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CANCELLATION OF ELECTION RESULTS

L'ANNULATION DES RESULTATS DES ELECTIONS

REPLIES TO THE QUESTIONNAIRE

REPONSES AU QUESTIONNAIRE

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A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The Electoral Code of the Republic of Albania, approved by Law no. 9087, dated 19 June 2003, of the Assembly of Albania, regulates the relations regarding the rules for voting of general elections for the deputies of the Assembly, the election of organs of local government and in a referendum, the organization and functioning of the election commissions, the preparation and revision of voter lists, the determination of electoral zones, the registration of electoral subjects and their financing; the coverage of electoral campaigns by the media; the organization and validity of referenda; procedures of voting and of issuing election results; the criminal and administrative violations of the provisions of this Code. Article 117 of this Code provides the cases when the elections can be declared invalid and cancelled.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

According to article 117 of the Electoral Code, The Central Election Commission (CEC), upon its own initiative or on the request of electoral subjects, declares the elections invalid if:

a) There have been violations of the law;

a/1) It finds that the number of voters who have voted with a falsified birth certificate with a photograph is higher than the difference between the two candidates ranked highest on the basis of the results declared by the ZEC or the LGEC;

b) There have been natural disasters of such proportions that the participation of the voters in the voting have been hindered; or

c) The voting has not begun or has been suspended for more than six hours;

And for any of these causes the electoral process has been affected to such a degree that it may have impacted the allocation of the mandates in the election units or on a national level or the acceptance or refusal of a referendum.

In the cases foreseen in point b) and c) the cancellation is obligatory. In the case of point a) the CEC cancels the elections if the violations of the law have determined the candidate victory, have influenced the allocation of mandates in the election units or on a national level, or the acceptance or rejection of a referendum

The decision to declare the elections invalid is taken from the CEC, upon its own initiative or on the request of electoral subjects. According to Article 117 of the Electoral Code, the CEC orders the rerun of elections only when: first, the elections have been declared invalid at least in one electoral unit and second, it has to value the possible impact of the allocation of mandates.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

The violations of the law that could be a reason for the invalidation of the elections should be in such a degree that it may have influenced the candidate victory or the allocation of mandates in the election units, and this is valued from the CEC or the Electoral Chamber.

Regarding the eligible criteria, the legal regulation is that the CEC verifies preliminarily the legal criteria of the candidate. Article 78 of the Electoral Code foresees that the documentation for the nomination of candidates for deputy, for mayor of a municipality or commune, or for the council of a municipality or commune is to be submitted respectively to the ZEC or the LGEC, more appropriate as, no later than 32 days before the date of the elections. The respective commissions verify the accuracy of the documentation submitted no later than 30 days before the date of the elections.

If the commissions notice discrepancies or irregularities in the nomination documentation before the end of the time limit for certifying it the commission gives the candidate the opportunity to correct the discrepancies or irregularities, setting a time limit for the resubmission of the documentation.

For candidates for deputy, the nomination documents are to be accompanied by a list with the signatures of 300 voters who reside in that zone, the names of whom are on the preliminary voter lists of that electoral zone. (Article 80) The candidates of political parties are exempt from the obligation if a member of the respective party holds at least one seat in the Assembly. For the purposes of this Code, the political party presents a statement in writing signed by the elected person, stating that he is a member of the political party. Independent candidates are exempt from the obligation if they hold seats in the Assembly.

The members of the election commissions and employees of the public administration in the service of these commissions have criminal and administrative liability according to the legislation in force for violations of the provisions of this Code.

Such violations can lead to the invalidation of the elections and they can be:

- The member of the commission has accepted that a person can sign for the members of his family, or on behalf of other persons (non members of his family),
- A person has voted more than once,
- There is no signature of the voters and the voting is not documented
- during the process of publishing the result, the voting documentation, as the stamp, ballot papers and recording has been sent open to the Zonal Election Commission,
- In the ballot boxes there are no tables of results,
- The recordings that declares open and close the process of voting are not found
- The absence of the original stamps
- Discrepancy of the numerals in the tables etc.

Article 179 of the Electoral Code provides for the violation of any one of the general principles specified in the Code, in cases when these violations have not affected the election result, is an administrative offence and is punishable with a fine.

The amount of the fine is determined on basis of the following circumstances:

a) The risk posed by the violation to the organization and administration of future elections;

b) The fact whether the perpetrator of the offence has benefited from the violation materially or through the violation has affected the taking of a seat from a candidate, political party or coalition;

c) The duration and the range of actions that led to the commitment of the offence;

ç) The fact whether there have been efforts to hide the violation and the extent of these efforts;

d) The attitude of the perpetrator of the offence following its detection;

dh) the fact whether officials have taken part in the commitment of the offence or whether public resources have been used for it;
e) The fact whether the violation is a repetition;
ë) The fact whether it is has been committed in co-operation with others;
f) The potential risk to free, fair, democratic, and transparent elections.

The violations that have had an impact on the election results are a criminal offence and are punishable with imprisonment of six months to two years (Article 179/4). In this case, the CEC makes an indictment near the body in charge with the public prosecution. The criminal acts affecting free elections and democratic system of elections are foreseen in the Criminal Code (Articles 325-332). The criminal act of drafting false documents committed by the persons in charge of drafting, assessing, providing the results of the elections, is sentenced to a fine of up to five years of imprisonment (Article 326). According as this violation has affected the result of elections is to be assessed by the Central Election Commission or the Election Chamber.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Yes, the candidates' activities or the activities of others can lead to cancellation of the elections.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The cancellation affects only the result of the candidate and this affects indirectly the final result of the whole election process

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The Electoral Code does not foresee such a case, however the candidate exclusion in the repeated elections has never happened in practice.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

According to point 10 of Article 36 of the Electoral Code, CEC declares the results of the elections in the zone, as well as the winning candidate in the zone. According to Article 29 of the Electoral Code, the competent authority that declares the final results of elections is the Central Electoral Commission. The CEC declares through a decision the final results of elections on the national level, based on the results declared by the ZEC, or as appropriate the LGEC, and after the court examination of appeals has been completed and also announces the winning candidates for deputy from the multi-name lists.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Court is not involved is the process of the certification. After the examination of appeals and the court decision, the competent body that announces the result in every zone is the Zonal Election Commission, whereas the final result is announced by the Central Election Commission.

3. Is there a specific body in charge of the control of finance in the electoral field?

According to Article 143 of the Electoral Code, the CEC administers the funds designated for the conduct of elections according to the rules contemplated in this Code. The funds designated by the state budget for the election campaign of the electoral subjects consist of funds for campaign financing, as well as a supplementary sum for the campaign finance funds that is used by the CEC to provide compensatory amounts. The funds for campaign financing shall not be less than the total amount allocated to political parties in the preceding elections.

Besides State Budget funds, the electoral subjects may benefit in their election campaign from donations by private local natural or legal persons. No natural or legal person shall give donations of more than 1,000,000 ALL or an equal amount in goods or services to the same electoral subject. Electoral subjects are to register and declare all donations received in the period, no latter than 45 days after the day of the Election, from the date of the President's decree setting the election date until the date of the elections. Political parties shall not spend for their election campaign, including that of their candidates, more than ten times the largest amount received by a party according to point 1 of article 145 of this Code.

1. The fund designated by the state budget is to be allocated to electoral subjects by a CEC decision according to the following rules: (Article 145/1)

a) 10 percent of the amount is to be distributed among all the political parties registered as electoral subjects. This amount is given to these political parties by the CEC no later than 5 days after the registration of their candidates with the ZEC and LGEC. The parties that register, individually or in coalition, fewer than 30 candidates for single member zones or less than 30 percent of the total number of mayors of local government units on a national scale do not benefit from funds allocated according to this letter;

b) 40 percent of the amount is to be allocated among the political parties represented in the Assembly and independent Members of Parliament who run for re-election. This amount is to be given to these political parties by the CEC no later than 5 days after the registration of their candidates with the ZEC and LGEC. For local elections, this amount is divided among the parties that are represented in the councils of municipalities or communes. The amounts, according to this letter, are allocated according to the formula provided in Annex 1 of this Code;

c) 50 percent of the total amount is allocated among the parties, that in the preceding elections for the Assembly, or as the case may be for the local government elections, received not less than 2.5 % of the votes, in proportion to the number of votes received on a national scale, according to the formula provided in Annex 1 of this Code. This amount is allocated to these political parties by the CEC not later than 10 days after issuance of the President's decree setting the election date.

2. The amounts distributed according to letter (c) of point 1 of this article are recalculated and reallocated according to the formula provided in Annex 1, according to the following procedure:

a) within 30 days after the proclamation of the final results, the CEC recalculates the designated amounts and determines the amounts that political parties will benefit as compensation or have to return due to the recalculation;

b) the compensatory amounts are given to the political parties entitled to this compensation by the CEC;

c) the CEC requests that the political parties that are required to return amounts are to return the amounts within 30 days of the notification of the decision. Otherwise, the CEC requests the Minister of Finances to order the Treasury Office to deduct the amount from the other budgetary funds that these parties receive and transfer these funds to the CEC budget. The Treasury Office, along with the obligation, retains a

penalty of 1% monthly of the amount to be paid for every month of delay.

3. Those political parties that, until 1 March 2005, do not return to the State Budget the amounts they owe as a result of the election campaign financing in the previous elections, shall not receive funds from the state budget for the 2005 elections, pursuant to point 1 of this article. If the amount these parties are obliged to return is smaller than the one they benefit, the CEC distributes to the respective political parties, according to point 1 of this article, only the difference between them.

4. What is (are) the competent body (ies) for deciding on complaints against the certification of election results?

The competent body entitled to decide on complains against Zonal Election Commission and Voting Centre Zonal Commission decisions is the Central Election Commission, whereas the competent body entitled to decide on complains against Central Election Commission decisions is the Electoral Chamber near the Court of Appeal of Tirana (judicial body).

5. Who may appeal the decision on certifying electoral results?

According to Article 146, any electoral subject has the right to appeal to the CEC against ZEC or LGEC decisions that damage their legal interests, within three days after the date on which the decision has been declared. For the purpose of the Electoral Code, “Electoral subjects” are political parties, coalitions registered with the CEC, their candidates as well as independent candidates registered with a ZEC or LGEC. The right to appeal according to this article is also granted to those individuals or political parties whose requests for registering as an electoral subject have been refused and to those to subjects, referred to in points 2 and 3 of article 18 of this Code, appealing against the refusal of requests for accreditation as observers, when the accreditation of the observers is delegated to the ZECs or LGECs.

According to article 162 of the Electoral Code, The electoral subjects are entitled to submit appeals against CEC decisions to the Electoral Chamber of the Court of Appeals of Tirana when these decisions affect their legal interests. Individuals or political parties whose request to be registered as an electoral subject have been rejected also have the right to appeal according to this article.

6. What is the time-limit for appealing the decision on certifying electoral results?

Any electoral subject has the right to appeal to the CEC against ZEC or LGEC decisions that damage their legal interests, within three days after the date on which the decision has been declared (Article 146).

At the conclusion of the review of the request for appeal, the CEC decides, as the case may require, to: (Article 161/2)

a) Dismiss the review;
b) Uphold the ZEC or LGEC decision;
c) Amend the ZEC or LGEC decision;
ç) Declare the elections invalid in one or several voting centres of the election unit or in the entire election unit.

No later than 10 days from the date the respective appeal is recorded, the CEC makes a final decision concerning the appeal against a ZEC or LGEC decision on the proclamation of results.

Appeals according to Article 162 of the Electoral Code are to be submitted to the Court of Appeals of Tirana, which passes them to the Electoral Chamber. An appeal against CEC decisions made during the period that starts 48 hours after the issuance of the decree for partial

or general elections until the termination of administrative review of election complaints or expiry of time limits for election complaints is to be made within 5 days after their proclamation.

Depending on the cases to be examined, the Electoral Chamber decides: (Article 174) a) to dismiss the case; b) to judge the merits of the case; or c) to compel the CEC to make a decision.

- The Electoral Chamber decides to dismiss the case when it finds that the appeal has been submitted beyond the time limits stipulated in this Code, or that the court lacks the competence to hear it. When the Electoral Chamber finds that it lacks competence, it forwards the case to the competent body.
- In judging the merits of a case, the Electoral Chamber decides on the full or partial acceptance of the appeal, or on its full or partial rejection, as well as the proclamation of the voting results for the multi-name lists for the Assembly in compliance with point 3 of article 161/3 of this Code.
- The Electoral Chamber imposes an obligation on the CEC to make a decision in compliance with point 2 of article 162 of this Code. In this case, the Electoral Chamber sets a fixed time limit of no longer than 10 days for making a decision.

The decision of the Electoral Chamber is final. No appeal may be made against it.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

No appeal may be made against the decision of the CEC to certify the final decision of the election.

The Electoral Chamber decides to dismiss the case when it finds that the appeal has been submitted beyond the time limits stipulated in this Code, or that the court lacks the competence to hear it. When the Electoral Chamber finds that it lacks competence, it forwards the case to the competent body.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The parties at the judicial examination proceedings concerning the court complaint have all the procedural rights contemplated in the Code of Civil Procedure, except when this Code provides otherwise.

The evidence administered by the CEC during its administrative review are to be brought by the CEC to the hearing regardless of the requests of the parties for this evidence.

The absence of one party during the proceedings does not constitute an impediment for the continuation of the adjudication by the Electoral Chamber, unless the Chamber decides otherwise (Article 172).

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

According to Article 161/2 of the Electoral Code, at the conclusion of the review of the request for appeal, the CEC decides to declare the elections invalid in one or several voting centres of the election unit or in the entire election unit. In the case when the decision of the CEC is appealed in the Electoral Chamber, he can decide the elections invalid in one or several voting centres of the election unit or in the entire election unit.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Article 71 of the Constitution said that: "The mandate of the deputy begins on the day he is declared elected by the respective electoral commission. The mandate of the deputy ends or is invalid, as the case may be: a. when he does not take the oath etc. According to the Assembly rules (article 3), the Assembly, on the first meeting, elects a Temporary Commission to Verify the Deputies' Mandates. The Commission verifies the elections' documentation and within 2 days makes a report before the Assembly for the validity of the mandated. In case the Commission finds irregularities, he proposes the Assembly for the delegation of the case to the Constitutional Court. The request to the Constitutional Court should be signed by not less than one fifth of the deputies of the Assembly within 3 days from the reading of the report. If at the end of this time the request is not signed and sent to the Constitutional Court, the deputy is invited to make the oath. The Constitutional Court, based on Article 131 of the Constitution decides on: e. Issues related to the eligibility and incompatibilities in exercising the functions of the deputies, as well as the verification of their elections.

Neither authority nor judicial body can cancel the election results after the elected candidate has takes his office.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

The abrogated Electoral Code, provided that the CEC decisions relating results of elections of deputies or referendums, as well as their invalidity should be appealed at the Constitutional Court within three days from their proclamation. The Constitutional Court revised the complaints and decided within 10 days (Article 141). The CEC decisions relating to local government elections results and their invalidity were appealed at the High Court within three days from their proclamation. The High Court revised this complaints and decided within 10 days.

After the entrance into force of the new Electoral Code, the judicial body that revises the complaints regarding the elections and the result in every unit, is not any more the Constitutional Court, but the Electoral Chamber of the High Court. According to Article 174/5 of this Code, the decision of the Electoral Chamber is final and no appeal may be made against it. Regarding the invalidation of the elections there is a large case law in the provisions of the abrogated and the new Electoral Code. In various occasion, the Constitutional Court has decided to invalidate the CEC decision which declared the invalidation of the result and ordered the rerun the elections in one unit or in the whole election zone. As well, the Electoral Chamber, when finds violations of the law that could affect the final result of the elections, can abrogate the CEC decision and even though, the Code provide that CEC is the only body that decides to rerun the elections, the Electoral Chamber has made itself the assessment and has ordered to rerun the elections where it was necessary.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

According to the abrogated Electoral Code, the Constitutional Court was entitled to revise the complaints of CEC regarding the final general parlamentarian elections result. On this ground, the Constitutional Court has examined in this period, a great number of requests of the electoral subjects, and according to the case has decided even the invalidation of the CEC decision and

has declared the elections invalidation. Because of the nature of this judgement, so to revise the facts upon the appellant based his request, the Constitutional Court has played the role of a court of first instance. During the elections of 2002, the Court, when has valued it necessary, in four cases has ordered to open the ballot boxes where was pretended that the result was invalid.

The Constitutional Court from the integrity of the proofs collected, has found that the electoral process in some unit was irregulas and had affected the result. Some of the reasons why the process was invalidated had been:

- the elections had not started for more than 6 hours;
- one person had signed on behalf of other persons;
- there is no signature of the voters and there is no documentation of the process;
- during the process of publishing the result, the voting documentation, as the stamp, ballot papers and recording has been sent open to the Zonal Election Commission.

For this reason, the Court has declared the invalidation of the elections in some units and has ordered their rerun (Decision No.74 d.2001 of the Constitutional Court).

The Court has decided to invalidate the CEC decision which declared the invalidation of the result and orderd the rerun the elections in one unit or in the whole election zone. (Decision No.78 d.2001 of the Constitutional Court), after finding that:

- In the ballot boxes there are no tables of results,
- The recordings that declares open and close the process of voting are not found
- The absence of the original stamps
- Discrepancy of the numerals in the tables etc.

The Constitutional Court, in its decision No.80/2001, has decided to order the rerun of the second round of elections, because the tables in a unit had discrepancy. The Court asked the subjects to present other documents, as the arguments where the ZEC was based, where not considered convincing. None of the tables were presented, so the Court decided to open the ballot box of the electoral unit to order the renumeration of ballots.

The Constitutional Court, in its decision No.111/2001, has abrogated the CEC decision and has ordered the rerun of the elections, because the CEC, has not invalidated the elections in four electoral units where had been violatations of the law that had affected the final elections decision.

The Constitutional Court, in its decision No.169/26.7.2002, has abrogated the CEC decision and has ordered the rerun of the elections, because has noticed this violations of the law:

- violations which consist in voting of one person on behalf of his family;

In this case the Constitutional Court administred as evidences the voters lists used during the process, which had a great value for the case. This Court noticed that in most of the cases and in a visible way there were similar signature for voters of one family. This was a persuasive fact that one person had voted for his entire family. This fact violate the principle of free elections, provided by article 45/4 of the Constitution. The Constitutional and Articles 6 and 98/1 of the Electoral Code, have a strict point of view regarding this political right. Every deviation from this principles has great concequences for the electoral process.

ARMENIA / ARMENIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

In case of cancellation of electoral results by the bodies, which are entitiled for certification of electoral results, the decision on cancellation of election results is adopted by the below-mentioned bodies within the following time-frames. The Central Electoral Commission (hearinafter: the RA President CEC), which is entitled for the summaraization and certification of results of elections of the RA President and elections of the National Assembly by proportional system, in cases established by law, adopts a decision on cancellation of electoral results no later than seven days after the voting day (Article 63(2) of the RA Electoral Code). The Territorial Electoral Commission (hearinafter: TEC), which is entitled for the summaraization and certification of results of elections of the National Assembly by majoritarian system, as well as elections of local self-government bodies, in cases established by law, adopts a decision on cancellation of electoral results no later than five days after the voting day (Article 63(1) of the RA Electoral Code).

Special time-frames for appealing to the competent bodies on the disputes on electoral results are stipulated by the RA Electoral Code (hearinafter: EC), as well as by the RA Law on Constitutional Court (hearinafter: CC Law) and RA Administrative Procedural Code (hearinafter: APC).

According to Articles 83(2), 115(8), 116(8) of the EC, Article 74(3) of the CC Law, in cases of disputes related to the results of elections of the RA President and members of Parliament it is allowed to appeal to the Constitutional Court within seven days after the announcement of elections' official results (the maximum time-frame for such announcement is the seventh day after the voting day – in case of the RA President's elections and elections of the National Assembly by proportional system, and the fifth day after the voting day- in case of elections of the National Assembly by majoritarian system and elections of local self-government bodies).

The decision of the TEC on the results of the elections of local self-government bodies may be appealed to the administrative court within three days after the moment, when the paintiff has been aware of or should be aware of violation of his\her electoral right (Article 133 of the EC and Article 146 of the APC).

The RA legislation stipulates also special time-frames for examination of disputes on electoral results by the competent bodies.

According to Article 51 of the RA Constitution, as well as to Article 74(16) of the CC Law, in cases of disputes related to the results of the Presidential elections the Constitutional Court shall make a decision within ten days after the day of registration of the appeal. According to paragraphs 17 and 18 of the same Article of the CC Law, in cases of disputes related to the results of the Parliamentary elections by proportional system the Constitutional Court shall make a decision within fifteen days after the day of registration of the appeal, and in cases of disputes related to the results of the Parliamentary elections by majoritarian system - within one mounth after the day of registration of the appeal: the last-mentioned time-frame can be prolonged not longer then 50 days with the decision of the Constitutional Court depending on its caseload.

According to Article 146(4) of the APC, the applications challenging the results of elections of local self-government bodies must be examined not later, than within 7 days after the day of the registration of the application.

Taking into account the time-frames established by law for official announcment of final electoral results by the competent electoral commissions, for challenging the electoral results before the competent judicial bodies, for examinantion of electoral disputes in these judicial bodies, it may be mentioned that the electoral results may be cancelled within the following maximum terms:

- the Presidential electoral results – no later, than 24 days after the voting day,
  results of elections of the National Assembly by proportional system - no later, than 29 days after the voting day (if the examination of the electoral dispute is not suspended at the Constitutional Court);
- results of elections of the National Assembly by majoritarian system - no later, than 43 days after the voting day (or 93 days, in case, when the general time-frame is prolonged) (if the examination of the electoral dispute is not suspended at the Constitutional Court);
- results of elections of local self-government bodies - no later, than 15 days after the voting day (if the examination of the electoral dispute is not suspended at the administrative court).

2. Is the cancellation only possible consequence of an established violation of law or are there cases when the cancellation is compulsory?

Article 86 of the RA EC constitutes the bases, on which the CEC cancels the Presidential elections. According to that Article Presidential elections shall be cancelled at any stage, if:

1) the amount of inaccuracies is higher than or equal to the difference between the number of ballots cast for the two candidates who received the most votes or, in the case if one candidate was running, the difference between the number of ballots cast for and against that candidate, which significantly affects the results of the election, i.e.it is impossible to reestablish the real results of the election and determine which candidate is elected;
2) violations of the EC, which may have influenced the election results, have taken place in the process of preparation and conduct of elections.

The TEC on the same bases shall cancel National Assembly elections by majoritarian system and Community leader's elections (Article 116, Article 133 of the RA EC).

According to Article 115 of the EC the CEC shall cancel National Assembly elections by proportional system, if violations of the EC have occurred during the preparation and conduct of elections, which may have influenced the outcome of the election.

As to Article 134 of the EC Community council elections shall be canceled, if:

1) the amount of inaccuracies precludes the possibility of determining the elected candidates to fill at least half of the council as established by paragraph 2 of Article 120 of the EC, i.e. the difference between the number of ballots cast for the elected candidate and the not-elected candidate is smaller than or equal to the difference between the amount of inaccuracies and the ratio of the number of council member candidates;
2) if violations of the EC have occurred in the process of preparation and conduct of the elections that may have affected the outcome of elections.

According to Article 74(15) of the CC Law, if in the process of the case review, after exhausting all the means prescribed by the Law for acquiring evidences, the Constitutional Court, nevertheless, could not find out the real results of the elections, it may decide to cancel the

results of the elections if the proved electoral violations make obvious for the Court that they had organized nature, took place repeatedly, continually and on massive scale, and if the combined analyses proves such a systematic interrelation of those violations that the principles of electoral rights prescribed in Article 4 of the Constitution were infringed.

The same contents provision is provide for in Article 149(5) of the RA A PC.

In sum, it is worth mentioning that the fact of exceeding the amount of inaccuracies the difference between the numbers of ballots cast for the two candidates for whom the highest number of ballots were cast, automatically leads to cancellation of elections (except the results of the National Assembly elections by proportional system). According to Article 115(7) of the EC the results of the National Assembly elections by proportional system couldn't be cancelled on the basis of amount of inaccuracies. In thus case under paragraph 2 of the same Article the number of inaccuracies may have impact on the distribution of mandates.

As to violations occurred during the preparation and conduct of elections, which may have influenced the outcome of the election, in any concrete case the authorized body, competent Electoral Commission, Constitutional Court or Administrative Court are those to assess such influence.

3. What kind of contravention of the law can serve as a basis for cancellation?

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

The analysis of Articles 86, 115, 116, 133, 134 of the EC, as well as paragraph 15 of Article 74 of the CC Law evidences that the bases for cancellation of electoral results could be **violations of requirements only of the RA EC**.

Defined criteria have been formed in practice of the RA Constitutional Court that may be basis to assess the influence of such violations on the results of elections.

The Constitutional Court in its CCD-236 decision has considered as bases for cancellation of electoral results such violations of electoral law, that hadn`t created necessary prerequisites to conduct elections in conformity with democratic principles and to protect thoroughly citizens` electoral rights.

