CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

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Municipal elections in the Netherlands (16 March 2022)

Rapporteur:[1] Mr Vladimir PREBILIC**,** Head of Delegation, Slovenia (L, SOC/G/PD)

Summary

Overall, the Congress delegation assessed positively the conduct of the local elections in the Netherlands, commending the high level of trust in elections among stakeholders and efficient organisation of the polls in the run up to the elections. Although certain issues were noted in the election campaign, such as under-regulation of the campaign finance and online hate speech, the campaign was calm and competitive.

On Election Day, the Congress delegation observed efficiently managed, transparent and inclusive elections, due to the density of polling stations and the possibility for voters to cast their ballot in any polling station within their municipality. Despite the generally positive assessment, the Congress members noted several longstanding issues that need to be addressed by the Dutch authorities, concretely the practice of proxy voting and the issue of unelected mayors.

1 Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

PRELIMINARY DRAFT RECOMMENDATION

1. Following the invitation from the Minister of Foreign Affairs of the Kingdom of the Netherlands, received on 17 November 2021, to observe the municipal elections scheduled for 16 March 2022, the Congress of Local and Regional Authorities refers to:

a. Article 1, paragraph 2 of the Committee of Ministers' Statutory Resolution CM/Res(2020)1 on the Congress of Local and Regional Authorities of the Council of Europe;

b. the principles laid down in the European Charter of Local Self-Government (ETS No. 122) which was ratified by the Kingdom of the Netherlands on 20 March 1991;

c. Chapter XIX of the Rules and Procedures on the practical organisation of election observation missions.

2. The Congress reiterates the fact that genuinely democratic local and regional elections are part of a process to establish and maintain democratic governance and that observation of grassroots elections is a key element in the role of Congress as a guardian of democracy at local and regional level.

3. The Congress delegation observed generally well-administered, transparent and orderly elections with a high degree of public trust in elections and high inclusiveness of the electoral process in the country.

4. At the same time, the Congress regrets that several longstanding issues regarding democratic elections in the Netherlands remain unaddressed, in particular the under-regulated campaign finance environment, proxy voting and the lack of elections for mayors.

5. The Congress is also concerned about the spread of fake news and hate speech on the internet during the election campaign which contributes to the polarisation of the society before and after elections.

6. In light of the above, the Congress invites the authorities of the Netherlands to:

a. strengthen the regulatory framework ensuring transparency and accountability of campaign and party finances on the local level;

b. reconsider the universal use of proxy voting in view of possible risks to electoral integrity, particularly for vulnerable groups of voters, and examine introducing other alternatives for permanent use, such as early or postal voting;

c. introduce effective measures to fight hate speech and fake news online during election campaigns;

d. replace the appointment of mayors by democratic elections in order to ensure the citizens' right to participate in the conduct of local public affairs and comply with fundamental principles of democracy.

7. The Congress calls on the Committee of Ministers, the Parliamentary Assembly and other relevant institutions of the Council of Europe to take account of this recommendation regarding the 2022 municipal elections in the Netherlands and of the explanatory memorandum in their activities relating to this member State.

DRAFT EXPLANATORY MEMORANDUM[2]

1. INTRODUCTION

1. Following an invitation from the Minister of Foreign Affairs of the Kingdom of the Netherlands, received on 17 November 2021, the Bureau of the Congress decided to deploy an election observation mission, in the hybrid format, in order to evaluate the municipal elections scheduled for 16 March 2022. This was the third time an election mission was deployed by the Congress to the Netherlands. Vladimir PREBILIC from Slovenia (L, SOC/G/PD) was appointed Rapporteur, heading an 11 member-delegation including Congress representatives on the Council for Democratic Elections of the Venice Commission, the Chair of the Monitoring Committee, an expert from the Congress Group of Independent Experts as well as members of the Congress Secretariat.[3]

2. Due to the hybrid format of this mission, the on-site visit on the Election Day was preceded by preparatory meetings organised remotely, on 10 and 11 March, to meet representatives from the Ministry of the Interior and Kingdom Relations, the Electoral Council (Kiesraad), as well as national and international NGOs and the media. On the Election Day, five Congress teams visited more than 70 polling stations in municipalities in most of the 12 Dutch provinces and observed calm and efficiently managed elections. The density of polling stations in the Netherlands and the possibility for voters to cast their ballot in any polling station within their municipality allowed for a highly inclusive ballot.

3. The following report focuses specifically on issues arising out of exchanges held with Congress interlocutors in the context of the 2022 municipal elections in the Netherlands and on observations made by members of the delegation on the Election Day. The Congress wishes to thank all of those who met with the delegation for their open and constructive dialogue. It also thanks the Association of Dutch Municipalities (VNG), the Ministry of the Interior of the Netherlands, the Dutch Electoral Council and all who lent their support to this mission.

