

2023 ELECTIONS

(UN)PROVEN IRREGULARITIES

**Election
Dispute
Resolution**

**[Case Study:
Serbia 2023]**

April 2024

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1 ABBREVIATIONS

APV	Autonomous province of Vojvodina	LEC	Local Electoral Commission
PS	Polling station	NARS	National Assembly of the Republic of Serbia
PB	Polling board	PEC	Provincial Electoral Commission
DS	Democratic Party	PSG	Movement of Free Citizens
LEMP	Law on the Election of Members of Parliament	REC	Republic Electoral Commission
LLE	Law on Local Elections	SDPS	Social Democratic Party of Serbia
UVR	Unified Voter Register	SPS	Socialist Party of Serbia

2 INTRODUCTION

The survey **(Un)proven Irregularities: Election dispute resolution in the 2023 election** is the third such study stemming from CeSID's work on electoral justice in Serbia. The first assessment of this kind, [Electoral Justice: Here, Now, Tomorrow \[The case of Serbia\]](#) was published in the spring of 2021 and aimed at highlighting the importance of election dispute resolution as a key pillar of the electoral process and, more specifically, deepen knowledge of this area, acquaint the public with safeguards, help build capacity of political parties and organisations, and point to priority areas for future strategic and practical interventions. The 2021 study identified prime concerns for ongoing work, and these, together with developments on the Serbian political scene (the boycott of the election, inter-party dialogue, legal amendments, and the April 2022 election) informed a second detailed survey, [Election Disputes in Serbia: So what do we do now? \[April 2022 elections\]](#), published by CeSID in 2022. This report sought to assess the efficiency, effectiveness, transparency, and equity of Serbia's election dispute resolution process after the adoption and first application of the set of new election laws, as well as to aid in empowering political organisations and election contestants to take part in the process and help the general public and civil society better understand electoral procedures and safeguards.

Lastly, to provide valuable insights into a topic that is at once extremely sensitive and under-appreciated, CeSID has now published this third survey of the resolution of election disputes in Serbia. **The survey focuses** on an assessment of electoral commissions during the Serbian elections of December 2023, including how these bodies ruled, or failed to rule, on complaints against actions and decisions, as well as on applications to annul voting due to polling station irregularities. In parallel, equal attention was also devoted to an analysis of actions taken by applicants and complainants, evidentiary processes, and outcomes of these proceedings, to understand the extent to which the process was functional and guaranteed efficient access to justice. The starting point was an analysis of the information against the **ideal electoral justice model, founded on four principles**:

- 1) **Fairness.** Fair administration of justice includes the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defence, 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.

The assessment was based on **a total of 929 proceedings pursued before local electoral commissions (LECs), the Provincial Electoral Commission (PEC), and the Republic Electoral Commission (REC)** during the entire electoral process. Information about these proceedings (including key data on applicants/complainants, outcomes, and cases) was retrieved from the publicly available [Complaints Register](#), published and made accessible for the first time for the 2023 election in an open format by the REC. To achieve the goals of this research project, CeSID manually analysed all the proceedings and supplemented data contained in the Complaints Register with additional information concerning *evidence for irregularities* (whether any evidence was submitted to accompany an application/complaint, and, if so, what this was), *grounds for the proceedings* (assigning categories in accordance with previous analyses), and *outcome of the proceedings* (primarily reasons why applications/complaints were rejected). This allowed a more detailed and thorough understanding of key problems inherent in the Serbian election dispute resolution process with the aim of **re-evaluating existing priorities and recommendations for improving the system in the light of new regulations, new findings, and new developments**.

By way of a reminder, in both previous assessments CeSID **identified and proposed interventions in four areas**:¹

(1) **Institutional model for election dispute resolution.** A coherent reform of the electoral administration that entails: making electoral commissions able to act on their own initiative in the event of irregularities; introducing intermediate-level election management bodies; instituting a case management system; regulating voter address inactivation; amending the legal framework designed to prevent abuse of public resources; introducing a General Instruction to govern actions by prosecutors' offices in election disputes; and improving the Criminal Code.

(2) **Rules and procedures for investigations and complaint and dispute resolution.** Changing time limits for filing complaints; requiring public hearings in some cases; clarifying provisions that govern communication between first- and second-instance bodies; alignment of laws to ensure consistency of time limits for elections at all levels; permitting initiation of proceedings by electronic means; revising rules concerning polling board (PB) result protocols; examining criteria for annulment of voting; and amending the Law on the Prevention of Corruption.

¹ This is a consolidated list of all recommendations developed by CeSID in its past analyses. Recommendations made in 2021 are separately available [here](#), and those published in 2022 can be found [here](#).

(3) **Legal remedies and sanctions and enforcement of decisions.** Reforming the Criminal Code (by amending a number of provisions and legislating new offences and broadening the scope of existing ones); enhancing the role of the prosecution service to ensure sanctions are imposed more efficiently; regulate the issue of national minority lists; and provide a broader range of legal remedies.

(4) **Informing and educating the public.** Mandate annual training plans and programmes for election management bodies at all levels, political parties and organisations at all levels, and Administrative Court staff at all levels; organise educational campaigns for voters; and produce easily accessible complaint forms.²

Lastly, the **context** ought to be borne in mind when reading this assessment and seeking to interpret the information. Here, electoral laws were last amended three years ago (in the immediate run-up to the June 2021 elections), when they dramatically changed the rules of the game, including by overhauling the entire system of voters' rights safeguards. The roles of the election contestants in the safeguards system were changed, and the competences of the election management bodies radically altered, with LECs facing vastly greater pressure and higher courts only recently assuming the power to hear complaints and disputes related to local elections. Consequently, **the stakeholders are still learning the rules, errors are common, and the system is still confusing and insufficiently familiar to some participants.** That said, even in the older, much longer-lived system the public still lacked **basic knowledge needed to participate in these processes** (by way of a reminder, CeSID's [2021 assessment](#) revealed no more than 10 percent of respondents knew how to lodge a complaint) and were not particularly inclined to engage with the issues either ([the previous survey](#) found that, of the total of 1,295 election disputes brought, members of the public initiated as few as 34, or 5 percent). The **complicated political situation** only compounds the problems at hand, characterised as it is by a lasting and complete absence of trust between political actors, sharp polarisation around virtually all important societal issues, and stalled political dialogue. The escalation of the political crisis, as reflected in the decision to not recognise the results of the election, allegations of voter fraud and election rigging, and, ultimately, the re-run of the Belgrade local election (currently set to be held in early June 2024) highlights the importance of guaranteeing **a just and efficient election dispute resolution system as a vital and key part of the electoral process.** Its importance is only enhanced by the instability of institutions and procedures on the one hand, and the powerful influence of political parties and groups on the fundamental parts of the legal framework governing elections, on the other.

² Reports by observer missions of the Office of Democratic Institutions and Human Rights (ODIHR) have also addressed the protection of voters' rights and set out recommendations. Two such recommendations were made following the [2022 elections](#): In line with international good practice, the Administrative Court should be legally bound to review all election-related cases in public hearings whereby the parties have the right to be heard (Other recommendations, #21), and The competent authorities should take prompt and effective steps to investigate allegations of offences, including voter intimidation and vote buying. Perpetrators should be held accountable in a timely manner. The Ombudsman should adopt a proactive approach, including by voter information campaigns, to encourage voters to report such violations (Other recommendations, #22). The first of the two was re-iterated, similarly worded, after the [2023 elections](#) (Other recommendations, #21).

3 CURRENT LEGAL FRAMEWORK

The Serbian election dispute resolution system was last revised in 2022, as part of a broader recasting of electoral laws. Currently, the framework is governed by the [Law on the Election of Members of Parliament](#) (LEMP, Chapter XI), [Law on Local Elections](#) (LEL, Chapter IX), as well as being indirectly regulated by the [Law on the Election of the President of the Republic](#), also enacted in 2022, and a number of other pieces of legislation that obliquely address the protection of voters' rights. These include the [Law on the Unified Voter Register](#) and its associated [Instructions for Implementing the Law on the Unified Voter Register](#), [General Administrative Procedure Law](#), [Political Finance Law](#), [Law on the Prevention of Corruption](#), and a large body of instructions, regulations, and provisions adopted by electoral commissions. As this assessment focuses on **proceedings before electoral commissions** – applications for annulment of voting due to voting irregularities and complaints concerning the electoral process more broadly – the following review of the legal framework will centre on the key provisions in these areas.

According to the new laws, the **right to initiate a dispute** is held by ten categories of persons:

- **Representatives of registered election lists**, in virtually all types of administrative disputes, to contest decisions or actions (including those not adopted/taken), and due to irregularities at polling stations.
- **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 jeopardised. In addition, voters may lodge complaints in some administrative disputes, including with regard to the registration of electoral lists or determination of results.
- **Proponents of electoral lists**, where the REC denies registration to electoral list.
- **Political parties**, only in some administrative disputes, including the appointment of non-core members of polling commissions or to contest the registration of an electoral list.
- **Candidates / leaders of electoral lists / individuals whose names appear in electoral list names**, where the REC denies registration to an electoral list.
- **Parliamentary groups**, to contest decisions on the core composition of PBs.
- **Monitors**, to contest an REC decision to deny monitors the right to oversee the printing or delivery of ballot materials.
- **Ministry of Foreign Affairs**, to contest a decision denying appointment of core PB members.
- **Ministry of Justice**, to contest a decision denying appointment of core PB members.
- **Mayors**, to contest a decision denying appointment of core PB members.³

³ The Ministry of Foreign Affairs can appeal a decision on the core composition of a polling board abroad, the Ministry of Justice can appeal against a decision on the core composition of a prison polling board, and mayors can appeal only if it was they who appointed polling board members (if the parliamentary groups have for any reason not done so).

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 disputes⁴ whilst at the same time significantly broadening 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.

Under the new framework, the **legal instruments available to proponents of electoral lists** depend on election type.

→ In **national-level (parliamentary or presidential) elections**, proponents may lodge **applications for annulment of voting, complaints, and appeals**.