The Constitutional Court in its CCD-408 decision has ascertained that the results of elections may be impacted by such violations of citizens' universal, equal, free and direct electoral right with consistent regularity, which mutilate the overall picture of the realization of citizens' electoral right and do not allow the making of a definite conclusion regarding final results of the whole process of elections.

According to the Constitutional Court`s legal position the decision to cancel or not to cancel electoral results in each case depends on concrete circumstances and must consider the heaviness and seriousness of legally evidenced violation, the scope of inclusion of violations, the means and forms of committing those violations. When investigating cases appealing election results, the Constitutional Court must take into consideration not only the aspect of defending rights and freedoms granted by the Constitution, but also the aspect of reliability and confidence towards the election process and the whole election system in terms of organizing and conducting it in accordance with legislation, proven violations of electoral right may be the basis for reconsidering results of elections. However, the essential content of such

reconsideration must be the question of whether existing legal violations have such a spread as to put in doubt the whole results and validity of elections. Violations that have taken place in any one polling station may not serve as basis for assuming similar violations in other polling stations or doubting the extent of confidence towards them. Results of elections may be cancelled only on the basis of those legally evidenced concrete violations, which had or may have had significant impact on the final results of elections. Results of elections may be cancelled if violations have significantly impacted the ratio of votes received by candidates and the overall result is mutilated.

In the CCD-703 decision by the Constitutional Court has been constituted." ...any dispute connected with the decision adopted on the results of the RA Natioanl Assembly elections by proportional system shall become a subject matter in view of protection of a specific right to vote considering breaches of rights in the RA EC and Constitution during election administration, which could have served as a ground for rendering another decision. It refers to violations, occured in the election process and revealed in a timely manner and submitted with the legal justification required, which reveal that in case of an election dispute filed on the protection of a passive voting right, the opportunity for proper exercise of that right is disabled. ... Meanwhile, the international practice of constitutional justice proves that only specific violations, affirmed in the procedure set out by the law, can serve as a ground to cancel the electoral results, which had had or could have had a substantial impact on the proportion of votes received by candidates and reveal the fact that the election results did not reflect the actual expression of voters' will."

4. Can only the candidates/ activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by neida ot other in favour of, but without the knowledge of a candidate)?

The RA legislation doesn`t concretize which subjects' violations of the EC can lead to cancellation of electoral results. It becomes clear from the legal positions of the Constitutional Court that it doesn`t matter who has violated the EC. It matters only if violations made by any subject or subjects can lead to the cancellation or not.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The cancellation affects the entire result of the elections

6. If the results of an election are cancelled, is the candidate concerned excluded from atanding for the repeated elections or not ?

According to Article 90 of the EC, in case of cancellation of Presidential election results a new Presidential elections shall be scheduled, with voting taking place on the 40th day after the new elections are scheduled. New Presidential elections shall be carried out with new nomination of candidates.

No provision prevents the new nomination of the same candidates, who have been participated in the elections, the results of which have been cancelled.

According of Article 115 of the EC, in the case if National Assembly elections by proportional system are cancelled, re-voting with the same parties (same composition) shall take place not earlier than 10 and no later than 20 days after the decision on cancellation enters into effect.

According to Article 116 of the EC, in the case of cancellation of elections of National Assembly by majoritarian system, re-voting shall take place not earlier than 10 and no later than 20 days

after the decision on cancellation enters into effect.

If the results of re-voting in the National Assembly elections by majoritarian system are cancelled, new elections shall be held not earlier than 30 and no later than 40 days after the decision on cancellation of re-voting results enters into effect. New elections shall take place with new nomination of candidates.

Again, no provision prevents the new nomination of the same candidates, who have been participated in the elections, the results of which have been cancelled.

According to Articles 133 and 134 of the EC, in case of cancellation of electoral results of local self-government bodies, re-voting with the same candidates shall take place 21 days later after the voting day. Re-voting with the same candidates can take place only once.

B. PROCEDURE FOR THE CANCELLATION OF ELECTION RESULTS

1. Which body is competent to certify the electoral results?

According to Article 41 of the EC the results of Presidential elections, as well as elections of the National Assembly by majoritarian system are summarized and certified by the CEC. According to Article 42 of the EC, electoral results of the National Assembly by majoritarian system and local self-government bodies are certified by the TECs.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

In the Republic of Armenia no judicial body is involved in the certifying procedure.

3. Is there a specific body in charge of the control of finance in the electoral field?

The Oversight and Audit Service acts as a such body. According to Article 26 of the EC on the day the election date is announced, the CEC shall set up an Oversight and Audit Service within the Commission to oversee the use of means allocated to electoral commissions for organization and conduct of national elections and to monitor the contributions to pre-election funds, their accounting and use.

Relevant specialists may be involved in the work of the Service on contractual basis. Once the Oversight and Audit Service receives declarations of candidates, parties and party alliances about the use of the means in their pre-election funds from electoral commission that had registered them, it shall check them within 20 days and forward the materials to the CEC for discussion. Materials about violations discovered as a result of these discussions shall be sent to a court of the first instance within three days, pursuant to a decision by the CEC. The procedures for formation and operation of the Oversight and Audit Service shall be established by the CEC.

The authority of the Oversight and Audit Service shall be terminated on the 45th day after the announcement of the final results of elections.

4. What is (are) the competent bod (ies) for deciding on complaints against the certification of election results?

According to Article 100, paragraph 3(1) of the RA Constitution, the Constitutional Court resolves the disputes arising from decisions on the results of elections of the President of the Republic and Deputies (by proportional and majoritarian systems).

According to the APC the disputes concerning the decisions on the results of elections of local self-government bodies are resolved by the administrative court.

We consider it necessary to mention, that as a result of constitutional reforms of 2005 and amendments to the CC Law, now the Constitutional Court examines not a dispute on electoral results, but a duspute on a decision adopted concerning the electoral results. The Constitutional Court in its decisions CCD-703 (10.06.2007) and CCD-736 (08.03.2008) has clerifyed the scope and content of such dispute. Particularly, the Constitutional Court in this regard has mentioned in its decision CCD-703: "Pursuant to paragraph 3(1) of Article 100 of the RA Constitution, the decision adopted on the election results is the subject matter of the dispute in the Constitutional Court, which, in accordance with paragraph 9 of Article 101 of the Constitution, the applicant shall make a subject matter for examination within the scope of "questions related to him/her".

The legal justification of the decisions of competent election commissions on the results of the elections to the RA National Assembly can be challenged in the Constitutional Court from two perspectives: both on the ground of the established procedure (rules of procedure) for their adoption, their adherence to the format and structure required by the law (formal grounds) and on that of the alleged mistakes in applying the norms of the substaintive law, due to which the election commissions, when summarizing the election results, drew a wrong conclusion on the number of candidates, included in the list of any party (party alliance), being elected or not (material grounds).

Procedural (formal) errors can be recognized by the Constitutional Court as a ground for legal assessment only in the event that the applicant proves their direct causal link with the election results. The Constitutional Court proceeds from the impact those have on the free will of voters and the election results, and not the necessity to formally affirm those mistakes.

Meanwhile, the decision of a competent election commission on the election results can be challenged in the Constitutional Court only in the event that, in the opinion of the applicant, the commission should have rendered another decision, i. e. stipulated other election results, and that is what should be justified by the applicant. For that purpose the applicant party should present to the Constituional Court facts of such election violations, which were submitted in advance to the competent election commission in the procedure, set out by the law, which, in his opinion, would have resulted in the affirmation of other election results. The objective of the constitutional procedure is to reveal the reliability and influence of such election violations on the election results. It is based on this principle, as well as the necessity to ensure constitutional and legal guarantees for further improvement of the election system in the Republic of Armenia, that the Constitutional Court examined and assessed the facts and arguments presented on the case."

The Constitutional Court regarding the mentioned issue has mentioned in its decision CCD-736 the following: "As a result of Constitutional Amendments of 27 November 2005, under Article 100(3(1)) of RA Constitution the Constitutional Court resolves disputes concerning the decision adopted in election results. The legal base of the CEC decision in the results can be challenged in constitutional court from two perspectives: regarding the fulfillment of prescribed order, the formal requirement of adoption (procedure), as well as with regard the potential violation of material legal provisions, by which the CEC made a wrong conclusion on the fact whether the candidate was elected or not (material bases). In addition in the second case, those violations can be considered as having impact on election results, which falsify the general image of realization by citizens of their right to vote, deprive the opportunity to come to a precise conclusion on final election results. At the same time, the active electoral right of already voted voters cannot be violated, in the result of assessment of the impact, which various violations can have on election results in the framework of protection of passive electoral right."

5. Who may appeal the decision on certifying electoral results?

According to Article 74, paragraphs 1 and 2 in regard to cases challenging the decisions on results of the Presidential elections and elections of National Assembly (by proportional and majoritarian) the following persons may appeal to the Constitutional Court:

a) the Presidential candidates – in regard to cases challenging the decisions on results of the Presidential elections;
b) political parties and unions of political parties - in regard to cases challenging the decisions on results of the elections of National Assembly by proportional system;
c) the candidates of the Deputies of the National Assembly - in regard to cases challenging the decisions on results of the elections of National Assembly by majoritarian system.

According to Article 149 of the APC, the results of the elections of local self- government bodies may be challenged at the administrative court by the candidates and political parties.

6. What is the time-limit for appealing the decision on certifying electoral results?

According to Articles 83(2), 115(8), 116(8) of the EC, Article 74(3) of the CC Law, in cases of disputes related to the results of elections of the RA President and members of Parliament it is allowed to appeal to the Constitutional Court within seven days after the announcement of elections' official results (the maximum time-frame for such announcement is the seventh day after the voting day – in case of the RA President's elections and elections of the National Assembly by proportional system, and the fifth day after the voting day- in case of elections of the National Assembly by majoritarian system and elections of local self-government bodies).

The decision of the TEC on the results of the elections of local self-government bodies may be appealed to the administrative court within three days after the moment, when the paintiff has been aware of or should be aware of violation of his\her electoral right (Article 133 of the EC and Article 146 of the APC).

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

According to Article 51 of the RA Constitution, as well as to Article 74(16) of the CC Law, in cases of disputes related to the results of the Presidential elections the Constitutional Court shall make a decision within ten days after the day of registration of the appeal. According to paragraphs 17 and 18 of the same Article of the CC Law, in cases of disputes related to the results of the Parliamentary elections by proportional system the Constitutional Court shall make a decision within fifteen days after the day of registration of the appeal, and in cases of disputes related to the results of the Parliamentary elections by majoritarian system - within one mounth after the day of registration of the appeal: the last-mentioned time-frame can be prolonged not longer then 50 days with the decision of the Constitutional Court depending on its caseload.

According to Article 146(4) of the APC, the applications challenging the results of elections of local self-government bodies must be examined not later, than within 7 days after the day of the registration of the application.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The principle of ex-officio clarification of the case circumstances set in Article 19 of the RA Law

on the Constitutional Court in constitutional procedure couldn't be comprehended as a subjective obligation of proof as in civil procedure. The essence of the principle of ex-officio clarification is that the Court is the authorized and responsible body for a proof, but not the parties. Nevertheless, the Constitutional Court`s opportunities to reveal objective truth aside from parties are restricted. The Constitutional Court in its legal positions has defined the scope of that opportunities.

The Constitutional Court in its SDO-736 decision has specially defined. «The obligation of the Constitutional Court to discover the facts of the case independently the positions of parties to the case has its special boundaries, the existence of which is conditioned with the real opportunities prescribed by the Constitution and the Laws and with the functional and other adjunct competences. Ex officio discovery of the facts of the case is limited to those boundaries, and this principle does not enable the constitutional court to act as lawenforcing body (like prosecutor's office, or inquiry body) or to substitute judicial or other administrative bodies.

In cases concerning the decision adopted on election results the constitutional court shall adopt a decision of merits of the case within 10 days, starting from the date of filing the application, by the virtue of Article 51(5) of the Constitution. In this case, the exhaustion of all legal remedies and applying to constitutional court with evidentary arguments is becoming crucial.»

The following legal position has been expressed in SDO-703 decision. «In the legal assessment of the arguments presented by the applicants, the Constitutional Court proceeds from the following position: in the event that the applicant party failed to challenge the decisions, actions or inaction of election commissions, other authorized bodies, conditioned by election preparation, administration and results summarization processes, in the extrajudicial (administrative) or judicial procedure, prescribed by the RA Election Code and other legal acts, before applying to the Constitutional Court, i. e. failed to utilise (exhaust) all the remedies, prescribed by the law, for the protection of his/her voting rights, hence is not fully empowered with his/her procedural opportunities to present facts of evidential significance and support his/her arguments with them within the public law dispute, examined in the Constitutional Court on the election results.»

According to the legal position expressed in SDO-408 decision «It is obvious that if legal subjects involved in the election process fail to realize the legal defense of their rights in an order and within the timeframe stipulated by legislation and bypass courts of general jurisdiction then the authorities of the latter does not transfer to the Constitutional Court. The Constitutional Court, when reviewing a case, must base itself upon arguments proven in accordance with the order established by legislation»:

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

According to Article 40 paragraph 4 of the RA EC, if violations of the EC's requirements occur during the voting process that may have affected the outcome of the vote, the TEC may cancel the results of the vote in that particular precinct. If the voting results in a precinct have been cancelled, then the voter turnout in that precinct shall be reported as the magnitude of inaccuracies in that precinct, and shall be taken into consideration when summarizing the election results.

According to Article 100 paragraph 3(1) of the Constitution of the RA, the Constitutional Court resolves the disputes arising from decisions on the results of elections of the President of the Republic and Deputies (by proportional and majoritarian systems), the administrative court resolves the disputes arising from decisions on the results of elections of the local self-

governmetn bodies. Both the Constitutional Court and the administrative court are not entitled to cancel the voting results in a particular precinct within the mentioned disputes. According to Article 74 of the CC Law the Constitutional Court in cases of disputes related to the decision on the electoral results shall rule one of the following decisions:

1) Leave unchanged the decision of the electoral commission;
2) Annul the decision of the electoral commissions and:
   a) cancel the results of the elections;
   b) determine as elected the relevant candidate or the corresponding number of candidates from the electoral list of a political party (union);
   c) declare the elections as non-carried-out;
   d) appoint a second round.

According to Article 149 of the RA Administrative Procedure Code, the Administrative court in cases of disputes related to the decisions on the electoral results shall rule one of the following decisions:

1) Leave unchanged the decision of the electoral commission;
2) Annul the decision of the electoral commissions and:
   a) cancel the results of the elections;
   b) determine as elected the relevant candidate or the corresponding number of candidates from the electoral list of a political party (union);
   c) declare the elections as non-carried-out.

As to the impact of the violations taken place in particular electoral precincts on the electoral results, the Constitutional Court has developed some practice and legal positions in this connection. Particularly, the Constitutional Court has developed a practice, according to which the voting results in concrete electoral precincts, where violations have taken place, are declared by Constitutional Court unreliable. In its decision CCD-412 the Constitutional Court has fixed the criteria for recognition of precinct voting results as unreliable, as well as criteria for assesment of the impact of the unreliable voting results on the the overall results of elections.

In its decision CCD-412 the Constitutional Court has recognized as unreliable the voting results in those precincts, where:

a) in the same Precinct Electoral Commission (hearinafter: PEC) there are summarizing protocols, which are official and differ one from another,
b) it is legally argued that there were cases of ballot stuffing, erroneous vote counting, votig for others and other crucial violations, but which were rejected by TEC unreasonably, and the courts did not protect in duly form prescribed by law the rights of commission members and proxies, regarding the organizing checking of voting results in PECs in accordance with the order and time frames enshrined in the law.

At the same time for the purpose of assesing the possible impact of unreliable voting results on overall results, Constitutional Court reduced the overall difference of votes for all the candidates in the amount of the votes of the candidate, who had received the majority of the votes in certain PEC.

In its decisions CCD-408, CCD-736 the Constitutional Court has also expressed legal position, according to which “the fact of violation in certain PEC or TEC cannot be base for making assumptions about similar violations in other precincts or for casting doubt on legality of electoral process as a whole. As grounds for cancellation the decision adopted in election results can be only those argumented, in accordance with the law, violations, which had essential impact or could have such impact on election results.”

10. May any authorirty (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed?

Comparing the term for taking office by the President-elect defined in Article 51 of the RA Constitution and the maximum term for cancelling results of Presidential elections, it becomes obvious that such situation couldn't arise.

Such situation couldn't arise in case of new or extraordinary elections of the President of the Republic. Though, according to Article 51 of the RA Constitution the President of the Republic elected by new or extraordinary elections shall take office on the twentieth day following the elections, and the results of the elections could be declared invalid no later than 24 days after voting, Paragraph 5 of the above-mentioned Article constitutes that the terms defined in that Article shall be calculated starting from the moment the court decision comes into force.

According to Article 63 of the RA Constitution the newly elected National Assembly`s term of office shall begin at the moment when the National Assembly convenes for its first sitting and according to Article 68 the first session of a newly elected National Assembly shall convene on the third Thursday following the election of at least two thirds of the total number of Deputies.

Taking into account the fact that disputing CEC`s decision on electing PM's by proportional system and TEC`s decision on electing an PM by majoritarian system doesn't automatically lead to suspense of those decisions, a situation is possible to emerge, where the results of elections are cancelled after office is taken.

Such situation could arise also in case of declaring the local self-government elections invalid either.

In such situation the invalidation of the results of elections leads to termination of the PM authorities.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?
2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

During 1996-2008 the Constitutional Court has examined 34 cases on challenging electoral results, including:

- 4 cases concerning the electoral results of the RA Presidential elections,
- 3 cases concerning the electoral results of the National Assembly by proportional system,
- 27 cases concerning the electoral results of the National Assembly by majoritarian system.

The electoral results have been cancelled by the Constitutional Court in 5 cases. All 5 cases concern to the electoral results of elections of the National Assembly by majoritarian system.

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 63 by its 21.06.1999 decision CCD-159. The Constitutional Court has found, that the decision adopted by the Regional Electoral Commission on the summarizing of the electoral results in constituency No. 63 has not been spelled out unambiguously and could not give good grounds for the CEC to declare the candidate who collected more votes than other contenders as elected to the National Assembly and to issue a membership certificate for him to the National Assembly.

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 56 by its 22.06.1999 decision CCD-161. The

reason for cancellation of electoral results was the fact that the number of inaccuracies was higher than the difference in ballots cast for the candidates who got the best and second best results in the given constituency: in a situation like this it was impossible to identify the winning candidate.

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 05 by its 20.06.2000 decision CCD-236. The Constitutional Court particularly has found that there were such violations of the RA EC in the electoral precincts, which prevent the creation of necessary and sufficient preconditions for elections in accordance with democratic principles and for full protection of electoral right of citizens.

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 67 by its 29.06.2002 decision CCD-367. The Constitutional Court found that the massive violations of the requirements of the EC that had occurred in the process of the organization and running of the elections, which had affected the outcome of the elections, showed that the electoral commissions had disregarded the observations and decisions made on the results of previous elections (including decisions adopted by the Court). During the organization and conduct of the additional elections in the constituency in question, the requirements of Articles 9(4) (drawing up and administration of voter lists), 11(3) (requirements with respect to voter lists), 13(2) (providing voter lists to the precinct electoral commissions), 42(11) (powers of the constituency electoral commission) and 50(2) of the EC (preparation for voting) and other necessary preconditions had not been met for holding the elections in accordance with the requirements of http://codices.coe.int/cgi-bin/om_isapi.dll?clientID=249035&hitsperheading=on&infobase=codices.nfo&jump=ENG-ARM-A-3&softpage=Document42_-_JUMPDEST_ENG-ARM-A-3 Article 3 of the Constitution (concerning electoral rights and the principle of holding elections/referenda).

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 50 by its 16.06.2003 decision CCD-425. The Constitutional Court found that the precinct electoral commission, in violation of Article 60 of the Electoral Code and relevant decision of the Central Electoral Commission, had not properly prepared the protocol of summarization of voting results. That being so, the Constitutional Court found that it created a suspicion concerning the legality of the summarization of the voting results in that precinct and amounted to a basis for declaring the official number of cancelled ballot papers in the precinct and in the whole constituency unreliable. Bearing in mind that in Precinct no. 1551 the difference in the votes cast for the first two candidates was 94, the Constitutional Court held, that had the 151 uncancelled ballot papers been actually cancelled and entered into that precinct's summarization protocol as cancelled ballot papers, it would have led to a situation, where it would have been impossible to determine the elected candidate.

The Constitutional Court has cancelled the electoral results of National Assembly elections by majoritarian system in constituency No. 16 by its 01.07.2003 decision CCD-434. Estimating the factual difference between the ballots cast for the applicant candidate and the elected candidate, the number of inaccuracies and the voting results in 3 electoral princincts, which have been recognised as unreliable, the Constitutional Court has found, that it was impossible to determine the elected candidate.

AUSTRIA / AUTRICHE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The Austrian Federal Constitution (B-VG) provides for the jurisdiction of the Constitutional Court to pronounce upon applications against certain electoral results in Article 141. This jurisdiction of the Constitutional Court refers to elections of the Federal President, to elections to representative bodies (Parliament, regional parliaments, municipal councils) or the European Parliament (as long as this relates to a member of the Austrian Republic), to the constituent authorities of statutory professional associations, or to State Governments or municipal authorities entrusted with executive power.

An application under Article 141 Federal Constitution may refer to either the results of the election or to a ruling that concerns the results or the procedure of the election. An application for a challenge must be filed within four weeks following the declaration of the election results or the delivery of the ruling. Any kind of illegality is sufficient for an application to challenge electoral results. However, the cancellation of electoral results can only be pronounced, if the following two criteria are met: proof of the alleged illegality; and a possible influence of the illegality on the electoral results. Thus, an election cannot be annulled based on a case of illegality that could not possibly have influenced the result, no matter how serious the illegality was by itself.

The legal basis of applications against electoral results is found in the Austrian Constitution, although there are additional legislative provisions concerning applications in electoral matters in further detail (Constitutional Court Act, electoral codes).

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

A cancellation can only be pronounced by the Constitutional Court in cases of illegality that was able to influence the results of the election. Thus, the cancellation is a possible, but not a compulsory consequence of a violation of law.

Notably, the Constitutional Court only takes into account the alleged illegality that is subject to the original application, but not illegalities that might become evident during the procedure, i.e., illegalities that the applicant himself was unaware of.

3. What kind of contravention of the law can serve as a basis for cancellation?

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures)?

Due to the fact that the challenge of electoral results may be based on every kind of illegality, it is possible that the established non-compliance with eligibility criteria can serve as a basis for cancellation, as long as the illegality was proven and was able to influence the electoral results.

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b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

Contravention of electoral laws and regulations can lead to cancellation of electoral results, provided that it was proven, and that its ability to influence the electoral results was established by the Constitutional Court. Such cases are often established by illegal actions and decisions by the election administration (e.g. failures in establishing the electoral register, or the absence of a voting booth).

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

In principle, only contraventions of electoral regulations may lead to a cancellation. However, contraventions of other laws may lead to cancellation of the election result if the election regulations and other electoral rules are infringed by this act as well.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Activities by any party can lead to cancellation, as long as they are associated with an illegality of the election or its procedure. In most cases, however, contraventions to the law capable of establishing an illegality of the election and its procedure are committed by the candidates themselves, or by the election administration. Contraventions of media (e.g. to the Media Act) do not lead to a cancellation of an election.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law or the entire result of the elections?

In the case that the Constitutional Court pronounces the cancellation of electoral results, there are two possibilities: the Constitutional Court may pronounce the invalidity of the election procedure as a whole; or the Court may pronounce only the partial invalidity of the election procedure. This depends on whether the appellant has claimed either the invalidity of the election procedure as a whole, or the partial invalidity in the application. The Constitutional Court is bound to the appellant's application in this regard. Thus, the Constitutional Court cannot pronounce the invalidity of the entire electoral procedure, if the appellant has only applied for a partial annulment.

Several cases can be distinguished concerning the decision of the Constitutional Court and its consequences:

The Constitutional Court may establish that a non-eligible person has been declared eligible; in this case the election of this person is invalid, whereas the electoral procedure as such remains valid. The procedure of replacement of the "wrongly" elected person depends on the electoral regulations (e.g. s. 106 seq. Code of Election to the National Council - *Nationalratswahlordnung*).

In case of the unjustified denial of the eligibility of a person, the Constitutional Court has to pronounce whether the election of another person has thereby become invalid or not. This may result in announcing the invalidity of the election of the latter person (§ 70 Abs 3 Constitutional Court Act).

Every other alleged illegality - depending on its influence on the electoral results - may lead to the entire or partial invalidity of the electoral procedure. Only those parts of the election may be invalidated that may have been influenced by the alleged illegality.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The candidate concerned is not excluded from standing for the repeated elections, as long as he or she is lawfully eligible for this repeated election.

In general, both the right to vote and the right to be elected may only be denied in case of being convicted to more than one year of imprisonment by a national court for intentionally committed criminal actions (Article 26 Federal Constitution). Both rights are re-granted after a time period of six months (the time period begins after the execution of the sentence).

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

There is no formal act of certification of electoral results in Austria.

It depends on the different electoral codes which authority is competent to proclaim the electoral results.