2. POLITICAL CONTEXT

4. The Netherlands, the largest part of the Kingdom of the Netherlands, is a constitutional monarchy with a parliamentary system of government. The Head of State is King Willem-Alexander since 30 April 2013. The bicameral Parliament includes the Senate, composed of 75 members elected by the Provincial Parliaments (States Provincials), and the House of Representatives, composed of 150 members directly elected through proportional representation.

5. The last parliamentary elections were held from 15 to 17 March 2021. The elections had originally been scheduled to take place only on 17 March, however, due to the COVID-19 pandemic, the Government decided to open some polling stations two days in advance, to ensure safe voting for vulnerable citizens. The turnout was 78.7 per cent and 17 political parties won seats in the House of Representatives.

6. The March 2021 Dutch parliamentary elections resulted in a fragmented Parliament. The ruling coalition containing People's Party for Freedom and Democracy (VVD), the Christian Democrat Appeal (CDA), Democrats 66 (D66) and the Christian Union (CU) was reinstated with a slim majority. It was only in January 2022, following protracted negotiations, that the new Government took office.

7. The political fragmentation which is evident at national level also occurs at the local level. More than 800 parties took part in the 2022 municipal elections, most of them contesting only a single municipality.

8. Municipal elections had last been held in 2018 with a turnout of 54.97%, similar to the 2014 turnout of 54%[4]. Therefore, concerted efforts were made to increase turnout in the 2022 elections including a public information campaign, creation of an online elections toolkit[5] and particular efforts to engage young voters.

2 Prepared with the contribution of Congress expert, Dr Brid Quinn (Ireland).
3 The details of the delegation, the final programme and the deployment areas appear in the appendices.
4 Ministry of the Interior and Kingdom Relations (2022) *Dutch Municipal Elections 2022*, p. 5
5 www.verkiezingentoolkit.nl

9. The March 2022 elections in the Netherlands took place as the country began to ease COVID-19 restrictions. A Temporary COVID-19 Elections Act had been passed, with wide political consensus, in November 2020. It provided for the safety of voters and polling staff and facilitated easier access to voting during the pandemic. Some measures of this act were extended in October 2021 and provisions for voters to vote early on 14 and 15 March 2022 were sanctioned. An additional international aspect affecting the elections was the evolving war in Ukraine.

3. ADMINISTRATIVE STRUCTURE AT LOCAL AND REGIONAL LEVEL

10. Local government in the Netherlands consists (as of May 2022) of 344[6] municipalities with three special municipalities (public bodies) in the Caribbean. The number of municipalities has been declining over the years, since there were 774 Municipalities in the 1990s and 403 in 2014, resulting in a considerable reduction in the total number.

11. The representative governing body at municipal level is the Municipal Council. The Board of Mayor and Aldermen and the Mayor are the executive organs. The Board of Mayor and Aldermen and the Mayor jointly constitute the Municipal Executive and this is where the administrative powers are concentrated. The members of the Board all have their own portfolios and prepare, coordinate and plan specific policies and implement legislation. The Aldermen are nominated by the Council.

12. The Mayor is the official representative of the Municipality and chairs both the Council and the Executive - the Board of Mayor and Aldermen. The Mayor serves a six-year term, which is renewable without limits. Mayors are not elected in the Netherlands. In formal terms, their appointment is made by Royal Decree. In practice, the Mayor is appointed from among candidates “selected” or “identified” by the Municipal Council. A vacancy notice is published identifying the desired profile for Mayor, and applicants can compete for the job (currently, only 3% of incumbent Mayors do not have a political background). If a Mayor loses the confidence of the Municipal Council, he/she would normally resign but if this does not happen, the Commissioner of the King would raise the issue of dismissal through State decision.

13. The 2021 Congress monitoring report on local and regional democracy in the Netherlands recommends that the appointment of mayors and King’s Commissioners be by democratic election, to ensure the citizens’ right to participate in the conduct of local public affairs and comply with fundamental principles of democracy.

14. Regional democracy takes place at the level of the 12 Provinces.[7] The Dutch provinces are territorial administrative bodies, which have their own competences and powers, possess a specific legal scheme and enjoy a separate system of financing. The institutional profile of Provinces mirrors in many aspects that of the Municipalities. Provinces are governed by Provincial Councils, while the executive body is the Board of the King's Commissioner and the Provincial Aldermen. The next provincial elections are scheduled for 2023.

4. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

15. The 1954 Charter of the Kingdom of the Netherlands establishes the political relations between the constituent entities of the Kingdom and includes the basic principles of elections such as free and secret ballot. The 2002 Constitution is legally subordinated to the Charter and contains, among other provisions, the conditions for the right to vote and the right to stand for political office. The Netherlands is a party to major international and regional instruments related to the holding of democratic elections, and the Constitution formally integrates international law into national law.

16. Municipal council elections are regulated by the 1989 Elections Act which serves as the basis for the conduct of all types of elections. The act remained largely unchanged since the previous municipal elections held in 2018. The Elections Act regulates the competences of election administration bodies, candidate registration, and the procedures for various elections. The 1989 Elections Decree unifies prior regulations and details selected sections of the Elections Act.

