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**REPORT**  
**ON THE CANCELLATION OF ELECTION RESULTS**

**Adopted by the Council for Democratic Elections**  
**at its 31<sup>st</sup> meeting**  
**(Venice, 10 December 2009)**  
**and by the Venice Commission**  
**at its 81<sup>st</sup> plenary session**  
**(Venice, 11-12 December 2009)**

**on the basis of comments by**  
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## **I. INTRODUCTION**

1. Further to the Venice Commission's decision to make a comparative study on the issue of cancellation of election results, the Council for Democratic Elections, at its 23<sup>rd</sup> meeting and the Venice Commission, at its 73<sup>rd</sup> Plenary Session (Venice, 13-15 December 2007) adopted a questionnaire on the cancellation of electoral results (CDL-EL(2007)043rev). Replies to the questionnaire were received from members or experts from 34 states (Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Portugal, Romania, Russian Federation, Serbia, Slovakia, Sweden, "the former Yugoslav Republic of Macedonia", Turkey and United Kingdom) (CDL-EL(2009)019). The replies to the questionnaire are the basis of the comparative study. A number of them were prepared at the occasion of the UniDem seminar on „Cancellation of Election Results”, which the Venice Commission organised in co-operation with the Constitutional Court and the Ministry of Justice and Home Affairs of Malta in Valletta (Malta) on 14-15 November 2008.

2. This report was adopted by the Council for Democratic Elections at its 31<sup>st</sup> meeting (Venice, 10 December 2009) and by the Venice Commission at its 81<sup>st</sup> plenary session (Venice, 11-12 December 2009).

## **II. SCOPE OF THE STUDY**

3. The present report deals with the legislation and practice of cancellation of election results in parliamentary elections. Although the procedure and legal basis for the cancellation of election results in parliamentary, presidential, regional or local elections are similar in some countries, some distinctions are made in many countries between those regulations. Usually the complaint or appeal procedure is slower and decision-making takes place in ordinary courts in the case of local elections, whereas time-limits for complaints and decision-making in case of presidential elections are shorter. Other norms are still applicable in case of cancellation of election results for the European Parliament. In some countries the legislation might considerably vary for regional elections.

4. Cancellation of election results has to be understood hereafter as a means to nullify the votes cast and mandates obtained in elections. It thus does not include fines or other punishments for violations of the electoral process nor decisions affecting the right to vote or the right to be elected before the elections, e.g. during nomination procedure of the candidates. The object of the study is thus not the whole appeal procedure in electoral matters.

5. The bodies in charge of cancellation of election results may be administrative bodies, such as election commissions organising the elections, in some countries parliaments when deciding on the confirmation of the election results and mandates, as well as judicial bodies. The practice of cancellation of election results varies a lot between different countries. The number of appeals against election results on that issue is quite big, but the cancellation is usually a last contingency.

6. European standards on the cancellation of election results in parliamentary elections may be found in the European Convention on Human Rights, which guarantees in Article 3 of its Additional Protocol the right to periodical elections by free and secret suffrage. Article 25 (b) of the International Covenant on Civil and Political Rights expressly provides for all main principles of the right to vote and to be elected. Such rights are applicable in practice only in case of substantial violations of electoral law. The right to vote and to be elected has to be guaranteed as belonging to every voter and candidate and effective appeal procedures should be open to every bearer of such rights. Elections have to proceed in accordance with the law in order to guarantee the right to vote and to be elected. These texts do not seem to guarantee every

single voter the right to introduce an appeal before a court in order to ask for cancellation of election results.

7. The Venice Commission's Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), which is the Council of Europe's reference document in this field, states under item II.3.3 the main principles governing the appeal process in electoral matters. These principles will be developed below when addressing the issue of cancellation of election results.

### **III. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS**

#### **A. LEVEL OF REGULATION**

8. The criteria for the cancellation of electoral results are in most countries stated in electoral laws; other aspects may be found in laws regulating the court procedure. Only in some countries, e.g. in Austria, France, Greece, Malta and Switzerland, such regulation is provided (usually in a very general way) in constitutions. There are also some countries (e.g. Latvia and the Netherlands) where cancellation of election results is not provided for in legislation.

9. The procedure for cancellation of election results is often rather detailed, sometimes at constitutional level, more often at the level of ordinary legislation adopted by the parliament.