In case of elections to the National Council, certain parts of the results, as well as the final result, have to be proclaimed by the general election administration (ss. 105, 108 Code of Election to the National Council). Within three days of proclamation, the representative of a participating party has the right to challenge the electoral results with a view to the numeric determination by the election administration.

The Constitutional Court is the only competent authority to decide on individual applications alleging the illegality of the election.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No court is involved in proclaiming the election results. The Constitutional Court is the only competent Court to decide on applications against electoral results listed in Article 141 Federal Constitution.

3. Is there a specific body in charge of the control of finance in the electoral field?

There is no specific body in charge of the control of finance in the electoral field in Austria.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

The Constitutional Court is the exclusive competent body for deciding on complaints against election results, based on an alleged illegality concerning election results listed in Article 141 Federal Constitution.

According to the principles of the Austrian Constitution, results of elections that are not listed in Article 141 Federal Constitution, may be challenged in an administrative way that involves the possibility of re-examination by Courts of Public Law.

5. Who may appeal the decision on certifying electoral results?

With a view the challenge of electoral results of elections listed in Article 141 Federal Constitution, there are various possible applicants depending on the election in question:

- Applications against electoral results of Regional Governments have to be supported by a tenth of all members of the Regional Parliament, at least by two members.
- Applications against electoral results of a municipal council have to be supported by a tenth of all members of the municipal council; but at least by two members.
- Applications against electoral results of the Federal President, of representative bodies, of the European Parliament, the constituent authorities of statutory professional associations, or municipal authorities entrusted with executive power (with exception of parish councils, as mentioned above) have to be supported by parties that presented their candidates in due time to the election administration. If the presentation of candidates is not required according to the election regulations, the authority to challenge election results arises from the election regulations.
- A person who alleges the unjustified denial of his or her eligibility in the election procedure has the right to challenge the electoral results.

6. What is the time limit for appealing the decision on certifying electoral results?

The application against the election results has to be lodged within four weeks of completion of the election procedure (s. 68 Constitutional Court Act). The election procedure is considered completed by the last official proclamation referring to the electoral results.

Concerning the elections to the European Parliament, the appeal has to be lodged within one week of publishing/proclamation by the general election administration (s. 80 Code of Election to the European Parliament).

Concerning the elections to the Federal President, the appeal has to be lodged within one week of proclamation in “Amtsblatt zur Wiener Zeitung” by the general election administration (s. 21 Code of Election of the Federal President).

7. Is there a time limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

In the case of challenges to electoral results of the European Parliament the Constitutional Court has to make a decision within four weeks of lodging the appeal (s. 80 Code of Election to the European Parliament).

Concerning the elections to the Federal President, the Constitutional Court has to make a decision within four weeks of lodging the appeal (s. 21 Code of Election of the Federal President).

In other cases of challenge of electoral results there is no time limit set up for the Constitutional Court to take a decision on the application.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The appellant has to substantiate the alleged illegality *(“Substantierungspflicht”)*. If the appellant fails to do so, the Constitutional Court dismisses the appeal.

As the parties have to substantiate the alleged illegality, they usually present their evidence – however, the Constitutional Court has the authority to collect evidence as well.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling station?

The alleged illegality establishes either an entire or partial invalidity of the electoral procedure, as mentioned above. It depends on which parts of the electoral procedure the alleged illegality could have had influence on. Therefore, it is possible that the Constitutional Court invalidates only the results of the concerned polling station.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Rules of proceedings or election regulations may provide for the possibility to cancel the result with a view to an elected candidate already installed under certain circumstances (e.g. s. 2 Rules of Parliament). However, theses decisions are not necessarily the consequence of the cancellation of an election.

It depends on the rules of proceedings, or the election regulations, which body is competent to file an application. The Constitutional Court decides on applications by representative bodies for unseating one of its members ("loss of seat" - *Mandatsverlust;* Article 141 para. 1 subpara. c Federal Constitution), and upon applications by constituent authorities of statutory professional associations for unseating one of its members (Article 141 para. 1 subpara. d Federal Constitution).

In the case that the application for unseating is pronounced by another authority by way of individual decision, the Constitutional Court decides on applications against this ruling (Article 141 para. 1 subpara. e Federal Constitution). Due to the effect *ex nunc* of the Constitutional Court's decision on the loss of seat of an elected candidate under Article 141 para. 1 subpara. c and d Federal Constitution, the mandate persists, and the replacement of the candidate is governed by the rules of proceeding of the concerned body.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

The cancellation of electoral results, its procedure and its constitutional framework have been subject to numerous decisions by the Constitutional Court.

In many cases, the Constitutional Court confirmed the alleged illegality itself, but was unable to confirm a possible influence of the illegality on the election result.

In the last 30 years, there have been some 250 cases concerning the cancellation of electoral results, its procedure and its constitutional framework.

2. If so, are there any cases which resulted in cancellation? If yes, what where the reasons for cancellation?

There have been numerous decisions that resulted in cancellation of election results, including the following:

VfGH 02.12.2000, WI-5/00
The Constitutional Court pronounced the cancellation of the election of the municipal council, because of lack of (additional) ballot papers in the voting booth.

VfGH 16.10.1999, WI-5/99; WI-6/99; WI-7/99
The Constitutional Court upheld the complaint of invalidation of the election, because there was no legal termination of the electoral procedure by the election administration, and the examination of validity of the ballot papers was carried out according to different criteria by the election administration.

VfGH 28.06.1996, WI-2/96
(1) The use of ballot papers in one electoral ward that were valid exclusively in a different electoral ward, (2) the admission of a person not registered in the electoral register to elections in that place, and (3) the revocation of one ballot paper, led to the pronouncement of the partial invalidity of the election to the National Council by the Constitutional Court.

VfGH 02.10.1986, WI-17/85
The examination of the ballot papers carried out by an unauthorized person led to the declaration of invalidity of the election procedure concerning a single electoral ward.

AZERBAIJAN / AZERBAIDJAN

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Article 170 of the Electoral Code of Azerbaijan specifies the following:
170.1. The Constituency Election Commission shall consider Parliamentary elections in a single-mandate constituency to have failed, if an equal number of votes are cast for the registered candidates.
170.2. The Constituency Election Commission or the Central Election Commission shall consider the elections in the single-mandate constituency to be invalid, in the following circumstances:
170.2.1. if violations occurred in the election constituency during the conduct of voting or during the determination of the election results, that make it impossible to determine the voters' will.
170.2.2. if the number of election precincts, during the elections in a single-mandate constituency, where voting results are considered invalid or where they are cancelled is more than two fifths of all the precincts in the same election constituency, provided that the number of registered voters in the election precincts exceeds ¼ of all voters registered in the constituency; or
170.2.3. on the basis of a court decision.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

According to Article 113.1 of the Electoral Code if a candidate, registered candidate, political party, bloc of political parties, or referendum campaign group violates the provisions of this Code, the relevant election commission shall warn the candidate, registered candidate, political party, bloc of political parties, or referendum campaign group through the mass media, providing the voters are informed. The election commission shall have the right to make a decision on the following issues irrespective of whether or not a complaint considering Article 112.2[1] of this Code was made about them:

- refusal of registration of a candidate or referendum campaign group;
- deregistration of a registered candidate or of a referendum campaigning group in the cases stipulated under Articles 73 and 73-1 of this Code;
- invalidation of the election of a candidate; or
- cancellation of a decision on voting results or election returns.

3. What kind of contravention of the law can serve as a basis for cancellation
   a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?
   b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?
   c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

[1] **112.2 -** The persons indicated in Article 112.1 of the Electoral Code may submit their complaints to the relevant superior election commission

170.2. The Constituency Election Commission or the Central Election Commission shall consider the elections in the single-mandate constituency to be invalid, in the following circumstances:
170.2.1. if violations occurred in the election constituency during the conduct of voting or during the determination of the election results, that make it impossible to determine the voters' will
170.2.2. if the number of election precincts, during the elections in a single-mandate constituency, where voting results are considered invalid or where they are cancelled is more than two fifths of all the precincts in the same election constituency, provided that the number of registered voters in the election precincts exceeds ¼ of all voters registered in the constituency;
170.3. If voting in a single mandate election constituency is considered invalid due to the miscount of ballot papers, the Central Election Commission shall make a decision on recount of votes. In such a case, the recount shall be provided by the relevant constituency election commission in a manner determined by the Central Election Commission.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Both can be taken into account.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

Cancellation shall affect only the result of a candidate.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

This question is not clear.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

According to Articles 86 and 102 of the Constitution of Azerbaijan results of both Presidential and Parliamentary elections shall be approved by Constitutional Court of Azerbaijan Republic.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

See above.

3. Is there a specific body in charge of the control of finance in the electoral field?

Article 97.1 of the Electoral Code states that a supervisory and audit service shall be established in the Central Election Commission and Constituency Election Commissions to ensure the control of expenditure of funding allocated to election commissions for election purposes, correct registration, and correct use of election funds and sources of funding.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

Articles of the Electoral Code specify:

112.2. Persons indicated in Article 112.1[2] of this Code may submit their complaints to the relevant superior election commission.
112.3. If complaints of the persons indicated in Article 112.1 are initially not considered by a superior election commission, such persons may consequently file complaints on the decision or the action (inaction) of the constituency election commission to the Central Election Commission, and on the decision or the action (inaction) of the Central Election Commission to the Court of Appeal.

5. Who may appeal the decision on certifying electoral results?

Article 112.3 of the Electoral Code states that if complaints of the persons indicated in Article 112.1 are initially not considered by a superior election commission, such persons may consequently file complaints on the decision or the action (inaction) of the constituency election commission to the Central Election Commission, and on the decision or the action (inaction) of the Central Election Commission to the Court of Appeal.

6. What is the time-limit for appealing the decision on certifying electoral results?

According to Article 112.11 of the Electoral Code courts should consider complaints concerning decisions of election commissions within 3 days (if no lesser timeline is identified by this Code). A complaint on the court decision may be filed with a superior court of instance within 3 days.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

According to Article 112.11 of the Electoral Code courts should consider complaints concerning decisions of election commissions within 3 days (if no lesser timeline is identified by this Code). A complaint on the court decision may be filed with a superior court of instance within 3 days.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

According to Article 112 of the Code the evidence shall be presented by the parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

According to legislation only those of the concerned polling stations shall be cancelled.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

[2] **Article 112.1 -** Voters, candidates, registered candidates, political parties, blocs of political parties, referendum campaign groups, agents of registered candidates, political parties, blocs of political parties, referendum campaign groups, observers, and election commissions may file complaints about decisions and actions (lack of actions) which violate citizens' right to vote within 3 days of the date the decision is published or made, or the date actions (lack of actions) occurred, or the interested person is informed about it.

Article 175 of the Electoral Code specifies the following:

175.1. In the case grounds specified in Article 89.1.1[3] of the Constitution of the Republic of Azerbaijan exist, the decision on disenfranchisement of a deputy of his/her mandate shall be adopted by the Constitutional Court.
175.2. In the case grounds specified in Article 89.1.3 of the Constitution of the Republic of Azerbaijan exist, the decision on disenfranchisement of a deputy of his/her mandate shall be adopted by the relevant court.
175.3. In the case grounds specified in Articles 89.1.2, 89.1.4 and 89.1.5 of the Constitution of the Republic of Azerbaijan exist, the decision on disenfranchisement of a deputy of his/her mandate shall be adopted by the Central Election Commission. The decision of the Central Election Commission may be appealed in the relevant court.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Decision of the Constitutional Court of 22 November 2000 "On the results of elections of Deputies to the Milli Majlis (Parliament) of Azerbaijan Republic held on 5 November 2000".

Decision of the Constitutional Court of 1 December 2005 "Concerning the results of elections to the Milli Majlis (Parliament) of Azerbaijan Republic of the third convocation, held on 6 November 2005".

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

Electoral results in some electoral districts were cancelled due to violations of electoral procedures.

[3] Deputy of Milli Majlis of Azerbaijan Republic shall lose his/her mandate in the following cases:
1. whenever during the elections there was falsification in calculation of votes;
2. on giving up the citizenship of the Azerbaijan Republic or accepting other citizenship;
3. on commitment of crime and whenever there is valid verdict of law court;
4. on taking position in state bodies, post in religious organizations, involvement in business, commercial or other paid activity (except scientific, pedagogical and creative activity);
5. on a voluntary basis.

BELGIUM / BELGIQUE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. **Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?** No.

2. **Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases? There are no clear rules on this issue** (see annex).

3. **What kind of contravention of the law can serve as a basis for cancellation**
   a) **Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?** Yes.
   b) **Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?** –
   c) **Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?** –

There are no clear rules on this issue (see annex).

4. **Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?** No.

5. **Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?**

There are no clear rules on this issue (see annex).

6. **If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?**

There are no clear rules on this issue (see annex).

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. **Which authority is competent to certify the electoral results? The parliamentary Assembly itself certifies the electoral results** (see annex).

2. **If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?** No.

3. **Is there a specific body in charge of the control of finance in the electoral field?** Parliamentiary control commission (see annex).

4. **What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?** The Parliamentary Assembly itself.

5. **Who may appeal the decision on certifying electoral results?**

There is no appeal possible against the certification of election results.

6. **What is the time-limit for appealing the decision on certifying electoral results?** Not applicable.

7. **Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?** Not applicable.

8. **Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?** Not applicable.

9. **If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?**

There are no clear rules on this issue (see annex).

10. **May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?**

There are no clear rules on this issue (see annex).

C. Case-law

1. **Is there any case-law concerning the cancellation of electoral results?** No.

2. **If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?** Not applicable.

Annexe

L'article 48 de la Constitution belge énonce que "chaque Chambre (du Parlement fédéral) vérifie les pouvoirs de ses membres et juge les contestations qui s'élèvent à ce sujet." L'article 231 du Code électoral précise que "la Chambre des représentants et le Sénat prononcent seuls sur la validité des opérations électorales en ce qui concerne leurs membres et en ce qui concerne les suppléants" et qu' "en cas d'annulation d'une élection, toutes les formalités doivent être recommandées, y compris les présentations de candidats." Toute réclamation contre l'élection doit être faite avant la vérification des pouvoirs (article 232 Code électoral).

Pour la vérification des pouvoirs des membres des parlements des entités fédérées (les Communautés et Régions), des dispositions analogues à l'article 48 de la Constitution existent. Il s'agit notamment

- pour le Parlement flamand, le Parlement de la Communauté française et le Parlement de la région wallonne, de l'article 31, paragraphe 3 de la loi spéciale du 8 août 1980 de réformes institutionnelles,
- pour le Parlement de la Communauté germanophone, de l'article 50 de la loi du 6 juillet 1990 réglant les modalités de l'élection du Parlement de la Communauté germanophone,
- pour le Parlement de la région de Bruxelles-Capitale, de l'article 22, paragraphe 3 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises.

Il résulte de ces dispositions qu'en Belgique, chaque Assemblée parlementaire vérifie seule et en dernier ressort, les pouvoirs de ses membres. La vérification des pouvoirs a un double objet : d'une part, contrôler si l'élu remplit toutes les conditions d'éligibilité et, d'autres part, vérifier la régularité des opérations électorales. L'exercice de cette double compétence est réglé, plus en détail par le règlement de chaque assemblée. La nature de la mission ainsi confiée à chaque assemblée apparaît par essence juridictionnelle et non législative. Elle tranche des litiges ayant pour objet un droit politique : celui d'exercer un mandat parlementaire.

Vérifier les pouvoirs des parlementaires, c'est s'assurer qu'ils ont été élus en toute légalité. L'opération conduit parfois à un recomptage des bulletins de vote ou à de nouveaux calculs électoraux.

C'est une fonction qui revient en propre à chaque Assemblée legislative, sans ingérence d'une autre Assemblée, ni du pouvoir exécutif ou du pouvoir judiciaire. Elle intervient juste après les elections. Elle doit être exercée dans tous les cas, qu'il y ait eu ou non des reclamations[4].

Les juridictions, tant bien la Cour constitutionnelle[5], que la Cour de Cassation[6] et le Conseil d'Etat[7], se déclarent sans compétence pour connaître des questions relatives aux résultats des élections législatives. Une loi qui attribuerait à des bureaux électoraux ou à des juridictions la compétence de vérifier les pouvoirs des parlementaires élus, serait contraire à l'article 48 de la Constitution. Par contre, l'article 48 de la Constitution ne s'oppose pas à ce que la loi confère à des autorités autres que les Chambres législatives le pouvoir de procéder à une vérification de l'éligibilité des candidats préalablement aux élections législatives. En vue d'empêcher les candidatures de ceux qui, en violation de dispositions légales d'ordre public, se présenteraient aux suffrages des électeurs, le législateur a introduit dans le code électoral diverses

[4] M. Verdussen, La Constitution belge. Lignes & entrelignes, 2004, p. 157.
[5] Cour Constitutionnelle, n° 20/2000, 23 février 2000; n° 81/2000, 21 juin 2000.
[6] Cass. 18 octobre 1995, J.L.M.B., 1996, 1078-1080.
[7] Conseil d'Etat, 12 mai 1982, De Laet, n° 22.250, R.A.A.C.E., p. 808; 16 juin 1995, Féret et Nols, n° 53.793; 8 mai 1995, Féret, n° 53.170.

dispositions instaurant un contrôle préventif de l'éligibilité des candidats aux élections. Ce contrôle est confié aux bureaux électoraux principaux de la circonscription électorale (articles 119 à 125 du Code électoral) contre les décisions desquelles un recours est possible devant la Cour d'appel du ressort (articles 125bis à 125 quarter du Code électoral).

Dans la plupart des Etats, le règlement du contentieux des élections législatives relève soit du pouvoir judiciaire, soit d'une juridiction spéciale, soit d'une autorité électorale nationale. Le système belge, emprunté par le Constituant de 1831 au droit anglais de l'époque, est contestable : la Chambre procède au contrôle avant que les pouvoirs de ses membres aient été vérifiés pour l'ensemble de l'assemblée; ses membres sont à la fois juges et parties ; ils ne sont pas toujours qualifiés techniquement pour résoudre des problèmes juridiques qui peuvent être délicats ; enfin, leur décisions risquent d'être fondées plus sur des considérations d'opportunité politique que sur des motifs juridiques[8].

"Aujourd'hui, la procédure de vérification des pouvoirs fait l'objet de deux types de critiques. L'on s'interroge, d'abord, sur les modalités de procédure. L'exercice équitable d'un tel contrôle ne devrait-il pas être garanti par certaines règles procédurales (audition des personnes concernées, publicité des audiences et des sentences, motivation formelle des décisions, voies de recours, etc.) ? D'autres critiques sont plus radicales. Elles dénoncent une confusion des responsabilités, les parlementaires faisant figure tout à la fois de contrôleurs et de contrôlés, de juges et de parties. Elles jettent ainsi un doute sur l'impartialité et les aptitudes des parlementaires pour exercer un tel contrôle. En somme, elles mettent en cause le principe même d'un contrôle parlementaire sur les élections" [9].

Les suggestions de réformes et les critiques de lege ferenda se sont faites nombreuses pour avancer l'idée de confier à un organe indépendant cette tâche délicate.

Selon certains auteurs, se tourner vers la création d'un organe juridictionnel reporterait toutefois la difficulté que, nommés par le pouvoir exécutif, ces magistrats auraient pu permettre à ce dernier d'exercer, par interposition, un contrôle sur le Parlement[10]. D'autres auteurs estiment que cette réforme paraît d'autant moins nécessaire actuellement qu'"en réalité, les abus paraissent bien avoir disparu depuis longtemps, et l'on peut présumer que s'ils devaient se reproduire, ils ne manqueraient pas d'être sanctionnés par l'opinion publique"[11].

Dans très peu de cas, des doutes ont plané sur des décisions prises par un parlement en matière de vérification des pouvoirs d'un de ses membres.[12] L'autonomie parlementaire en matière de contrôle des conditions d'éligibilité et de vérification de la régularité des opérations électorales et le fait qu'en pratique il n'y a pas eu d'exemples d'élections annulées, depuis un temps immémorial, explique l'absence d'un droit élaboré en la matière.

En matière de réglementation des dépenses électorales, la loi du 4 juillet 1989 a créé une commission de contrôle, composée paritairement de membres de la Chambre des Représentants et du Sénat, dont le rôle est de constater un dépassement de dépenses autorisées. Dans ce cas, le parti politique perd, pendant quatre mois au maximum, le droit de dotation établie par la loi. L'article 14 de la loi prévoit, en outre, que des sanctions pénales peuvent être prises en cas de violation de la réglementation sur les dépenses électorales.

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[8] J. Velu, Droit public, tome I, Le statut des gouvernants, Bruxelles, Bruylant, 1986, p. 528-529, n° 350.
[9] M. Verdussen, La Constitution belge. Lignes & entrelignes, 2004, p. 157.
[10] O. Orban, Le droit constitutionnel de la Belgique, t. II, Les pouvoirs de l'Etat, Liège, Dessan, 1908, p. 471.
[11] J. Velu, Droit public, tome I, Le statut des gouvernants, Bruxelles, Bruylant, 1986, p. 529, n° 350.
[12] Voir Ann. Parl. Conseil culturel de la Communauté culturelle francophone, 1978-1979, 18 janvier 1979, p. 3-9 dans l'affaire Bernaerts et Ann. Parl. Conseil de la Region wallonne, 1985-1986, 27 novembre 1985, 2-18, dans l'affaire Van Overstraeten.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTION RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which election results have to be or may be cancelled?

In the legal system of Bosnia and Herzegovina, the issue of elections is governed by the Election Law of Bosnia and Herzegovina. Article 2.10 of the said Law, stipulating the conditions under which the election results may be cancelled, reads:

> "The Election Commission of Bosnia and Herzegovina may annul elections in an electoral unit or at an individual Polling Station if it is established that irregularities occurred, during the voting or counting of ballots, which may affect the election results."

In order to fully comprehend the election system established in Bosnia and Herzegovina, it must be underlined that the BiH Central Election Commission may cancel election results only prior to the announcement of final election results. Namely, political entities are granted the mandate only after the announcement of final election results. Therefore, the cancellation of election results may occur only during the process of establishing final election results. Following the announcement of final election results, the mandates of certain political entities may be cancelled in specific cases, as mentioned at the end of this paper.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

A mandatory cancellation is stipulated by the Election Law of Bosnia and Herzegovina. The quoted provision of the Election Law obliges the BiH Central Election Commission to cancel elections in an electoral unit or at an individual Polling Station if it is established that irregularities occurred, during the voting or counting of ballots, which may affect the election results. Hence, it may be concluded that a mandatory cancellation applies in case where the competent body establishes a breach of the Election Law.

3. What kind of contravention of the law can serve as a basis for cancellation?

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

In the legal system of Bosnia and Herzegovina, any of the three cases mentioned above may serve as a basis for cancellation of election results. However, in case that non-compliance with eligibility criteria is established (including the insufficient number of signatures), a political party or independent candidate shall be excluded from the elections when applying for a certificate of eligibility with the competent authority. Therefore, in case that the said breach is established, the entity cannot even launch a pre-election campaign, *i.e.* the entity cannot be elected and, consequently, the cancellation of election results at a later stage cannot occur.

The breaches mentioned under b) and c), if established, may result in cancellation of election results, too, and this is to be established in the course of procedure preceding the announcement of final election results. At this stage of the procedure, complaints of law violation may be filed with the BiH Central Election Commission, which is obliged to resolve

such complaints. The Court of BiH is competent to decide such complaints in the appellate proceedings. Therefore, the final election results can be announced only after the final decisions on all complaints of law violation have been taken.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Taking into account the relevant provisions, regulating this area, first and foremost, the candidates' activities may lead to the cancellation of election results. The media conduct towards a specific candidate cannot result in the cancellation of election results. However, a sanction can be imposed with regard to the activities of members or sympathisers of a specific political party or persons involved in the administration of the election.

Pursuant to the Instruction on adjudication of complaints and appeals filed with the BiH Central Election Commission, Article 7(1) stipulates that the BiH Central Election Commission shall have the first instance competence to decide on the complaints and appeals related to a violation of Article 7.3 paragraph (1) item 7 and Article 7.4 paragraph (1) item 3.

Article 7.3 paragraph (1) prescribes that candidates and supporters of political parties, lists of independent candidates, and coalitions, as well as independent candidates and their supporters, and election administration officials are not allowed, *inter alia*, to use language which could provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, video types, SMS text messages or internet communications, or any other materials that could have such effect (item 7).

Article 7.4 paragraph (1) stipulates that commencing twenty-four (24) hours prior to opening of the Polling Stations, and until they close, political parties, coalitions, list of independent candidates and independent candidates are prohibited from engaging in public political activity, which includes but is not limited to making use of the local or international media for the purposes of influencing voters (as stipulated in item 3 of the said Article).

(2) The means of communications mentioned under item 3 paragraph 1 of this Article include the instruments producing audio, video, or text content. These instruments include but are not limited to Radio and Television programs, print media, internet, SMS text messages or video messages sent by cell phones, *etc*.