- **Applications for annulment** may be lodged with the LEC in the event of voting irregularities, at the latest 72 hours after PSs have closed. Proponents of electoral lists may file these on any grounds stipulated by law, whilst voters may do so if their own ballot secrecy or freedom of vote were infringed upon, or if they were prevented from voting without cause. All applications must contain a set of mandatory elements, such as contact information, subject-matter, facts, evidence, and the like. The LEC must rule on these applications within 72 hours and publish the relevant decision on its website.
- **Complaints** contesting decisions or actions, or due to a failure to make a decision or act in the electoral process, may be lodged by proponents of registered electoral lists; other groups may do so but have a more restrictive set of formal grounds. Complaints must also contain the same elements as applications for annulment. The time limits are also the same, at 72 hours for filing and 72 hours for a decision to be made, but in this case the decision-making body is the REC. The REC is also competent to rule on **complaints against decisions on applications for annulment of voting at PSs**, which effectively means the REC is both the first-tier and the second-tier election dispute body, depending on each individual case. The time limits for this second type of complaints are also identical, 72 hours for filing and 72 hours for decision-making, with an additional 72 hours to cover the time needed for the first-instance body to forward the case to the second-instance authority.
- Lastly, **REC rulings on complaints may be appealed to the Administrative Court** within 72 hours of these rulings being adopted. For its part, the Administrative Court must rule at the latest within 96 hours, of which 24 hours is allotted for the case files to be forwarded by the REC to the Court, which then has 72 hours to consider the matter. The appellate ruling is considered final and may not be contested by extraordinary legal means set out in legislation governing administrative disputes.

→ In **local elections**, proponents may lodge **complaints and appeals**.

⁴ In contrast to 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 jeopardised 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.

- A **complaint** may be lodged to contest a decision or action, or due to a failure to make a decision or act in the local election process, and must contain a set of elements that includes facts, evidence, contact information, and the like (Art. 80 LEL). Complaints must be filed with the LEC within 72 hours of the adoption of the contested decision or action, unless otherwise provided for in the LEL, and the LEC has another 72 hours to make and publish its ruling on the complaint. The LEC may reverse the initial decision or may adopt a new decision to replace the one reversed.
- Local election safeguards are a two-tier arrangement, so LEC decisions may be **appealed with the higher court** territorially competent for the local authority in question, within 72 hours of the decision being published on the LEC website. Once an appeal has been lodged, the LEC must deliver the case files to the court within 24 hours, and the court then must rule on the appeal within 72 hours. The court's ruling (to allow, dismiss, or reject the appeal) is final and may not be contested by extraordinary legal means set out in legislation governing administrative disputes.

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. The first is a **judicial challenge mechanism** in the form of an **application to audit a sample of polling board result protocols**, which is available to opposition electoral lists that have won more than 2 percent of the vote each (according to preliminary results) and national minority opposition lists with more than 1 percent of the vote. This application can be filed for no more than 5 percent of PSs in an LEC area and may lead to the LEC adopting decisions to correct PB protocols for minor issues, or to repeat the voting if the irregularities are severe enough to warrant it. The new regulations also govern the right of **election monitors to complete and sign monitor protocols**, which identifies monitors who observed the polling board and details any protests they may have (Art. 168 of the new LEMP).

Lastly, the legislation clearly lays out **rules for *proprio motu* annulment of voting**. Here, an LEC is required to adopt a **decision finding that the results of voting at a particular PS cannot be determined** where: (1) no voting took place at the PS or was interrupted and not resumed; (2) the LEC does not receive the PB protocol; (3) a PB protocol that has been received has not been signed by at least three PB members; and (4) there are major errors in the vote tally that cannot be corrected following an audit of all ballot papers from the PS concerned. In addition, the LEC will rule to **automatically annul voting** at a PS where: (1) the number of ballots found in a ballot box exceeds the number of voters who turned out to vote; (2) the PB 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 PB member; and (4) the sum of unused ballots and ballots found in the ballot box exceeds the number of ballots received by the PB.

This legislative framework has now been in force for no more than two years, and the dramatic changes and innovations it has introduced have significantly improved electoral justice in Serbia. Election stakeholders are still learning to navigate their rights and duties, and the same can be said of the LECs, which are now also responsible for making decisions in disputes for national-level elections. Whereas the actions of these two groups can be assessed given the available information, **higher courts** became competent for ruling in election disputes only in mid-2023 and their performance thus remains poorly understood.

4 ELECTION DISPUTES BY THE NUMBERS

As explained in the introduction and methodology sections, the dispute resolution process for the December 2023 elections was assessed using **a total of 929 cases** listed in the **Complaints Register** available online from the [REC](#), a database that details proceedings across all stages of the electoral process and at all levels. Another 275 appellate cases were analysed only indirectly.

Where appropriate and possible, the latest data were compared with previous studies of election dispute resolution performance done by CeSID, especially the 2022 assessment [Election Disputes in Serbia: So what do we do now? \[April 2022 elections\]](#).

4.1 ELECTION TYPES

Of the **929 cases** assessed, **344 were filed in local elections**, including 24 in the Belgrade election, **62 were filed over irregularities in the Autonomous Province of Vojvodina (APV) election**, whilst a final **523 were brought in parliamentary elections**. In terms of percentages, Belgrade cases accounted for no more than 2.58 percent of the total, whereas those for the APV election made up 6.67 percent. Cases over irregularities in other local authority areas accounted for 34.44 percent, and disputes in the parliamentary election accounted for a final 56.29 percent.

Figure 1: Election disputes by type of election (%)

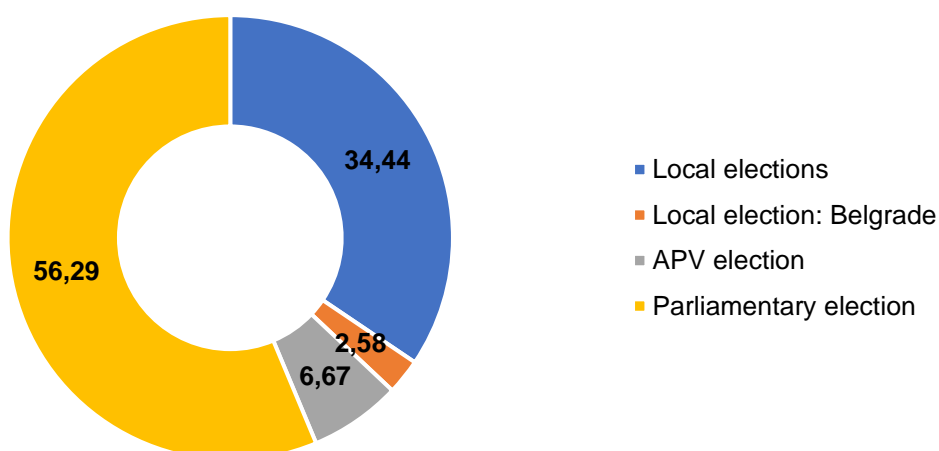


Table 3.1 shows the dispute caseloads for electoral commissions throughout Serbia in the period observed. The ten LECs with the most cases were Vranje (with by far the highest number, at 111), Trgovište (43), Novi Pazar (39), Belgrade (24), Leskovac (21), Bački Petrovac (17), Bela Palanka (15), Vlasotince (15), Niš (13), and Babušnica (13). All other electoral commissions had fewer cases, with most registering only one or two each.



Of the 111 cases brought in **Vranje**, 108 concerned the local election there, of which as many as 106 were filed by the Bravely for Vranje – SRCE, DS, PSG, Environmental Uprising – Čuta electoral list. All these were complaints over identically described irregularities at all 106 PSs. Each complaint alleged that the number of ballot papers in the ballot box at the PS was greater than the number of voters who turned out, and that the sum of unused ballot papers exceeded the number of ballot papers received by the PB at the PS. Apart from these two alleged issues, some complaints cited other reasons, such as voting irregularities, organised bussing of voters, presence of unauthorised persons at PSs, and the like. All the complaints were rejected as incomplete 'as the allegations stated in the complaint were not substantiated by any piece of evidence, which is a mandatory element of a complaint.'⁵



Conversely, in **Trgovište** all cases were brought by the Socialist Party of Serbia, 23 over irregularities in the local election and 19 for the parliamentary election.⁶ The complaints alleged differences between the number of voters registered in local and parliamentary elections, claiming that 'it was unclear what voter register they were in, since the voter register was supposedly the same for all voters'⁷. All of these complaints were rejected on grounds of a lack of standing.

Table 1. Election dispute case numbers by electoral commission, all election types

CITY ELECTORAL COMMISSIONS					
<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>
Belgrade*	24	Kraljevo*	9	Požarevac	1
Bor	2	Kruševac*	2	Prokuplje*	3
Valjevo	4	Leskovac*	21	Smederevo*	8
Vranje*	111	Loznica*	3	Sombor	2
Vršac	3	Niš	13	Sremska Mitrovica	3
Zaječar	1	Novi Pazar*	39	Subotica	12
Zrenjanin	8	Novi Sad	10	Užice	4
Jagodina	3	Pančevo	2	Čačak	7
Kikinda	2	Pirot*	4	Šabac*	6
Kragujevac*	6				
URBAN MUNICIPALITY ELECTORAL COMMISSIONS					
<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>
Barajevo (BG)	1	Zemun (BG)	1	Rakovica (BG)	2
Voždovac (BG)	2	Lazarevac (BG)	1	Savski Venac (BG)	3
Vranjska Banja*	3	Mladenovac (BG)	3	Sopot (BG)	1
Vračar (BG)	1	Novi Beograd (BG)	4	Stari Grad (BG)	1
Grocka (BG)	1	Obrenovac (BG)	2	Surčin (BG)	1
Zvezdara (BG)	3	Palilula (BG)	5	Čukarica (BG)	4
MUNICIPAL ELECTORAL COMMISSIONS					
<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>	<i>Electoral commission</i>	<i>Case #</i>

⁵ Extract from ruling by the Vranje CEC on complaint [013-178-70/2023-10](#).

⁶ The Socialist Party of Serbia won 2.71 percent of the vote in the Trgovište local election, which means it was 10 votes short of entering the local legislature.

⁷ Example: Complaint [013-208/2023](#).