6 In the 2022 elections, the municipalities of Amsterdam and Weesp merged, ibid. p 2
7 The Provinces are Groningen, Frieslân, Drenthe, Overijssel, Gelderland, Flevoland, Utrecht, Noord-Holland, Zuid-Holland, Zeeland, Noord-Brabant and Limburg.

17. The 2013 Political Finance Act includes comprehensive regulation of the financing of political and campaign activities. However, it regulates only the political financing of parliamentary parties on a yearly basis, whereas campaign financing for municipal council elections remains largely unregulated. Other relevant legislation includes the 1992 Municipalities Act, the 2009 General Administrative Law Act, and the 1994 Criminal Code.

18. A Temporary COVID-19 Elections Act was passed with a wide political consensus in November 2020 to provide for the safety of voters and polling staff and facilitate easier access to voting during the pandemic. The validity of most measures of this act was extended in October 2021 and provided for distancing and protection requirements during the polls and a possibility for voters to vote early on 14 and 15 March. Certain temporary measures, such as providing the possibility for voters over the age of 70 to vote by post and allowing a voter to vote as a proxy for up to three (instead of two) voters, were abolished. Apart from COVID 19-related adjustments, the legal context remained largely unchanged since the municipal elections organised in 2018.

19. Elections for municipal councils are held every 4 years according to a proportional representation system and on the basis of open candidate lists with preferential voting. Seats are proportionally distributed to candidate lists according to the electoral quota, which is determined by dividing the total number of valid votes cast by the number of seats elected in a given municipality. Following the initial distribution, remaining seats are distributed either by the arithmetical rule of highest averages or remainders, depending on the size of the council. All lists containing all candidates are included on the ballot. A voter can vote for any one candidate on a list, which also results in a vote for the respective list. Candidates that receive a sufficiently high number of preferential votes are automatically declared elected. The remaining seats that the list won are awarded to candidates in the list order.

5. ELECTION ADMINISTRATION

20. The election administration is highly decentralised. Municipal council elections are administered by the municipal authorities, with support and methodological guidance from the Ministry of Interior and Kingdom Relations (MoIKR) and the Electoral Council (Kiesraad), an independent administrative body. The MoIKR is responsible for proposing legislation and for issuing regulations related to the election process. The MoIKR also conducts a review after each election to identify areas of potential improvement.

21. The Electoral Council (Kiesraad) acts as an advisory body and information centre regarding franchise and elections. It consists of seven members who are appointed by Royal Decree for a period of four years. For municipal elections, it has no functions or authority over the election administration.

22. At municipal level, Electoral Committees (ECs) are established by the Board of Mayor and Aldermen. The Board decides on the number of Electoral Committees in the municipality and the number of members in each Electoral Committee. A five-member Central Electoral Committee (CEC) with the mayor as chairperson is established in each municipality for a period of four years. Election organisation, including the nomination and training of members of polling station committees, is also the responsibility of the municipalities.

23. Voting and counting procedures are administered by Electoral Committees. 9,000 Electoral Committees were temporarily appointed before the 2022 elections. Each Electoral Committee consists of between four and seven members including the chairperson. Substitute members may be designated to fill in for absent members. Due to the COVID-19 pandemic, 2,500 early voting locations were opened to give voters in every municipality the option to vote already on 14 and 15 March.

24. Anybody over 18 years can apply to become a member of an Electoral Committees. To serve in ECs on Election Day, all members, including substitutes, must complete a training course; municipalities also conduct separate webinars for EC chairpersons. Due to the pandemic, all training sessions were organised online. Electoral Committee members are prohibited from indicating political preferences while carrying out their duties, but the law does not prohibit candidates, councillors and aldermen from serving in ECs. However, the Kiesraad advised the municipalities not to appoint as EC members those who were elected or appointed to political office, as they might be perceived as politically biased.

25. Municipalities in the Netherlands have significant responsibilities with regard to elections. CECs register names of political parties wishing to compete in the elections, register the candidate lists, determine the election results and allocate the mandates. Furthermore, municipal authorities are responsible for maintaining voter registers, mailing voting cards, identifying polling premises, recruiting and training EC members, procuring electoral materials and providing voter information.

6. VOTER REGISTRATION

26. Voter registration in the Netherlands is passive. Voter registers are maintained by municipalities based on information derived from the national Personal Records Database (PRD). No later than two weeks before the election, voting cards are distributed by the municipalities to all eligible voters. The cards contain security features and must be produced in order to receive a ballot paper. Voters may vote in any polling station within their municipality. At the polling station, voters must present their voter card and a State-issued identification document to a member of the EC, which retains the voter cards. Homeless voters and those without a registered address are not able to vote, as they are not included in the PRD and do not receive voter cards, unless they are registered under a postal address such as the address of a social welfare institution.