Article 11 of the Instruction on adjudication of complaints and appeals stipulates sanctions that the BiH Central Election Commission may impose when deciding on complaints or appeals. Article 11, paragraph 1 provides for that, when deciding *ex officio* or on complaints and appeals, the BiH Central Election Commission may order the election commission, the voters register centre or the polling station committee to impose the following measures and sanctions stipulated by the Election Law of BiH, which include, *inter alia*, de-certification of a political party, coalition, list of independent candidates or independent candidate, as prescribed in Article 11, paragraph 1, item d), and when the BiH Central Election Commission decides on the complaint regarding a violation pursuant to Article 7.4 paragraph (1) item 3 and the rules of Chapter 16 of the Election Law of BiH, it may fine the political subject in an amount not exceeding 10.000 Convertible Marks, as prescribed in Article 11, paragraph 2.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law or the entire result of the elections?

As stated, the entire process of establishing the lawfulness in the election process shall be conducted up to the final election results certification. If during that stage of the procedure, a

violation of the law concerning one of the candidates is found, the candidate concerned shall be removed from the list as a consequence thereof. If, nevertheless, a violation of the Election law by a party as a political entity is found, a decision can be made so as to eliminate the party from the election process.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Article 14 paragraph 1 of the Election Law of Bosnia and Herzegovina stipulates that, after the cancellation of the election results, repeated elections are conducted using the same candidate lists and the eligible voters list from the Central Voters Register which were used in the annulled elections.

B. PROCEDURE FOR THE CANCELLATION OF ELECTION RESULTS

1. Which authority is competent to certify the election results?

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, to verify that the elections were conducted in accordance with the Election Law and to publish results of all direct and indirect elections set forth by this Law. The Central Election Commission of Bosnia and Herzegovina is an independent body, which reports directly to the Parliamentary Assembly of Bosnia and Herzegovina, and which derives its authority directly from the Election Law.

2. If the competent authority certifying the election results is not a judicial body, is a court involved in the certifying procedure?

Pursuant to the Rulebook on the Announcement of Preliminary Results and Certification of the Election Results (*Official Gazette of BiH*, No. 53/04), final confirmation, certification and announcement of election results in official gazettes shall take place after the adoption of a decision by the Appellate Division of the Court of Bosnia and Herzegovina, on complaints submitted against the election results referred to in Article 7 of this Rulebook, in accordance with the order laid down in Article 4 paragraph 3 of this Rulebook. It follows from the said provision that the Court of BiH has appellate jurisdiction in the area of elections, which is rare, given that the Court of BiH has no appellate jurisdiction over decisions of ordinary courts in the entities or in the Brcko District of BiH. Thus, the Election Commission confirming the election results is not a judicial authority. However, the Court of BiH is involved in the confirmation procedure only in the event that a complaint against the election results is filed.

3. Is there a specific body in charge of the control of finances in the area of elections?

In regards to finances and their control in the election process, it is necessary to distinguish between the funding of the election process itself and funding of political entities participating in the election process. Article 1.2 of the Election Law of Bosnia and Herzegovina stipulates provisions related to the funding of the election process, according to which the Central Election Commission is a body in charge of control of funding in the area of elections in Bosnia and Herzegovina. The funding of political entities is stipulated by the Law on Funding Political Parties, which contains provisions on manner of funding, sources, money limits, donations etc. The Central Election Commission shall control the enforcement of this law and is competent to adopt decisions sanctioning political parties should they act contrary to the provisions of the said law. Sanctions are monetary in nature and political parties have the right to lodge an appeal with the Court of Bosnia and Herzegovina against the decision of the Central Election Commission.

4. What is (are) the competent body (bodies) for deciding on appeals against the certification of election results?

The Central Election Commission of BiH has a first-instance competence to decide on complaints lodged over the violations of the rules of the election process, election rights etc.

The second-instance competence lies with the Appellate Division of the Court of Bosnia and Herzegovina, which is competent to decide on appeals against the decisions of the Central Election Commission of BiH.

5. Who may appeal the decision on certifying electoral results?

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 within 48 hours following the violation committed. 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.

6. What is the time-limit for appealing the decision on certifying election results?

The answer to this question is contained in the answer to the question number 5.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal against the decision on certifying election results?

The Central Election Commission of BiH, as a first-instance appellate body, has a duty to consider the complaint and appeal and deliver a decision within 48 hours following the expiry of the time-limit set forth in Article 6.3 paragraph 3 of the Election Law. In accordance with Article 6.9 paragraph 3 of the Election Law, the Appellate Division of the Court of BiH, when deciding on the application of the Election Law, has a duty to deliver a decision on the appeal within 3 days from the day of receiving the appeal.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

As to the procedure before the Central Election Commission, Article 6.7 of the Election Law o BiH provides that “when adjudicating a complaint or an appeal, the Election Commission of Bosnia and Herzegovina may proceed on the facts established or conduct hearings. The Election Commission of Bosnia and Herzegovina may allow parties to present additional evidence or base their decisions on the written record of the lower-instance commissions”.

As to the procedure before the Court of BiH, the Appellate Panel of the Court of BiH is competent to conduct proceedings on complaints relating to the alleged violations of the Election Law in accordance with the principles of administrative disputes stipulated by the Law on Administrative Disputes of Bosnia and Herzegovina. That Law provides that the administrative disputes are dealt with at the sessions in camera although exceptionally a hearing may be held in cases relating to important and complex matters. In order for a case to be resolved, the Court of BiH shall request the authority whose decision is challenged to submit relevant documentation and shall, in case of failure to submit the documentation, take a decision on the basis of the case-file and arguments and documentation submitted by the plaintiff.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

According to Article 2.10 of the Election Law of BiH, only the results of electoral units or polling stations the violation refers shall be annulled.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Following the announcement of the final election results to the political entities, mandates may be cancelled (which implicitly means the cancellation of the election results of a political entity) if the Law on Conflicts of Interests is violated. That Law defines situations where an elected person (or another person) is in conflict of interests and it also provides that the Central Election Commission is competent to establish that a conflict of interests exists. The Court of Bosnia and Herzegovina is competent to deal with the appeals relating to the failure to issue a ruling on the existence of conflict of interests or appeals against the Central Election Commission's decisions on merits in relation to the existence of conflict of interests. The Law on Conflict of Interests provides that in certain cases of conflict of interests, an elected official may be sanctioned so as to be ineligible to stand for any directly or indirectly elected office for a period of four (4) years following the committed violation. This Article is interpreted in a way that an elected official who is currently holding office shall have his mandate cancelled and shall be banned from standing as a candidate for a period of four (4) years, in case of the established conflict of interests and imposition of such sanction.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results? If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

During its work relating to the local and general elections in Bosnia and Herzegovina over many years, there were some cases where the Central Election Commission cancelled preliminary elections results in certain polling stations. The reasons for canceling the results varied. However, they mostly related to the complaints against irregularities of ballot counting. We would like to reiterate that those cases did not relate to the final election results but preliminary election results, since all complaints against irregularities relating to the elections are dealt with at a stage preceding the announcement of the final results.

Within its appellate and abstract jurisdiction, the Constitutional Court of Bosnia and Herzegovina has not encountered cases relating to the cancellation of the election results. However, according to its case-law, the Constitutional Court of Bosnia and Herzegovina dealt with cases relating directly to the application of that Law during the election process. For example, in Case No. *U 13/05* relating to a request for review of the constitutionality of an Article of the Election Law relating to the issue of running for office of BiH Presidency member, the Constitutional Court of Bosnia and Herzegovina declared itself incompetent to deal with that case, since the challenged provision derived fully from Article V of the Constitution of Bosnia and Herzegovina. The Constitutional Court has concluded that the consideration of the challenged provision of the Election Law would imply a review of conformity of the constitutional provision with the provisions of the international documents relating to the human rights, and took the position that these, *i.e.* the European Convention, could not have a superior status in relation to the Constitution of BiH. In connection with this case there is Case No. *AP-2678/06* in which regard a decision was taken on dismissing the appeal of political party and a candidate

who stood for election to the position of the member of BiH Presidency from RS whose candidacy was rejected by the Central Election commission on the grounds that the said candidate declared himself as Bosniak. Article 8.1 of the Election Law of Bosnia and Herzegovina provides that *the member of the Presidency of Bosnia and Herzegovina that shall be directly elected from the territory of RS - one Serb shall be elected by voters registered to vote in the Republika Srpska.* The basis for this provision of the Election Law is provided by the Constitution of Bosnia and Herzegovina.

In Case No. *AP-952/05*, the Constitutional Court of Bosnia and Herzegovina decided on an appeal against the ruling imposing a fine by the Court of BiH and Election Council for violation of the rules of conduct during the election campaign because billboards with images of a person accused of the criminal act of war crime were displayed.

The issue of allocation of seats in House of Peoples has been raised in Appeal No. *AP 35/03*. In this case, the Constitutional Court concluded that the right to free elections under Article 3 of Protocol No.1 to the European Convention does not impose obligation on a State to introduce any specific system, nor did it provide a possibility for the appellant to complain against a certain election system regulated by the positive law in his country.

BULGARIA / BULGARIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Not in the Constitution, but in the legislation on the elections.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

In the cases of inelegibility or Incompatibility the cancellation is compulsory

3. What kind of contravention of the law can serve as a basis for cancellation

a) **Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?** Insufficient or fake signatures.

b) **Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?** Yes.

c) **Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?** Yes - In the Criminal code for fake signature, bying votes, voting without having the right to vote

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)? No.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections? It can affect the candidate's election or the whole elction as well?

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not? No.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The Constitutional Court when it concerns the President or Mp's to the Parliament of Bulgaria. In all other cases Supreme administrative court.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Courts only.

3. Is there a specific body in charge of the control of finance in the electoral field?

An Independent agency controls collecting and expenditure in the elections according to the established limits in the electoral law.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

The Constitutional or the Supreme Administrative court.

5. Who may appeal the decision on certifying electoral results?

All parties that have interest.

6. What is the time-limit for appealing the decision on certifying electoral results?

One month but no limitation for incompatibility.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

One month.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Court collects evidence ex officio but also accepts evidence from the parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

It depends what is the impact on the final election result.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Yes scheduling and holding new election.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Bulgaria des not belong to the common law legal family but to the Romano germanic civil law family but there are certain decisions that have erga omnes effect and are valid in identical cases.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

Its not possible bases on the judicial decision alone to be used as as precedent law

CROATIA / CROATIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Yes, there are such provisions. Under Article 86 of the Law on Elections for the Croatian Parliament *(Zakon o izborima zastupnika u Hrvatski sabor)*, Official Gazette, no. 116/99, 109/00, 53/03, 69/03-consolidated text of the law, 44/06, 19/07, if the State Electoral Commission, when deciding on a complaint, finds that there were irregularities that essentially influenced or could have influenced the results of the elections, it shall cancel the electoral activities and determine that these actions shall be repeated within the term that makes it possible for the elections to be held on the day they were called.

If it is impossible to repeat the cancelled activities, or if the irregularities refer to the voting procedure, and they did or could have essentially influenced the election results, the State Electoral Commission shall cancel the election and determine the term when the election shall take place.

Article 46 of the Law on the Election of the President of the Republic of Croatia *(Zakon o izboru predsjednika Republike Hrvatske)*, Official Gazette, no. 22/92, 42/92, 71/97, prescribes the same.

The same provisions on the cancellation of certain electoral activities may also be found in the laws that regulate local elections: Article 59 of the Law on the Election of the Members of Representative Bodies of the Units of Local and Regional Government *(Zakon o izboru članova predstavničkih tijela jedinica lokalne i područne (regionalne samouprave)*, Official Gazette, no. 33/01, 10/02, 45/03, 40/05, 44/05-consolidated text, and Article 88 of the Law on the Election of the Heads of Municipalities, Mayors and of the Mayor of the City of Zagreb *(Zakon o izborima općinskih načelnika, gradonačelnika i gradonačelnika Grada Zagreba)*, Official Gazette, no. 109/2007.

Beside the provisions in the electoral laws, there are also the provisions in the Constitutional Law on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*), Official Gazette, no. 99/99, 29/02 and 49/02-consolidated text, which prescribe the competence of the Constitutional Court in the control of the constitutionality and legality of the elections and in deciding on electoral disputes. Under Article 87 of this Law, the Constitutional Court controls the constitutionality and legality of elections, controls the constitutionality and legality of the national referendum and decides on electoral disputes that are not within the jurisdiction of the courts of law, acting as a court of appeal against the rulings of the competent electoral commission.

Political parties, candidates, not less than 100 voters or not les than 5 percent of the voters of the constituency in which the elections are held are authorized, under Article 88 of the Law, during the elections or not later than within the term of 30 days from publishing the election results, to request from the Constitutional Court to undertake the relevant measures in performing control of the constitutionality and legality of the elections, if they deem that electoral activities are being carried out in discordance with the Constitution and the law.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

It depends on the nature of the violation. There may be violations that do not essentially distort the purity of the election results, but on the other hand, there may be violations where the competent electoral commissions have to cancel the electoral activities concerned. This is the case when the polling commission establishes that the number of ballots in the polling box exceeds the number of voters who voted at a certain polling station. This may happen when the members of the polling commission forget to make a mark in the voting register beside the voter's name when they give him the ballot papers to vote. If this happens, it will appear that there is one ballot more in the box than the number of those who voted.

Under Article 89 of the Constitutional Law on the Constitutional Court, when the Constitutional Court finds that the participants in the elections acted contrary to the Constitution and the law, it informs the public through the media, if necessary warns the competent bodies, and in the case when the violation influenced or might have influenced the results of the elections, it annuls all or separate electoral activities and decisions that preceded such a violation.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

This may be a reason for cancellation of the election on the basis of control of the constitutionality and legality of the elections under the electoral laws and the Constitutional Law on the Constitutional Court.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

Contravention of the electoral laws may be a reason for the cancellation of the election if the contravention influenced or could have influenced the election results. It is important to say that neither the State Electoral Commission nor the Constitutional Court have the legal powers to cancel the election results if the contraventions happened in the electoral campaign. The only thing that they can do is to establish that these contraventions happened and that they were contrary to the rules of fair electoral campaigning.

c) Contravention of other laws, such as established violation of the criminal or the civil code in relation to election related activities?

Such contraventions are under the jurisdiction of courts and under the relevant regulations neither the State Electoral Commission nor the Constitutional Court are competent to decide in such cases. Their capacities are strictly electoral.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by the media or others in favour of, but without the knowledge of a candidate)?

The State Electoral Commission and the Constitutional Court of the Republic of Croatia are only competent to decide on contraventions of the electoral laws, no matter whether they were committed by the candidates or political parties. During the campaign the State Electoral Commission has no powers other than to proclaim that certain activities were contrary to a fair electoral campaign. All other disputes are under the jurisdiction of the courts. The State

Electoral Commission and the Constitutional Court of the Republic of Croatia have no real sanctions for the contravention of the electoral or other laws except to cancel electoral activities in the cases of irregularities that essentially influenced, or could have influenced, the election results. In this case, as has been said before, they may cancel the electoral activities and determine 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.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law or the entire result of the elections?

No, the possible cancellation of electoral activities is not related to the result of the candidate as such. It is related only to a certain electoral activity in which an electoral regulation has been violated. Since Croatia has the proportional electoral system, the candidates appear together on electoral lists. The majority system where the candidates appear at elections separately is only applied in the elections for the President of the Republic and for the mayors at local elections. However, the possible cancellation of the voting results at a certain polling station affects the entire result of the elections at that polling station.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

No, the State Electoral Commission has no authority to exclude a certain candidate from standing for the repeated elections. It shall accept the candidature of every candidate who fulfils the requirements prescribed.

B. Procedure for the cancellation of electoral results

1. Which authority is competent to certify the electoral results?

There are relevant electoral commissions that certify the electoral results. These are the State Electoral Commission at the parliamentary and presidential elections, and relevant municipal, town or regional electoral commissions at the local elections.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No, only electoral commissions are competent for certifying electoral results. The courts have no competence in the electoral procedure in Croatia.

3. Is there a specific body in charge of the control of finance in the electoral field?

The candidates and political parties have the obligation to declare to the State Electoral Commission the amount of money they intend to spend on an election campaign, but without any sanction if they omit to do so. The State Electoral Commission has no powers to control finance in the electoral field. The State Audit Office *(Državni ured za reviziju)* controls the regularity of finances of all state bodies, private enterprises, and political parties as well.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

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.

5. Who may appeal the decision on certifying electoral results?

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.

The same rules apply to complaints against decisions of the State Electoral Commission on certifying electoral results.

The Law on the Election of the President of the Republic of Croatia in Articles 44 and 45 prescribes almost the same conditions for complaints in the presidential elections, as do the laws on local elections.

6. What is the time-limit for appealing the decision on certifying electoral results?

In all kinds of elections the time limit (the term) for complaints and appeals is 48 hours from the time when the decision on certifying electoral results is published.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

Yes, the State Electoral Commission has to bring a decision within 48 hours after it has received the complaint.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Yes, it has this authority, and it may ask for evidence from the polling committees or from the appealing parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

In such cases the cancellation is limited just to the polling stations where the irregularities were noticed.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

After the expiry of the terms for appeal and the terms for the control of the constitutionality and legality of elections (60 days from the publication of the official results) there are no legal means for cancelling the election results. In that case, the possible cancellation is independent of the full installation of the candidate (after the verification of the mandate).

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Electoral results at the polling stations may be cancelled in all cases when the irregularities have influenced the polling procedure or the electoral results, no matter in what way.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

The most common case for the cancellation of electoral results is when the polling commission establishes that there are more ballots in the polling box than there are voters who voted at a certain polling station. This may happen when the members of the polling commission forget to mark the voter's name in the voting register before handing out the ballot papers. If so, it will appear that there is one ballot more in the box than the number of those who voted.

CYPRUS / CHYPRE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Our Constitution confers an unqualified right to question an election upon any ground and bestows correspondingly jurisdiction on the Electoral Court to heed and take cognizance of every objection to an election.

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."*

It is expressly envisaged by the Constitution, in its Article 145, that an election petition is to be made under the provisions of the Electoral Law, Law No.72/79. The Constitution, therefore, provides by clear implication for the right to regulate, by law, access to the Electoral Court, by means of an election petition.

The Law governing elections and election petitions is the **Election of Members of the House of Representatives Law, 1979 (Law 72/79). Section 57(2)** of the Law reads as follows:

> *"The reference to the Electoral Court is made by means of an Election Petition filed by the Attorney-General of the Republic or by an elector inscribed on the electoral roll relevant to the election or by a person claiming to have had a right to vote at the election or by a person alleging himself to have been a candidate at the election*."

The provisions of this law relating to the cancellation of elections are applicable mutatis mutandis to presidential and municipal elections.

2. Is the cancellation only a possible consequence of an established violation of law (i.e the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? if it is compulsory, which are these cases?

Article 36 of the **Election of Members of the House of Representatives Law, 1979 (Law 72/79)** provides that:

> "No election shall be invalid by reason of-
>
> a) Any loss, theft or destruction of a ballot box or ballot boxes, or
>
> b) Any failure to proceed with or complete the voting at any polling station or polling stations, or
>
> c) Any other non-observance of, or non-compliance with, the provisions of this Law,

If it appears that the election was conducted in accordance with the principles laid down in such provisions and that matter in question did not affect the result of the election."

Furthermore Article 58(2) above, states that election may be declared void if it is proved t*hat*

there was non-compliance with the provisions of this Law relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non compliance affected the result of the election.

An election is not to be declared invalid for an informality or for a triviality. But if the breach of the rules or the mistake at the polls did affect the result, the election is vitiated. Therefore an election shall be declared invalid where it appears either that it was conducted in such a manner that there was substantial non-compliance with the law as to elections or that there was a breach of the rules or an irregularity which affected the result.

However the election of a candidate shall be declared null and void if he is convicted for any corrupt or illegal practice.

3. What kind of contravention of the law can serve as a basis for cancellation

a) established non compliance with eligibility criteria (including, if applicable, the insufficient number of signatures)

b) contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)

c) contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities.

The grounds for declaring null and void an election, on an election petition, are set out in Article 58 which stipulates that:

"The election as a whole or the election of some candidates as members may be declared to be void on an election petition on any of the following grounds, which shall be proved:

a) That by reason of general bribery, general treating, or general undue *influence, or other misconduct or circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate or candidates whom they preferred;*

b) That there was non-compliance with the provisions of this Law relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non compliance affected the result of the election.

c)That a corrupt practice or illegal practice was committed in connection with the election by any candidate or with his knowledge or consent or by the election agent of any candidate;

d)That any candidate personally engaged a person as his election agent or other agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Court or by the report of the electoral court.

e)That any candidate was at the time of his election a person disqualified for election as a member;

f) That an objection to any nomination papers should not have been allowed, or a declaration of the invalidity of any nomination papers should not have been made.

Treating is corrupt on the part of the person treating when at the time he treats he does so for the purpose of influencing any other person in the exercise of his power of voting. Whether or not that's the purpose for which is given is a question of fact and where that purpose is not expressly proved it may be inferred from the facts of the case which are proved. The corrupt purpose may be expressly proved for example, if the person treated is asked to come and take the treat and then vote for the party whose success the treats is trying to procure. The relative position of the treater and the person treated, the effect which the treat provided would be likely to have on the person treated, the part taken by the treated in the election and the time when

the treat is given are material. Treating is not corrupt when it is a mere form of ordinary hospitality or in relation to business matters and there is no purpose of influencing voters.

Where by reason of undue influence the majority of electors were or might have been prevented from electing the candidate or candidates whom they preferred is a ground for declaring void an election. It is the ordinary right of a citizen to canvass and to propagate for the candidate of his choice. This is not illegal provided the person propagating or canvassing does not interfere with the free exercise of the right of the elector.

4. Can only the candidates´ activities (contravention to the law) lead to the cancellation or can the activities of others be taken into account (e.g contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

A candidate is not liable, nor is his election to be avoided, for any illegal practice committed without his consent or connivance by an agent other than by his election agent. If a candidate had aided and abetted the television authorities in presenting himself and his views and the extent and nature of his backing to the electors, with a view to promoting or procuring his election,in contravention of the law, he commits an offence. However where neither he nor his agent, gave any authority to any of the aforesaid broadcasts. accordingly no offence against them lies

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

As mentioned above not every contravention of the law lead to the cancellation of the election. If however the non-compliance with the law affected the result of the election then the election of the person involved would be cancelled.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The Returning Officer shall forwith, after the result has been declared by him, certify by endorsement on the writ of election the return of the person or persons elected and shall return to the Minister the writ so endorsed.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Our Constitution safeguards the independence of the three powers of state. Therefore the Judicial power is not involved in the certifying procedure. The judiciary is only involved through an election petition filed before the Supreme Court.

3. Is there a specific body in charge of the control of finance in the electoral results?

No.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

As stated above the Supreme Court has exclusive jurisdiction, under our constitution, to adjudicate finally on any electoral petition made against the certification of election results.

5. Who may appeal the decision on certifying electoral results?

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

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

6. What is the time-limit for appealing the decision on certifying electoral results?

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.

7. Is there a time limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?`

No. However elections petitions are tried promptly.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Under Rule 11 of the Supreme Constitutional Rules 1962, the Court has power to summon any person to give evidence or produce documents for the purpose of enabling the court to come to a just decision in the case.

The Court has full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Regulations applicable to the case of Electoral Petitions in Court proceedings, are the Civil Procedure Rules.

9. If the violation of the law is limited to a few polling stations do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

On a scrutiny at the trial of an election petition the following votes only shall be struck off, namely

a) The vote of any person whose vote was procured by bribery, treating or undue influence;
b) The vote of any person who committed or procured the commission of personation at the election;
c) The vote of any person proved to have voted on more than one occasion at such election;
d) The vote of any person, who, by reason of a conviction or report of a corrupt or illegal practice was incapable of voting at the election;
e) Votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or if the facts causing the disqualification, or after sufficient public notice of the disqualification or the facts causing it are notorious.

As mentioned above any failure to proceed with or complete the voting at any polling station or polling stations or non-compliance with the law will not render the elections void if they did not affect the result of the elections.

10. May an authority (i.e election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

As stated above only the Supreme Court acting in its capacity as electoral court has the jurisdiction to decide on electioral petitions.

3. CASE LAW

1. Is there any case-law concerning the cancelation of electoral results?

Yes there are a number of cases concerning election petitions

2. If so, are there any cases which resulted in cancellation, If yes, what were the reasons for cancellation?

There is only one case in which the elections were declared null and void and it dates back to 1907. The election was cancelled because the Respondents were, by their agents guilty of corrupt practices, to wit, bribery and treating, and that there was general treating.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Under the Czech law, there are no constitutional provisions which stipulate these terms. Article 20 of The Constitution of the Czech Republic solely lays down, that other conditions of the exercise of the right to vote, the organisation of elections and the scope of judicial review shall be set by law.

Four statutes regulate various types of elections in the Czech Republic: elections to municipal representative bodies (councils), to regional representative bodies (councils), to Parliament (the Chamber of Deputies and the Senate) and to the European Parliament. Each statute stipulates its own terms under which electoral results may be cancelled. Generally, there are three ways to initiate a cancellation of the election results. The petitioner may seek a court decision on the invalidity of the elections, the invalidity of voting or the invalidity of a candidate being elected.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

The Czech Law system does not distinguish between the compulsory and the facultative cancellation of the election results. The cancellation of election results is not the only possible consequence of a violation of law (see also the answer to question A. 3). In its review of the election results the court proceeds with regard to the individual circumstances of each case. The invalidity of the elections, the invalidity of voting or the invalidity of a candidate being elected may only be declared if the violation of law influences the election results.