Ada	3	Žabalj	2	Odžaci	3
Aleksandrovac*	1	Žabari*	1	Paraćin*	5
Aleksinac	1	Žagubica*	3	Petrovac na Mlavi*	7
Alibunar	2	Žitište	4	Pećinci	2
Apatin	2	Žitorađa*	6	Plandište	2
Arandelovac	1	Ivanjica	1	Požega*	1
Arilje	1	Indija	2	Preševo	1
Babušnica*	13	Irig	2	Priboj*	10
Bajina Bašta	1	Kanjiza	3	Prijepolje*	1
Batočina*	1	Kladovo	2	Ražanj*	2
Bač	2	Knić*	1	Rača*	4
Bačka Palanka	5	Knjaževac	1	Raška	1
Bačka Topola	3	Kovačica	4	Rekovac*	3
Bački Petrovac	17	Kovin	4	Ruma	2
Bela Palanka*	15	Kosjerić	2	Svilajnac	1
Bela Crkva	2	Koceljeva*	6	Svrljig	3
Beočin	4	Krupanj*	2	Senta	2
Bečej	2	Kula	8	Sečanj	2
Blace*	3	Kuršumlja*	10	Sjenica	1
Bogatić*	8	Kučevo*	4	Smed. Palanka	1
Bojnik*	6	Lajkovac*	4	Sokobanja*	2
Boljevac	1	Lapovo*	1	Srbobran	2
Bosilegrad	3	Lebane*	3	Sremski Karlovci	2
Brus*	4	Lučani	1	Stara Pazova	4
Bujanovac	1	Ljig*	2	Surdulica	2
Varvarin*	3	Ljubovija*	3	Temerin	2
Velika Plana*	3	Majdanpek	2	Titel	2
Veliko Gradište*	4	Mali Zvornik*	8	Topola*	4
Vladimirci*	1	Mali Iđoš	2	Trgovište*	43
Vladičin Han	3	Malo Crniće*	3	Trstenik*	1
Vlasotince*	15	Medveđa*	2	Tutin	1
Vrbas	3	Merošina*	3	Čičevac*	1
Vrnjačka Banja	1	Mionica	10	Čuprija*	5
Gadžin Han*	3	Negotin	3	Ub*	2
Golubac*	1	Nova Crnja	1	Crna Trava*	1
Gornji Milanovac	2	Novi Bečej	2	Čajetina	1
Despotovac*	2	Novi Kneževac	1	Čoka	2
Dimitrovgrad*	4	Opovo	1	Šid	2
Doljevac*	1	Osečina*	1		

* Local authorities where local elections were held.



The table above corroborates the previous finding that election disputes can be abused in a bid to affect the outcome of the poll by forcing a repeat of the vote. By way of a reminder, in the 2022 elections, one PS saw voting repeated as many as five times as two political parties contested a single seat in parliament.⁸ In addition to lengthening the electoral process and unduly

⁸ See Section 4.4, Efficiency of decision-making and compliance with time limits, in [Election Disputes in Serbia: So what do we do now? \[April 2022 elections\]](#), CeSID, Belgrade 2022.

burdening the election management bodies, these actions also promote **public mistrust of procedures and outcomes.**

4.2 APPLICANTS / COMPLAINANTS IN ELECTION DISPUTES

As in previous elections, the vast majority of proceedings were initiated by proponents of **registered electoral lists**: these accounted for as many as 84.82 percent of the total, or 788 of the 929 cases. This share was somewhat lower than in the [April 2022 elections](#), when it had stood at 90 percent. By election type, the share of cases initiated by electoral lists ranged from 87.3 percent in the parliamentary election (457 of 523), 93.5 percent in the APV election (58 of 62), 41.66 in the Belgrade local election (10 of 24), to 82.18 percent in other local elections (263 of 320). The table below shows the number of cases brought by 13 registered electoral lists in the parliamentary election.

Table 2. Applicants and complainants in the parliamentary election: registered electoral lists, absolute numbers (total: 457)

Registered electoral lists	# of cases brought
Milica Đurđević Stamenkovski – Boško Obradović – National Gathering – State Building Strength – Serbian Party Zavetnici – Serbian Movement Dveri	215
Serbia against Violence coalition	203
Socialist Party of Serbia	22
New Democratic Party Of Serbia – Movement for the Restoration of the Kingdom of Serbia coalition	6
Kuršumlija against Violence coalition #	3
Serbia Centre #	1
Požega against Violence coalition	1
United Opposition of Kuršumlija coalition – Zvezdan Ristić #	1
We – Voice of the People, Prof. Dr Branimir Nestorović	1
Live Free – Marinika Tepić – Zdravko Ponoš*	1
People's Movement of Serbia Leskovac – Miroslav Aleksić*	1
Socialist Party of Serbia (SPS), Social Democratic Party of Serbia (SDPS), Democratic Party of Bulgarians (DPB) coalition #	1
Serbian Movement Dveri #	1

These applications for annulment of voting were rejected due to a lack of standing as they were lodged by proponents of local electoral lists, not proponents of electoral lists for the parliamentary election.

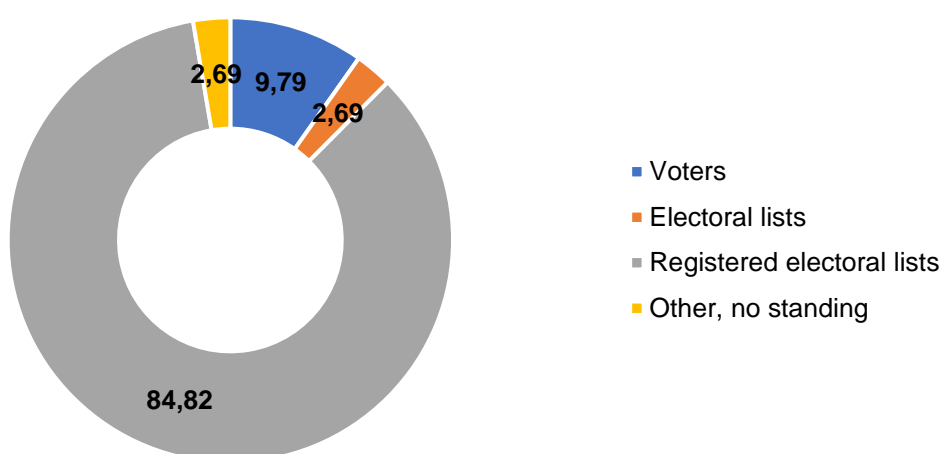
* These applications were rejected both due to a lack of standing and a lack of merit or incompleteness/incomprehensibility.

Voters were the second most numerous category of applicants, at **9.79 percent** (91 of 929), an encouraging finding given that the [previous assessment](#) (2022) revealed this group accounted for no more than 5 percent of all election disputes. Voters were the likeliest to bring cases in the Belgrade election, at 54.16 percent (13 of 24), with their engagement significantly lower in elections at other levels, from 10.7 percent in the parliamentary election (56 of 253), to 6.56 in other local elections (21 of 320), to as little as 1.61 percent in the APV election (1 of 62). **Of the total of 91 cases, 61 were brought by men (67 percent) and 29 by women (32 percent),** whilst

one case was initiated by a group of voters. Although the share of voters was higher than in 2022, it has remained low, and this issue ought to be actively addressed in the future.

Proponents of electoral lists (that were not registered) brought a total of 25 cases at all levels, accounting for 2.69 percent of the total. An identical share was registered for **other applicants/complainants**, most of which lacked standing to complain or lodge applications for annulment of voting. These included officers of municipal committees of political parties (4), members or substitute members of electoral commissions (5), representatives of electoral lists not authorised to lodge complaints (6), members of PBs (3), parliamentary candidates (2), local councillors (1), representatives of registered political parties (1), and unidentified applicants (3).

Figure 2. Categories of complainants/applicants, all election types (%)



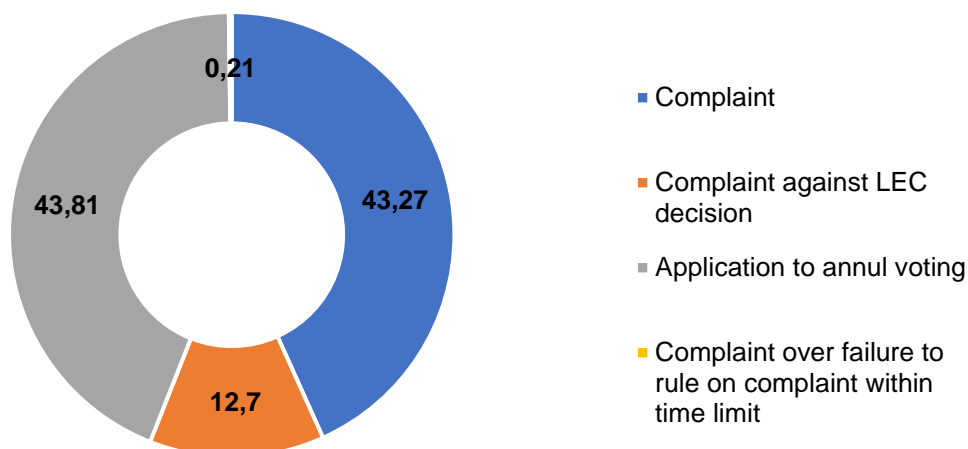
Voters were still not sufficiently involved in election dispute resolution or active in safeguarding their own electoral rights. This process remains captured by political parties and organisations contesting the elections. Attention should be paid to women's participation in these processes.

Many complainants/applicants were still unfamiliar with procedures and standards, thus unduly burdening the process with numerous cases that fail to clear even the initial threshold for their merits to be assessed.