27. Dutch citizens and European Union citizens who are aged at least 18 on Election Day are entitled to vote in municipal council elections where they reside. Non-EU citizens are also entitled to vote if they have resided legally and continuously in the Netherlands for 5 years or more. Only those who committed a serious violation against the foundations of the State, as specified in the 1983 Constitutional Amendment, are disenfranchised. By law, this can be imposed as an additional punishment to those serving sentences longer than one year for certain crimes including electoral fraud. EU citizens disenfranchised by a court decision of another member State are also not entitled to vote in the Netherlands.

28. Dutch voters may authorise a proxy to vote on their behalf, provided that the proxy is a voter in the same municipality. This may be done by providing the proxy with a signed voter card and a copy of the voter's ID card. A voter may also request proxy voting by sending a request to the municipality, who will issue a proxy certificate to the proxy. By law, a proxy may cast up to two proxy votes, and must cast their own vote at the same time. Given the potential challenges to the secrecy and equality of the vote, the practice of proxy voting is considered problematic by experts. There are indications of a higher incidence of proxy voting by men on behalf of women in some communities, as well as the impossibility of verifying that the proxy voted as intended.

29. Dutch citizens abroad may not vote in municipal elections; however, if temporarily abroad and included in the PRD, they can still vote in person in the Netherlands or by authorising a proxy. Detainees and eligible prisoners can vote only by proxy, unless they are granted prison leave on Election Day or if the municipality opens a polling station at the place of confinement. For the 2022 elections, the voter registers closed on 31 January, coinciding with the day of nomination of candidates. The total number of voters is published together with the final results of the elections. In total, 13,598,133 voters were eligible to participate in the 2022 municipal elections.

7. REGISTRATION OF PARTIES AND CANDIDATES

30. All eligible voters may stand for election as municipal councillors in the municipality where they reside. They may stand in another municipality if they declare they will move there if elected. By law, certain roles are considered incompatible with being elected as councillors, therefore, members of governmental, provincial or local executive bodies may not stand as candidates in municipal elections.

31. Political parties, groups and associations wishing to compete in elections can register their names and logos with the CEC up to 43 days before the deadline for candidate list nomination. To register with the municipal CEC, parties must submit a deposit of EUR 112.50 which is returned if the party submits a candidate list on the day of nomination. If a party's name was previously registered with the CEC, it may run in any municipal council election using that name; this includes parties that participated in previous elections.

32. Non-registered groupings and individuals are also allowed to compete. Their lists are labelled only by an ordinal number determined by the respective CEC. A group of parties may compete in a

particular municipal council election on a common list by submitting a candidate list under an agreed name. A party list can include a maximum of 50 candidates and parties with more than 15 councillors in the outgoing municipal council may include up to 80 candidates. Each candidate may be included on only one list in each municipality.

33. The lists are ordered on the ballot according to the number of seats won in the outgoing municipal elections, followed by parties and unnamed lists with their ordinal numbers determined by drawing lots. Candidates can *de facto* run individually, by submitting an unnamed list with only one candidate listed. The candidate lists can be submitted to the CECs only on the day of nomination, which for these elections was 31 January 2022.

34. To be accepted, the list must be accompanied by ten, twenty or thirty support declarations, depending on the size of the municipal council, unless the party won at least one seat in the previous municipal council elections. The declarations of support must be given by persons registered to vote in a given municipality. A voter may not sign for more than one declaration of support.

35. The submitter of the list must also pay a deposit of 225 EUR, which is returned if the list wins at least one seat, or at least 75 per cent of one electoral quota. The low threshold ensures inclusivity and representativeness but results in a large number of parties being listed on the ballot paper making it physically unwieldy.

36. It is a noteworthy feature of Dutch municipal elections that large number of local parties/groupings compete in elections. On 22 December 2021, the Government Gazette published a list of 43 party names and authorised persons which had been registered[8]. According to NL News, 16 national parties fielded candidates in the 2022 municipal elections, the remaining candidates stood as individuals or for new parties/groupings.

8. ELECTION CAMPAIGN

37. The Dutch Constitution guarantees freedom of association, assembly and expression. However, election campaigns lack regulations, as there is no official campaign period, with campaigning permitted in the lead up to and during Election Day. Also, there are no restrictions as to where parties can campaign other than in the vicinity of and within polling stations.

38. In 2021, most parties signed the Dutch Code of Conduct on Transparency in Online Political Advertisements. The code was drafted by the International Institute for Democracy and Electoral Assistance (International IDEA) in consultation with political parties represented in the Dutch House of Representatives and online platforms, at the request of the Ministry of the Interior and Kingdom Relations.[9] The code sets the standard and promotes core values relevant to online political advertising and elections, including transparency, privacy, safety, fairness, integrity, and a level playing field.

39. For the 2022 municipal elections, a mix of traditional and new media campaigning strategies was used. Because of COVID-19 there was less door-to door canvassing and fewer street stalls than usual. No large public rallies were organised. All parties engaged in social media and online campaigns. However, smaller parties felt that their lack of finance constrained their reach and impact on social media.