The Supreme Administrative Court pointed out, that the election results may be cancelled only if three cumulative conditions of review of elections are fulfilled. The first condition is a violation of law and the second condition is a causal nexus between the violation of law and the election results. The last and the most important condition for cancelling the election results is the fundamental intensity of the violation of law, which could have influenced the election results.

3. What kind of contravention of the law can serve as a basis for cancellation

- **a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?**
- **b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?**
- **c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?**

All the three above-mentioned kinds of contraventions can generally serve as a basis for cancellation of election results in the Czech Republic. Therefore not only the non-compliance with eligibility criteria or contraventions of the electoral laws and regulations may cause the cancellation of election results. The Supreme Administrative Court noted in one of its significant judgments in electoral matters that a court makes decision in electoral matters not only on the basis of a violation of the electoral laws but also takes into account the violation of other laws anyhow related to the elections. The Supreme Administrative Court called this theory “relevant unlawfulness”.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

In the Czech Republic courts in electoral matters do not only assess the activities of individual candidates or political parties, but activities of others are also taken into account. The courts have concluded that the election laws are to be interpreted as laying down that the effect of media on the pre-election campaign be taken into account. Therefore a violation of media law may also result in the cancellation of election results.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

It depends on the way of cancelling the election results (see answer to question A. 1.). While the invalidity of the elections and the invalidity of voting affect the entire results of the election (of course, in the appropriate election district), the invalidity of a candidate being elected only affects the result of the candidate.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Under the Czech law there are no provisions stipulated that any candidate should be excluded from standing for the repeated elections.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

Basically it is the State Electoral Commission which issues a certificate of election in the elections for both chambers of the Parliament. In the communal and regional elections it is the municipal office and the regional authority.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No, even when the election court (with the exception of the Constitutional Court when dealing with the review of a certificate of election of a Member of Parliament) has to decide in response to an election complaint, its decision only has cassational effect.

3. Is there a specific body in charge of the control of finance in the electoral field?

No, because in the Czech Republic there are no election expenses limits.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

Regional courts (in communal and regional elections), the Supreme Administrative Court (in parliamentary elections and elections to the European Parliament) and the Constitutional Court (as a court of second instance in parliamentary elections or as a court of extraordinary relief in other matters).

5. Who may appeal the decision on certifying electoral results?

Every candidate subject (either a political party and a coalition or an independent candidate) and every citizen (in relation to election district where s/he is registered).

6. What is the time-limit for appealing the decision on certifying electoral results?

Within 10 days from the date when the election results are officially (in a certain newspaper) announced (there is a special time limit of six months for a petition for an extraordinary relief to the Constitutional Court in other than parliamentary elections).

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

Within 20 days of the receipt of election complaint at a regional court or at the Supreme Administrative Court (there are no such time-limits for the Constitutional Court).

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The courts can collect evidence which they find essential for the decision. The parties can present evidence as well but the courts are not bound by the scope of the evidence presented by the parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

This question has to be solved on a case by case basis, because the decisive issue is, whether the violation could have influenced the election results in the whole constituency or not.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Courts in election cases decide in principle on an “ex tunc” and not on an “ex nunc” basis, therefore if they cancel the results of an election, the apparently elected candidate is apprehended as never having been elected, even if s/he was installed or took part in any activities of the body to which s/he was elected.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Due to the fact that the legal regulation of the cancellation of electoral results in the Czech legal system is not very detailed, the role of the Supreme Administrative Court and the regional courts in this area is really irreplaceable (see especially answers to questions A. 2., A. 3. and A. 4.).

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

The cases which resulted in the cancellation of electoral results were generally based on two separate reasons for that cancellation. The cancellation was either due to errors in the voting procedures (e. g. wrongful calculation of election results or fundamental errors in the organisation of elections)[*], or due to the breach of the pre-election campaign rules (e. g. dishonest and unfair campaign or abusing the media owned by the state or by the self-governing units in campaign)[**].

[*] See judgment of Regional Court in Hradec Králové of 20 November 2006, case no. 52 Ca 71/2006 (Collection of the Decisions of the Supreme Administrative Court no. 1055/2007), judgment of Regional Court in Brno of 14 November 2006, case no. 30 Ca 206/2006, or judgment of Regional Court in Brno of 10 November 2006, case no. 30 Ca 203/2006 (this judgment was finally revoked by the Constitutional Court).

[**] See judgment of the Supreme Administrative Court of 3 December 2004, case no. Vol 10/2004 [http://www.nssoud.cz (this judgment was finally revoked by the Constitutional Court)].

ESTONIA / ESTONIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Yes, there are respective legislative provisions.

According to Article 15.2.5 of the *Riigikogu* Election Act, Article 17.2.4 of the Local Government Council Election Act and Article 13.2.5 of the European Parliament Election Act, the National Electoral Committee (NEC) of Estonia has the competence to declare voting results in a polling division, (in city or rural electoral district – in case of elections of the local government), in a county or in the state invalid and to hold a repeat vote, if the violation of law significantly affected or could have significantly affected the voting results.

In addition, according to Article 46.2 of the Constitutional Review Court Procedure Act, the Supreme Court may declare the voting results in the polling division (station), the electoral district, the rural municipality, the city, the county, the state or in the election of the President of the Republic or the Board of the *Riigikogu* invalid, if the violation of law affected or may have affected the voting results to a significant extent.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

The cancellation of electoral results is a discretionary decision of the NEC (or the Supreme Court), and it is the most far-reaching consequence which can only follow if a violation of law which significantly affected or could have affected the voting results, has been established.

This means that the NEC or the Supreme Court must hold sufficient evidence that due to the breach of the voting rules, the electoral results significantly differed or could have differed. Merely an assumption of inappropriate affecting of the voting results is not enough.[13]

On the other hand, the actual effect on voting results must not be determined; a reasonable doubt that the electoral results might have been affected to a significant extent is already sufficient for declaring the voting results invalid and for holding a repeat voting.[14]

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

In principle, yes – a non-compliance with eligibility criteria can serve as a basis for cancellation of election results, – if this significantly affected or could have affected the voting results.

For example, in a case where a candidate without a right to run as a candidate (for example a non-citizen), was considered elected to a local government council, the Supreme Court assessed the significance of the affecting of the electoral results, based on the criteria, whether

[13] Decision of the Constitutional Review Chamber, 30.11.2005, No 3-4-1-34-05, p 12.
[14] Decision of the Constitutional Review Chamber, 08.11.2005, No 3-4-1-24-05, p 12.

the number of votes received by this candidate affected the distribution of mandates in that electoral district and whether without the votes casted to this candidate the distribution of mandates in that electoral district would have been any different.[15]

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

In principle, yes (see also answer to the previous question 3.a).

For example, in a case where 6 violations of the voting procedure were ascertained in a polling division with 1226 voters, the Supreme Court confirmed that these violations did not have such an extent that they could have affected the electoral results, and therefore there was no basis to declare the voting results invalid in this polling division.[16]

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

The provisions referred to in answer 1 of this questionnaire do not constrain the notion of violation of laws with any specific law (i.e. only electoral laws or regulations). Hence, contravention of any law can theoretically serve as a basis for cancellation of election results, provided that this contravention significantly affected or could have affected the voting results.

For example, the Supreme Court has referred to Article 168 of the Penal Code which stipulates the prohibition of active campaigning during the day of an election or referendum ("Unlawful campaigning"), pointing out that the misdemeanour procedure concerning this offence shall be conducted by police prefectures.[17]

According to the interpretation of the Supreme Court, the criminal or misdemeanour procedure possibly going on simultaneously with resolving the complaint on electoral results does not bind the NEC, because in the aforementioned procedures only deal with the question of responsibility of the concrete subject. The NEC has to find out circumstances necessary for. its own supervisory proceedings.[18]

Although the NEC cannot investigate the existence of alleged misdemeanour actions, it is the NEC who has to take a standing on the outcome of the misdemeanour offence (for example: unlawful campaigning), and on the basis of the data available, assess whether the offence significantly affected or could have affected the voting results.[19]

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Either's actions can serve as grounds for cancellation, provided that the unlawful acts significantly affected or could have affected the voting results.

For example, the Supreme Court has deemed necessary for the NEC to investigate, whether a private company's advertisement of a food product by a symbol which was very similar to a logo one of the political parties (a green letter "K") falls into a concept of a forbidden political

[15] Decision of the Constitutional Review Chamber, 04.11.2002, No 3-4-1-14-02, p 13.
[16] Decision of the Constitutional Review Chamber, 07.11.2005, No 3-4-1-23-05, p 8.
[17] Ruling of the Constitutional Review Chamber, 24.09.2003, No 3-4-1-11-03, p 7.
[18] Decision of the Constitutional Review Chamber, 08.11.2005, No 3-4-1-24-05, p 12.
[19] Decision of the Constitutional Review Chamber, 09.11.2005, No 3-4-1-26-05, p-s 8 and 9.

outdoor advertisement, i.e. whether the way of advertising of this product can be unambiguously connected with the candidates of this party.[20] Thereafter the NEC established that the electoral results depend on several factors in conjunction and that the experts and sociological studies could not draw a direct link between the abovementioned advertisement and the electoral results. As a final instance, the Supreme Court also confirmed that there was no reliable evidence that exactly this advertisement influenced the preferences of the electorate. Therefore, as there was no sufficient evidence that due to the breach of the voting rules the electoral results significantly differed or could have differed, the voting results were not invalidated.[21]

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

According to Article 46.1.1 of the Constitutional Review Court Procedure Act, the Supreme Court may repeal a resolution of electoral committee, declare an act of electoral committee unlawful and require that electoral committee make a new resolution or act.

According to Article 15.2.2 and Article 15.2.4 of the Riigikogu Election Act, Article 17.2.1 and Article 17.2.3 of the Local Government Council Election Act and Article 13.2.2 and Article 13.2.4 of the European Parliament Election Act, the NEC has a competence

- to issue a precept for the elimination of deficiencies in an act or in a resolution of an electoral committee of lower instance, or
- to repeal a resolution of an electoral committee of lower instance, or to declare an act of an electoral committee of lower instance unlawful and to issue a precept for elimination of the violation.

Besides the NEC and the Supreme Court, who both have the competence to declare the results of the elections invalid within the whole state (see answer to question 1), the County Electoral Committees (CEC) have the competence

- to issue a precept for the elimination of deficiencies in an act or in a resolution of a polling division or, in case of the local government elections, of a city or rural Electoral Committee, or
- to repeal an act of the abovementioned electoral committee, or to declare an act of an electoral committee unlawful and to issue a precept for elimination of the violation.

This means that the electoral committees and the Supreme Court have the competence to cancel the results of the elections only in part of which it concerns the mandate of a concrete candidate involved in the contravention to the law.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The electoral laws do not have special regulation about the candidates participating in the repeat voting, i.e. the same requirements apply as for the initial voting. Therefore, the answer to this question probably depends on the substance of the violation of electoral law. For example, if the essence of the violation consisted in someone failing to meet the requirements set forth for the candidates for the elections, such candidate likely could not run again in the repeat voting. But if the violation was about for example violation of the rules in counting the election results, the elimination of a candidate probably would not be necessary.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

[20] Decision of the Constitutional Review Chamber, 14.11.2005, No 3-4-1-27-05, p-s 9 and 18.
[21] Decision of the Constitutional Review Chamber, 30.11.2005, No 3-4-1-34-05, p 12.

1. Which authority is competent to certify the electoral results?

In case of the *Riigikogu* and the European Parliament elections, the division committees verify the voting results in the polling divisions, the County Electoral Committees verify the voting results in the counties and the National Electoral Committee verifies the voting results and election results across the whole country.

In case of the Local Government Council elections, the division committees verify the voting results in the polling divisions, and the rural or city electoral committees verify the voting results and election results in the rural municipality or cities. The County Electoral Committees and the National Electoral Committee supervise the actions of the division committees and rural or city electoral committees.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Yes, the Supreme Court is involved as the first and last court instance by way of reviewing the complaints and protests against decisions and acts of electorate committees.

3. Is there a specific body in charge of the control of finance in the electoral field?

According to Article 65.1 of the *Riigikogu* Election Act, all political parties and independent candidates conducting an election campaign are required to submit a report to the *Riigikogu* Anti-Corruption Act Enforcement Committee on their campaign expenditures and the sources of funds used one month after election day. These reports are publicly available. In addition, a party receiving allocation from the State Budget must order a revision of its accounts by way of auditing its annual fiscal report. The Tax and Customs Board reviews the correctness of calculating and paying taxes and usage of tax benefits. In case of suspecting violation of the requirements and restrictions set on the financing of political parties, the abovementioned control organs can inform the police or the prosecutor's office that must then conduct the respective criminal or misdemeanour investigation.[22]

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

According to Chapter 12 of the *Riigikogu* Election Act, Chapter 11 of the Local Government Council Election Act and Chapter 11 of the European Parliament Election Act, there is a three-tier complaint reviewing system. First the complaint against an act of a polling division (or, in case of local government council elections – also against the decision or act of a rural or city electoral committee) must be filed with the relevant County Electoral Committee. The latter's decision can be appealed to the NEC. Finally, the decision of the NEC can be contested at the Supreme Court by way of constitutional review proceedings.

5. Who may appeal the decision on certifying electoral results?

Complaints may be made by a voter, candidate or political party who finds that its rights have been violated by a decision or act of an electoral committee.

6. What is the time-limit for appealing the decision on certifying electoral results?

[22] A recent decision of the Supreme Court, dealing precisely with the question of adequate control over the financing of political parties dates from 21.05.2008, Decision of the General Assembly, No 3-4-1-3-07. The General Assembly concluded that the different publishing requirements and supervisory organs in conjunction guarantee the possibility to find out the actual financers of political parties (p 50). Five judges out of 19 delivered one dissenting opinion.

The election acts provide for a three-day deadline after the contested act or decision has been made for filing a complaint.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

A complaint must be reviewed within three days, except for at the Supreme Court who "shall adjudicate the appeal against a resolution or act of an electoral committee immediately but not later than within seven working days after the receipt of the appeal in compliance with the requirements" (Article 44.1 of the Constitutional Review Court Procedure Act).

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Both are possible. The Supreme Court has pointed out that the electoral committee is obligated to ascertain the relevant circumstances of the case and if necessary, collect evidence for that purpose on its own initiative.[23] The Supreme Court has also said that the electoral committee must implement the principle of investigation in a way and to the extent that the three-day deadline of reviewing the complaint permits.[24]

The Supreme Court itself does not collect new evidence and when it deems that the reasoning of the electoral committee is only formal and that the committee has not fully investigated the evidence supporting or refuting the arguments of the complaint, it has referred the matter back for further assessment to the NEC.[25]

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

Depending on the extent of the violation of law, the electoral committees and the Supreme Court have the competence to cancel the results of the elections only in part of which it concerns the concrete candidate or polling station involved in the contravention to the law (see above, answer to question A.5).

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

The electoral laws do not cover such possibility and there is no court practice on it either. This situation is unlikely to occur because the NEC registers the elected members of the *Riigikogu* after election day (or after the repeat vote) only if the term for filing complaints and appeals with the NEC and the Supreme Court has expired or if final resolutions have been adopted in respect of filed complaints and appeals (Article 74.1 of the *Riigikogu* Election Act). An analogous provision is foreseen in Article 68.1 of the Local Government Council Election Act. In case of the European Parliament elections, the NEC registers the elected Members of the European Parliament by its decision not later than on the twentieth day after election day or after the results of the repeat vote have become clear (Article 72 of the European Parliament Election Act).

[23] Decision of the Constitutional Review Chamber, 08.11.2005, No 3-4-1-24-05, p 11.
[24] Decision of the Constitutional Review Chamber, 14.11.2005, No 3-4-1-27-05, p 9.
[25] Decision of the Constitutional Review Chamber, 08.11.2005, No 3-4-1-24-05, p 18.

Consequently, all disputable mandates of the elected candidates have to be resolved before the declaration of election results.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Yes, there is considerable case-law concerning the contesting of electoral results both in the NEC and at the Supreme Court.

Altogether in years 2002-2008, the NEC has reviewed 83 electoral complaints and conducted supervision proceedings on its own initiative in 9 cases. Most of the complaints (72) have been dismissed or returned without reviewing due to deficiencies in a complaint. The NEC has satisfied wholly or partially 11 complaints, thereby declaring a resolution of a county electoral committee invalid in 8 cases and issuing a precept for a new resolution to be adopted in 3 cases.

During the same period of time, the Supreme Court has reviewed 71 complaints and protests against decisions and acts of electorate committees (most of these have been appeals against the abovementioned NEC decisions). In 62 cases, the complaints have been dismissed or returned without reviewing due to deficiencies in a complaint. 9 complaints have been satisfied wholly or partially, thereby in 8 times the resolution of an electoral committee was repealed or an act of an electoral committee was declared unlawful, and once the Supreme Court required the electoral committee to make a new resolution or act.

	The NEC	The Supreme Court
Number of complaints during years 2002-2008	83	71
Complaints dismissed or returned without reviewing	72	62
Complaints satisfied wholly or partially	11	9

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

No complaints on cancellation of electoral results have been satisfied in the NEC nor at the Supreme Court. The only case when a voting result was cancelled was in 2002, when the NEC conducted a supervision proceeding on its own initiative.[26] This time the NEC established that in the Vinni rural municipality Council elections a non-eligible candidate had run at the elections. Without the votes given to this candidate the distribution of mandates in this municipality would have been different, therefore the violation of law significantly affected the electoral results. By the percept of the NEC a repeat vote was held in that municipality.

[26] The decision of the NEC, 22.10.2002, No 36.

FINLAND / FINLANDE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Election Law, which concerns parliamentary, presidential, local and EU elections, includes the pertinent provisions.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

If the competent court establishes that the decision or measure of an electoral authority has been unlawful and this may obviously have affected the electoral result and the result cannot be corrected, it orders a new election be held.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

See question 2.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

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5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

There will be a new election in the electoral district or municipality at issue.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The order to hold a new election does not in itself affect the position of any candidate.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The results of parliamentary elections are certified by the electoral commissions of the electoral districts, the results of local elections by the central electoral commission of the municipality, the results of presidential and EU elections by the electoral commission of the Helsinki electoral district.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No.

3. Is there a specific body in charge of the control of finance in the electoral field?

Ministry of Justice.

4. What is (are) the competent body(ies) for deciding on complaints against the certification of election results?

At the first instance regional administrative courts and at the second instance the Supreme Administrative Court.

5. Who may appeal the decision on certifying electoral results?

Those who feel that their interests or rights are violated by the decision and those who have been candidates in the election, as well as the parties and a non-party joint lists which have made a candidate application, have the right to lodge an appeal on the grounds that the decision certifying the result is unlawful. In addition, the following persons can lodge an appeal against the decision on the grounds that the electoral procedure has been incorrect and that this might have had an effect on the result of the election:

a) every person who is eligible to vote in the electoral district or municipality; and
b) in municipal elections, any member of the municipality.

6. What is the time-limit for appealing the decision on certifying electoral results?

14 days.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

No.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The evidence should, as a rule, be provided by the complainant.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

See question A 5.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

No.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

In recent decades, the Supreme Administrative Court has decided three cases where the complainant(s) has requested the cancellation of electoral results, two concerning local and one concerning parliamentary elections.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

In one case, the Supreme Administrative Court ordered a new election to be held in a municipality on the grounds that 16 advance votes had incorrectly been rejected by the central election commission of the municipality (KHO: 1981-A-II-12).

FRANCE

En l'état actuel du droit électoral français, les réponses suivantes peuvent être apportées :

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?

La Constitution confie au Conseil constitutionnel le soin de veiller à la régularité des opérations relatives à l'élection présidentielle (article 58), au référendum (article 60) ; l'article 59 donne au même conseil la charge de statuer sur les réclamations relatives aux élections à l'Assemblée nationale et au Sénat. Par ailleurs, le Code électoral attribue le contentieux électoral au Conseil d'Etat en première et dernière instance pour les élections européennes et régionales et pour ce qui est des élections municipales et cantonales (assemblées des départements) aux tribunaux administratifs avec appel devant le Conseil d'Etat.

Dans tous les cas, l'examen de ce contentieux peut conduire à l'annulation de l'élection considérée et à l'occasion de chacune d'entre elles, les résultats de plusieurs circonscriptions sont annulés. Toutefois, cela ne s'est jamais produit pour les élections présidentielles, le référendum et les élections européennes, même s'il peut y avoir l'annulation de quelques bureaux de vote (sur environ 65.000), sans conséquences véritables.

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?

L'annulation doit toujours découler d'une violation des dispositions légales ou réglementaires contenues dans le Code électoral : pour chaque élection, le juge électoral compétent décide si la violation intervenue est suffisante ou non pour entraîner l'annulation.

Dans quelques cas, la violation de dispositions liées à la réglementation financière des campagnes électorales oblige le juge de l'élection à prononcer l'inéligibilité du candidat concerné, et s'il s'agit du candidat élu, son inéligibilité entraîne la déchéance du mandat et par voie de conséquence l'annulation de l'élection. Il en va ainsi en cas d'absence de dépôt du compte de campagne, de dépôt sans présentation par un expert-comptable ou de rejet du compte confirmé par le juge électoral ; ceci n'est pas applicable à l'élection présidentielle.

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats?

- **a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?**
- **b. La violation de lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote) ?**
- **c. La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?**

La violation des règles sur l'éligibilité ou des lois et règlements électoraux peut servir de base, si elle paraît suffisante au juge électoral, pour avoir altéré la sincérité du scrutin, à l'annulation. En revanche, je ne vois pas d'hypothèse dans laquelle une violation du Code civil ou du Code pénal entraînerait l'annulation ; elle pourrait, éventuellement, après l'élection, entraîner la perte des droits civiques de l'élu et par là la déchéance de son mandat, d'où l'obligation d'organiser

une nouvelle élection, mais ce n'est pas une annulation à proprement parler.

4. Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (par exemple la violation des règles sur la campagne par les médias ou d'autre personnes en faveur d'un candidat, mais à son insu) ?

En principe, seules les activités des candidats (ou de leur suppléant et en cas d'élections plurinominales des membres de leur liste) peuvent entraîner l'annulation. L'intervention de personnes extérieures ne peut avoir cet effet que si cela a été fait avec la participation ou l'accord du candidat.

Quand à l'intervention des medias, le moyen est rarement retenu et ne peut entraîner l'annulation que s'il a été assez massif pour fausser le résultat de l'élection. Il y a quelques exemples pour les élections locales (parti-pris systématique d'une radio locale écoutée par exemple) mais je n'en vois qu'un pour les élections législatives (CC 28 juillet 1998 AN Var 1ère circonscription), en raison d'un appel à barrer la route au candidat du Front national sur une chaîne de télévision nationale, le jour même du scrutin.

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des résultats des élections ?

Uniquement l'annulation du résultat du candidat impliqué.

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?

Oui, sauf s'il a été déclaré inéligible par le juge électoral, ce qui ne peut intervenir qu'en cas d'absence de dépôt ou de rejet du compte de campagne, comme dit en A2. Dans les autres cas, le candidat peut se représenter… et il est fréquent qu'il soit réélu !

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Quelle est l'autorité compétente pour valider les résultats des élections ?

Le juge de l'élection, Conseil constitutionnel ou juge administratif selon les cas, comme dit en A1.

2. Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?

L'annulation ne peut être prononcée que par un juge. Une autorité administrative (Commission nationale des comptes de campagne et des financements politiques, préfet) peut demander l'annulation au juge mais non la prononcer elle-même.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?

Oui, la commission indiquée ci-dessus qui est une autorité administrative indépendante composée de neuf membres désignés, à raison de trois chacune, par les trois hautes juridictions que sont le Conseil d'Etat, la Cour de Cassation et la Cour des comptes.

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?

Le résultat de l'élection est proclamé par une autorité administrative et, à partir de là, s'ouvre un délai de recours devant le juge électoral qui est de dix jours pour toutes les élections. Cependant, pour l'élection présidentielle et le referendum, le Conseil constitutionnel proclame les résultats après avoir jugé des réclamations présentées par les électeurs.

5. Qui peut recourir contre la décision de validation des résultats des élections ?

Tout candidat ou électeur de la circonscription concernée ; il n'y a pas d'ouverture aux personnes morales, pas même aux partis politiques.

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections ?

Le délai du recours est de dix jours après la proclamation des résultats pour toutes les élections, sauf l'élection présidentielle. Pour cette dernière, un électeur doit porter sa réclamation sur le procès-verbal de son bureau de vote (c'est-à-dire pendant que les opérations électorales ont lieu) et les candidats d'une part, le préfet dans les départements et les collectivités d'outre-mer d'autre part, ont quarante-huit heures pour déférer au Conseil constitutionnel les opérations électorales, pour l'ensemble en ce qui concerne les candidats, pour le département ou la collectivité dont ils ont la charge pour les préfets.

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?

Non, sauf pour l'élection présidentielle où il est de trois jours pour le premier tour et de dix jours pour le second. Dans la pratique, pour les élections législatives, le Conseil constitutionnel s'efforce de respecter un délai maximum d'un an mais ce n'est pas une obligation ; il en va généralement de même pour les autres élections mais lorsqu'il y a appel ce délai peut être dépassé.

8. Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties ?

Normalement, l'examen d'un recours se fait sur la base des griefs soulevés par les requérants ; le juge électoral peut, mais cela arrive rarement, décider de mesures d'instruction complémentaires.

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?

Les deux réponses peuvent être apportées : une violation grave dans un bureau entraîne l'annulation de celui-ci mais si cette annulation conduit à une incertitude sur l'ensemble de la circonscription, cela peut entraîner l'annulation de l'ensemble (par exemple élections municipales de Perpignan en 2008, annulation par le tribunal administratif et recours en examen devant le Conseil d'Etat).

10. Est-ce qu'une autorité (par exemple des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après

que le candidat élu est entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

Oui, c'est toujours le cas sauf pour l'élection présidentielle où le contentieux est purgé avant la proclamation des résultats. Pour les autres élections, le candidat élu entre en fonctions et perd son mandat si l'élection est annulée ; il est alors procédé à une élection partielle.

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?

Oui et elle est trop abondante pour être résumée ici ! Un millier de pages dans un des derniers ouvrages parus !

2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

En dehors de l'élection présidentielle, chaque élection générale donne lieu à l'annulation de quelques circonscriptions (4 à 5 en moyenne pour les 577 circonscriptions législatives). Les motifs sont extrêmement variés. Les principales têtes de chapitre sont :

- irrégularités dans l'établissement de la liste des électeurs ;
- inéligibilité découverte a posterio du candidat élu (ou de son suppléant) ;
- violation par lui des règles de financement en matière de campagne ;
- irrégularités substantielles dans le déroulement de sa campagne ;
- irrégularités dans le déroulement des opérations de vote ;
- fraude ou falsification des résultats.

Il appartient dans chaque cas au juge de l'élection d'apprécier si l'irrégularité est établie et si en ce cas elle est suffisante pour avoir altéré la sincérité du résultat. En règle générale, le juge procède par la méthode dite de déduction hypothétique, qui peut se résumer ainsi :

- je constate que l'irrégularité peut concerner X voix ;
- si l'écart entre le candidat élu et le candidat battu est supérieur à ces X voix, je valide l'élection (l'irrégularité existe mais elle n'est pas suffisante pour avoir modifié le résultat) ;
- si l'écart est inférieur à ces X voix, j'annule car il y a doute sur le résultat réel.

GEORGIA / GEORGIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

There are constitutional or legislative provisions in Georgian legal system which stipulate the terms under which electoral results have to be or may be cancelled.

According to the Article 2 [Legal Basis of Elections] of the Georgian Elections Code, the legal basis for preparing for and conducting elections for the President of Georgia, the Parliament of Georgia, the representative body of local self-governance – *sakrebulo*, is the Constitution of Georgia, universally recognized human right principles and standards of international law, this Law, other legislative Acts and legal Acts of the election administration[27].

Article 4 point 4 of the Georgian Constitution requires that the composition, authority and election procedure of the chambers shall be determined by the Organic Law. Georgian Election Code and the law about the Constitutional Court of Georgia are regarded as organic laws in Georgian legal system.

According to the Article 8² of the Georgian Election Code, it is prohibited to adopt/issue a normative act, which: a) Restricts the free expression of a voter's will; or b) Interferes with the equality of election participants. Such a normative act may be appealed in the Constitutional Court of Georgia.

Organic law about the Constitutional Court of Georgia, Article 19 point 1.d states, that on the basis of a constitutional claim or a constitutional submission, the Constitutional Court shall be authorised to consider and adjudicate upon the dispute on constitutionality of referendum or election. According to the Article 23 point 4 of the organic law about the Constitutional Court of Georgia, upholding a constitutional claim concerning the dispute on constitutionality of election, shall result in cancellation of the scheduled election and recognition of annulment of the results of the election wholly or partially (in particular electoral districts or precincts). Therefore, in case of upholding a constitutional claim concerning the dispute on constitutionality of elections, the scheduled elections have to be cancelled and electoral results have to be annulled wholly or partially (in particular electoral districts or precincts).[28]

Other legislative provisions stipulating the terms under which electoral results have to be or may be cancelled are:
Article 34 paragraph 2 “f” of the Georgian Elections Code, electoral results may be cancelled by the District Election Commission on the basis of an application/complaint (if such application/complaint is filed according to the procedure and within the period prescribed

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[27] Articles cited from the Georgian Elections Code [in Georgian] (updated), source: http://cec.gov.ge/uploads/KETIJ/SAARCHKODEQSI.doc (last visited on 30.04.09), also official version of the latest Georgian Elections Code, provided by the Georgian legal resources database “Codexi. net 2005” as compared with the Georgian Election Code, English version, source: http://cec.gov.ge/uploads/attachments_old/262_2492_810535_ElectionCodeofGeorgia-updated%5B18%5B1%5D.12.2007%5D.pdf (last visited on 30.04.09).

[28] Articles from the Georgian Constitution as well as the Organic Law about the Constitutional Court of Georgia in English cited from the official website of the Constitutional Court of Georgia, source: http://www.constcourt.ge/index.php?lang_id=ENG&sec_id=20 (last visited on 30.04.09) as compared to the latest versions of these laws provided by Georgian legal resources database “Codexi net 2005”.

hereunder) or at its own initiative, examine the lawfulness of the actions and decisions taken and made by PECs on election day, as well as by the appointed officials thereof (including the correctness of the registration of election participants, counting of ballot papers and etc) In case if it detects any violation, shall make the appropriate decision (which is immediately sent to the CEC for approval or raises an issue in the CEC to declare void the district results)." Therefore, electoral results may be cancelled. Electoral results have to be cancelled "if the violation results in a change of any person elected in a single-mandate district or of any candidate participating in the second round of elections, or a change of any persons elected in a multi-mandate district (when holding elections for local self-government bodies), or such violation has an adverse effect on the decision as to whether the elections shall be deemed held or not (for single-mandate districts and for elections of local self-government bodies), and if such examination doesn't enable the DEC to establish the fairness of the result, the DEC shall make the decision to render the voting results in the relevant election precinct null and void and raise the question before the CEC to appoint the date for a second ballot;"

Article 104 [Consolidation of the Results of the Poll at District Election Commission] paragraph 2 of the Georgian Elections Code, stipulates, that in case of any application/complaint or dissenting opinion of any PEC member is submitted requesting for the revision or invalidation of voting results:

a) if the precinct election results may *not* affect the final election results, the DEC ***may*** decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC;
b) if the precinct election results may affect the final election results, the DEC ***shall,*** by its ordinance, decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC.

Electoral results have to be cancelled by Central Election Commission in case of the gross and major violations of the law and when the electoral results have been cancelled in the polling stations where the total number of voters is more than half of the total number of voters in the election district or of Georgian population, it shall result in by-elections or rerun elections.

According to the Article 105 points 12 and 12¹ of the Georgian Election Code:

a) in case of the ***gross violation*** of Georgian Elections Code, if voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections;
b) in case of the ***major violations*** of Georgian Elections Code, if the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections.

According to the Article 125 paragraphs 2 and 3 of the Georgian Elections Code [Consolidation of Sakrebulo Election Results at District Electoral Commission]:

a) Electoral results may be cancelled and a district electoral commission may annul vote results in an electoral precinct where Georgian Elections Code was grossly violated. Election results shall not be consolidated at a district electoral commission before a decision is made on the appeals that might prompt annulling of vote results in a precinct;
b) Voting results have to be cancelled and elections in an electoral district shall be declared invalid if the number of ballot papers declared invalid in the given district is more than half of the total number of voters who took part in elections in the district.

Georgian Parliament is shall not recognise an elected member and the Georgian Central

Election Commission has to cancel the results of an election if a person elected as an MP does not submit the drug test certificate to the CEC in due terms (on the 7th day after the elections day) or refuses to pass the drug test. According to the article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231), electoral results in the concerned polling station have to be cancelled, the CEC shall appoint rerun elections and determine his/her replacement according to the terms and procedures prescribed by article 106 (paragraphs 5, 7 and 7¹) of this law.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

According to the Article 23 point 4 of the organic law about the Constitutional Court of Georgia, upholding a constitutional claim concerning the dispute on constitutionality of an election, shall result in: a) **cancellation of the scheduled election**, or b) **obliging for holding the election**.

Further, possible consequence of an established violation of the law is a) **revision of the voting results** or b) **its invalidation**. Article 29 paragraph 1 "n" of the Georgian Election Code stipulates, that the Central Election Commission shall "by own initiative or under the application/petition check the legitimacy of decisions and acts of election commissions, their officials and in case of any revealed violation shall invalidate *or* revise them by its decree; under a decree, shall make the decision on opening of parcels received from the respective precinct election commissions and on the recounting of ballot papers/special envelopes/registers of voters." According to the Article 61 of Georgian Election Code [Applications and Complaints Regarding Violation of Procedures of Voting and Counting of Votes], a person can file an application/complaint on observed violations against vote counting and summing up of election results procedures claiming revision or invalidation of the election results. Such application/ complaint shall be filed before the approval of the summary protocols of the voting and election results.

Powers and Authorities of District Election Commission, laid down in the Article 34 para.2 of Georgian Elections Code include competence to verify the lawfulness of decisions made by PECs and their officials at its own initiative or on the basis of an application/complaint. If any violation is detected, DEC shall take a decision to a) **change** or b) **declare them void**.

Consequently, cancellation of electoral results is only a possible consequence of an established violation of law. According to the Article 104 [Consolidation of the Results of the Poll at District Election Commission], of the Georgian Elections Code, in case of any application/complaint or dissenting opinion of any PEC member is submitted requesting for the revision or invalidation of voting results,

a) if the precinct election results may affect the final election results, the DEC ***shall,*** by its ordinance, decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC;
b) if the precinct election results may not affect the final election results, the DEC ***may*** decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC.

According to the Article 105 paragraphs 12 and 12¹ of the Georgian Election Code, established violation of the law has different consequences:

a) In case of the ***gross violation*** of Georgian Elections Code, if voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections";

b) In case of the ***major violations*** of Georgian Elections Code, if the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections."

Moreover, according to the paragraphs 13 of the Article 105 of the Georgian Election Code, in case there is an of application/appeal, demanding the revision of the voting results or its invalidation, CEC adopts decision by its ordinance to open the sealed packages submitted from the corresponding PEC and recount the ballot papers, or assigns corresponding DEC/special group to perform the above mentioned activity. In case of necessity CEC has the right to tabulate the election results based on the PEC protocols.

As relates the compulsory cases of cancellation, according to the Article 125 of the Georgian Elections Code, cancellation of voting results is compulsory and elections in an electoral district shall be declared invalid if the number of ballot papers declared invalid in the given district is more than half of the total number of voters who took part in elections in the district.

Cancellation of voting results is compulsory also according to the Article 34. 2.f "if the violation results in a change of any person elected in a single-mandate district or of any candidate participating in the second round of elections, or a change of any persons elected in a multi-mandate district (when holding elections for local self-government bodies), or such violation has an adverse effect on the decision as to whether the elections shall be deemed held or not (for single-mandate districts and for elections of local self-government bodies), and if such examination doesn't enable the DEC to establish the fairness of the result, shall make the decision to render the voting results in the relevant election precinct null and void and raise the question before the CEC to appoint the date for a second ballot;

In case a normative act is adopted /issued, which restricts the free expression of a voter's will or interferes with the equality of election participants, such violation of law may be appealed at the Constitutional Court of Georgia. If the Court upholds the constitutional claim concerning the dispute on constitutionality of elections, cancellation of electoral results wholly or partially (in particular electoral districts or precincts) is compulsory.

Pursuant to the Article 8² of Georgian Election Code, offenders of the electoral legislation shall bear administrative or criminal liability and the competent authority can act in its discretion.

Georgian Parliament is authorised not to recognise an elected member and the Georgian Central Election Commission shall cancel the results of an election also after the elected candidate is fully installed if a person elected as an MP does not submit the drug test certificate to the CEC in due terms (on the 7th day after the elections day) or refuses to pass the drug test. According to the article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231), it is compulsory to cancel electoral results by the CEC in the concerned polling station, appoint rerun elections and determine replacement of an elected MP according to the terms and procedures prescribed by Article 106 (paragraphs 5, 7 and 7¹) of this law.

3. What kind of contravention of the law can serve as a basis for cancellation

- **a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?**
- **b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures?)**
- **c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?**

Article 8² of the Georgian Election Code stipulates that it is forbidden to adopt/issue a normative act, which restricts the free expression of a voter's will or interferes with the equality of election participants. Such a normative act may be appealed in the Constitutional Court of Georgia and it can serve as a basis for cancellation of electoral results. Offenders of the electoral legislation shall bear administrative or criminal liability.

According to the Article 105 paragraphs 12 and 12¹ of the Georgian Election Code, following kinds of established violation of the law can serve as a basis for cancellation of electoral results:

a) In case of the ***gross violation*** of Georgian Elections Code, if voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections";
b) In case of the ***major violations*** of Georgian Elections Code, if the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections."

Article 125 of the Georgian Elections Code stipulates, that elections in an electoral district shall be declared invalid if the number of ballot papers declared invalid in the given district is more than half of the total number of voters who took part in elections in the district.

Following contravention of the law can serve as a basis for cancellation of electoral results: According to the Article 34. 2.f: if the violation results in a change of any person elected in a single-mandate district or of any candidate participating in the second round of elections, or a change of any persons elected in a multi-mandate district (when holding elections for local self-government bodies), or such violation has an adverse effect on the decision as to whether the elections shall be deemed held or not (for single-mandate districts and for elections of local self-government bodies), and if such examination doesn't enable the DEC to establish the fairness of the result, shall make the decision to render the voting results in the relevant election precinct null and void and raise the question before the CEC to appoint the date for a second ballot.

According to the Articles 51¹ paragraph 3 of the Georgian Elections Code, no corrections whatsoever shall be made to the data entered in the summary protocols of voting and election results. A protocol so amended shall be deemed null and void by the upper election commission. Amendments to the protocol shall be fined.

According to the Articles 34. 2."f", 125.1-2 of Georgian Elections Code, gross and major violations of Georgian electoral law and considerable amount of invalidated ballot papers can serve as basis of cancellation of electoral results. According to the Article 77¹ of the Georgian Election Code an appeal may be lodged in case of the following contraventions of the law:

1. Regarding the voters' lists;
2. Regarding formation of election districts;
3. Regarding formation of election precincts;
4. Regarding appointment/election of a member of the CEC and DECs;
5. Regarding appointment/election of a member of the PEC;
6. Regarding the ordinance of an election commission and its chairperson on the pre-term termination of the authority of an election commission member or officer as well as regarding the failure to take a decision of the pre-term termination of the authority an election commission member or officer (in accordance with the grounds provided by Article 21 of this Law);

7. Regarding an ordinance of the CEC on the pre-term termination of the authority of a subordinate election commission, as well as regarding the failure to take a decision on the pre-term termination of the authority of the subordinate election commission;
8. The right to appeal to the appropriate district/city court regarding the failure to transfer funds allocated for the elections from the State budget of Georgia to the CEC account within the timeframe provided for under this Law is granted to the CEC;
9. Regarding election registration of a party, election bloc, voters' initiative group and registration of their representatives;
10. Regarding the ordinance of the election commission on registration of a candidate for the Presidency of Georgia, party participating independently, the party lists presented by the party/ election blocs, separate candidates of the party list and candidates nominated in single-mandate election district;
11. Regarding a CEC ordinance on registration of domestic and international observer organizations;
12. Regarding an ordinance of the DEC on registration of a domestic observation organizations;
13. Regarding an ordinance of the election commission Secretary on accreditation of representatives of the press and other mass media;
14. Regarding violation of the election campaign procedure established by paragraph 9 of the Article 73 of Georgian Elections Code:

    9. From the moment of publication of the relevant legal Act that announces the elections until the publication of the final results of the elections, it is prohibited to:

    a) for election subjects and their representatives to personally, or through someone else, transfer to *voters* monetary funds, gifts and other items of material value, to sell them goods at discounted prices, to supply or disseminate free-of-charge any goods (except for agitation materials envisaged by this Law), as well as to raise the interest of voters by promising to transfer them money, securities and other items of material value;

    b) Using private personal funds and/or the election campaign funds by a physical or a legal person for the purposes of performing such works or providing such services (except for works and services defined under the Georgian law on state procurement), which are under the competence of Georgian State and/or local self-governance bodies, according to the Georgian legislation;
15. Regarding violations by the press and other mass media of the provisions of paragraphs 11 and 13-17 of Article 73 of Georgian Election Code about Election Campaign (Agitation) [Contravention of the electoral laws and regulations with special attention to the campaign rules and the rules of voting procedures]:

    11. Any betting related to the elections shall be prohibited;

    13. **Deleted.** (22.11.2007 N5500);

    14. Starting from the 50th day prior to election day until the approval of the final election results by the CEC, owners of broadcasting license and a public broadcasting authority shall abide by the following terms [16.12.2005]:

    a) If allocating air time for election campaigning and political advertising, publicly to announce and submit weekly to the CEC the following information (regional television and radio broadcasting companies submit this information to a relevant district election commission): the start and end date and frequency of the allocated air time; duration and timetable of the allocated daily air time; the air time tariff; provided service. [16.12.2005];

    b) Paid airtime allocated by a TV or radio broadcaster shall not exceed 15 % of the total daily broadcasting time per day; no election subject shall be allocated more than one-third of this time;

    c) When broadcasting political advertising via TV, the screen corner shall display the inscription "Paid political advertising" or "Free political advertising";

d) For the period provided for in this paragraph, no [deletion – 16.12.2005] placement of political advertisement, may be made other than at the times and space allocated for this purpose;
14¹. Obligations prescribed by provision 15 of this Article shall cover only those newspapers that are financed from the state or local budget. *(22.11.2007 N5500)*
15. Beginning from the 50th day prior to the Election Day until the approval of the final election results by the Central Election Commission, [16.12.2005] newspapers, other than the newspapers of political parties, shall abide by the following terms:
a) If allocating newspaper space for election campaigning and political advertising, the newspaper must publish in its newspaper and submit weekly to the CEC the following information (regional newspapers submit the information to a relevant district election commission) : the start and end date and frequency of the allocated newspaper space; the size of space allocated in one newspaper issue; if providing newspaper space free of charge, the share of the free space in the total space allocated for political advertising; the space tariff; provided service [16.12.2005];
b) No election subject shall be allocated more than one-third of the newspaper space in one newspaper issue or over a period of one week
[deletion – 16.12.2005];
c) The space tariff shall be the same for all election subjects;
d) When publishing a campaign article or political advertising, above the heading of the article and in the corner of the advertisement, shall be made the inscription "Paid political advertising" or "Free political advertising";
e) Must not publish [deletion – 16.12.2005] political advertising which violate the provisions of this paragraph during the period stated herein [24.12.2004];
15¹. The forms of the information to be presented in the election commission according to subparagraph "a" of the paragraphs 14 and 15 of the present article shall be determined by a resolution of the Central Election Commission of Georgia [16.12.2005];
16. Subject to paragraph 15, a newspaper, has the right to allocate free of charge air time/space for political advertising to an election subject [24.12.2004];
17. If any election subject fails to use its share of air time or newspaper space, owners of broadcasting license, a public broadcasting authority or newspaper shall have the right to distribute this time or space equally among the other election subjects. [24.12.2004] 14. Starting from the 50th day prior to election day until the approval of the final election results by the CEC, owners of broadcasting license and a public broadcasting authority shall abide by the following terms [16.12.2005]:
a) If allocating air time for election campaigning and political advertising, publicly to announce and submit weekly to the CEC the following information (regional television and radio broadcasting companies submit this information to a relevant district election commission): the start and end date and frequency of the allocated air time; duration and timetable of the allocated daily air time; the air time tariff; provided service [16.12.2005];
b) Paid airtime allocated by a TV or radio broadcaster shall not exceed 15 % of the total daily broadcasting time per day; no election subject shall be allocated more than one-third of this time;
c) When broadcasting political advertising via TV, the screen corner shall display the inscription "Paid political advertising" or "Free political advertising";
d) For the period provided for in this paragraph, no [deletion – 16.12.2005] placement of political advertisement, may be made other than at the times and space allocated for this purpose;
141. Obligations prescribed by provision 15 of this Article shall cover only those

newspapers that are financed from the state or local budget. *(22.11.2007 N 5500)*

15. Beginning from the 50th day prior to the Election Day until the approval of the final election results by the Central Election Commission, [16.12.2005] newspapers, other than the newspapers of political parties, shall abide by the following terms:

a) If allocating newspaper space for election campaigning and political advertising, the newspaper must publish in its newspaper and submit weekly to the CEC the following information (regional newspapers submit the information to a relevant district election commission) : the start and end date and frequency of the allocated newspaper space; the size of space allocated in one newspaper issue; if providing newspaper space free of charge, the share of the free space in the total space allocated for political advertising; the space tariff; provided service [16.12.2005];

b) No election subject shall be allocated more than one-third of the newspaper space in one newspaper issue or over a period of one week
[deletion – 16.12.2005];

c) The space tariff shall be the same for all election subjects;

d) When publishing a campaign article or political advertising, above the heading of the article and in the corner of the advertisement, shall be made the inscription "Paid political advertising" or "Free political advertising";

e) Must not publish [deletion – 16.12.2005] political advertising which violate the provisions of this paragraph during the period stated herein [24.12.2004];

151. The forms of the information to be presented in the election commission according to subparagraph "a" of the paragraphs 14 and 15 of the present article shall be determined by a resolution of the Central Election Commission of Georgia [16.12.2005];

16. Subject to paragraph 15, a newspaper, has the right to allocate free of charge air time/space for political advertising to an election subject [24.12.2004];

17. If any election subject fails to use its share of air time or newspaper space, owners of broadcasting license, a public broadcasting authority or newspaper shall have the right to distribute this time or space equally among the other election subjects [24.12.2004];

16. Regarding an ordinance of the election commission in cases where there are violations of the provisions of Article 76 [Prohibition on Use of Official Position during Election Agitation and Campaign] and 98¹ [Cancellation of the Majoritarian Candidate Registration] of Georgian Election Code;
17. Regarding actions and decisions of a PEC and its members during polling and tabulation of the voting results (other than drawing up of the summary protocol of voting results and its approval);
18. Regarding the summary protocol of the PEC and PEC ordinance on the approval of the summary protocol (after appealing against this ordinance at the higher level district election commission) as well as regarding the relevant ordinance of the higher level district election commission;
19. Regarding an ordinance of the DEC on invalidation of the election results at the election precinct or failure to invalidate the election results;
20. Regarding a CEC ordinance on the determination that elections were held or not held;
21. Regarding the summary protocol of DEC and DEC ordinance on its approval;
22. Regarding summary protocol of CEC and ordinance on its approval.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favor of, but without the knowledge of a candidate?)

According to the Articles 34. 2."f", 125.1-2 of Georgian Elections Code, gross and major violations of Georgian electoral law and considerable amount of invalidated ballot papers can lead to cancellation of electoral results. Not only the candidates' activities (contraventions to the law) lead to cancellation but also contravention to campaign rules by media or other in favor of any candidate can lead to cancellation of electoral results, because according to the Article 77¹ para. 15-16, an appeal may be lodged in case of the contraventions of the law related to campaign rules by media. The knowledge of a candidate of any contravention to the law in his/her favor is an indifferent matter.

Any person who violates the law by his/her activities (contraventions to the law) shall bear responsibility determined by the law, as stipulated in the Article 8² paragraph 3 of Georgian Elections Code. According to the Article 105 paragraphs 12. 12¹ of Georgian Elections Code, gross and major violations of electoral law by any offender can lead to cancellation of electoral results. The election results in the election district shall be deemed invalid if voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district or where the total number of voters is more than half of the total number of Georgian population. In these cases, the CEC shall appoint by-elections or the CEC shall schedule rerun elections.

According to the article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231) activities of an elected MP (contravention to the law), such as the violation of the terms and procedures regarding the drug control may lead to the cancellation of electoral results in the relevant polling station.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The cancellation of electoral result may affect only the result of the candidate who is involved or concerned by the contravention to the law or the cancellation of electoral result may affect the entire result of the elections.

According to the Article 106 paragraph 3, if the elections are declared not held, and the election results are deemed invalid for a multi-mandate election district, by-elections shall be held.

Article 63 paragraph 4 of Georgian Elections Code states, that **i**f the DEC invalidates the election results in any election precinct(s) and the total number of voters in this election precinct(s) is so inconsiderable that it will not have any effect on the recognition of the elections as valid or on the selection of the person(s) elected in the election district or the candidate(s) in the second round of elections, the DEC will determine the elected person(s) or candidate(s) participating in the second round not taking this precinct(s) into consideration.

Article 104 [Consolidation of the Results of the Poll at District Election Commission] paragraph 2 of the Georgian Elections Code, stipulates, that in case of any application/complaint or dissenting opinion of any PEC member is submitted requesting for the revision or invalidation of voting results:

a) if the precinct election results may *not* affect the final election results, the DEC ***may*** decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC;
b) if the precinct election results may affect the final election results, the DEC ***shall,*** by its ordinance, decide for or against the opening of the packages and re-counting of the ballot papers received from the PEC.