4.3 TYPES OF PROCEEDINGS AND COMPETENT COMMISSIONS

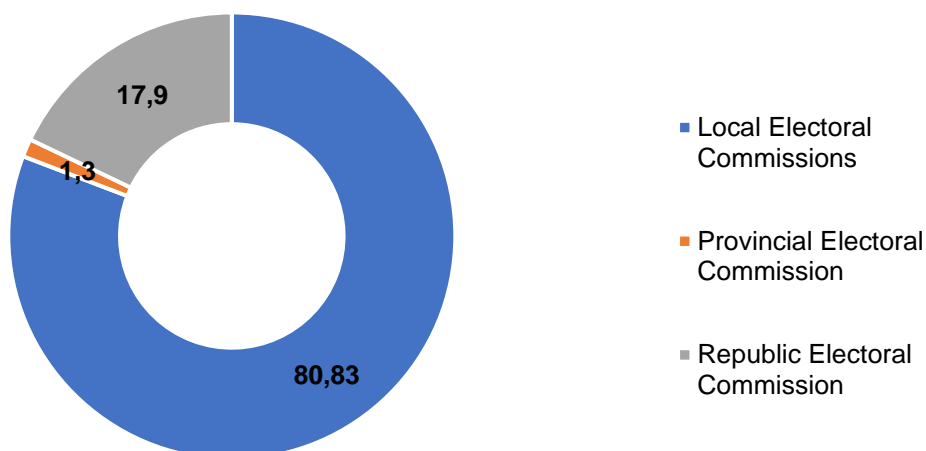
Approximately equal numbers of first-instance proceedings were initiated by **complaints**, at 43.27 (402), and **applications to annul voting**, at 43.81 percent (407). This does not mean that all complaints pertained to the period before or after election day, as under the [LLE](#) contesting voting irregularities requires lodging a *complaint*, whereas the equivalent instrument in the [LEMP](#) is an *application for annulment of voting*. In addition, the LEMP allows complaints against both decisions and actions and for failure to make a decision or take action. Slightly fewer of 13 percent of all proceedings were initiated by **complaints against LEC decisions** (12.7 percent, or 118), whilst two appeals (0.2 percent) were lodged for failure to rule on a complaint in a timely manner.

Figure 3. Types of proceedings, all election types (%)



As expected, and in line with the new statutory framework, **LECs** were competent for the vast majority of cases, 751 of 929, or **80.8 percent**. The REC came second, having ruled on 166 complaints or 17.9 percent of the total, whilst the PEC ruled in 12 cases or 1.3 percent.

Figure 4. Competent electoral commissions, all election types (%)



4.4 TYPES OF IRREGULARITIES / SUBJECT-MATTER OF COMPLAINTS AND APPLICATIONS

The REC's [Complaints Register](#) categorises cases by type as shown in Table 3 below.

Table 3. Subject-matter of complaints and applications in the Complaints Register

Subject-matter of complaint or application	#	%
Complaint against a decision or action	42	4.52
Complaint against a total/final voting results report	10	1.07
Complaint due to failure to make a decision or take an action	15	1.61
Application/complaint due to voting irregularities	423	45.53
Complaint against a decision to register an aggregate electoral list	4	0.43
Complaint against a ruling dismissing or rejecting application for annulment of voting at a PS	108	11.62
Complaint against a ruling dismissing or rejecting an application for appointment of a non-core PB member or substitute member	6	0.64
Complaint against a ruling dismissing or rejecting an application for appointment of non-core LEC member or substitute member	2	0.21
Complaint against a ruling noting proprio motu that the results of voting cannot be determined for a PS	1	0.10
Complaint against a ruling appointing a non-core LEC member or substitute member	5	0.53
Complaint against a ruling rejecting an electoral list	8	0.86
Complaint against a ruling denying registration to an electoral list	14	1.50
Complaint against a ruling to register an electoral list	57	6.13
Application/complaint due to voter(s) being prevented from voting	3	0.32
Other	233	25.08

As most of these categories are procedural in nature and as such their subject-matter is beyond dispute, this assessment will focus on the category of **voting irregularities (423 cases)**. For clarity, this group was disaggregated into seven distinct categories to better demonstrate the commonest irregularities reported during voting.

1. **Irregularities in connection with vote tabulation**, including mismatch between actual number of ballot papers and number listed in PS protocol, missing signatures on PS protocol, excess ballot papers found in ballot boxes, disproportionately large numbers of invalid ballot papers, and the like. ***This category comprised 140 cases, or 33.09 percent of the total.*** Notably, 106 identical cases were filed for all PSs in Vranje with the allegation that ballot boxes contained excess ballot papers, and these generic complaints made this group so numerous.
2. **Procedural issues** or non-compliance with procedures, comprising all omissions in connection with the organisation and conduct of the voting process, such as failures to appropriately complete control ballot papers, failures to properly complete or provide forms or certificates that are part of the set of electoral documentation (especially with protests recorded in PB protocols), and inappropriate physical arrangements at the PS, minor failures to maintain order at the PS (use of mobile phones, overcrowding, and the like). ***This category comprised 119 cases, or 28.13 percent of the total.***
3. **Issues with the voter register**, including inadequate management of this document, allegations of differences between the two extracts from the voter register (one each for the local and parliamentary election) at the PS, errors with voter signatures on the extracts, and the like. ***This category comprised 46 cases, or 10.87 percent of the total.***
4. **Irregularities in connection with voting outside PSs**, including inappropriately completed certificates of entitlement to vote, abuses involving commissions that made

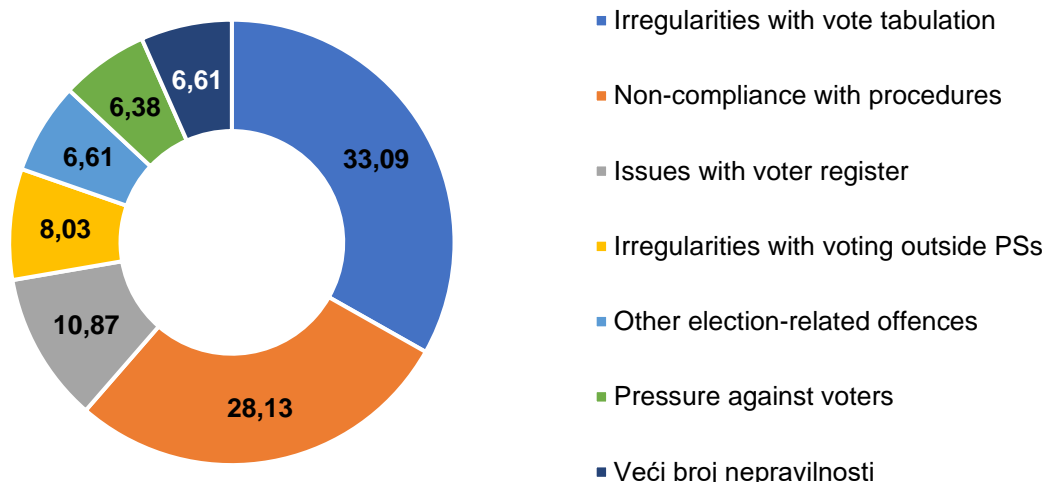
field visits, voters being allowed to vote away from a PS after the deadline for this had expired, abuses involving ballot papers, and the like. ***This category comprised 34 cases, or 8.03 percent of the total.***

5. **Other election-related offences**, including voting for someone else, ballot stuffing, forged ballot papers, parallel voter lists, allowing unregistered people to vote, and the like. ***This category comprised 28 cases, or 6.61 percent of the total.***
6. **Pressure against voters and infringements of ballot secrecy and freedom**, including publicly instructing voters who to vote for, casting ballots openly, presence of unauthorised persons at PSs, and the like. ***This category comprised 27 cases, or 6.38 percent of the total.***
7. Proceedings relating to **multiple different irregularities** were reviewed as a separate category. This primarily involved generic complaints lodged by the Serbia against Violence coalition and its associated local coalitions that detailed the following types of irregularities:⁹ (1) infringement of the right to a free and equal election campaign; (2) infringement of the right to free and fair elections in connection with the management of the voter register; (3) infringement of ballot freedom; and (4) infringement related to the safekeeping of ballot papers. It is worth noting that a total of **28** of these cases (6.61 percent) were found to be categorised as ‘voting irregularities’ in the REC’s Complaints Register due to inconsistent coding of these cases by LECs when inputting data. Most LECs categorised these complaints as ‘other’, with another **198** cases of this type listed in that group.

Although a direct comparison of these data with the 2022 findings does not produce consistent results (primarily due to major legislative changes that have completely reconfigured the election dispute resolution process), citing some figures identified in 2022 may help to better understand the context and underscore how deep-seated some of these issues are. Procedural issues were also quite common in 2022, when they made up 56 percent of all cases, whilst irregularities with voting away from PSs had the same share as in 2023, at 8 percent. This suggests a **need to improve voting day performance, both at PSs and outside them**, which may entail: (1) reforming polling boards to ensure they have adequate staff, roles, and funding; (2) foster and determine clear accountability (both financial and otherwise) of PB members for non-performance to prevent future omissions; and (3) offer systematic and thorough training for core and non-core PB members and keep detailed records and statistics of their performance. Conversely, **voting away from PSs** remains insufficiently familiar to voters and often insufficiently clear to PBs. At the same time, the frequency and recurrence of issues with voting away from PSs also suggests this arrangement offers opportunities for abuses involving certificates, signatures, and ballot papers, leading to misrepresentation of voters’ intentions.

⁹ See, for example, Application to annul voting at all PSs in Bosilegrad, [013-425/2013-57](#).

Figure 5. Types of voting irregularities, all election types (%)



It may be interesting to note the examples of some ten applications for annulment in the parliamentary election lodged with the REC by members of a single family and other (presumably connected) persons alleging **incorrect vote tabulation**. All of these applications were identical and claimed that the voters received their ballot papers at the PS but then realised they did not wish to vote for any of the options available, so they folded the ballot papers, placed them in their pockets and removed them from the PS. The voters subsequently reviewed the vote tallies and found the number of voters and number of ballots cast were the same, which they felt was inaccurate as they had taken their ballot papers away with them. The REC rejected these applications as **inadmissible**, a decision the voters appealed with the Administrative Court. The court also dismissed the appeals as untimely.¹⁰



As in 2022, these elections saw **generic complaints or applications for annulment of voting**. These cases pose a burden for election management bodies but are nearly without exception dismissed or rejected on grounds of being incomplete or untimely or lacking merit.

Non-compliance with procedures at PSs has remained a major issue and cause for disputes, as has **voting away from polling stations**.