#### **B. SUBJECT-MATTER OF THE CANCELLATION OF ELECTORAL RESULTS**

10. In almost all countries observed the criteria for cancellation of election results are stated by very general provisions. It is a common standard to leave the competent authorities a wide margin for appreciating whether the irregularities in elections are such as to involve the cancellation of the vote. Although the wording in legislation or case-law may vary, it may be said that in almost all countries the main criteria are that violations occurred in the election constituency during the conduct of voting or during the determination of the election results, that have made it impossible to determine the voters' will, or that the irregularities and violations may have affected the election results. This is in line with the Code of Good Practice in Electoral Matters, according to which "the appeal body must have authority to annul elections where irregularities may have affected the outcome" (CDL-AD(2002)023rev, II.3.3.e)

11. The legislation of some countries provides for illustrative lists; for example, according to the Albanian law, the cancellation has to take place if there have been natural disasters of such proportions that the participation of the voters in the voting has been hindered; if voting has not begun or has been suspended for more than six hours; and if the violations of the law have determined the candidate's victory, or have influenced the allocation of mandates in the election units or at national level. In all countries election results may be cancelled on the basis of non-compliance with electoral laws, in particular with voting procedure rules.

12. Compulsory cancellation of election results is provided for in very few countries, e.g. in Romania in case of fraud; in Serbia and in "the former Yugoslav Republic of Macedonia" electoral laws contain a list of violations which make such cancellation compulsory.

13. Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures) might be a basis for the cancellation of election results in most countries (e.g. in Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Malta, Turkey). In some countries such questions shall be considered before the elections and might hence not cause the cancellation of election results (Albania, Bosnia and Herzegovina, Switzerland, "the former Yugoslav Republic of Macedonia").

14. In Sweden, an established non-compliance with eligibility criteria leads to the candidate in question losing his or her seat, but not to cancellation.

15. In Germany, ineligibility of a candidate results in the loss of the mandate of the candidate concerned. There will be no repetition of the election.

16. Violation of other laws than those regulating the election procedure in general (electoral laws) cannot be the basis for cancellation of election results in Armenia, France, Lithuania, Portugal, the Russian Federation, Serbia, Switzerland and "the former Yugoslav Republic of Macedonia". In Austria and in Hungary violation of other laws than electoral laws may lead to cancellation of the election result if election legislation is infringed by this act as well. In most countries (e.g. in Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, Germany, Greece, Liechtenstein, Malta, Moldova and Sweden) infringements of such laws (e.g. the criminal code) might be a basis for the cancellation of election results if those violations might have affected the allocation of mandates.

### **C. THE AUTHOR OF THE VIOLATION WHICH LEADS TO CANCELLATION OF ELECTION RESULTS**

17. The question whether cancellation of election results may only be caused by candidates or political parties or whether such cancellation may be caused by other persons shows that there are many countries where candidates' or political parties' activities are not the only possible cause for the cancellation, but that there are also many countries where the activities of other persons (in particular mass media) cannot have such effect.

18. There are no limitations on the cancellation of election results in cases of breaches of applicable norms by other persons than candidates or political parties in Albania, Armenia, Azerbaijan, the Czech Republic, Estonia, Georgia, Germany, Hungary, Liechtenstein, Lithuania, the Netherlands, Portugal, Slovakia and Sweden. However, in Germany for example, there is no practice of cancellation of election results except in cases where violations have been caused by candidates, political parties or the election administration.

19. In Austria, Finland, France and Switzerland only violations by candidates, political parties or the election administration may cause the cancellation of election results. In the United Kingdom the acts of agents or employees of the candidate can lead to an election result being declared void. In Korea cancellation might be caused by candidates or campaign managers or spouses of candidates, but not by anyone else.

20. In conformity with Malta's constitutional provisions, cancellation of an election would have to take into account the whole picture and gauge the effect of the irregularities on the electoral process without any specific limitation to the candidates' activities; on the other hand, when the election is questioned under the provisions of the electoral polling ordinance, the violation must originate from the candidate or his/her election agent.

21. Only candidates' or parties' activities may lead to the cancellation of election results in Bosnia and Herzegovina, Croatia, Cyprus, Romania and "the former Yugoslav Republic of Macedonia". In Croatia and "the former Yugoslav Republic of Macedonia", authorised bodies may cancel acts of other bodies in the electoral field and decide that these activities shall be repeated within the term that makes it possible for the elections to be held on the day they were called, but such acts cannot be the basis for the cancellation of election results.