According to the Article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231) activities of an elected MP (contravention to the law), such as the violation of the terms and procedures regarding the

drug control may lead to the cancellation of electoral results in the relevant polling station. Therefore, the cancellation affects only the result of the candidate who is involved or concerned by the contravention to the law.

Nevertheless, According to the Article 105 paragraphs 12 and 12¹ of the Georgian Electoral Code:
12. If, in any election district, because of gross violation of the Law, the voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections.
12¹. If during the proportional elections, due to the major violations of this Law, the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections [12.10.2004].

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

If the results of an election are cancelled due to the violations of the law, offender, possibly the candidate concerned, shall bear administrative or criminal liability. In case of the deprivation of the liberty as the liability, Georgian legislation excludes the offender (who may be the candidate concerned) from participating in the elections.

According to the Georgian Constitution, Article 28 point 2, only individuals… who have been deprived of their liberty by the due process of law, are deprived of the right to participate in elections and referenda.

Consequently, if the results of an election are cancelled, Georgian legislation does not exclude the candidate concerned from standing for the repeated elections, unless he/she has been deprived of liberty.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

According to the Article 29 paragraph 1, subparagraph “o” of the Georgian Elections Code, the Central Election Commission based on the summarizing protocols of voting results of district and precinct election commissions, shall determine the results of elections of the Parliament of Georgia (by party lists), the President of Georgia, Tbilisi city Sakrebulo and referendum/plebiscite, and confirm the final protocol of the Central Elections Commission of Georgia by issuing a decree.

Powers and Authorities of District Election Commission, laid down in the Article 34 para.2 subpara. “g” of Georgian Elections Code includes competence of the DEC summarize the vote results in the election district during the elections of the Parliament of Georgia (by party lists), the President of Georgia, Tbilisi city Sakrebulo, also when a referendum/plebiscite is held, based on the ordinances of precinct election commissions and summarizing protocols of vote results, with taking into account the results of considerations of the election legislation violations, and confirm the district election commission’s final protocol of the vote results of by issuing a decree.

According to the Article 38 paragraph 2. subpara. “d” of Georgian Elections Code the Precinct Election Commission determines the election results in the election precinct and approves the

summary protocol of election results by the relevant ordinance.

According to the Article 103 paragraph 1 of the Georgian Elections Code the Precinct Election Commissions sums up the results of the poll and enters them into the protocols of results of the elections held through the majoritarian and proportional systems.

According to the Article 104 paragraph 1 of the Georgian Elections Code, the District Election Commission, based on the protocols of the PECs, sums up at its session the results of polling and enters them into the protocols of results of voting held in accordance with the majoritarian and proportional systems.

According to the Article 105 paragraph 1 of the Georgian Elections Code, the Central Election Commission of Georgia, based on the protocols received from the DECs and PECs, not later than 18 days after Election Day (general elections) sums up, at its sessions, the results of the elections for the Parliament of Georgia and enters them into the protocol.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The PCE, DCE and the CEC are competent bodies to certify the electoral results. According to the Article 77 paragraph 1, a court is involved only in case of a breach of election law, which may be appealed to a higher instance election commission and afterwards to general courts of law. If the dispute refers to the constitutional nature of the elections a breach of election law may be appealed also to the Constitutional Court of Georgia.

3. Is there a specific body in charge of the control of finance in the electoral field?

According to the Article 45 [Disposal of Funds Necessary for Elections] paragraphs 1-5:

1. Funds allocated for election commissions are disposed of by the Chairperson and Accountant of the Commission, who are responsible for the proper use of the funds.
2. The DEC, no later than 30 days after election day, ceases all settlement of accounts with organizations and individuals and, within 10 days, transfers the funds remaining in its account to the account of the CEC. Within 2 weeks of the transfer of the remaining funds, the DEC submits a financial report to the CEC.
3. The form of the DEC report on expenses related to the elections is determined by an ordinance of the CEC.
4. The CEC submits to the Ministry of Finance a summary financial report on expenses related to the elections.
5. The proper use of funds allocated for elections is controlled by the Chamber of Control of Georgia.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

According to the Georgian Elections Code, a breach of election law may be appealed to a higher instance election commission and only afterwards to general courts of law. If the dispute refers to the constitutionality of the electoral normative act, which restricts the free expression of a voter's will or interferes with the equality of election participants, certification of election results based on such act may be appealed also to the Constitutional Court of Georgia. [Articles 8^2 and 77 of the Georgian Elections Code].

According to the Article 29 paragraph 1 subparagraph “w”, Central Election Commission of Georgia is competent to consider election-related applications and complaints in the manner established by the Georgian Elections Code and take the appropriate decisions within the limits of their authority.

Powers and Authorities of District Election Commission, laid down in the Article 34 para. 2 of Georgian Elections Code include competence to verify the lawfulness of decisions made by PECs and their officials at its own initiative or on the basis of an application/complaint. If any violation is detected, DEC shall take a decision to change or declare them void.

District Election Commission shall examine the lawfulness of the actions and decisions taken and made by PECs on election day, as well as by the appointed officials thereof (including the correctness of the registration of election participants, counting of ballot papers and etc) on the basis of an application/complaint (if such application/complaint is filed according to the procedure and within the period prescribed hereunder) or at its own initiative. In case if it detects any violation, the DEC shall make the appropriate decision (which is immediately sent to the CEC for approval or raises an issue in the CEC to declare void the district results). If the violation results in a change of any person elected in a single-mandate district or of any candidate participating in the second round of elections, or a change of any persons elected in a multi-mandate district (when holding elections for local self-government bodies), or such violation has an adverse effect on the decision as to whether the elections shall be deemed held or not (for single-mandate districts and for elections of local self-government bodies), and if such examination doesn't enable the DEC to establish the fairness of the result, shall make the decision to render the voting results in the relevant election precinct null and void and raise the question before the CEC to appoint the date for a second ballot.

Moreover, according to the Article 34 of Georgian Elections Code, based on the ordinances of precinct election commissions and summarizing protocols of vote results, taking the results of considerations of the election legislation violations into consideration, the District Election Commission shall summarize the vote results in the election district during the elections of the Parliament of Georgia (by party lists), the President of Georgia, Tbilisi city Sakrebulo, also when a referendum/plebiscite is held, and shall confirm the district election commission's final protocol of the vote results by issuing a decree; On the basis of ordinances and summary protocols of final election results submitted by PECs, and in consideration of the results of the adjudication of violations of Election Law, the District Election Commission shall establish for the election district the results of the elections of the Parliament of Georgia (Deleted), [23.12.2005] the elections of local self-government authorities (except for that of Tbilisi City Sakrebulo) and approve the summary protocol of final election results of the DEC by the appropriate ordinance.

According to the Article 38 paragraph 2. subpara. "b" of Georgian Elections Code the Precinct Election Commission shall check the correctness of the compiled voters lists, adjudicate appeals filed in connection with such lists and in case of detecting any errors and inconsistencies, immediately, but no later than the following day, apply to the relevant DEC with a proposal to make amendments to the lists;

5. Who may appeal the decision on certifying electoral results?

According to the Article 77¹ of the Georgian Elections Code, an appeal about the violations of electoral law may be lodged:

- Regarding the voters' lists:

  The right to lodge an appeal to the court is provided to a representative of a party/election bloc/voters' initiative group having election registration at the appropriate election commission; to an organization with election observer status, to a member of the appropriate district or precinct election commission, to a citizen whose application for enrolment on the voters' list was rejected by the election commission

- Regarding formation of election districts:

  The right to lodge an appeal to the court within the timeframe provided for under this Law is granted to the representative of a party/election bloc having election registration in the CEC,

to an organization with election observer status, to a CEC member

- Regarding formation of election precincts:

The right to lodge an appeal to the court within the timeframe provided for under this Law is granted to the representative of a party/election bloc having election registration at the district election commission, to an organization with election observer status, to a member of the appropriate district election commission;

- Regarding appointment/election of a member of the CEC and DECs;

The right to lodge an appeal to the court is granted to a person specified under Georgian legislation in the timelines specified under Georgian Elections Code;

- Regarding appointment/election of a member of the PEC:

The right to lodge an appeal to the relevant election commission is granted to representative of an election party/bloc with election registration in the DEC, an observer organization, member of the relevant district or precinct election commission.

- Regarding the ordinance of an election commission and its chairperson on the pre-term termination of the authority of an election commission member or officer as well as regarding the failure to take a decision of the pre-term termination of the authority an election commission member or officer (in accordance with the grounds provided by Article 21 of Georgian Elections Code [Early termination of the term of office of an election commission member/official]):

The right to lodge an appeal to the court within the timeframe provided for under this Law is granted to the representative of a party/election bloc having election registration in the CEC, to an organization with election observer status, the member of the relevant or upper-level election commission whose authority was dismissed under this ordinance.

- Regarding an ordinance of the CEC on the pre-term termination of the authority of a subordinate election commission, as well as regarding the failure to take a decision on the pre-term termination of the authority of the subordinate election commission:

The right to lodge an appeal to the court is granted to a CEC member, representative of a party/election bloc having election registration in the CEC, to an organization with election observer status, more than half of the members of the commission whose authority was pre-termly terminated under this ordinance.

- The right to appeal to the appropriate district/city court regarding the failure to transfer funds allocated for the elections from the State budget of Georgia to the CEC account within the timeframe provided for under this Law is granted to the CEC:
- Regarding election registration of a party, election bloc, voters' initiative group and registration of their representatives, the right to lodge an appeal to the court is granted to:

a) A party/election bloc, representative of a voters' initiative group in the CEC (for elections for the President of Georgia), if the CEC has not registered this party/election bloc/voters' initiative group or their representatives or has cancelled their registration;

b) A representative of a voters' initiative group in a DEC during the local elections, if the DEC has not registered this initiative group or its representative or has cancelled their registration;

c) An election bloc, party participating independently in the elections, representative of a voters' initiative group in the CEC (for elections for the President of Georgia), at least 2 persons having election observer status (accredited as observers by the CEC), if they deem that the party, election bloc or voter initiative group was registered in violation of the provisions of the election law;

d) A party/election bloc participating independently in the elections, representative of a voters' initiative group in a DEC during the local elections, at least 2 persons having election observer status (accredited as observers by the DEC), if they deem that a voters' initiative group was registered in violation of the provisions of the election law;

- Regarding the ordinance of the election commission on registration of a candidate for the Presidency of Georgia, party participating independently, the party lists presented by the party/ election blocs, separate candidates of the party list and candidates

nominated in single-mandate election district, the right to lodge an appeal to the court is granted to:

a) party/election bloc, majoritarian candidate, representative of a voters' initiative group in the CEC (for the elections for the President of Georgia), if the CEC has not registered a candidate for the presidency of Georgia, the party list presented by a party/election bloc, candidates of the party list and candidates nominated for single-mandate election districts and the DEC has not registered the candidates nominated by the party/election bloc for the local self-government elections or an election commission has cancelled their registration;

b) majoritarian candidate, a representative of a voters' initiative group in a DEC during local elections, if the DEC has not registered the candidate nominated by this initiative group or has cancelled his/her registration;

c) a party participating independently in the elections and having election registration, the registered election bloc, a representative of a registered voters' initiative group in the CEC (for the elections of the President of Georgia), at least 2 persons having election observer status (accredited as observers by the CEC), if they deem that the party/election bloc lists, majoritarian candidates or candidates from the party/election bloc lists were registered in violation of the provisions of the election law or if the majoritarian candidates or the candidates from party/election bloc lists do not comply with the provisions of the Georgian constitution and legislation or the compliance was assured with the violation of Georgian constitution and legislation.

d) Party participating independently in the elections and having election registration, a registered election bloc, representative of a registered voters' initiative group at the DEC during local elections, at least 2 persons having election observer status (accredited as observers by the DEC), if they deem that the DEC has registered party/election bloc lists, majoritarian candidates or candidates from the party/election bloc lists in violation of the provisions of the election law or if the majoritarian candidates or the candidates from party/election bloc lists do not comply with the provisions of the Georgian constitution and legislation or the compliance was assured with the violation of Georgian constitution and legislation.

- Regarding a CEC ordinance on registration of domestic and international observer organization, the right to lodge an appeal to the court is granted to: the above mentioned organizations, if the CEC has not passed them through registration; a party/election bloc having election registration, a representative of a registered voters' initiative group in the CEC, a registered organization having observer status, if they deem that the observing organization was registered in violation of the election legislation;
- Regarding an ordinance of the DEC on registration of a domestic observation organizations, the right to lodge an appeal to the court is granted to the above mentioned organizations, if the DEC has not passed the organization through registration; a representative of a party/election bloc, registered voters' initiative group in the DEC, a registered organization having observer status, if they deem that the observing organization was registered in violation of the election legislation;
- Regarding an ordinance of the election commission Secretary on accreditation of representatives of the press and other mass media, the right to lodge and appeal to the court is granted to representative of press and media, whose application over accreditation was not satisfied by an election commission, also representative of the initiative group of voters in this election commission, representative of party/election bloc with election registration and the organization holding an observer status;
- Regarding violation of the election campaign procedure established by paragraph 9 of the Article 73 of Georgian Elections Code [Election Campaign (Agitation)], the right to lodge an appeal to the court is granted to:

a) a party, election bloc, representative of a voters' initiative group in the CEC (for elections for the President of Georgia), an organization with election observer status, election commission, if the appeal concerns violation of the abovementioned procedure by a party/election bloc or a candidate for the Presidency of Georgia;

b) to the party, election bloc, majoritarian candidate, organization with election observer status, election commission, if the appeal concerns violation of the abovementioned procedures by the candidate nominated to the single- or multi-mandate election district;

- Regarding violations by the press and other mass media of the provisions of paragraphs 11 and 13-17 of the Article 73 of Georgian Election Code

a) The right to lodge and appeal at the court is granted to a person specified by Georgian legislation;

- Regarding an ordinance of the election commission in cases where there are violations of the provisions of Article 76 [Prohibition on Use of Official Position during Election Agitation and Campaign] and 98¹ [Cancellation of the Majoritarian Candidate Registration] of Georgian Election Code:

a) The right to lodge an appeal to the court is granted to: the party nominating the candidate and the candidate about whom the ordinance has been issued; other parties with election registration, election bloc, representative of a voters' initiative group in the CEC (for elections for the President of Georgia), organization with election observer status, representative of the voters' initiative group in the DEC (if the matter concerns a majoritaran candidate), unless the commission proves the abovementioned breach;

- Regarding actions and decisions of a PEC and its members during polling and tabulation of the voting results (other than drawing up of the summary protocol of voting results and its approval):

a) The right to appeal to the court is granted to: a representative of a party, election bloc, voters' initiative group at the precinct or higher level DEC, an observer from an organization with election observation status at the precinct or higher level DEC, higher level election commission and its chairperson;

- Regarding the summary protocol of the PEC and PEC ordinance on the approval of the summary protocol (after appealing against this ordinance at the higher level district election commission) as well as regarding the relevant ordinance of the higher level district election commission, the right to lodge an appeal at the court is granted to: a representative of a registered party, election bloc, voters' initiative group in a relevant election commission and the organization holding an observer status;
- Regarding an ordinance of the DEC on invalidation of the election results at the election precinct or failure to invalidate the election results, the right to appeal to the court is granted to: a representative of a party, election bloc, voters' initiative group, a majoritarian candidate, an observer from an organization with election observation status at the appropriate DEC as well as to the CEC;
- Regarding a CEC ordinance on the determination that elections were held or not held, the right to appeal to the court is granted to: a party/election bloc participating independently elections, representative of a voters' initiative group in the CEC (for elections for the President of Georgia), representative of a voters' initiative group at the DEC (if the matter concerns the election district), majoritarian candidate and an organization with election observation status;
- Regarding the summary protocol of DEC and DEC ordinance on its approval, the right to appeal to the court is granted to: a party/election bloc participating independently in the elections, representative of a voters' initiative group in the DEC, majoritarian candidate and an organization with election observation status;
- Regarding summary protocol of CEC and ordinance on its approval the right to appeal to the court is granted to: a party/election bloc participating independently in the elections, representative of voters' initiative group in the appropriate district election commission, representative of voters' initiative group in the CEC (for elections for the President of Georgia) majoritarian candidate and an organization with election observation status;

According to the Article 77 paragraph 12 of Georgian Elections Code, timeframes and procedures for consideration of disputes, also the circle of persons, who may appeal against a violation of law is determined under this Law and by relevant Georgian legislation.

According to the Article 17 paragraph 5 of Georgian Elections Code, the procedure for forming election commissions and their authority are determined under this Law, except for the Central Election Commissions of the Abkhazian and Adjarian autonomous republics. The latter's forming procedure is determined pursuant to the relevant law of the autonomous republic, their authority being determined under this Law and the law of the autonomous republic.

According to the Article 77 paragraph 13 of Georgian Elections Code, timeframes and procedures for consideration of disputes in Central Election Commissions of the Abkhazian and Adjarian autonomous republics is determined pursuant to the relevant law of the autonomous republic.

6. What is the time-limit for appealing the decision on certifying electoral results?

According to the Articles 61 and 62 of the Georgian Elections Code, [Applications and Complaints Regarding Violation of Procedures of Voting and Counting of Votes], an application/ complaint on observed violations against vote counting and summing up of election results procedures, claiming revision or invalidation of the election results shall be filed before the approval of the summary protocols of the voting and election results. Such application/complaint mentioned shall be registered by the PEC Secretary in the Record Book and shall be forwarded by the PEC to the higher level DEC by 18:00pm of the day following Election Day. In case the results are not summed up by this time, by 18:00 pm of the day following the day the summary protocol of the voting and election results is completed. The application/complaint can be delivered to the DEC directly by the applicant/complainant within the same period.[29]

The application/complaint on observed violations against vote counting and summing up of election results procedures, claiming revision or invalidation of the election results shall be registered by the DEC Secretary in the DEC Record Book upon its acceptance at the DEC. The commission will adjudicate the application/complaint and decide during one calendar day following the registration of the application/complaint at the DEC. The decision of the DEC shall be made by ordinance, which may be appealed only at the court according to the procedure, stipulated by Georgian Elections Code.[30]

According to the Article 77 [Timeframes and Procedures for Consideration of Disputes] of Georgian Elections Code, any decisions constituting the breach of election law, as well as a decision of the Precinct Election Commission on certifying electoral results may be appealed at an appropriate District Election Commission. A decision of the DEC may be appealed in a court, within 1 calendar day of the decision being made. A decision of the court may be appealed within 2 calendar days of the decision being made at a higher instance court. The decision of an appellate court is final and may not be appealed.[31]

Any decisions constituting the breach of election law, as well as a decision of the District Election Commission on certifying electoral results may be appealed at a Central Election Commission. A decision of the CEC may be appealed in a Tbilisi City Court within 1 calendar day of the decision being made. Tbilisi City Court shall consider the decision of the CEC within 2 calendar days. Tbilisi City Court may be appealed at the appellate court within 1 calendar day of the decision being made. The decision of an appellate court is final and may not be appealed.[32]

[29] See Article 61. paragraphs 5-6 Georgian Elections Code.
[30] See Article 62. paragraph 1 of Georgian Elections Code (as amended 21.03.2008. N6013).
[31] See Article 77, paragraph 2 of Georgian Elections Code (as amended 21.03.2008. N6013).
[32] See Article 77, paragraph 4 of Georgian Elections Code (as amended 21.03.2008. N6013).

Any decisions constituting the breach of election law, as well as a decision of the Central Election Commission [on certifying electoral results] may be appealed at a Tbilisi City Court within 1 calendar day of the decision being made. Tbilisi City Court shall consider the decision of the CEC within 2 calendar days. Tbilisi City Court may be appealed at the appellate court within 1 calendar day of the decision being made. The decision of an appellate court is final and may not be appealed.

According to the Article 77¹ paragraph 9 of the Georgian Elections Code, the right to appeal to the appropriate district/city court regarding the failure to transfer funds allocated for the elections from the State budget of Georgia to the CEC account within the timeframe of 10 calendar days is granted to the CEC.

As regards constitutionality of elections, according to the Article 77¹ paragraph 1 of the Georgian Elections Code, the timeframes for lodging and the consideration of constitutional appeals related to the appointment or non-appointment of an election as provided for by this Law are determined by the Organic Law of Georgia "On Constitutional Court of Georgia" and the Law of Georgia "On Constitutional Legal Proceedings". According to the Article 37 of the Error! Hyperlink reference not valid.**,** lodging a constitutional claim concerning constitutionality of holding the election shall be permissible within three days from the promulgation of the election results by the Central Electoral Commission of Georgia.

Regarding an ordinance of the election commission in cases where there are violations of the provisions of Article 76 [Prohibition on Use of Official Position during Election Agitation and Campaign] and 98¹ [Cancellation of the Majoritarian Candidate Registration] of Georgian Election Code; also regarding actions and decisions of a PEC and its members during polling and tabulation of the voting results (other than drawing up of the summary protocol of voting results and its approval) according to the Article 77¹ paragraph 19 of the Georgian Elections Code the right to appeal to a district court is granted not later than the second day after the Elections Day. The court shall consider a case within not later than the next day. A decision of the district court may be appealed at an appellate court not later than next day, after this decision being promulgated. Appellate court shall decide not later than next day after an appeal has been filed.

The term of appeal related to the constitutional nature of the elections shall be determined within 10 days following the announcement of the decision made on the approval of the election results by the appropriate election commission, and the term of consideration of the constitutional appeal is determined by the Organic Law of Georgia "On Constitutional Court of Georgia" and the Law of Georgia "On Constitutional Legal Proceedings"..

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

According to the Article 77 [Timeframes and Procedures for Consideration of Disputes] of Georgian Elections Code, District Election Commission shall consider an application about the decision of the Precinct Election Commission on certifying electoral results within 1 calendar day. The court shall consider the decision of the District Election Commission within 2 calendar days. Higher instance court shall consider an application about the court decision DEC decision regarding the PEC, certifying electoral results within 2 calendar days. [33]

Central Election Commission shall consider an application about the decision of the District Election Commission on certifying electoral results within 1 calendar day. Tbilisi City Court shall consider the decision of the CEC within 2 calendar days. [34]

[33] See Article 77, paragraph 2 of Georgian Elections Code (as amended 21.03.2008. N6013).
[34] See Article 77, paragraph 4 of Georgian Elections Code (as amended 21.03.2008. N6013).

Regarding an ordinance of the election commission in cases where there are violations of the provisions of Article 76 [Prohibition on Use of Official Position during Election Agitation and Campaign] and 98¹ [Cancellation of the Majoritarian Candidate Registration] of Georgian Election Code; also regarding actions and decisions of a PEC and its members during polling and tabulation of the voting results (other than drawing up of the summary protocol of voting results and its approval), the court shall consider a case within not later than the next day. Appellate court shall decide not later than next day after an appeal has been filed.[35]

As regards a time-limit, set up for the Constitutional Court of Georgia to make a decision on the appeal on the constitutionality of the decision on certifying electoral results, according to the Article 22 of the Organic Law about the Constitutional Court of Georgia:
3. The time-limit for the consideration of a claim concerning constitutionality of election of the President of Georgia shall not exceed seventeen days from lodging the claim with the Constitutional Court.
4. The time-limit for the consideration of a constitutional claim concerning constitutionality of referendum and election of the Parliament of Georgia and a local representative body – Sakrebulo, Gamgebeli and Mayor shall not exceed 30 days from admission of the case by the Constitutional Court for the consideration of the merits. Under the exceptional circumstances the President of the Constitutional Court shall prolong the time-limit for the consideration (by no longer than 30 days).
6. If, at the time of the consideration by the Constitutional Court of a constitutional claim, provided for by paragraphs 2-4 of the present Article, another claim specified in the same paragraphs entered the Constitutional Court, the term for the consideration of the latter shall be calculated from the day, when a judgment with regard to the claim being under the consideration of the merits is rendered.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

According to the Article of Georgian Elections Code, in case of absence of the party during the court hearing on the dispute, the decision can be made on the basis of investigating the materials existing in the case, and according to the provisions of Articles 4 and 19 of the Administrative Procedural Code of Georgia.[36]

These provisions of the Administrative Procedural Code of Georgia, mentioned in the Georgian Elections Code, *inter alia* stipulate, that during the hearing of an administrative case the parties shall be bound by and enjoy the rights under Chapter 4 of the Civil Procedures Code of Georgia. The court may render the decision to seek additional information or evidence (Article 4. [Adversary proceeding and examination of case-related circumstances by the court]); In addition to the authority prescribed by Article 103 of the Civil Procedures Code of Georgia, the court may collect information on factual circumstances and proofs at its initiative. A party to the case may provide his opinion of factual circumstance and proofs prior to their examination. A Court may provide a party with additional time in order to present the proofs. In case a party is not able to collect his/her proofs and provide them to the court, it shall be reported to the court not later than a day before the court hearing (Article 19 [Collection of proofs by the court]).

Therefore, in case of absence of the party during the hearing on election disputes, judicial body (the appeal body) deciding the cancellation of election results has the authority to collect evidence according to the inquisitorial approach of the administrative justice. This means that the judicial body (the appeal body) has powers or can develop practices that enable it to play an active role in a dispute.