4.5 PROVING IRREGULARITIES AND CASE OUTCOMES

As noted above, the assessment focused on cases categorised by LECs and the REC as ‘**voting irregularities**’, and this **report will also centre on these proceedings**. This emphasis is pertinent as the issue of proving irregularities has remained an important one in Serbian law, and despite its complexity is still unresolved notwithstanding the recent changes to legislation. Here, Art. 81 [LLE](#) now requires a complaint to be ‘intelligible and contain everything that is necessary to allow it to be acted upon, especially [...] evidence’. The same provision is repeated in Art. 149

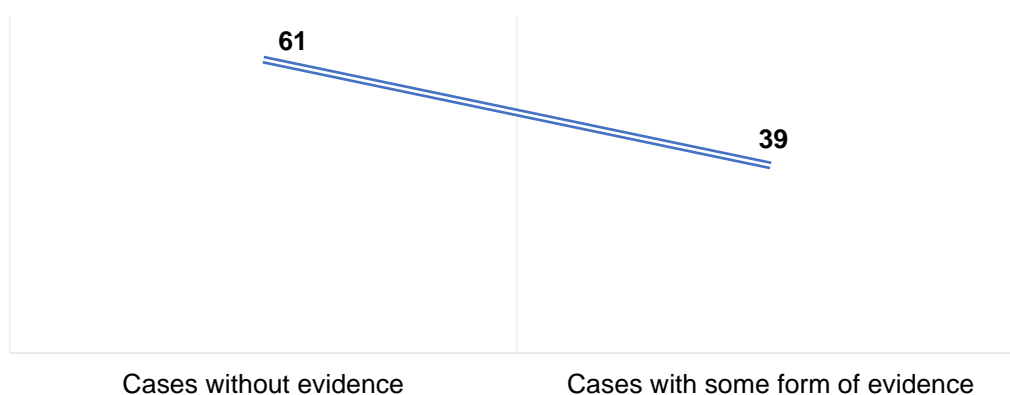
¹⁰ See case [02 No. 013-1836/23](#).

[LEMP](#), the only difference being that the instrument named there is the application for annulment of voting. Both pieces of legislation stipulate that incompleteness of a complaint or application is grounds for rejection.

4.5.1 Cases involving voting irregularities

Of the 423 cases in this category, **258 or 61 percent did not provide any evidence whatsoever**. These cases were based on the complainants'/applicants' allegations of irregularities at or outside PSs, or in some cases included requests to examine a party or called on electoral commissions to make findings of fact. As many as **224 cases without proof were filed by proponents of registered electoral lists**, with 15 lodged by voters and 19 by other persons (PB members, electoral commission members, unauthorised representatives of electoral lists, and the like).

Figure 6. Use of evidence in election dispute resolution, all election types (%)



The outcomes of all cases in this category initiated without evidence (258) were poor for the applicants/complainants: **210 were rejected** (due to a lack of standing, as incomplete, untimely, or inadmissible, or for a variety of these reasons), whilst **45 were dismissed** as lacking merit.¹¹ Another three cases were discontinued as the applicants withdrew. It may be worth noting that **two parallel elections** meant persons with due standing to complain in one election did so in the other, either erroneously or due to ignorance of the rules, which resulted in the rejection of their complaints due to a lack of standing. By way of a reminder, election dispute mechanisms in local elections differ from those in parliamentary ones, whilst Chapter VIII LLE clearly spells out criteria for assessing when a coalition or nonpartisan group is deemed to be the same entity in multiple types of elections.



One interesting complaint was lodged with the Babušnica MEC due to that body's failure to rule in a timely manner to allow three voters to review ballot papers. The repeated poll took place on 30 December, and the application was made on 1 January; by law, the review can take place up to 48 hours after polling stations close. The MEC failed to rule on the application within 48 hours, after which the proponent of a registered electoral list complained.

*The MEC rejected the complaint as **being lodged ahead of time**. The response to the complaint stated it had been made 'prior to the expiry of the time limit for electoral commission*

¹¹ One case handled by the Vranje CEC was dismissed as untimely. In view of the CEC's other rulings, this is likely to be an inadvertent mistake. See case [013-187/2023-10](#).

members to review the ballot papers', citing the one-day extension to this deadline due to the New Year's Day holiday. The complainants appealed this ruling, but it was rejected as inadmissible since the three voters who authorised the applicant to apply had not voted in the election.¹²

Electoral commissions were also inconsistent in dealing with cases where no evidence was provided: although the ultimate outcomes were the same, some commissions rejected cases as incomplete, with others dismissing them as lacking merit. To enhance legal certainty and improve election dispute resolution at the national level, these procedures ought to be made consistent. Some electoral commissions also took a **narrowly formal approach to decision-making**, rejecting complaints made in the form of applications, and vice versa, whilst others took a more lenient view towards mistakes made by applicants/complainants.



*In one case before the PEC, a complainant who identified themselves as a substitute member of the PEC mistakenly lodged a complaint with the PEC instead of filing an application for annulment with the relevant LEC. The PEC, however, extended to this person the **'procedural position' enjoyed by any voter** to ensure they could access the full extent of their civic rights, with the explanation that the complainant was **'incontrovertibly a voter'** in the APV election.¹³ By contrast, some electoral commissions would reject as **inadmissible** any filings erroneously designated as objections instead of applications, and vice versa, without assessing their merits.¹⁴*

Of the **cases that contained at least some evidence (a total of 165)**, most (125, or 75.75 percent) included **PB protocols**. Notably, the 2022 election dispute resolution assessment found that these protocols were not in and of themselves sufficient for applications or complaints to be upheld (at any decision-making tier), and that any allegations of irregularities required positive and incontrovertible evidence, as electoral commissions were not investigative bodies and were unable to find facts, examine evidence, conduct public hearings, or confront parties to a dispute. The same line of approach was taken by the Administrative Court, which restricted itself to examining only submissions provided by lower-instance bodies. This view was criticised by the ODIHR, whose [report on the December 2023 elections](#) states that 'while the law requires oral public hearings in administrative disputes, in practice, the Administrative Court decided on electoral appeals on the basis of written submissions, limiting the opportunity to present one's case, contrary to international good practice'.¹⁵ Apart from PB protocols, **25 cases (15.15 percent) involved the submission of additional evidence** such as statements by PB members, extracts from the voter register, protests against PB protocols, and election materials. **Statements by PB members** were the sole evidence used in 11 cases (6.67 percent), whilst **a combination**

¹² Case [013-10-229/2024-2](#), Babušnica MEC.

¹³ Case 102 No. [013-168/2023-01](#). Another example of this is provided by the [Subotica CEC](#), which deemed complaints to be equivalent to applications for annulment and so permitted greater effectiveness in resolving electoral disputes.

¹⁴ Case [013-395/2023](#), Vlasotince MEC.

¹⁵ The same report states that the Administrative Court had notified the ODIHR that this provision did not apply to election disputes in light of the short deadline involved. Nevertheless, the ODIHR mission recommends compliance with the [Code of Good practice in Electoral Matters](#), which advises for the applicant's right to a hearing involving both parties to be protected.

of evidence was submitted in four cases, including PB members' protests, photographs, video recordings, police protocols, and the like.



One interesting case was heard by the Novi Sad LEC, where the authorised representative of a registered electoral list applied for annulment of voting at one PB due to alleged irregularities observed by a non-core PB member that were reported as **parallel voter lists and pressure on voters**, in contravention of Art. 98 LEMP. The PB member completed a protest against the PB protocol. In its ruling, the LEC noted that the protests section contained the first and last name of the PB member who lodged it, **but lacked the signature of the PB president** confirming who the protest was made by, as well as that two additional instruments were submitted together with the protocol by the same PB member with the same allegations as the application. The LEC dismissed the allegations in the protest as lacking merit since there was no interruption in the voting at the PB, as revealed by the protocol. Particularly notable was the LEC's explanation of **parallel voter lists**: '[t]he LEC could not corroborate Milan Mandić's allegation of there having been parallel voter lists [...] because in the parliamentary election [...] each polling station received from the Ministry of Public Administration and Local Government **one sole extract from the voter register to allow the PB to conduct the voting**, with the polling board at PS 121 being no exception, **and as such the allegation that unknown individuals maintained parallel voter lists is unfounded and unsubstantiated**'¹⁶



One case that included evidence was initiated by an application for annulment lodged by a voter with the Zvezdara LEC after she was allegedly denied the ability to vote. She had initially accessed the online UVR to identify her polling station, but **she was not listed in the extract from the voter register there and was not allowed to vote as her last name was different**. The applicant provided a copy of her identity card and a screen capture of her online UVR query indicating which PS she was supposed to vote at. The LEC's fact-finding ruling stated: 'A review of the voter register for polling station 83, Seventh Belgrade Secondary School – 1, found that T. S. was not found in the voter register extract under the **first and last name indicated in the application**. As such, the LEC concluded the application was to be deemed unsubstantiated and that voting at the polling station in question was **conducted fully in accordance with the law**'.¹⁷

Protests against PB protocols are a relatively recent innovation. This document was introduced in the 2022 elections as a 'special instrument', as part of the reform of election materials and forms to be completed by the PB after the PS closes. Protests are an addition to PB protocols that is provided as part of the election materials and should, as a rule, include all events of significance for the voting process or that affected the voting. Protests can be lodged by PB members (both core and non-core), whilst the PB president is required to register them into the official PB protocol.¹⁸ [The 2022 assessment](#) revealed electoral commissions were not consistent in their treatment of this instrument: some interpreted it as evidence, whilst others saw it as a sort

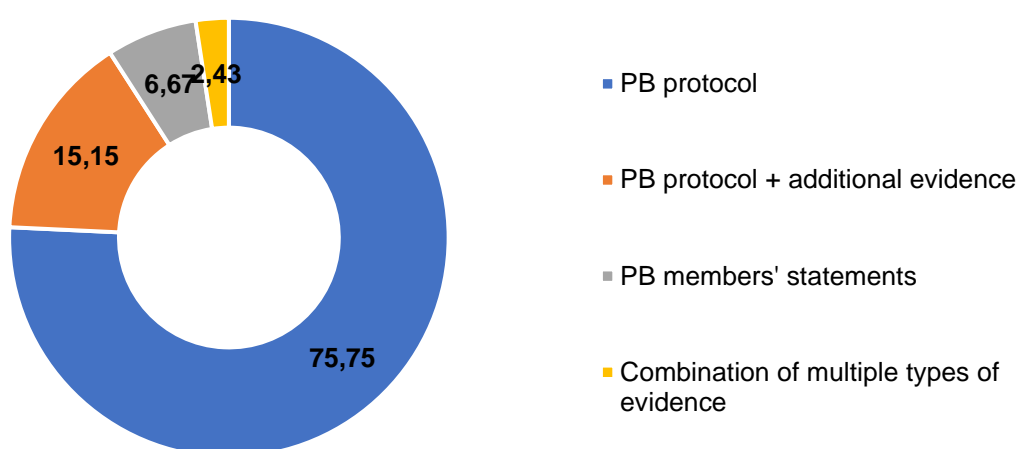
¹⁶ See Case [020-8/2023-263-1-I](#).