### **D. SCOPE OF CANCELLATION OF ELECTORAL RESULTS**

22. The scope of the cancellation of election results may be limited to the area concerned. It may thus be possible to cancel the election results at constituency level or at polling station level. However, some countries do not provide for an cancellation at polling station level, as it will be seen below.

23. Electoral law in countries observed differs also in answering the question whether the cancellation affects only the result of the candidate who is involved or concerned by the violation of the law.

24. On the first point, the Code of Good Practice in Electoral Matters states that it must be possible to annul the entire election or merely the results for one constituency or one polling station. Appeal bodies should have authority to annul elections, if irregularities may have influenced the outcome, *i.e.* may have affected the distribution of seats. In zones where the results have been annulled, the elections must be repeated (when the allocation of seats may be different after repeated elections) (CDL-AD(2002)023rev, point II.3.3.e and par. 101). This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small.

25. The possibility to cancel the results in a single polling station is foreseen in most countries (Albania, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Hungary, Korea, Latvia, the Netherlands, Portugal, Romania, Russian Federation, “the former Yugoslav Republic of Macedonia” and Serbia).

26. This is not the case everywhere. In Armenia the results of a polling station may not be cancelled, but may be considered as unreliable and not taken into account in the allocation of mandates. Cancellation of results is possible only in the whole constituency. Only the results of a whole constituency may be cancelled also in Liechtenstein, Lithuania, Slovakia, Sweden and Switzerland.

27. The question whether a single candidate may be eliminated by cancelling the mandate while not affecting the result of other candidates is answered negatively in most countries. Only in Azerbaijan, Bosnia and Herzegovina, Cyprus, France, Switzerland and the United Kingdom, such violations caused by one candidate or list of candidates do not affect the results in general. There are countries where the cancellation may affect only the candidate concerned in specific cases, *e.g.* when the candidate does not possess the right to be elected.. In most countries the results in the whole constituency are cancelled. In these cases new elections are held in some countries, such as Hungary, Lithuania, Malta or “the Former Yugoslav Republic of Macedonia”, in other countries mandates are allocated based on votes not taking into account votes for the candidate who has caused the violation.

#### **E. RESTRICTION OF THE RIGHT TO BE ELECTED IN CASE OF CANCELLATION OF ELECTORAL RESULTS**

28. In most countries (Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Finland, Greece, Latvia, Lithuania, Portugal, Russian Federation, Serbia, Slovakia, Sweden, Switzerland, Turkey, “the former Yugoslav Republic of Macedonia”) the cancellation of election results because of violations of the law during the elections by a candidate does not give rise to the restriction of the candidate’s right to be elected in repeated elections. In some of those countries, *e.g.* in Turkey, no new nomination procedure of the candidates takes place. In Sweden, it is a custom that the candidate who caused the cancellation of election results is not put up by political parties as a candidate again.

29. In some countries such restriction of the right to be elected is possible, if the violation is considered as a crime and the candidate is convicted. Such is the case in countries where legislation requires that a person punished for a crime may not stand as a candidate in the elections of the legislative body. This applies *e.g.* in Austria (in case a candidate was sentenced to more than one year of imprisonment for intentionally committed criminal actions), Georgia (the candidate has been deprived of his/her liberty due to administrative or criminal liability),

Estonia, Hungary, Liechtenstein, Malta, Moldova and the Netherlands. In France, the right to be elected may be restricted for a year in case of violations in the area of election campaign financing. As the cancellation procedure of election results is in most countries fast and repeated elections take place usually before the candidate has been convicted, such possibilities are mainly hypothetical.

#### **IV. PROCEDURE FOR THE CANCELLATION OF ELECTION RESULTS**

##### **A. COMPETENT BODIES TO CERTIFY THE ELECTION RESULTS OR REVIEW SUCH DECISIONS**

30. According to point II.3.3.a of the Code of Good Practice in Electoral Matters, the appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible. The quoted standard is followed by most countries observed in this study. The number of countries not providing a final appeal to court is small. Although the questionnaire did not cover national legislations in the matter handled in point II.3.3.c of the Code of Good Practice in Electoral Matters – which states that the appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative); neither the appellants nor the authorities should be able to choose the appeal body – overlapping of competences does not appear to be an issue in the countries which answered the questionnaire for the questions related to the cancellation of electoral results.

##### **1. Administrative bodies and Parliament**

31. In most countries the decisions on certifying the electoral results are taken by central electoral bodies or district electoral bodies. Such is the case in Albania, Armenia, Austria, Bosnia and Herzegovina, Croatia, the Czech Republic, Estonia, Finland, Georgia, Hungary, Korea, Latvia, Lithuania, Malta, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Sweden and “the former Yugoslav Republic of Macedonia”. The returning officer (part of the electoral administration) is entitled to certify the results in Cyprus and in the United Kingdom.