40. Dominant campaign issues were the cost of living, housing, energy costs. Some larger municipalities promoted web applications such as “Stemwijzer” (or Vote Match) to provide non-partisan information on the election programmes of political parties by allowing voters to compare their views with those of the contesting parties. StemWijzer offered a list of thirty statements against which voters could compare their personal position with the positions of the political parties. For the 2022 municipal elections StemWijzers were prepared for 55 municipalities and 8 urban regions[10].

8 Government Gazette 2021, 50668
9 See: https://www.idea.int/sites/default/files/news/news-pdfs/Dutch-Code-of-Conduct-transparency-online-political-advertisements-EN.pdf
10 See: https://home.stemwijzer.nl/veel-gestelde-vragen/

9. CAMPAIGN FINANCING

41. There are no political and campaign finance regulations specific to municipal elections, other than those requirements that ordinarily apply to parties with parliamentary representation. The 2013 Political Finance Act (PFA) elaborates disclosure requirements for electoral contestants. The law provides for both public and private funding, though only political parties with at least one seat in Parliament are eligible for public funding.

42. Local party branches collect membership dues and can receive donations. A lack of funding for parties that are unrepresented in Parliament, including local parties that collectively constitute more than one third of the representatives in all municipalities, may create an unfair financial advantage in favour of larger parties. Concurrently, only those parties that receive public funding are required to disclose their finances, which may result in a lack of transparency in the financing of municipal election campaigns.

43. The Association of Netherlands Municipalities (VNG) has recommended amending the Political Finance Act (PFA) by adding a specific regulation for local political parties. The 2021 report of the Congress Monitoring Committee contains support for this proposal, since this would allow funds to be granted to all local political parties which they could use to employ more staff members, follow training courses, improve their campaigns and attract more party members'[11].

44. The legislation does not impose campaign expenditure limits on either parties or candidates. There are no limits to the contributions that parties can accept from individuals or legal entities, including private corporations. Those parties that are required to register donations must maintain records of contributions over EUR 1,000, including those made in-kind, though this does not include a requirement for public disclosure. Public disclosure requirements apply for contributions of upwards of EUR 4,500 from an individual donor in a given calendar year and debts totalling EUR 25,000 and above per calendar year. The annual financial reports submitted by parties to the MoIKR are made available on the Ministry's website.

45. In general, the thresholds for recording and for disclosure of sources of funding have been criticised by the OSCE/ODIHR as being too high to permit adequate transparency and stand contrary to international standards and good practices[12]. Donations from foreign donors are unregulated, which also is at odds with international standards. Some parties have committed to internal disclosure requirements. The Commission on Political Party Finance (a three-member advisory body) advises the MoIKR on political and campaign finance but does not have any responsibilities related to municipal elections other than those relating to all parliamentary parties.

10. MEDIA

46. Freedom of expression is actively protected by the Dutch State and a solid legal and constitutional framework effectively guarantees freedom of speech. There are very few limits on the dissemination of information and opinion. Media-related regulations are elaborated in a 2008 Media Act. The level of pluralism in the Dutch media is high with 23 public broadcasters, 10 of which are national and 13 regional, and over 600 broadcasters in total. Freedom House assessed in 2021 that a free and independent press thrives in the Netherlands. However, there is growing concentration of media ownership with many national and regional newspapers now owned by two Belgian publishers. Reuters' 2021 Report found that the Dutch media landscape is characterised by increased media concentration, strong growth of digital news use, and the appearance of alternative and sometimes strongly partisan sources[13].

47. The Dutch Media Authority upholds the rules set out in the Media Act. It grants licences to private broadcasters and processes complaints related to media law. However, internet content is not subject to its oversight. A self-regulatory Press Council oversees compliance with journalistic ethics and good practice.

11 CG (2021) 41-05 Final, p. 42
12 See, https://www.osce.org/files/f/documents/5/7/512830_0.pdf
13 https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf , p.90

48. Free airtime on public media is available for parties with representation in Parliament and is allocated by the Media Authority. Parties without parliamentary representation are not entitled to free airtime in the public media. OSCE/ODIHR sources assert that this provides an unfair advantage to parliamentary parties particularly in municipal elections[14]. Congress interlocutors drew attention to the strong loyalty to local parties rather than local branches of national parties but also to the overshadowing of local issues by national and international issues and the negative impact of centralisation of media outlets.

49. Concerns about increasing polarisation among some groups emerged recently. Polarisation of public opinion regarding COVID-related restrictions and immigration led to protests and an increase in verbal and physical aggression against media personnel. Spread of hate speech and fake news online has contributed to the polarisation. This led to an increase in self-censorship amongst journalists. However, Congress interlocutors stated that populism is not as evident at local level as in the national arena.

50. For twenty years, the Netherlands has ranked among the top ten countries for press freedom. However, the recent violence against Dutch journalists has caused the Netherlands to fall from 6th to 28th place among the 180 nations in 2022[15]. Nevertheless, the country ranked highly in the political, economic, and legislative criteria. OSCE/ODIHR noted hostility towards the media by certain political parties and some sections of the public[16].

