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**REPORT**

**“COMPLAINTS AND APPEALS PROCEDURES  
IN THE COUNCIL OF EUROPE MEMBER STATES”**

**by**

**Mr André KVAKKESTAD (Expert, Norway)**

The Article 3 of Protocol no. 1 to the European Convention on Human Rights is the main basis when stating the European standard on election and electoral matters. Article 3 of Protocol No. 3 reads as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.

Together with this article one need to take into consideration the laws and traditions that have developed within Europe. This also is a part of the European standards.

When it comes to the question of complaints and appeals one do see that the traditions within Europe differ quite a lot. This has to do with historical circumstances when created, and to the developing of principles and needs.

One will see that in older democracies where the laws and practices has not changes for decades, or even longer, there is more reluctance to give other bodies of state the right to intervene into the election results and appeal procedure, then in newer democratises. This has to do with a different view on the question on the need for parliamentary independence on the one hand and the need for check and balance on the other hand.

The complaint and appeal procedure must be understood within the trust invested in the court system and the government at the time of legislation.

Another question is if legislation given at a certain historical time is to be regarded as satisfactory to day. My opinion is that as times go by and standards develop, also older democracies has to adopt to the time and standards of today and not use history to defend the need of yesterday.

I would like to show the large difference within Europe regarding complaint and appeal procedure by giving some examples. There are probably other examples that could have been given, but it has not been too easy to get a good overview on the practices of all member states of the Council of Europe.

For sure there are European standards and not a European standard. The question might be if there is any kind of standards at all. Then one have to ask one selves if there at least ought to be some kind of guidelines or common ground to build some kind of standard.

### **Norway**

When it comes to parliamentary elections, the basis for the procedure for making a result valid is based on the Constitution § 64. There it is stated that every elected Member of Parliament shall be given an accreditation that will be validated by the Parliament it selves.

This means that complaint regarding the election and the electoral process at the end is being decided up on by the Parliamentarians that consist of those elected in the contested election.

The right to make the preliminary decision up on whose list to accept and the tabulation of local results is the regional assembly by its executive committee. This is a 100% political body.

There is no part for the courts to take part in questions regarding the electoral process or the election result. The conduction, decisions and appeals are only dealt with by political bodies. This is so even if the political bodies can ask there administrations for some advise.

Any voter has the right to complain on every aspect of the electoral process. That means that complaints can be based up on questions on registration of the parties' lists, the organisation of the election, the right to vote, observed violations on Election Day or counting and tabulation.

The problem is that it might not be finally decided up on until after the new elected parliament meets for its first seating.

**Example:**

In 2001 there was a situation where 2 different groups that argued regarding who could use the name of the party and then hand in the legal party list. This happened in many of the regions and constituencies. It was also clear that the one losing would contest the result of the election. One also saw that it could happen that constituencies accepted lists from the different group.

The question was then to be handled by the regional assembly. The assembly knew that there decision would be contested, so they asked the ministry to give an advice. The ministry was reluctant to do so. This was due to the fact that they might be asked by parliament to give a legal opinion for the final decision. So it looked like being a rather likely situation that one could have a new election due to the reluctance to get a clear decision.

After the regional assemblies had taken there decision the ministry decided to give some guidelines anyway. This then resulted in regional assemblies changing there decisions that had already been made.

As expected the decisions of the regional assemblies were contested and had to be decided up on by the newly elected parliament.

The Parliament decided that the decisions of the regional assemblies made after recommendations from the ministry were correct and a new election then was not necessary.

It would be difficult to speculate in what had happened if the ministry had not given the advice.

**1981**

In 1981 there were problems regarding the early voting. There were a number of ballots that had been accepted as valid that should not have been invalidated.

The margins in two constituencies/regions were so close that it could have inflicted up on the result.

The Parliament then decided to have a new election in two of the constituencies/regions. The result was a change of one Member of Parliament.

Another problem was that the new election was conducted in December so the Parliament went on without a clear result in 2 of the 19 constituencies for more then two months.

**1993**

In the constituency of Oslo there were quite a few less ballots then voters signed of in the voter list. After several days a ballot box with some hundred ballots turned up.

This was regarded by Parliament as not sufficient to hold a new election.

### Sweden

Sweden has a system where the final decision is made by a board consisting of political members and at least one judge. The Election Review Board.