32. In the Netherlands the central electoral body certifies the results but a final decision is made by the *Parliament*. In Belgium the results are certified by the corresponding house of Parliament, which is also entitled to examine the complaints. Parliament is the decision-making body also in Liechtenstein, Luxembourg and Switzerland. In Germany the competence for certification of electoral results is vested in a parliamentary committee.

##### **2. Judicial bodies**

33. There are countries where judicial bodies are involved in the certification procedure even without any complaints. A court has to certify the results in Azerbaijan, Bulgaria and Moldova.

34. In Turkey the electoral results are also certified by a body of judicial nature, the Supreme Board of Elections, whose members are selected from amongst the judges by the General Assembly of the Court of Cassation and by the General Assembly of the Council of State (highest administrative court). This body is also a central body for the administration of elections and considers the complaints on the results of elections as a last instance.

35. In France, the electoral administration has no power to declare the elections invalid or to cancel the results, but it has the power to ask the appropriate judicial bodies to decide on such an issue. Otherwise, the declaration of election results by administrative bodies is followed by a time-limit to introduce complaints. In presidential elections the competent judicial body certifies the results after the time-limit has passed and complaints have been reviewed.

36. In most countries, judicial bodies are involved in the certification or cancellation of electoral results only on the basis of complaints or appeals. Such is the case in Albania, Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, Korea, Latvia, Liechtenstein, Malta, Portugal, the Russian Federation, Serbia, Slovakia, Sweden, Switzerland and the United Kingdom.

37. In Lithuania, complaints may be addressed to the Parliament or the President of the Republic, who may submit the complaint to the Constitutional Court.

38. Courts are not involved in the decision-making on the electoral disputes in Belgium, Luxembourg and Romania. Disputes in judicial bodies on the cancellation of electoral results are not allowed either in the Netherlands.

39. The competent courts to review the complaints or appeals in matters concerning the certification of electoral results are in most countries constitutional courts. Such is the case in Armenia, Austria, Azerbaijan, Bulgaria, Cyprus, the Czech Republic (as a second instance; in the first instance, it is the Supreme Administrative Court), Estonia, Germany, Liechtenstein, Lithuania, Malta (on some issues also ordinary courts), Portugal and Slovakia.

40. In many countries such disputes are considered in ordinary courts. Such is the case in Finland (regional administrative courts in first instance and Supreme Administrative Court in second instance), Georgia (ordinary courts of law; the appeal court's decision is final, though in constitutionality issues a way to the Constitutional Court is also open), Hungary (Supreme Court), Latvia (Supreme Court), Russian Federation (Supreme Court), Serbia (Supreme Court), Switzerland (Federal Court as the last instance), "the former Yugoslav Republic of Macedonia" (administrative courts) and Korea (Supreme Court). In France, the *Conseil constitutionnel* and the *Conseil d'Etat* are competent depending on the issue raised and the elections concerned. In Bosnia and Herzegovina, the competence to discuss the appeals is vested in the Appellate Division of the Court of Bosnia and Herzegovina.

41. Special electoral courts are set up in Albania – the Electoral Chamber near the Court of Appeal of Tirana -, in Greece (Supreme Special Court) and in the United Kingdom (Election Court). In Sweden the appeals are considered by the Election Review Board.

### **3. Bodies in charge of control of finances in the area of elections**

42. The effectiveness of the control of the electoral results' legality depends on the effectiveness of the control of finances used by political parties and candidates during the electoral campaign. Although the question of financing and limitation of spending for candidates and political parties is not the main topic of the present report and legislation in this field varies substantially in observed countries, it has to be noted that a central body in charge of finance control in the area of elections is a rather efficient means to guarantee the legality of limitations in this area. It has thus to be noted that the question of such bodies' rights to get information from political parties, candidates or other persons is not discussed in this paper.

43. In most countries such functions are vested in the electoral administration, mainly in a central electoral body or one of its commissions. This is the case e.g. in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Korea, Lithuania, Romania, the Russian Federation and Serbia.

44. In Belgium a committee including members from both houses of parliament has been set up, but the control mechanism does not imply the cancellation of election results.