51. Despite these negative developments, the open media environment in the Netherlands continues to provide voters with a full and diverse range of political information. For the 2022 municipal elections, public broadcasters organised debates with party leaders. Some media outlets held debates with local contestants. Congress interlocutors praised the efforts of local media to give in-depth coverage to local issues such as housing, childcare, transport, windmills, local taxes, etc.

11. COMPLAINTS AND APPEALS

52. The Elections Act provides recourse to complaints and appeals in relation to voter registration and the registration of political groupings and candidates, which can all be submitted to the respective CEC. The Council of State is the highest administrative court with general jurisdiction, and in relation to municipal elections only hears cases related to the registration of the party names, candidate and voter registration; its decisions are final.

53. The General Administrative Law Act excludes the possibility of appeal of important facets of the electoral process including voting procedures, vote counting and the election results. A complaint or appeal on any electoral matter otherwise not specified can be submitted to the Civil Court, provided there was a 'gross' violation of electoral procedures.

54. Serious electoral violations are regulated by the Penal Code and fall under the jurisdiction of the criminal courts with no expedited deadlines for election related cases. For other aspects of elections, including campaign finance, campaigning and challenges to the election results, there are no election-specific rules and regulations that would allow judicial appeal other than to the Civil Court.

12. DOMESTIC AND INTERNATIONAL OBSERVERS

55. All citizens can observe the polling procedures on Election Day and sessions of election administration bodies and have the right to file an oral complaint on any part of the process. The Elections Act provides for international election observation. The Congress interlocutors indicated that there is not a strong culture of election observation in the Netherlands.

56. According to the Congress interlocutors, Dutch people have a strong trust in their government and public administration so civil society organisations and political parties do not see the need to deploy observers.

14 ODIHR Needs Assessment Mission Report (2022)
15 https://rsf.org/en/country/netherlands
16 ODIHR Needs Assessment Mission Report (2022)

57. Because of the perceived high level of trust and transparency in the Dutch electoral system and the positive assessments in previous international reports, few international organisations sent observers for the 2022 municipal elections in the Netherlands[17].

13. ELECTION DAY

58. On Election Day, five Congress teams visited over 70 polling stations in municipalities, covering most of the 12 Dutch provinces. Because of COVID-19 concerns, new voting venues had to be found for the 2022 elections so some church buildings and community halls were used. Polling stations were also established in some nursing homes. Prior to COVID-19, inclusiveness and easy access to polling stations have always been prioritised in the Netherlands. For example, voting took place in museums, community halls, railway stations, churches, restaurants and boats during the 2014 and 2018 elections.

59. Due to COVID-19, early voting had already been permitted in 2,500 early voting locations on 14 and 15 March. On Election Day, polling stations were open from 7.30 to 9 pm. Voting hours can be modified and mobile polling stations organised by a decision of the Board of Mayor and Aldermen and many municipalities did so.

60. The Congress observation teams noted with satisfaction the adept manner in which the polling stations were operated, in particular: the preparedness of the staff, proving effective training; the wide range of locations for polling stations (e.g., shopping centres and railway stations); the high quality of the fact sheets and other documentation such as the online toolkit; and finally the availability of a hot-line to deal with any issues that arose.

61. Impressive also were the systems to assist voters with special needs. Not only were polling stations physically accessible but the teams also visited polling stations equipped with Braille equipment and stations where EC members could use sign language. In the Netherlands, at least 25% of the total number of polling stations must be in buildings accessible to voters with a physical impairment.

62. Proxy voting was observed in most stations with an average of 10% of votes being made by proxy. This accords with the national figures. There is a long tradition of proxy voting in the Netherlands but there are risks and challenges associated with this practice, particularly with regard to secrecy, failure to reflect the voter's will and potential coercion to vote in a certain way.

63. Observers also commented positively on the gender composition of Electoral Committees, many of which had high numbers of female members and a mixed age profile.

64. The Congress teams noted the awkwardness of the large ballot papers during the counting process, but it was clear that those counting were experienced and/or well-trained. Nevertheless, the counting system seemed cumbersome.

65. For the 2022 elections an experiment on central vote-counting was carried out. 34 municipalities were selected for the experiment which was underpinned by a special law.

14. RESULTS

66. On Election Day, 6,878,130 votes were cast and 8,237 municipal councillors were elected. Local parties won around 36% of the votes. This was more than three times the share of the largest national party, the right-wing liberal VVD. The share of the vote for locally-based parties was up from 29% in 2018, reinforcing their position as the dominant force in rural politics. Local parties also did well in many cities. For example, both Leefbaar in Rotterdam and Groep de Mos in The Hague increased their vote share and topped the poll in their respective cities.[18]

67. According to the Stem op een Vrouw Foundation in the newly elected municipal councils, more than 37 percent of councillors are women. Previously, this share was only 31 percent. In the 70 largest municipalities, the share of women in the municipal council is even greater with an average of 41 percent of women councillors. Before the elections on 16 March, women were in the majority in