¹⁷ See Case [XI No. 013-1-187](#).

¹⁸ Paragraph 15.1 of the PB Protocol states: 'If a polling board member wishes to lodge a protest, the polling board president will indicate the first and last name of the protesting member and affixes his own signature to the protocol to confirm he has received a special instrument from the polling board member containing this protest, which is enclosed and constitutes an indivisible part of this protocol'.

of application for annulment of voting (although no specific application or complaint had previously been lodged by a party with due standing), and still others simply chose to ignore it.¹⁹ These elections again showed **the status of protests against PB protocols was quite unclear and that their evidentiary power was largely dubious**, primarily as at some PBs the protests were never delivered (although the protocols stated they existed), whilst a number of electoral commissions found the protests existed but that there was no indication of who lodged them, meaning they were not admissible as evidence. Moreover, in some local authorities the protests were not publicly available after PSs closed and were published only later after this ‘technical oversight’ had been identified. This omission was the grounds for a number of complaints that were dismissed as lacking merit.²⁰ Failure to publish protests is certainly poor practice as it both diminishes transparency and makes it more difficult to prove irregularities, as well as creating legal uncertainty in the election dispute resolution process.

Figure 7. Evidence used in cases concerning voting irregularities, all election types (%)



Of the **165 applications/complaints that used one or multiple types of evidence**, 19 (11.5) were rejected due to being inadmissible, incomplete, unintelligible, or lodged by a person without standing; 139 (84.24 percent) were dismissed as lacking merit; one (0.6 percent) was discontinued; and six (3.63 percent) were upheld.



*Although electoral commissions are not investigative bodies, two of these entities did examine the merits of applications/complaints by asking PB presidents or members to provide statements in response to the allegations. The Bački Petrovac LEC dismissed a complaint as lacking merit after requiring the president of the PB concerned to submit a **declaration on the subject-matter of the complaint**, which involved allegations made in a protest to the PB protocol that voting away from the polling station did not comply with the law.*

¹⁹ See Section 4.3 of the assessment, Performance and effectiveness of electoral commissions and the Administrative Court.

²⁰ See Case [06-30-205/2023-09](#), Bogatić MEC.

*The **PB president's statement, provided online**, denied the allegations, whereupon the complaint was dismissed.²¹*



*The second example is provided by the Kladovo LEC, where allegations of irregularities at a polling station were investigated through a review of the election materials and a **statement required of the PB president**. Here, the electoral commission examined allegations that the PB president assisted multiple voters in casting their ballots at the PS. The commission engaged in evidence-gathering; the PB president was requested to provide an explanatory statement, and, once he had done so, the complaint was found to be lacking merit.²²*

There is little justification for such actions by the commissions, especially given the explanations that the irregularities in question in and of themselves were not grounds for an annulment of the vote. Evidence-gathering by the commissions that goes beyond mere review of case files and election material is therefore controversial because in doing so commissions exceed the scope of their powers in election dispute resolution and may ultimately adversely affect legal certainty.

Five **applications and complaints that were accepted** were lodged in the parliamentary election, with an additional one filed in a local election. All were made by **registered electoral lists**, three by the Milica Đurđević Stamenkovski – Boško Obradović – National Gathering – State Building Strength – Serbian Party Zavetnici – Serbian Movement Dveri coalition, two by the Serbia against Violence coalition, and one by the Serbian Party Zavetnici. These applications and complaints pertained to the following irregularities:

(1) One person was allowed to vote after previously having had UV-sensitive spray applied without proving they were a PB member (as mandated by the LEMP). This application was made by the Zavetnici coalition and substantiated by the PB protocol and extract from the voter register. The commission reviewed the protocol and the protests and found the irregularities constituted grounds for annulment of voting.

[Subotica LEC, parliamentary election, Case [1-013-96-2023](#), 20 December]

(2) Two cases pertained to unsigned certificates of entitlement to vote away from a polling station, with the voters in question registered as having voted and their ballot papers having been inserted into the ballot box. The applications were made by the Serbia against Violence coalition, which proposed a review of the protocol on the handover of election materials after the closure of the PB, certificates of entitlement, and extract from the voter register. After reviewing the documentation, the commission found irregularities had occurred at both polling stations that constituted grounds for annulment of voting.

[Kula LEC, parliamentary election, Cases [01-013-31/2022-3](#) and [01-013-31/2023-4](#), 20 December]

(3) Forged ballot papers were found in a ballot box (differing in colour, typeface, and stamp from the original) when the votes were being tallied, after which the PB decided it was unable to establish the results of the voting there. This application was made by the Zavetnici coalition and substantiated by the PB protocol. The commission annulled the vote after reviewing the electoral materials as ‘the number of ballot papers in the box

²¹ Case [013-71/2021-4-2](#).

²² Case [013-1/2023-155-1](#).

exceeded the number of voters who turned out to vote'.
[Niš LEC, parliamentary election, Case [013-309-1-2/2023](#), 22 December]

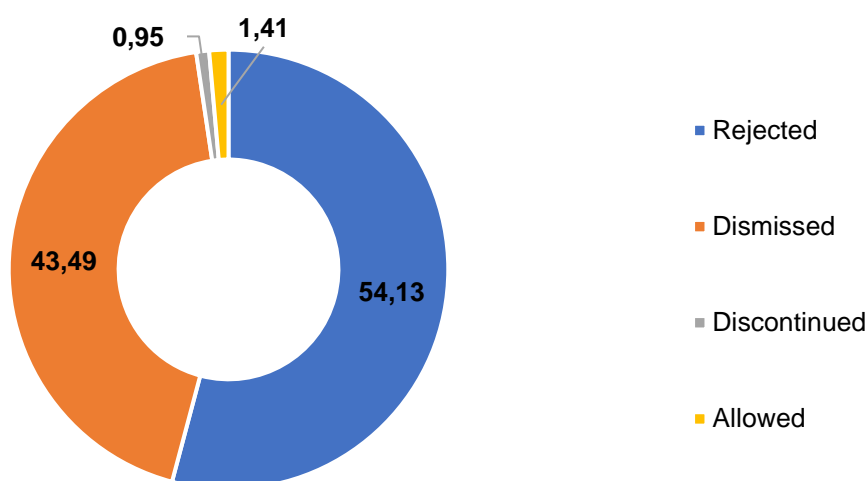
- (4) **A voter was prevented from exercising their right to vote** as the extract from the electoral register had previously been signed by another person in their name. This application was made by the Zavetnici coalition and substantiated by the PB protocol. The commission reviewed the protocol, written protests appended to the protocol, the election monitor protocol, and the UVR extract, and annulled the voting as the voter in question had been prevented from voting without valid grounds.

[Niš LEC, parliamentary election, Case [013-309-2/2023](#), 22 December]

- (5) **Excess ballot papers were found in a ballot box due to irregularities with voting away from the PS** at a PS where voting in the parliamentary election had been annulled immediately beforehand. This application was made by the Zavetnici coalition, which sought a review of the entire set of election materials. The electoral commission performed the review and found the complaint had merit.

[Topola LEC, local election, Case [257/2023](#), 21 December]

Figure 8. Outcomes of cases involving voting irregularities (423 cases), all election types (%)



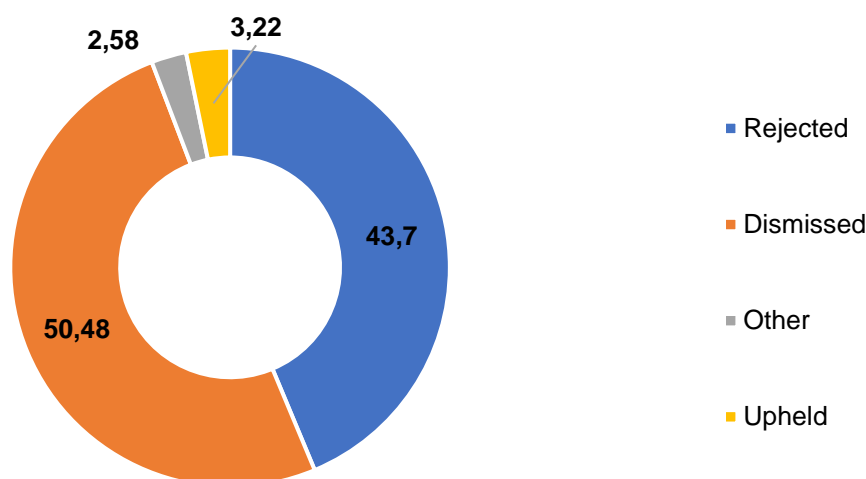
Of the total of 423 cases alleging voting irregularities, as many as 229 (54.13 percent) were rejected, 184 (43.49 percent) were dismissed, four (0.95 percent) were discontinued, and six (1.41 percent) were upheld.