45. In Croatia the task is vested in the State Audit Office, in Finland in the Ministry of Justice. A parliamentary committee is set up in Estonia. In France all three highest judicial bodies appoint members of a special independent committee. Such committee consisting of judges and representatives of political parties is set up in Greece. In Latvia the task is vested in the Bureau for the Prevention and Combating of Corruption, in Portugal in the Constitutional Tribunal and in the United Kingdom in the Electoral Commission.

46. No special institutions are set up and/or the task is vested in different bodies in the other countries considered.

## **B. APPEAL PROCEDURE**

### **1. Introductory remarks**

47. The questionnaire did not include a question on the procedure for introducing complaints before electoral bodies. Although the answers to the questionnaire cover the issue in relation to some countries, it is not the aim of the present report to deal with it. As in most countries the decisions concerning electoral results are made by central electoral bodies or under the control of central bodies, the appeal procedure is simple and not time-lasting. It is more important to study whether the include possibilities to introduce a complaint before judicial bodies is open, who are the persons entitled to introduce a complaint and which are the main characteristics of such proceedings.

48. The procedure before the administrative bodies is usually more accessible for voters, the complaints have to be introduced faster than before courts (if the time-limit for the presentation of an appeal to the court is short, it is short also for the presentation of objections before central electoral bodies). In many countries the electoral bodies have to collect evidence *ex officio*.

### **2. Standing for appeals to the court**

49. The answer to the question on who has the right to appeal the electoral results before judicial bodies and request cancellation of election results shows how open the way to the court is. The right to vote and the right to be elected are guaranteed by the possibility to apply to the competent court. In case the elections are carried out unlawfully the individual constitutional right to vote or to be elected is violated. Such right should be protected by individual complaint, though it might not always lead to the cancellation of election results. The cancellation of election results is not necessary if the violations of electoral law are at small scale and do not influence the electoral results (the list of members of the legislative body).

50. Point II.3.3.f of the Code of Good Practice in Electoral Matters states clearly that all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.

51. National legislation varies widely in this field. In Bulgaria, Hungary, the Russian Federation and Switzerland, the standing is the most open: the list of persons guaranteed that right is almost unlimited. Those who feel that their interests or rights are violated by the decision are allowed to appeal in Finland and Austria. In Cyprus the right to appeal is given to voters whose names appear on the register, persons claiming to have had a right to be returned or elected at such election and persons alleging to have been a candidate at such election. Voters, candidates and political parties or coalitions have such a right in Estonia, Korea, Portugal (on the condition that the appealing voter has made an objection before the electoral body and this has been stated in the protocol). Voters and candidates or political parties have the right to appeal to court also in Bosnia and Herzegovina, the Czech Republic, France, Greece, Luxembourg, Serbia, Sweden and the United Kingdom. Voters do not have such a right in

Albania, Armenia, Latvia, Moldova and “the former Yugoslav Republic of Macedonia” where such appeals are open for candidates, representatives of candidates’ lists or political parties.

52. In Germany the scrutiny procedure before the *Bundestag* shall be initiated by a formal request made by an eligible voter or by a group of eligible voters. A complaint against parliament’s decision on the validity of an election can be filed by an eligible voter whose objection was rejected by parliament only when he or she can present 100 supporting signatures of other persons entitled to vote. In addition, Members of Parliament who have lost their seats due to a decision taken by the *Bundestag*, parliamentary groups and parliamentary minorities comprising at least ten percent of the regular number of seats of the *Bundestag* are entitled to lodge complaints.

53. In Croatia the appeal is provided for parties, supporters of independent lists, candidates for members of Parliament, at least 100 voters or at least 5% of the voters in the electoral unit where the elections are being held.

54. In Slovakia a complaint may be submitted by a political party taking part in the elections, 10% of the entitled voters of an electoral district, or a candidate who gained at least 10 % of votes in the electoral district.

55. In Lithuania parties which have nominated candidates as well as candidates themselves may lodge complaints before the parliament or the president, who may apply to the Constitutional Court with the inquiry whether the electoral law has been violated.

### **3. Time-limit for appeal**

56. Point II.3.3.g of the Code of Good Practice in Electoral Matters states that time-limits for lodging appeals must be short (three to five days at first instance). It could be argued that a shorter time-limit hampers the possibility to present solid reasoning and proofs in order for the case to be dealt with efficiently. A longer time-limit is a basis for uncertainty on the correctness and legality of electoral results and hampers the functioning of democracy.

