policy-Paper_final-EN.pdf.

7.4. Informing and educating the public, election officials and arbiters

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	STAKEHOLDER	PRIORITY*	TIMEFRAME
# 1 Develop a curriculum annual training plan for the <i>electoral administration</i> at all levels on EDR – national, provincial, and local – and regularly conduct training aimed at increasing the capacity of electoral commissions for receiving, recording, fact-finding and taking appropriate action when ruling on applications and complaints, notably on audit and recount and annulment	REC, LECs	High	Medium term
#2 Develop a training curriculum and plan for <i>political parties and organizations</i> at all levels – national, provincial, and local – in particular with lawyers, and regularly conduct training aimed at increasing the capacity of political parties and organizations to keep abreast of mechanisms in the election dispute resolution process and how to use them and what to expect	Political parties and organizations, civil society	High	Medium term
# 3 Develop a curriculum and annual training plan for officers of the <i>Administrative Court</i> at all levels on election disputes resolution – national, provincial, and local – and regularly conduct sessions (annually or before an election) aimed at increasing the Court’s capacity for fact-finding taking appropriate action when ruling on appeals. This training should include judges but also judicial staff, like registrar and clerks. It should also include inter-institutional working sessions between REC and Administrative Court to sensitize judges on the technical aspect of an election process, such as recounts or counting procedures or any election technology that is used.	Administrative Court	Medium	Medium term
# 4 Organize and conduct educational campaigns for <i>voters</i> and disseminate information to the public about how to use electoral dispute resolution mechanisms and access the appellate process, for instance by producing short clips/ videos on how to report abuses of misuse of public resources or where to report election offences	Civil society in cooperation with EDR actors: REC, LECS and Administrative Court	High	Medium term
# 5 Develop forms for lodging complaints in the election process and make sufficient numbers of copies available at polling stations. These should contain all necessary information and instructions on how to complete and lodge them.	REC, LECs	Medium	Short term