4.5.2 Overview of case outcomes

Although this section focuses on cases involving election day irregularities, it may be useful to provide a brief outline of the outcomes of all dispute resolution processes. Here, **of the 929 cases, as many as 406 (43.7 percent) were rejected at the initial application/complaint vetting stage.** This means the proceedings were either brought by a party that lacked proper standing or the applications/complaints were inadmissible, untimely, unintelligible, or incomplete (or suffered from a combination of these deficiencies), and as such did not proceed to the stage where their merits would have been assessed. Of these 406 cases, 341 were brought by registered electoral

lists. **An additional 469 cases (50.48 percent) were dismissed**, whilst 24 were either discontinued, saw the electoral commission in question declare itself incompetent, or ended for other reasons. Lastly, **applications/complaints were upheld in no more than 30 cases, or 3.22 percent of the total.**

Figure 9. Outcomes of election disputes (929 cases), all election types (%)



The statistics of cases with successful outcomes reveal that proving election irregularities ranges from the difficult to the impossible, primarily as the regulations clearly require evidence but **stop short of stating what constitutes acceptable or sufficient evidence to have a vote annulled**. Practice to date (and not just in the latest elections) has shown that photographs and videos are not useable as evidence, as they are commonly obtained in violation of the law, but developments have also raised the issue of **whether PB protocols and protests are admissible in evidence**. By way of a reminder, the protocol is essentially the sole document that demonstrates how election day proceeded and contains information about any and all events that may have affected the voting. It is completed by representatives of the PB, an election management body, who are designated by registered electoral lists and financed using public funds to efficiently and lawfully organise voting on election day. That protests can simply be omitted from the protocol or manipulated in any way **denies stakeholders the ability to incontrovertibly determine what occurred at the PS**, meaning that applications/objections are then dismissed as lacking merit. One issue that warrants particular attention is the **lack of any sort of PB member accountability** in cases where the protocol is completed inaccurately or where protests are not provided to the electoral commission together with the protocol. Another long-standing issue that makes it difficult to prove irregularities is the **politically coloured composition of election management bodies**, both electoral commissions and PBs, meaning that case resolution is at times guided by political interests rather than reflecting actual circumstances and facts.

Another major issue that ought to be mentioned in connection with case outcomes is the **disproportionate nature of judicial relief to the seriousness of any proven voting irregularities**. Here, annulment of voting is the sole legal remedy envisaged by the Serbian legal framework for a set of major voting irregularities: there are no fines, administrative penalties, or any other sanctions that may be imposed for irregularities that did not decisively affect voting or

results at a PS. This feature is particularly significant in cases where irregularities occur due to inadvertent errors by PB members or voters and where these omissions in and of themselves do not constitute electoral fraud. As such, when discussing any upcoming reform of the electoral legislation it may be useful to consider **legislating a broader range of legal remedies** that electoral commissions may have at their disposal. This approach would reduce the impunity of PB members whilst also deterring undesirable behaviour in the future.

Another general observation is that **LECs vary widely in how they pseudonymise personal data** in enactments intended for publication on the REC website or in print. By way of a reminder, the 2023 [Personal Data Pseudonymisation Guidelines](#) envisage how authorities should remove sensitive data, such as national identification numbers, personal identity document numbers, addresses, contact details, and the like. A review of the applications and complaints from the REC's database reveals a wide variety of practices. Whilst most electoral commissions complied with the pseudonymisation requirement, others have **published the entirety of the applicants'/complainants' personal information: these include Arilje, Loznica, Zvezdara, Valjevo, and Jagodina**. As such, **urgent training is required for LEC secretaries** (who the Guidelines make responsible for the pseudonymisation) to ensure they are able to effectively safeguard personal data in compliance with the current rules.

Notably, the electoral commissions **performed efficiently and in compliance with statutory time limits**, with some exceptions (in some local authorities the LECs at times lacked decision-making quorums). **Case disposition was fast-tracked** and the resulting decisions were published promptly on the REC website, which had a positive impact on transparency. Two proceedings took longer than usual to complete as they involved all judicial review options, where the courts returned the cases to the electoral commissions for further action.

Outcomes were favourable to the applicants/complainants in only slightly more than 3 percent of all cases. With the exception of applications/complaints rejected at the preliminary vetting stage,

*it was found that **substantiating applications/complaints was extremely difficult, verging on the impossible in some cases.***



*The legal requirement to provide evidence was introduced so as to prevent frivolous complaints and abuse of the dispute resolution process, but has in practice **made it difficult to safeguard electoral rights.***

***Political influence on the composition of election management bodies and the lack of accountability of these institutions** are two long-standing factors that diminish the equity and efficiency of electoral justice in Serbia.*

4.6 RULINGS ON APPEAL

The courts heard a total of **275 cases** throughout the election process. Higher courts were competent to rule on appeals in local elections, whilst the Administrative Court retained its competence to hear cases related to national and provincial elections.

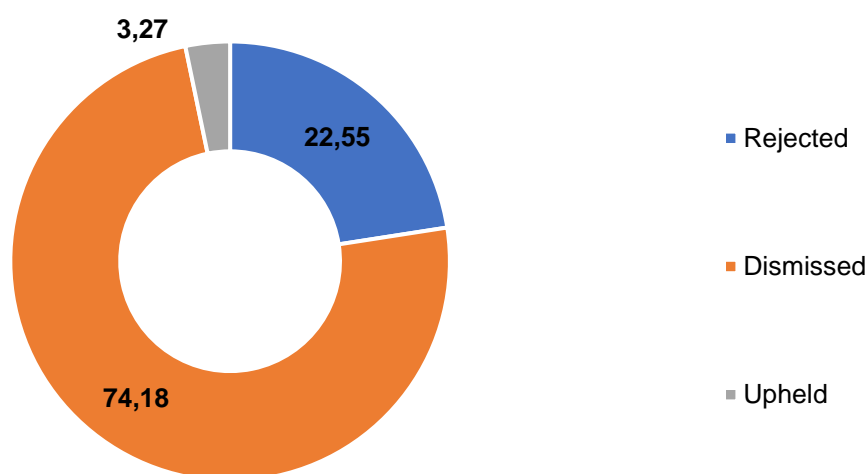
In this context, as the Complaints Register reveals, **the Administrative Court heard 55 cases**, two of which involved appeals against decisions of the PEC and 53 were appeals against decisions made by the REC. **No appeal was upheld: 33 were dismissed due to a lack of merit, whilst 22 were rejected, primarily as untimely.** The Administrative Court deliberated in closed sessions and without having the parties confront one another and efficiently, in full compliance of

the statutory time limits. As noted above, the ODIHR criticised such actions, noting they fell short of international election dispute resolution standards, which include the right to a reasonable notice of a claim, reasonable opportunity to prepare a defence, and the right to a fair and impartial fact-finding process, hearing, and decision. Conversely, the court justified its approach by citing the urgent nature of these proceedings and the fact that public hearings were not mandatory.

Higher courts ruled in 220 cases. The Higher Court of Vranje had the greatest workload, with 108 cases,²³ followed by the courts of Novi Pazar, 27, Trgovište, 21, Belgrade, 15, Kraljevo, 8, Babušnica, 6, Mali Zvornik, 4, Pirot, Šabac, Petrovac na Mlavi and Vlasotince three each, Bojnik, Kučevo, Rača, and Gadžin Han, two each 2, and Leskovac, Bela Palanka, Blace, Brus, Varvarin, Velika Plana, Veliko Gradište, Žagubica, Ljig, Medveđa, and Topola with one case each. Of these 220 cases, **40 were rejected** as inadmissible or untimely, whilst **171 were dismissed** on grounds of a lack of merit. A total of **9 appeals were upheld**, of which four resulted in reversals of initial decisions and 5 also ended with adoption of new decisions. Interestingly, **none of these nine cases pertained to voting irregularities**: all were administrative disputes. Four appeals were upheld as LECs had failed to rule in due time, three over issues with the registration of electoral lists, and two due to irregularities with designation of national minority lists.

Of the 275 appeals heard by all courts, **62 were rejected, 204 dismissed, and nine upheld.**

Figure 10. Outcomes of appeals (275 cases), all courts (%)



That **no appeal over voting irregularities upheld** is additional confirmation of just how difficult it is to prove irregularities. It also suggests courts take **narrowly formal and rigid** views when making decisions. This is the consequence of legal practice, systemic solutions, and traditions that prevent courts from gathering evidence and doing anything that may exceed the bounds of case files forwarded by first-instance bodies.

²³ For a more extensive discussion of the reasons behind this figure, see Section 4.1, Election types.

4.7 ELECTION DISPUTE RESOLUTION AND THE CONSTITUTIONAL COURT

Under the [Law on the Constitutional Court](#), the Constitutional Court has a subsidiary role in election dispute resolution, meaning that it hears disputes where electoral rights are not subject to judicial or other safeguards. Any voter or candidate for the office of President of Serbia, member of parliament, or local councillor may **apply** for the Constitutional Court to hear an election dispute for which no court is legally competent. This application may be made at the latest within 15 days after the completion of the impugned election procedure. The law also requires this application to include evidence of why action is sought from the Constitutional Court. Where a proven irregularity in the election process has had a major impact on the outcome of the election, the Constitutional Court will rule to **annul the entire election procedure or parts of such procedure** that must be clearly indicated.

Notably, Art. 37 of the Law on the Constitutional Court mandates that the Court hold a **public hearing** when ruling in election disputes. The Court may also decide **not to hold a public hearing** where it finds a matter to have been sufficiently investigated in the course of the proceedings and that any evidence gathered permits it to rule without a public hearing, if it has previously ruled in the same matter and no other reasons have been given to rule otherwise, and if grounds exist to discontinue the proceedings.

The Law on the Constitutional Court **does not set out any time limits** for decision-making or any time limits within which an election management body whose decision is being impugned to produce materials and respond to any allegations made in the petition.

In the aftermath of the December 2023 elections, Serbia against Violence filed applications with the Constitutional Court to annul the parliamentary and Belgrade local elections. [As alleged by the petitioners](#), the petitions contain substantial evidence of fraud and irregularities that occurred not only on election day but throughout the election process. The applications [present examples](#) of how the irregularities affected all stages of the election process: from the calling of the election through the nominations process, election campaign, preparation of the voter register, vote tabulation, and abuses with the publication of results. At the time of writing, **the Constitutional Court was yet to rule on these applications** and was still undertaking [preliminary actions](#) that include assessing whether the submissions are complete and admissible collecting the requisite information, data, and evidence, and taking other procedural actions relevant for the Court's decision-making. In the meantime, the mandates of members of parliament have been verified, and a new local election in Belgrade has been called for early June 2024.

The latest legislative revisions drafted by the Government of Serbia Working Group based on ODIHR recommendations include [amendments to the Law on the Constitutional Court](#) that introduce clear time limits for decision-making in election disputes. The proposed changes stipulate that (1) a competent authority has a total of eight days to respond to the Constitutional Court and provide any and all documents relevant for decision-making in the case; (2) after receiving an application, the Constitutional Court has 30 days to rule on it; and (3) where the Constitutional Court has annulled an election procedure partially or in whole, the time limit for a repeated election is extended from ten to 30 days from the date on which the Constitutional Court delivers its ruling to the competent authority. It is unclear if and when these amendments will take effect: at the time of writing, amendments to this package of laws were the subject of discussion between government and opposition officials in parliament.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS / KEY FINDINGS

Three key groups of findings ought to be considered to appropriately understand the topic of election dispute resolution in Serbia. These are: (1) **systemic solutions**, (2) the role of **applicants/complainants**, and (3) the **practices** of bodies ruling on complaints and applications for annulment of voting.