17 See ODIHR 2022
18 https://www.dutchnews.nl/news/2022/03/small-parties-make-big-gains-as-discontent-dominates-local-elections/

seven municipalities. This is now the case in 24 municipalities, including Wageningen, Delft, Zwolle, Utrecht, Leeuwarden and Nijmegen. [19]

68. The turn-out for the 2022 municipal elections was lower than expected. Only 50.3% of the voters availed of their franchise. The turn-out was uneven and was particularly low at 38.9% in Rotterdam. In Amsterdam 46% of voters took part, down from 52.2% in 2018, in The Hague it fell from 48% to 43%, while in Utrecht 56.4% voted compared to 59% in 2018. The Home Affairs Minister expressed her concerns about the low turn-out, saying it was unclear if 'local conditions or national issues' caused voters to stay home'[20].

15. CONCLUSIONS

69. The 2022 local elections in the Netherlands were held in a period of gradual lifting of Covid-19 restrictions with some measures being still in place. The Congress delegation found that the elections held on 16 March were conducted efficiently by a highly decentralised and well-organised election administration with transparent and orderly procedures on the Election Day. It was evident that citizens have a high level of public trust in the electoral administration.

70. The pre-election environment was conducive to democratic elections with the election administration conducting electoral preparations in an efficient and transparent manner. The election campaign was calm and without major incidents. According to the Congress interlocutors, the campaign finance environment is under-regulated in the Netherlands which leads to a lack of transparency. The campaign was marked by a rise of hate speech and fake news in the media.

71. The Congress delegation welcomed the overall inclusiveness of elections and the high degree of trust among electoral stakeholders. The delegation however noted some longstanding issues. Firstly, the universal use of proxy voting opens room to possible risks to electoral integrity and alternative methods, such as early or postal voting, could be considered to replace proxy voting. Secondly, the introduction of a democratic election process for mayors should be explored so as to comply with fundamental principles of democracy.

19 https://www.nu.nl/politiek/6191833/mede-dankzij-voorkeursstemmen-meer-vrouwen-in-nieuwe-gemeenteraden.html
20 https://www.dutchnews.nl/news/2022/03/bruins-slot-wants-investigation-into-low-turnout-in-local-elections/

APPENDIX I

ELECTION OBSERVATION MISSION

16 March 2022 municipal elections in the Netherlands

FINAL PROGRAMME

Meetings in remote format - Bluejeans system (in English)

On-site observation on Election Day

Thursday 10 March 2022

09:30 – 09:45 Briefing for the Delegation with **Ms Renate ZIKMUND,** Head of the Department of Statutory Activities

09:50 – 10:50 Briefing with representatives of the Ministry of the Interior and Kingdom Relations
- **Mr Hans KLOK**, Head of Election Department
- **Mr Pien VAN DEN EIJNDEN**, Senior Legislative Lawyer, Team Leader on Election law
- **Mr Reinier FLEURKE**, Senior Policy Adviser

11:00 – 12:00 Briefing with representatives of the Electoral Council
- **Mr Rudy ANDEWEG**, Vice-Chair of the Electoral Council
- **Ms Pamela YOUNG**, Secretary Director
- **Ms Mirjam DE BRUIN**, Legal adviser & International Coordinator

Lunch break

13:45 – 14:30 Briefing with representatives of the Association of Dutch Municipalities (VNG)
- **Mr Pieter JEROENSE**, Director
- **Mr Bert van VIJFEIJKEN,** Team Leader
- **Ms Juliette von der JAGT,** Senior Legal Advisor

14:40 – 15:40 Briefing with members of the Dutch Delegation to the Congress
- **Mr Harald BERGMANN**, Head of Delegation
- **Mr Joris BENGEVOORD**, Member of Delegation

15:50 – 16:35 Briefing with representatives of the Dutch Association for Civil Affairs (NVVB)
- **Mr John DE RUITER**, Chair of NVVB
- **Mr Henk VAN DIJKHUIZEN**, Vice-Chair of NVVB

16:35 – 17:00 Debriefing

Friday 11 March 2022

09:30 – 09:45 Briefing for the Delegation with **Ms Renate ZIKMUND**, Head of the Department of Statutory Activities

09:50 – 10:50 Briefing with representatives of the Dutch Institute of Human Rights
- **Ms Jacobine GEEL**, Chair of the Institute
- **Mr Timo VELDMAN**, Senior Officer

11:00 – 12:00 Briefing with representatives of NGOs
- **Mr Eric STOKKINK**, Director, ProDemos
- **Mr David MUNTSLAG,** Team Leader, ProDemos

12:10 – 12:35	Briefing with representatives of the media • **Mr Mark VISCH**, Director of the organisation of the Dutch Local Public Broadcasters (NLPO)
12:35 – 13:00	Debriefing