There are no courts involved in the decision up on electoral matters.

Sweden earlier had the decision regarding the elections made by The Supreme Administrative Court. The reason for the change was that one wanted also to have political knowledge into the deciding body. The election is regarded not only as a legal framework, but also a political process. This means that there can be situations where measures needed to be taken are regarded differently by the politicians then from a strictly legal point of view. I suppose that what might be argued differently is the possible impact violations might have up on the result.

When it comes to the political appointments there is different views within the political parties on the question of political members ought to be active politicians or not. This results in a mix within the board.

Every person that is in the voter list can appeal the decision regarding the result of the election. The same right goes to political parties that have participated in the specific election.

There have been 70 cases of complaint regarding parliamentary elections since 1975. The Election Review Board has found some irregularities, but none so serious that re-election was needed.

In 2002 there was a re-election in a municipal assembly due to five votes not delivered from the Post to the Election Committee. The margin in the first result was 1 vote!

### Germany

When it comes to federal elections the Federal law on Scrutiny of Elections provides that it is the Parliament/Bundestag that is having the main responsibility. This means that the parliament do decide up on there own case.

The procedure in Parliament is that one establishes a special committee which is composed of Members of Parliament. This committee then prepares the cases for the Parliament to make the decision.

The decision of the Parliament then may be subject to an appeal to the Federal Constitutional Court.

The reason for the procedure that the Parliament is part of the process is historical. It goes back to 1871 when Parliament won this right from the then governing monarch.

#### *Who can appeal?*

To be able to contest the result and to bring the case in for the Parliament one needs to be a eligible voter, the Federal Returning Officer that oversees the election one of the 16 state returning officers or by the President of the Parliament.

When it comes to appealing the Parliaments decision to the Federal Constitutional Court the possibilities are more limited. Here the appeal has to be made by the person that brought the case in to Parliament with an additional support by 100 signatures from other people that has the right to vote. By the members of the Parliament the right to appeal is limited to the person that has lost the seat due to decision of the Parliament or to a group of parliamentarians that count for at least 10 % of the total members in Parliament.

*When?*

For the formal protest on the election result to be taken into consideration by the Parliament, it has to be handed in to Parliament within 2 month after Election Day.

The appeal up on the decision of Parliament has to be handed in and specified within 2 month after the decision that is challenged was made in Parliament.

The total timeframe of the process means that a final decision might not be made for more then 4 month after the day of election. If it then is to be called for a new election the time is running fast.

### **Czech Republic**

In the Czech Republic it basically starts with the State Electoral Commission issuing certificates up on the elections in the two chambers of parliament.

Then the decision of the State Electoral Commission can be brought in for the Supreme Administrative Courts. There decision can then again be appealed to The Constitutional Court.

*Who can file a case?*

The right to complain is given to every single person that is registered with the right to vote in the region/constituency where the result is being challenged.

The right to complain is also given to every participating candidate either with in a political group, coalition or as an individual candidate.

*When?*

The complaint has to be handed in within 10 days from the result of the parliamentary election is made official. Then the Supreme Administrative Court has 20 days to make a decision up on the given complaint. The Constitutional Court do not have any timeframe within to make their decision.

### **Estonia**

In Estonia the National Electoral Committee verifies the result of the election in the country.

The result can be appealed to the Supreme Court.

*Who can appeal?*

Every voter that finds their right to have been violated is in a position to complain and thereby appeal the decision of the National Electoral Committee. As a parallel the right to take a case to the Supreme Court is also given to a candidate or a political party that fin there right violated.

*When?*

When the result of the election has been officially declared, the appellant has the relatively short timeframe of 3 days to contest the result.

The National Electoral Committee can within 3 days review there decision regarding the ccomplaint.

The Supreme Court then has a timeframe of 7 working days from receiving the appeal to deliver their final decision.

*Some numbers*

From 2002 there have been 83 cases of complaint to the National Electoral Committee where they themselves have changed the result wholly or partially in 11 of these appealed cases.

71 cases have been handled by the Supreme Court, and out of them 9 cases have been ruled in favour of the appellant wholly or partially.

**Serbia**

In Serbia the Republic Electoral Commission is the certifying body regarding parliamentary elections. The result has to be stated within 96 hours after the closing of the polling stations.

An appeal can be filed to The Supreme Court of the Republic of Serbia.