57. Most countries observed follow the rule of short time-limits. In a number of countries the time-limit is less than three days: in Georgia, Hungary, Lithuania and Portugal there is only one day to introduce the claim; in Bosnia and Herzegovina, Croatia, Serbia and “the former Yugoslav Republic of Macedonia” the time-limit is two days (48 hours).

58. The rule is three days in Azerbaijan, Estonia, Latvia, Malta, Switzerland (each 3 days), Albania (3 days for the introduction of the complaint before the central electoral body and five days before the court) and Liechtenstein (3 days plus 5 days to present evidence and reasons). A relatively short time-limit for the presentation of complaints is also provided for in Armenia (7 days), the Czech Republic, France, Slovakia, Sweden, (10 days), Finland (14 days) and Greece (25 days). Other countries have a longer time-limit: in the United Kingdom as a general rule 21 days, in some issues 14 or 28 days, in Austria 28 days, in Korea 30 days, in Bulgaria and Cyprus one month. A long term is provided in Germany (2 months for a complaint to the *Bundestag* and 2 other months to the Federal Constitutional Court) and in the Russian Federation (up to one year – however this time-limit does not affect or suspend the procedures related to declaration of election results or to office-taking by the elected persons).

### **4. Time-limit for the court to decide on the matter and right to collect evidence**

59. The effectiveness of the judicial procedure depends mainly on two indicators: time-limit for the court to decide on the matter brought before it and regulation on the presentation of evidence.

60. Although longer proceedings might give judicial bodies more time to discuss the matter, collect evidence and make more elaborated decisions, they might make the fulfilment of successful decisions more difficult, put the judiciary under political and public pressure and hamper the functioning of legislation or government. A short term may however make it difficult for the judiciary to consider all the issues raised in appeals or complaints thoroughly.

61. Point II.3.3.g of the Code of Good Practice in Electoral Matters states that time-limits for deciding appeals must be short (three to five days at first instance). The explanatory report to the code (par. 95) states on this issue that two pitfalls must be avoided: first, that appeal proceedings retard the electoral process, and second, that, due to their lack of suspensive effect, decisions on appeals – other than those concerning Election Day and the results – are taken after the elections have been held. Finally, decisions on the results of elections must also not take too long. This means both that the time limits for appeals must be very short and that the appeal body must make its ruling as quickly as possible. Time limits must, however, be long enough to make an appeal possible and for the commission to give its ruling. A time limit of three to five days (both for lodging appeals and making rulings) seems reasonable. It is however permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

62. The legislation of the various countries differs quite substantially in this field. There are countries where the time-limit is shorter than suggested: in Georgia in some instances and in Hungary the decision has to be made at the latest on the first day after the introduction of the appeal. Otherwise, in Georgia the Constitutional Court has 30 days for taking a decision and the term may be extended for 30 other days. Those cases deal only with the constitutionality issues and are thus relatively limited. It might be difficult to follow point II.3.3.h of the Code of Good Practice in Electoral Matters which states that the applicant's right to a hearing involving both parties must be protected.

63. A two-day time-limit is provided for the court to consider the appeal in Croatia, Serbia, Portugal and "the former Yugoslav Republic of Macedonia", three days are provided in Azerbaijan, Bosnia and Herzegovina and Lithuania. A relatively short term for decision-making is provided also in Latvia (7 days), Estonia (3 days for the review of complaints by electoral bodies and 7 working days by the Supreme Court), Armenia (depending on the issue 15 days or 30 days plus a possibility to extend the term for 50 days) and the Czech Republic (20 days in the Supreme Administrative Court, no time-limit in the Constitutional Court). Time-limits in other countries are longer (in Austria 4 weeks, in Luxembourg and Bulgaria one month, in the Russian Federation 2 months; in Korea 180 days) and might lead to a political pressure by the parties or mass media in the decision-making.

64. In many countries (Cyprus, Finland, France, Germany, Greece, Liechtenstein, Malta, Sweden, Switzerland, United Kingdom) there does not exist any time-limit for the judiciary. There are countries among them where the decision-making lasts usually for less than a month. In France a time-limit of one year is frequent. In Germany the procedure is long and it has happened that there are still some cases pending after the next elections of the *Bundestag*.

65. The right for the judicial body to *collect additional evidence* when reviewing the cases on cancellation of electoral results is important if the dispute is on facts not specified sufficiently in protocols of electoral bodies. In those cases the success of appeals depends mainly on the proofs presented by the plaintiff.