Tuesday 15 March 2022

Various times	Arrival of delegation members
21:00	Evening briefing

Wednesday 16 March 2022

07:00 – 23:00	Observation of the election day
23:00	Debriefing in the hotel

Thursday 17 March 2022

Various times	Departure of delegation members

DELEGATION

Mr Vladimir PREBILIC, Head of Delegation, Slovenia (SOC/G/PD, L), Congress representative on the Council for Democratic Elections of the Venice Commission
Ms Gunn-Marit HELGESEN, Norway (EPP/CCE, R), Congress representative on the Council for Democratic Elections of the Venice Commission
Ms Gudrun MOSLER-TÖRNSTRÖM, Austria (SOC/G/PD, L), Congress Chair of the Monitoring Committee
Mr David ERAY, Switzerland (EPP/CCE, R), Congress Thematic Spokesperson on Artificial Intelligence and Digitalisation
Ms Carla DEJONGHE, Belgium (ILDG, R)
Ms Jana FISCHEROVA, Czech Republic (ECR, L)

Expert

Ms Brid QUINN, Member of the Congress Group of Independent Experts on the European Charter of Local Self-government

Congress Secretariat

Mr Rafael BENITEZ, Director of the Congress of Local and Regional Authorities
Ms Renate ZIKMUND, Head of the Department of Statutory Activities
Mr Adam DRNOVSKY, Election Observation Officer
Ms Martine ROUDOLFF, Assistant, Local and Regional Election Observation

APPENDIX II

CONGRESS ELECTION OBSERVATION MISSION

16 March 2022 Municipal elections in the Netherlands

DEPLOYMENT PLAN

Congress teams	Area of deployment
Team 1 – South Mr Vladimir PREBILIC, Head of Delegation Ms Brid QUINN, Expert Ms Renate ZIKMUND	**Zuid-Nederland** – Limburg (Venlo/Eindhofen), Noord-Brabant (s'Hertogenbosch)
Team 2 – East Ms Gudrun MOSLER-TÖRNSTRÖM Mr Rafael BENITEZ	**Oost-Nederland** – Gelderland (Arnhem/Apeldoorn), Flevoland (Lelystad), Overijssel (Zwolle/Almelo/Enschede)
Team 3 – North Ms Gunn-Marit HELGESEN Mr Adam DRNOVSKY	**Noord-Nederland** – Friesland (Leeuwarden), Groningen (Groningen), Drenthe (Assen/Emmen)
Team 4 – West Ms Jana FISCHEROVA Ms Carla DEJONGHE	**West-Nederland** – Utrecht (Hilversum/Utrecht), Zuid-Holland (Rotterdam), Zeeland (Middelburg)
Team 5 – Capital Mr David ERAY Ms Martine ROUDOLFF	**Amsterdam** and western surroundings (Haarlem/Alkmar/Hoorn)

APPENDIX III

PRESS RELEASE

Congress concludes election observation mission to the Netherlands

ELECTIONS NETHERLANDS 21 MARCH 2022

An 11-member delegation from the Congress of Local and Regional Authorities of the Council of Europe carried out a mission to observe the municipal elections in the Netherlands held on 16 March. The on-site visit was preceded by preparatory meetings organised remotely, on 10 and 11 March, to meet representatives from the Ministry of the Interior and Kingdom Relations, the Electoral Council (Kiesraad), as well as national and international NGOs and the media. This provided insight into the highly decentralised election administration of the country but also issues such as the under-regulation of campaign finance at local level and the situation of local media being in decline.

On Election Day, five Congress teams visited around 70 polling stations in municipalities in most of the 12 Dutch provinces and observed calm, efficiently managed and inclusive elections, due to the density of polling stations and the possibility for voters to cast their ballot in any polling station within their municipality.

Despite the high accessibility of polls, in particular for voters with disabilities, the turnout reached 50.9 per cent, compared to 54.1 per cent from previous municipal elections which is significantly less than at national level. Most of the candidates elected are from the local and regional political parties, while mandate gains of national parties fell behind.

The Congress observers noticed also the Dutch tradition of “proxy voting” wherein any voter can vote on behalf of another two voters within the same municipality where these voters are registered. According to observations made on Election Day, this practice - the challenges of which had been discussed in the country before - accounted to approximately 10 per cent of the votes cast.

The delegation was composed of members presenting the Congress on the Council for Democratic Elections including Ms Gunn Marit HELGESEN, Norway (R, EPP/CCE) and Mr Vladimir PREBILIC, Slovenia (L, SOC/G/PD), Ms Gudrun MOSLER-TÖRNSTRÖM, Austria (L, SOC/G/PD), Chair of the Monitoring Committee, Mr David ERAY, Switzerland (R, EPP/CCE), Thematic Spokesperson on Artificial Intelligence and Digitalisation, Ms Carla DEJONGHE, Belgium R, (ILDG), and Ms Jana FISCHEROVA, Czech Republic (L, ECR). Professor Brid QUINN, member of the Group of Independent Experts on the European Charter of Local Self-Government, was the expert on this mission.

The election observation report including propositions to the authorities will be presented at the meeting of the Monitoring Committee scheduled for 30 June 2022.