The procedure is that the complainant files a complaint to the Republic Electoral Commission who then reviews the matter. Their decision on admitting or dismissing the complaint can be appealed to the Supreme Court.

*Who can file a complaint?*

Every voter that is enlisted in the list of voters has the right to submit a complaint regarding violation of his/her rights regarding the election.

A candidate or a submitter of an electoral list is also entitled to submit a complaint if their rights have been violated.

*When?*

In Serbia there is quite a strict timetable regarding appeals and decisions.

An appeal must be handed in within 48 hours of the receipt of a decision of the Republic Electoral Commission regarding violations in the electoral procedure, the Court then has to make a decision also within 48 hours. Regarding certification of mandates the time frame for the Supreme Court is within 72 hours.

**Bosnia and Herzegovina**

In Bosnia and Herzegovina, the Central Election Commission, (in accordance with Article 2.9 of the Election Law of BiH,) shall be competent to establish and certify results of all direct and indirect elections set forth by this Law.

The first instance to review the complaint is the Central Election Commission itself. Then one can appeal the decision made by the Commission to the Appellate Division of the Court of Bosnia and Herzegovina.

*Who can appeal?*

In accordance with the Election Law of BiH, the voter and political entity, whose right, laid down by the Election Law, was violated, may lodge a complaint with the Election Commission.

(I have not seen that there is any change in who can appeal to the Supreme Court of Bosnia and Herzegovina.)

*When?*

A complaint to the Central Election Commission has to be handed in within 48 hours following the violation committed.

The Central Election Commission then has to deliver their decision within 48 hours from receiving the complaint.

In the second-instance proceeding, an appeal shall be lodged with the Appellate Division of the Court of Bosnia and Herzegovina within two days from the day of receiving the decision of the Central Election Commission of BiH on the application of this Election Law.

**Croatia**

The relevant electoral commissions that certify the electoral results is the State Electoral Commission at the parliamentary and presidential elections,

The State Electoral Commission of the Republic of Croatia decides on complaints in the first instance. In the second instance, the Constitutional Court of the Republic of Croatia decides on appeals.

*Who can appeal?*

Under Article 83 of the Law on Elections for the Croatian Parliament, complaints to the State Electoral Commission for irregularity during the candidacy procedure or during the election procedure (and that includes the certifying of electoral results) may be submitted by every political party, bearers of the 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.

If the electoral list or the candidate for the representative of a national minority was proposed by several political parties, the complaint is considered regular even if only one political party submitted it.

*When?*

The time limit for complaints and appeals is 48 hours from the time when the decision on certifying electoral results is published.

The State Electoral commission also has to make their decision up on the complaint within 48 hours.

**Cyprus**

In Cyprus the Constitution has some Articles that directly concern the appeals of election results. They have established an Electoral Court as I understand is the Supreme Constitutional Court.

**Article 85** of the Constitution provides that:

*“Any question with regard to the qualifications of candidates for election and election petitions shall be finally adjudicated by The Supreme Constitutional Court”*

**Article 145** further provides that:

*“The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition, made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber*

*Who can appeal?*

An election petition may be presented to the Supreme Court by the Attorney General or any one or more of the following persons:

By electors whose names appear on the register, persons claiming to have had a right to be returned or elected at such election or a person alleging to have been a candidate at such election.

*When?*

An election petition must be filed within one month from the date of the publication in the government gazette of the results of the elections.

The Supreme Court does not have a timeframe to operate within, but the tradition is that they handle appeals speedily.

**Conclusion remarks**

As one does see there is diversity in almost all aspects of the procedure regarding the electoral process related to the official results, handling of complaints and the decisions up on appeals.

One also can see that the period of time from a complaint is handed in to the competent body, and until a final decision up on the matter is to be given differs in a quit large manner.

There is no European standard regarding the question of having an independent body to decide up on complaint and appeals. What one might see is that newer democracies do weigh the principle of having a decision made by an independent body the most, and that older democracies weighs in the tradition of the independence of the parliamentary bodies.

One still has to ask the question if there ought to be some kind of European standard or guidelines regarding complaints and appeals on electoral matters. Then one might have to figure out what kind of needs do one have in the society of today. Is there some guarantees that is regarded as so important that they have to be baked into some kind of common European understanding of fair handling of complaints and appeals in electoral matters?