66. In most countries (e.g. Armenia, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Georgia, Greece, Korea, Latvia, Serbia, Slovakia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia") the judicial bodies dealing with complaints on the cancellation of electoral results have the right to collect evidence. In Germany and Liechtenstein it is a principle that the plaintiff does not have to deliver evidence and that courts

collect it actively. In other countries courts are allowed to collect evidence, but in practice they do not do it often, possibly due to the short time-limits for decision-making. There are countries among those listed where the court does not have the obligation to collect evidence and may base its decision on the facts brought before it by the parties.

67. In Azerbaijan, Finland, Hungary, Malta and the United Kingdom the judiciary does not collect evidence and has to base its decision on evidence presented by the parties of the proceedings.

68. In Lithuania the Constitutional Court does not collect evidence *ex officio* but has the right to compel parties to present additional evidence.

69. In Bosnia and Herzegovina, Estonia and the Russian Federation the duty to collect evidence and present them to the court is vested in electoral bodies. The right to collect additional evidence from the complainant or *ex officio* is limited. In those countries it might happen that, in the absence of an effective investigation by the electoral administration, the decision can be made only by sending the case back to the electoral administration (this is the case in Estonia) or by compelling electoral bodies to do it by court proceedings.

### **C. POSSIBILITY FOR DECIDING ON THE CANCELLATION OF A MANDATE AFTER TAKING THE OFFICE**

70. Some legal orders allow cancelling the electoral results after the candidate has taken his/her office, whereas others do not. National legislation makes it generally possible to terminate the mandate of members of legislative bodies for a number of reasons, including on the basis of incompatibility and disenfranchisement. Such a basis for the termination of the mandate has to be distinguished from cancellation or termination of the mandate because of cancellation of voting results. The latter means that the candidate has not taken his/her office in accordance with the law. Cancellation of a mandate is meant as a consequence of a violation of electoral legislation or other legislation applicable to the electoral process, including non-compliance with rules on the eligibility to be elected.

71. The possibility to cancel election results after the elected candidate has entered office may be limited to the most serious violations of electoral procedure, e.g. cases of criminal offences, while in some disputable and not so evident cases the cancellation is not allowed.

72. A distinction can be made between countries which allow such cancellation of election results without time-limit and those which exclude it after office-taking. It may happen that the elected person takes office before the time-limit for introducing a claim to cancel the election results has expired (e.g. in Bulgaria, Cyprus and the Russian Federation). It might also be possible to allow the cancellation because of still ongoing court procedures but not to allow new cases to be initiated.

73. A relatively small number of countries do not admit the cancellation of results after the candidate has taken office. In Bosnia and Herzegovina, Finland, Liechtenstein, Moldova, the Netherlands, Portugal and "the former Yugoslav Republic of Macedonia" the cancellation is not possible after that date. The same is true in Estonia, Hungary, Romania and Switzerland, where the court disputes have to be closed before office-taking. In Albania the parliament sets up a committee to verify the election results and can send a request to the Constitutional Court on the issue. Cancellation of a mandate is not allowed after the oath has been taken.

74. Court proceedings might be still ongoing and thus the cancellation of electoral results possible in Armenia. In Austria, Azerbaijan and Croatia it is possible to challenge the legality of electoral results after the members of legislative bodies have taken office.

75. In Latvia cancellation is often allowed after office-taking only in case of a crime which leads to the cancellation of the electoral results. There are less strict limitations or no limitations at all in the Czech Republic, France, Germany, Korea, Lithuania, Malta, the Russian Federation, Serbia, Slovakia, Sweden and the United Kingdom.

## **V. CASE-LAW**

76. The number of cases concerning cancellation of election results varies depending on the countries' legislation. There are countries with long-established democratic traditions with only a small number of court cases concerning cancellation of election results (e.g. Finland), but in some other established democracies the number of court cases may be more significant (Austria, France, Germany). In more recent democracies, there is no clear common trend either (e.g. in Albania and "the former Yugoslav Republic of Macedonia" the number of cases is far bigger than e.g. in Azerbaijan or Lithuania).

77. Nonetheless, cancellation took place very rarely in the last decades - with very few exceptions: "the former Yugoslav Republic of Macedonia", local elections in Sweden - or even never (e.g. in Cyprus, Estonia, Germany, Greece, Liechtenstein, Lithuania, Malta, Switzerland).

78. Sometimes violations of election law have been recognised by courts, but this has not affected the allocation of mandates. Such case-law is not fully considered in the replies to the questionnaire and as the violations have been of minor importance, is not really worthy to be considered.