When it comes to **systemic solutions**, it ought to be understood that the current legislative framework for electoral dispute resolution is fairly new (having been adopted in 2022), constitutes a radical recasting of the previous statutory arrangements, and is complex in a number of areas. Apart from the rules being distributed over a large number of laws, this complexity is largely the product of differences between the various types of elections in how election disputes are conducted and the recent involvement of higher courts, which had hitherto never heard election-related cases. At the same time, the new laws have failed to eliminate the powerful **political influence** on electoral commissions and PBs, which gives political parties and groups a major say in how elections are managed. In this sense, the unprofessional electoral administration generates a number of problems that have for years characterised the Serbian system, in particular the high dependence of decision-making on political interests and the occasional attempts to abuse the system to achieve party political objectives. One major problem here is the **systemic lack of accountability for unprofessional and/or illegal actions on the part of members of election management bodies**, with no criminal or misdemeanour cases brought against any of them or clear records kept of their performance. *For that reason it comes as no surprise to see that procedural infringements and issues with vote tabulation at PSs have remained the commonest irregularities, with these two groups accounting for more than 60 percent of all complaints and applications for annulment of voting.* However, perhaps the most salient systemic problem, one that has the most decisive effect on electoral justice, is the **extreme and at times insurmountable difficulty of proving irregularities in the election process**, mainly as the regulations mandate that evidence be provided but do not stipulate what exactly constitutes admissible or sufficient proof to annul an election. Polling board protocols in and of themselves have found to be insufficient proof, but protests to the protocols as currently defined are also unable to play this role, as in some cases the protests are simply not delivered or are manipulated. Lastly, **the equity and efficiency of election procedures are significantly restricted** by the inability of electoral commissions to gather evidence, organise public hearings, or confront parties to the disputes. (Courts lack these powers too, restricted as they are to second-instance examination of case files submitted by first-instance bodies.) *This conclusion is corroborated by the fact that no evidence was provided in 61 percent of all cases; only PB protocols were cited in 75 percent of those where some evidence was submitted. Of the total of 165 applications/complaints that were substantiated by evidence, 139 (84.24 percent) were rejected, all for lack of merit, one (0.6 percent) was discontinued, and 6 (3.63 percent) were upheld.* The system's **advantages** include its ability to operate well in terms of **speed/urgency of deliberation** and **transparency** in publishing information, an aspect much improved relative to the past. Rulings in all cases are available on the websites of the REC or the Administrative Court, applicants/complainants are kept informed of the outcomes of their cases, and the public are able to review all accompanying materials, if any. In addition, the system is generally well

designed as it provides **at least two-tier** safeguards of electoral rights where first-instance decisions can be contested.

A second group of key findings pertains to the **role of applicants/complainants** in the election dispute resolution system. *The crucial conclusion here is that the process remains captured by political parties and groups contesting the election, with 84.82 percent of all cases brought by them and voters still not participating sufficiently in election dispute resolution.* The general public were already lacking the basic knowledge required to take part in these processes (in 2021, as few as 10 percent were aware of how to file a complaint), as well as not being particularly eager to engage, a situation again registered in the 2023 elections. **Many applicants/complainants remained ignorant of the procedures and standards** (and, more broadly, the new legislative framework), so cases were brought by persons without standing, there was confusion over when to lodge a complaint and when an application and which election type relief was being sought in, and, lastly, cases were often brought over irregularities and actions that do not constitute grounds for annulment of voting. In a practice that is becoming a feature of nearly all elections, **election commissions were inundated with identical, generic complaints and applications**, often using pre-prepared templates, although this was less common in the December 2023 elections than previously (these practices were identified by the Vranje LEC and Trgovište LEC, and, to a lesser extent, the REC as well). Apart from containing procedural errors, such generic complaints often did not contain even the basic minimum of elements required by the law (such as a description of the actions, facts, and evidence), which meant the vast majority were rejected. *The study revealed that, of the 929 cases in total, no fewer than 406 (43.7 percent) were rejected at the initial complaint/application vetting stage. This meant the filings were seen as having been made by persons without standing or as inadmissible, untimely, incomprehensible, or incomplete (or a combination of multiple grounds) and did not proceed to an assessment of their merits. Of the 406 cases, 341 were brought by registered electoral lists.*

Lastly, the third major set of findings produced by this study pertains to the **uneven performance of authorities competent for ruling on complaints and applications for annulment of voting**, primarily LECs. This was the consequence firstly of structural issues inherent with the LECs and secondly of their lack of capacity and experience in election dispute resolution. The December 2023 election re-affirmed the previous finding whereby electoral commissions faced two major issues: **inconsistent performance and excessive formalism in decision-making**. These two factors were seemingly less present than before and were reflected in the differing practices of electoral commissions throughout the country, as illustrated above, in terms of admitting standing (some admitted a wide variety of complainants/applicants whilst others rejected cases based on strictly formal criteria), treating misnamed submissions (where some rejected applications titled as 'complaints' and vice versa, whilst others disregarded these formal errors), considering incomplete applications (where some treated the lack of evidence as grounds for rejection due to incompleteness and others as grounds for dismissal for lack of merit), and so on. Other concerns have included the **differing practices of commissions in terms of protests against PB protocols and their approach to treating evidence, where some of these bodies have engaged in what amounts to investigative action**. This was also a structural issue that was also found in equal measure in the courts, so a detailed assessment of higher court actions in election disputes would be useful as this has quite a strong bearing on the integrity of electoral justice.

5.2 STRATEGIC INTERVENTIONS / RECOMMENDATIONS

In the light of new legislation, new findings, and new circumstances identified in the development of this assessment, CeSID has **re-evaluated prior recommendations and proposed strategic interventions** and re-focused them on **the performance of electoral commissions and courts**, the key stakeholders in election dispute resolution. 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.

5.2.1 Institutional dispute resolution model

Election stakeholders (especially direct ones) must know which institution is responsible for which type of dispute, and must also be familiar with all procedural and substantive rules and procedures that will govern the dispute resolution process.

Recommendation	Stakeholder	Priority*	Timeframe
ZERO RECOMMENDATION Implement a participatory, systemic, and coherent reform of election management bodies – at the national, provincial, and local level – to professionalise these authorities and ensure they enjoy access to stable funding, a clear legal status, and permanence.	Parliament, public consultations	High	Medium term
#1 Introduce provisions allowing the LECs, PEC , and REC to react on their own initiative at all stages of the electoral process where it detects violations, without formal prompting by a party. This recommendation requires previous professionalisation of the election management bodies and the removal of political influence and party political structures from these authorities.	Parliament, LECs, PEC , REC, public consultations	High	Medium 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.	LECs, PEC, REC, higher courts, Administrative Court	Medium	Long term
#3 Organise and offer regular training for secretaries of LECs and other persons handling personal data about the necessity of and rules for pseudonymising personal data	REC, LECs	High	Medium term

when publishing official documents. Practice needs to be aligned, personal data protection arrangements for complainants/applicants improved, and abuses prevented.			
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5.2.2 Rules and procedures 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 familiarised 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 defence, 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, higher courts	Low	Short term
#2 Engage actively and continuously with electoral commissions to enhance their capacity for decision-making in election disputes, especially with regard to ensuring consistency of evidence interpretation practices.	RIK, expert community	High	Short term
#3 Harmonise regulations and allow disputes to be initiated by electronic filings, in compliance with the Electronic Signature Law and the General Administrative Proceedings Law. Clearly regulate electronic means of communication with parties to proceedings.	Parliament, LECs, REC	High	Short term
#4 Revise statutory instruments 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.	Parliament, REC	High	Short term

#5 Revise the statutory framework to clearly stipulate admissible and sufficient evidence to prove voting irregularities.	Parliament, REC	High	Short term
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4.8.3. 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 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.	Ministry of Justice, prosecution service, State Prosecutorial Council	High	Medium term
#2 In compliance with best practice, amend statutory rules that govern the granting of ethnic minority status to electoral lists and harmonise the relevant provisions of the LEMP, LEL, and Political Parties Law. Launch broad-based public consultations on this issue and ensure the process is fair.	Parliament, line ministries, LECs, REC, public consultations	High	Medium term
#3 Consider amending the legislative framework to provide more granular legal remedies in electoral disputes to promote the efficiency and speed of the electoral process and address fraudulent annulment of voting at individual PSs.	Parliament, LECs, REC, public consultations	High	Medium term

4.8.4. Informing and educating the public

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

Recommendation	Stakeholder	Priority	Timeframe
# 1 Develop an annual training plan for <u>election management bodies</u> at all levels – national, provincial, and local – and regularly conduct training aimed at increasing the capacity of electoral commissions for fact-finding and taking appropriate action when ruling on applications and complaints.	REC, LECs	High	Short term

#2 Develop an annual training plan for <u>political parties and organisations</u> at all levels – national, provincial, and local – and regularly conduct training aimed at increasing the capacity of political parties and organisations to keep abreast of mechanisms in the election dispute resolution process and how to use them.	Political parties and organisations, civil society	High	Short term
#3 Develop an annual training plan for officers of the <u>Administrative Court</u> and regularly conduct sessions (annually or before an election) aimed at increasing the Court's capacity for fact-finding and taking appropriate action when ruling on appeals.	Administrative Court, Judicial Academy, REC	Medium	Medium term
#4 Develop an annual training plan for officers of <u>higher courts</u> and regularly conduct sessions (annually or before an election) aimed at increasing these courts' capacity for fact-finding and taking appropriate action when ruling on appeals.	Higher courts, Judicial Academy, REC	High	Medium term
#5 Organise and conduct educational campaigns for <u>voters</u> and disseminate information to the public about how to use electoral dispute resolution mechanisms and access the appellate process.	Civil society	High	Short term
#6 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	High	Short term