79. Cancellation of election results has been caused by the following reasons<sup>1</sup>:

- a) Failure to comply with the turnout requirement (Moldova);
- b) Errors in voter registration or candidate nomination
  - Registration of candidates with no right to be elected (Estonia, France, Korea, the United Kingdom)
  - Unlawful refusal to register a candidate (the United Kingdom)
  - Denial of a person's right to vote (the Netherlands)
  - A person not entitled to vote takes part in the ballot (Austria, the Netherlands, Romania)
  - Irregularities in voter registration (France, Hungary)
  - Candidates coerced into withdrawing their candidacy (the United Kingdom);
- c) Violations of campaign regulation (including regulation on campaign finances)
  - Buying off votes or illegal influence on voters (Cyprus, Hungary, Latvia, the Netherlands)
  - Illegal use of an official position during the campaign (Czech Republic, Russia)
  - Unfair campaign (Czech Republic)
  - Violation of legislation on campaign financing (France);
- d) Violations of legislation applicable to the voting process
  - The elections had not started for more than 6 hours (Albania)
  - Public order was disturbed on election day ("the former Yugoslav Republic of Macedonia")
  - Lack of ballot papers in the voting booth (Austria)
  - Some voters have voted several times or for others or their identity was not controlled (Albania, Hungary, "the former Yugoslav Republic of Macedonia")

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<sup>1</sup> Based on the replies to the questionnaire it is not possible to list all kind of grounds for the cancellation of election results and countries with listed reasons for the cancellation of election results is not exhaustive, as the causes are not listed with same level of particularity or on some countries missing at all.

- Family or forbidden proxy voting (Albania, "the former Yugoslav Republic of Macedonia")
- Incapacity of the official representatives present at the polling stations ("the former Yugoslav Republic of Macedonia")
- Difference between the number of ballot papers in the polling box and the number of voters who signed the electoral register (Croatia, "the former Yugoslav Republic of Macedonia")
- A sealed package of ballot papers has been opened by unauthorised civil servants (the Netherlands)
- Irregularities in advance or postal voting (Bosnia and Herzegovina, Sweden), vote-rigging (corrupt practices) during postal voting (the United Kingdom)
- Irregularities in voting with mobile ballot boxes (Georgia)
- Ballot papers have not been signed by the appropriate official (Korea) or stamped (the United Kingdom)
- Assistance provided by the personnel of a polling station to persons who were not in need of help (the Netherlands)
- No documentation of the voting process (Albania)
- Voting after the polling stations were closed (the United Kingdom)
- No legal termination of the electoral procedure by the election administration (Austria);

e) Violations in counting or reporting

- Advance votes have incorrectly been rejected by the electoral administration (Finland)
- Ballot papers have been left unattended before counting (the Netherlands)
- Examination of ballot papers carried out by an unauthorised person (Austria)
- Some votes were counted twice (Sweden)
- Examination of validity of the ballot papers was carried out according to different criteria by the election administration (Austria)
- Wrongful calculation of election results (Czech Republic)
- Irregularities made in the election report which has not been signed by the members of the electoral board ("the former Yugoslav Republic of Macedonia")
- Documentation and ballot papers have been sent open to central electoral bodies (Albania)
- Falsification of results (France);

f) Violations in allocation of mandates

- Mistakes concerning the distribution of seats (Sweden)
- Summarising of election results has not been spelled out unambiguously (Armenia).

80. In some cases the cancellation has been caused by the addition of a number of irregularities in the same elections (e.g. in Russia).

## VI. CONCLUSIONS

81. In almost all European countries there is a possibility to appeal the decision validating election results. However, national procedure for the cancellation of election results varies between the European states.

82. Some countries have a fast procedure, where the deadline for appealing is very short and the body considering the appeal has a limited time to make a decision. In other countries the time-limits are long or not provided for in law. Differences also appear based on the question of whether the last instance to review the cancellation is a judicial body or not, how broad the right to collect evidence by the decision-making body is and whether the cancellation is still possible after the elected person has taken office.

83. There are lesser divergences concerning the legal basis for the cancellation of election results as in all observed countries the rule is that the cancellation is possible when the violations have affected the overall results (allocation of mandates). The question of which kind of violations may lead to cancellation is however not settled in a uniform way.

84. In short, even if the principles laid down in the Code of Good Practice in Electoral Matters on the cancellation of election results are not fully followed in most countries, the legislation is mostly in harmony with the Code.