[35] See Article 77¹, paragraph 19 of Georgian Elections Code (as amended 21.03.2008. N6013).
[36] See Article 77, paragraph 7 of Georgian Elections Code (as amended 21.03.2008. N6013).

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

If the violation of the law is limited to few polling stations and the total number of voters in this polling stations is so inconsiderable that it will not have any effect on the recognition of the elections as valid or on the selection of the person(s) elected in the election district or the candidate(s) in the second round of elections, the results of the only those of the concerned polling stations may be cancelled. In this case, the DEC will determine the elected person(s) or candidate(s) participating in the second round not taking this precinct(s) into consideration (Article 63, para. 4 [Consolidation of Voting and Election Results at District Election Commission] of the Georgian Elections Code).

The results of only concerned polling stations may be cancelled also when the election has been declared invalid in an election precinct and the CEC appoints the second ballot in this precinct. In cases where the difference between the votes of the candidates who have the best results is less than the total number of voters in this election precinct and if the results of the second ballot are cancelled, the results of the elections are summed up without taking this precinct into account (Article 105. para. 14 [Consolidation of the Results of the Elections at the Central Election Commission of Georgia] of the Georgian Elections Code).

In case the violation of the law is limited to few polling stations, the results of the whole constituency have to be cancelled because of the gross and major violations of the law and when the total number of voters in cancelled stations is more than half of the total number of voters in the election district or of the Georgian population.

According to the Article 105 of the Georgian Elections Code:
12. If, in any election district, because of gross violation of the Law, the voting results are deemed invalid in more than half of the election precincts or in some precincts, where the total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections.
12¹. If during the proportional elections, due to the major violations of this Law, the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections [12.10.2004].
14. Where the election has been declared invalid in an election precinct, the CEC appoints the second ballot in this precinct, in cases where the difference between the votes of the candidates who have the best results is less than the total number of voters in this election precinct. In this case, if the results of the second ballot are cancelled, the results of the elections are summed up without taking this precinct into account.

According to the Article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231) activities of an elected MP (contravention to the law), such as the violation of the terms and procedures regarding the drug control may lead to the cancellation of electoral results in the relevant polling station. In this case, the violation of the law is limited to few polling stations, only those results of the concerned polling stations.

Nevertheless, According to the Article 105 paragraphs 12 and 12¹ of the Georgian Electoral Code:
12. If, in any election district, because of gross violation of the Law, the voting results are deemed invalid in more than half of the election precincts or in some precincts, where the

total number of voters is more than half of the total number of voters in the election district, the election results in the election district shall be deemed invalid and the CEC shall appoint by-elections.
12¹. If during the proportional elections, due to the major violations of this Law, the results of the elections were deemed invalid in more than half of the election districts or number of districts, where the total number of voters is more than half of the total number of Georgian population, the results of the elections are deemed invalid and the CEC shall schedule rerun elections [12.10.2004].

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Pursuant to the Article 21 point 3 of the organic law about the Constitutional Court of Georgia, The issue of constitutionality of the elections of the Parliament of Georgia and the President of Georgia, as well as the issue of constitutionality of a referendum shall be considered by the Plenum of the Constitutional Court, whereas the issue of constitutionality of the elections of a local representative body – Sakrebulo, Gamgebeli, and Mayor shall be considered by a Board of the Constitutional Court. In case of the successful electoral dispute at the Constitutional Court, the normative act in question will be held unconstitutional; therefore, electoral results have to be cancelled.

Georgian Parliament is authorised not to recognise an elected member and the Georgian Central Election Commission is authorised to cancel the results of an election after the elected candidate is fully installed if a person elected as an MP does not submit the drug test certificate to the CEC in due terms (on the 7th day after the elections day) or refuses to pass the drug test. According to the Article 107¹ [Drug Control over the Persons Elected as MPs of Georgia] of Georgian Elections Code (as amended on 15.07.2008; N231), the CEC shall cancel electoral results in the concerned polling station, appoint rerun elections and determine his/her replacement according to the terms and procedures prescribed by Article 106 (paragraphs 5, 7 and 7¹) of this law.

As a consequence of this decision regarding the mandate of the elected candidate, according to the Article 106 paragraphs 5, 7 and 7¹ of Georgian Elections Code:
5. By its ordinance, the CEC shall appoint the by-election Election Day and timeframes for election arrangements for a multi mandate election district, no later than 2 months prior to Election Day [23.12.2005].
7. If a Member of the Parliament who resigns, was elected through the party list of a party participating independently in the elections, the seat of such MP shall be occupied by the candidate for Parliament named next in the same list within a period of 1 month, if such candidate agrees to be a member of the parliament within 15 days after the creation of the vacancy. Otherwise, the vacant seat shall be occupied by the candidate named next to such candidate in the list etc. If there is no other candidate named in the party list, this mandate of MP shall be deemed cancelled.
7¹. If a Member of the Parliament who resigns, was elected through the party list of an election bloc and it was specified in the party list that such member was the member of one of the parties of such election bloc, the seat of such Member shall be occupied within a period of 1 month by the candidate of the same party named next in the list, if such candidate agrees to be a member of the parliament within 15 days after the creation of the vacancy. Otherwise, the vacant seat shall be occupied by the candidate of the same party named next in the list etc. If it was not specified in the party list that such person was a member of one of the parties of the election bloc, his/her successor shall be appointed according to the procedure established by paragraph 7 of this Article.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

There is a following case-law at the Constitutional Court of Georgia, concerning the cancellation of electoral results:
1. Two members of the Parliaments of Georgia v. Central Electoral Commission of Georgia, N13/122,128; 13. June 2000;
2. Three groups of members of the Parliament of Georgia v. Central Electoral Commission of Georgia; N6/134-139-140; 30. March, 2001.

This case-law in based on the relevant Georgian electoral law at the time of its application.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

2.1.
In case of *two members of the Parliaments of Georgia v. Central Electoral Commission of Georgia,* [N13/122,128; 13 March, 2001] was a joint case consisting of the constitutional claims N122 and 128. Only one demand of the group of members of the Parliament of Georgia with the composition of: Vakhtang Khmaladze, Hamlet Chipashvili, Tengiz Jgushia and others (52 MPs) has been regarded as unconstitutional, therefore resulted in cancellation of electoral results.

Subject of the claim

I. According to the Constitutional Claim No l22 of the group of members of the Parliament of Georgia with the composition of Vakhtang Khmaladze, Hamlet Chipashvili, Tengiz Jgushia and others - (52 MPs) - the constitutionality in relation to Sub-Clause "e", Clause 1, Article 49 of the Constitution of Georgia of: (a) the resolution and final minutes of Khoni Regional electoral commission No55 of November 15,1999 which provides that "Mebuke Jemal is elected as a member of the Parliament of Georgia" (subject of the claim was stated on the last stage of the hearing in the final speech of the Claimants' Representative); (b) Decree No 192/199 of the Central Electoral Commission of Georgia of November 19,1999 on "the annulment of results of the second round of elections in No 15 and No 22 Electoral Districts of Khoni Electoral Region No55; (c) Part V of the final minutes of the Central Electoral Commission of November 18,1999 on the "results of re-voting and the second round of the election of the Parliament of Georgia held on November 7 and 14, 1999" concerning the recognition of Jemal Mebuke as a member of the Parliament elected by the majoritarian system in Khoni Electoral Region No 55 and the part of Article VII concerning the annulment of the results of the second round of elections in the Electoral Districts No 15 and No 22.

The Plenum of the Constitutional Court of Georgia, as a result of consideration of the merits of the case, on the basis of analysing the data of the Constitutional Claims, the speeches of the participants to the constitutional proceedings, the evidences of the witnesses, the conclusion of the specialists and the written proofs existing in the case, determined the necessary circumstances for the adjudication upon the case.

I. The Constitutional Claim No l22 of the group of members of the Parliament of Georgia (Vakhtang Khmaladze, Hamlet Chipashvili, Tengiz Jgushia and others - (52 MPs) shall be partially satisfied.

1. During the consideration of the case, representatives and witnesses of both the Respondents and the Claimants confirmed the fact that before the completion of voting in the Electoral District No 15 of Khoni one-mandate Electoral Region No 55 on 18:15 p.m. 18:30 p.m

(i.e.30 or 45 minutes before), the seal of the Regional Commission was lost. After this incident the voting process was not continued in the above electoral district.

In connection of the above mentioned, the Constitutional Court refers to the provisions of the Organic Law of Georgia on "The Parliamentary Elections of Georgia" which define the purpose of the seal of the Regional Commission during the voting process and further electoral procedures. Namely, according to Clause 1, Article 51, during the voting process "the electoral bulletin shall be certified by signatures of two members of the Electoral Commission and the seal of the Commission." Pursuant to Sub-clause "a", Clause 1, Article 52, during the calculation of votes in an electoral district, after the completion of voting, the Electoral Commission calculates and packs unused voting bulletins. The package.. .shall be signed by the Chairman (or deputy) and Secretary of the Commission and the seal of the commission shall be put on it." According to the same sub-case, the damaged voting bulletins shall be calculated as well, and they shall be packed and sealed in the same way (i.e., with the seal of commission). According Sub-clause "c", "the chairman of the Regional Electoral Commission shall examine the validity of the seals on the ballot boxes in the presence of Members of the Commission" and unseals them (ballot boxes are sealed on the day of elections before voting). According to Sub-clause "d", invalid and indefinite bulletins shall be put in separate envelopes according to their colors and sealed in such a way that it shall be impossible to take out or put in a bulletin without damaging the seal. "Similarly (in sealed envelopes) bulletins are kept after the counting of votes for each candidate, party or electoral block" (see Sub-clauses 9 and 11). Finally, in accordance with Sub-clause "i", Clause 1, Article 52, "the Regional Electoral Commission shall examine the results of calculation of votes and draft a due minutes. "The number of copies of such minutes shall be three times more than the number of candidates, parties, and electoral blocks. Each copy of the minutes shall be signed by the chairman, deputy chairman, secretary and members of the Commission and approved by the seal of the commission."

That provision of the Organic Law concerning the seal of the Regional Electoral Commission is of a mandatory nature. Usage of a seal of the Regional Commission has no other alternative during the voting and other procedures of calculation of votes.

Thus, in accordance with the Organic Law on "The Parliamentary Elections of Georgia", the seal of the Regional Commission represents an important and essential attribute of the electoral process. Considering the above mentioned, the Constitutional Court shall not take into account the opinion of the Claimants' representative that "in case of loss of the seal... the Commission should not have stopped working, but should have waited till 20:00 pm for voters to come and instead of the seal, to solve the issue of absence of the seal, by means of an additional signature or signatures."

2. It was proved by the materials of the case that in Dzedzileti Electoral District No 22 of Khoni one-mandate Electoral Region No 55 there was no appendix of the list of electors for the portable ballot boxes. Voting by using the ballot boxes in the electoral districts was held without such a list, which represents a gross violation of the electoral legislation.

Article 50 of the Organic Law of Georgia on 'The Elections of the Parliament of Georgia" stipulates that "if because of an illness or any other reason a voter is unable to go to a polling station, on the basis of his request which shall be communicated to the District Election Commission by 18:00 of the pre-election day and registered in the journal of applications, the district commission instructs its members to arrange a vote casting at the voter's location, as provided for by an appendix of the voters' list and makes a corresponding mark therein." (Clause 8). The same mandatory requirements concerning the regulation of the preparation of the above list are laid down by the normative act on "the Instructions with regard to the Activities of the Di strict Electoral Commission" approved by decree of the Central Electoral Commission No 154/1999 of October 20,1999. The above normative act is provided for and

adopted on the basis of Organic Law on "The Parliamentary Elections of Georgia, (see Sub-clause "d", Clause 3, Article 1; Clause 1, Article 9). Clauses 2 and 3 of Article 9 of the Instruction underlines that: "Members of the Commission shall take with them the list of voters, to serve them by means of portable balloting boxes; voters shall confirm the reception of bulletins by their signatures on the list of votes."

Actually, none of these complex requirements of the Organic Law and Instruction have been met in Dzedzileti Electoral District No 22. The request of above mentioned categories of voters was not communicated to the District Electoral Commission on the pre- election's day till 6.00 p.m. and therefore was not registered in the journal of applications; the District Electoral Commission has not ordered members of the Commission to arrange a vote casting at the voter's location, on the basis of an appendix of the list of voters with a corresponding mark therein (an appendix for the list of voters has not been prepared); of course, members of the Commission have not taken a list of the corresponding voters with the portable balloting boxes and accordingly in such circumstances the voters have not confirmed the receipt of the bulletins by their signature.

In contradiction with the opinion of the Claimants' representative, the Constitutional Court finds it completely unjustified to hold balloting by absolute violation of the above-adopted Clauses of the Organic Law of Georgia on "The Parliamentary Elections of Georgia".

3. In accordance with Clause 9, Article 54 of the Organic Law on "The Parliamentary Elections of Georgia, "the Central Electoral Commission has right to declare elections null and void in those electoral districts where the gross violation of this law have taken place. This issue shall be considered by the Commission not less than within 5 days from the day of elections."
The Constitutional Court notices that there is no legislative definition of "a gross violation" of the Organic Law on "The Parliamentary Elections of Georgia". It implies that the Central Electoral Commission defines each case on its own. The Constitutional Court regards that loss of a seal of the District Commission and arrangement of elections by portable balloting boxes without an appendix of the list of voters, considering the above provisions of the Organic Law, actually falls under the category of a gross violation. Forthcoming from this, the Central Electoral Commission had the right to declare results of the election null and void in No 15 Khidi and No 22 Dzedzileti Electoral Districts, and therefore to make correspondent decisions on November 18 and 19 (elections were held on November l4).

4. The Constitutional Court shall not take into account the Claimant's opinion that the Central Electoral Commission didn't have a right to consider and to declare the results of elections null and void in the No 15 Khidi and No 22 Dzedzileti Electoral Districts. On the basis of that opinion, Clauses 8,9 and 10, Article 53 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia" are indicated: "8. The application concerning the annulment of elections in electoral districts shall be prepared in the District Electoral Commission on the day of elections from 7 am till 8 pm. This application shall be attached a minutes of a violation, where a date and place of the drafting of the minutes, the name, last name and position of the person who has drafted the minutes, data about the violator; the place, time and essence of the committed violation; names and addresses of witnesses and explanation of the violation and other additional references shall be specified"; 9. The Regional Electoral Commission shall submit the application mentioned in Clause 8 of the present Article with the enclosed minutes to the District Commission on the following day of the elections, which shall consider it within 2 days and shall immediately notify the Central Electoral Commission its opinion with regard to the declaration of the elections invalid"; "10. The application submitted and prepared in violation of the rules provided for by this Article shall not be considered."

The Claimants' point is that the decision concerning the annulment of the election in No 15 Khidi and No 22 Dzedzireti Electoral Districts was adopted in violation of the present

requirements: on the day of election - on November 14 from 7 am till 20 pm no relevant applications and minutes were prepared in the Regional Electoral Commissions; an application concerning annulment of the elections in No 22 Electoral Districts was submitted to the District Electoral Commission on November 15 at 17:55 and no application has been submitted to No 15 Electoral District.

In this connection, the Constitutional Court notes that according to Clauses 8, 9 and 10, Article 53 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia" preliminary conditions for the annulment of elections in electoral districts is limited to the voting period and the Central Electoral Commission is not and naturally shall not be bound by the limitations provided for by those Clauses. This proceeds from Sub-clause "a", Clause 2, Article 22 of the Organic Law on "The Parliamentary Elections of Georgia" which states that "the central electoral commission.. .within its competence shall control the execution of this law and the Constitution of Georgia on the whole territory of Georgia and shall provide their uniform application." (Similarly, in accordance with Clause "a", Article 24 "The Regional Electoral Commission .. .within its competence shall control the execution of this law and the Constitution of Georgia on the territory of electoral region and shall provide their uniform application").

Therefore, the Central Electoral Commission is authorised and responsible to provide general (of course, even without one's application and after the voting) control over an execution of electoral legislation and take adequate measures in case of its violation.

Thus, in the opinion of the Constitutional Court, the electoral results of No 15 Khidi and No 22 Dzedzileti Electoral Districts of Khoni one-mandate Electoral Region No 55 were lawfully declared null and void; however, in the final minutes of the Central Electoral Commission, in violation of the requirements of Clause 11, Article 54 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia", the names of those districts are not indicated (only numbers), as well as the reasons for invalidation and the number of voters.

5. Pursuant to Clause 10, Article 54 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia", "in case of annulment of elections in electoral districts, the Central Electoral Commission shall appoint re-elections for candidates presented in the districts, if the total number of voters in these districts is more than the number of the difference of accepted votes by the candidate with the next best result."

In case of existence of above condition, it is possible that according to the results of re-voting, the candidate with the previous (before re-voting) best result could be outpaced by the candidate of the next best result. Therefore, re-elections, i.e., voters of those electoral districts in which the electoral were declared null and void, may essentially influence the final results of the elections. It means that in such circumstances a candidate existing in the second place before re-voting may be elected as a member of the Parliament.

Thus, in certain conditions, re-voting turn out to be the only guarantee for lawful implementation of the relevant provisions of Clause 1, Article 49 of the Constitution of Georgia. Namely, in relation with the No 55 Khoni one-mandate Electoral Region, fulfilment of that requirement of this Article of the Constitution is implied in that the Parliament shall consist of 85 (with one member elected in the No 55 Khoni one-mandate Electoral Region) MPs elected by the majoritarian system on the basis of the universal and equal suffrage.

The Constitutional Court remarks that according to the case materials, the declaration of the electoral results null and void in No 15 Khidi and No 22 Dzedidzeleti Electoral Districts of No 55 Khoni one-mandate Electoral Region provoked the circumstance provided for by Clause 10, Article 54 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia" (none of the representatives of the Respondents deny it). In spite of this, the requirement of Clause 10, Article 54 of the Organic Law has not been met in No55 Khoni one-mandate Electoral Region.

In contradiction with Article 55 of the Organic Law and the present Clause of Article 54, the Central Electoral Commission did not arrange re-voting in No 15 Khidi and No 22 Dzedzileti Electoral Districts. The final results have been concluded without the above and therefore, Jemal Mebuke was considered to be elected in Khoni one-mandate Electoral region No 55.

Due to the above violation, voters of the electoral districts were deprived their constitutional right to participate in the elections, an opportunity provided for by the Organic Law to elect their majoritarian candidate by re-voting on their own and to impact the results of elections in the electoral districts. The mentioned violation affected the constitutional right of the candidate Akaki Bobokidze, as it has excluded an opportunity for his election as a majoritarian member of the Parliament of Georgia.

Thus, the circumstances that (a) in contradiction with Clause 10, Article 54 of the Organic Law of Georgia on "The Parliamentary Elections of Georgia in No 15 Khidi and No 22 Dzedzileti Electoral Districts re-voting were not held and (b) a majoritarian candidate of Khoni Electoral Region No55was elected in two electoral districts without taking into account results of the re-voting do not correspond to and violate the requirements of Clause 1, Article 49 of the Constitution of Georgia.

According to the statement of the Respondent's representative, in case of annulment of results of the second round of election, re-voting shall not be held, for the law determines a period of two weeks from "general elections" for it, this period has already expired. A representative of the Claimants replied that in the case of a possible two rounds of elections, each of them shall be considered separately as general elections and the calculation of days shall be correspondingly conducted. The Respondents pointed to a possible gap in the Organic Law which is not refused by the Constitutional Court either, moreover the necessity for the perfection of the electoral practice and the Organic Law of Georgia on "The Parliamentary Elections of Georgia is stated in the final report of the election monitoring mission of the Office of Human Rights and Democratic Institutions of Organisation for Security and Co-operation in Europe. The mission visited Tbilisi and monitored the Parliament elections of November 14 and October 31,1999. (in the supervisors opinion, alongside the general positive evaluation of the elections, "some Clauses of the Organic Law are vague and contradict each other and some of them cause serious inconvenience.") However, alongside the above, the Constitutional Court considers that it is impermissible to justify the violation of the constitutional provisions, principles and norms on the ground of existing gaps in the current legislation.

A representative of the Respondents also noted that after the second round of the elections, in case of re-voting, election of a candidate shall not be possible in due time before the meeting of the newly elected Parliament. He thinks that if the re-voting had been held after the first meeting of the newly elected Parliament, the constitutionality of solving that issue would be doubtful. In contradiction to it, the Court referred to Article 51 of the Constitution of Georgia, which states that the newly elected Parliament will begin its work when authority of two thirds of the deputies is approved.

6. The Central Electoral Commission summarised the results of the second round elections in Khoni one-mandate Electoral Region No 55 on the basis of the regional majoritarian minutes of November 15. In this connection the Constitutional Court notes that the elementary and universally accepted rules concerning preparation of the documentation were not preserved at the District Electoral Commission. According to the case materials it has been proved that the chairman of the Commission and members signed and sealed the copies of the final minutes before filling the relevant data in it that created an actual opportunity for forgery. This explains the fact that there are sealed and signed minutes of November 15 and 16, bearing different kinds of data, as well as one similar copy of the minutes without a date. According to the regional majoritarian minutes of November 15, J. Mebuke was elected in Khoni Electoral Region as a member of the Parliament, and according to the minutes of

November 16 and of no date A. Bobokidze got more votes than J. Mebuke. The interrogated witnesses, members of the District Electoral N. Kakabadze and K. Khonelidze, declared that signatures on their behalf on the district majoritarian minutes submitted to the Central Electoral Commission do not belong to them.

Even a representative of the Claimants who does not recognise the lawfulness of the annulment of the election results in No 22 Dzedzileti Electoral Districts and considers the winner A. Bobokidze on the basis of the general data and the regional majoritarian minutes of November 16 in Khoni one-mandate Electoral Region instead of J. Mebuke, declared in the court: "Along with the "serious errors" in No 22 Dzedzileti Electoral District, similar inaccuracies were revealed in several regional minutes, however none of them were checked by the district Electoral Commission. It is obvious from the minutes of the regional commission that the total number of both unused and used bulletins in districts 3,4,6,10,12 and 18 exceeded the number of received bulletins at those districts, i.e., there were more bulletins in the above districts than the district commission had submitted and the total number of unused and used bulletins in districts 1 and 2 were less than the bulletins received in those districts, i.e., submitted bulletins were "lost" at those districts..., the number of the "lost" bulletins nearly coincides with the number of additionally "revealed" bulletins in other districts." (It should be noted that the Respondents did not reply to that argument of the Claimants representative.) This circumstance shall be underlined to characterise the general situation created while summarising the election results in Khoni one- mandate Electoral Region.

The Constitutional Court considers that neither the documents prepared in such a situation in Khoni Electoral Commission and naturally nor the results of the elections summarised on the basis of the above document shall be considered lawful and credible.

Taking into account the circumstances detected as a result of the consideration of the merits of the constitutional claims No 122 and No 128 filed by two groups of the members of the parliament of Georgia, Constitutional Court has ruled:
2. The demand of the group of members of the Parliament of Georgia with the composition of: Vakhtang Khmaladze, Hamlet Chipashvili, Tengiz Jgushia and others (52 MPs) and to regard as unconstitutional and null and void: a) the election results in one-mandate Khoni Electoral Region No 55, where according to the district majoritarian protocol of November 15, 1999, "Mr Mebuke, Jemal has been elected as an Member of the Parliament" and b) Clause VII of the final minutes of the Central Election Commission of Georgia of 18 November 1999 on "the results of re-voting and the second round of elections of the Parliament of Georgia held on November 7 and 14, 1999" in that part of relating to Mr. Jemal Mebuke as a majontarian MP elected in Khoni Electoral Region No 55 shall be satisfied.

2.2.
In case of *three groups of members of the Parliament of Georgia v. Central Electoral Commission of Georgia* [N6/134-139-140; 30. March, 2001], the Constitutional Court of Georgia has upheld the constitutional claim and has regarded relevant normative act as unconstitutional, which resulted in cancellation of electoral results.

The reasons for cancellations are stated in the decision, attached herein:

THREE GROUPS OF MEMBERS OF THE

PARLIAMENT OF GEORGIA V. CENTRAL ELECTORAL COMMISSION OF GEORGIA

N6/134 - 139 - 140 **30 March, 2001**

The Plenum of the Constitutional Court of Georgia with the following composition: Avtandil Demetrashvili (Chairman of the Hearing), Nikoloz Shashkin, Avtandil Abashidze, Otar Benidze, Besarion Zoidze, Jacob Putkaradze, Nikoloz Cherkezishvili, Lamara Chorgolashvili and Zaur Jinjolava (reporter), and Lili Melashvili and Tamar Gachechiladze *{Secretaries of the Hearing)* at an open court hearing with the participation of the Representative of the

Claimants for the Constitutional Claim N134 - Lawyer Roland Shonia; the Representative of the Claimants for Constitutional Claim N139 - Member of the Georgian Parliament Vakhtang Khmaladze, and the Lawyer of the same Claimants Lado Sanikidze; the Representative of the Claimants for the Constitutional Claim N140 -Lawyer Lela Tsanava; the Representatives of the Respondent -Lawyers of the Central Electoral Commission of Georgia Lili Begiashvili and Elza Guliashvili; also Boris Karseladze (for Constitutional Claim N139);

Witnesses -Members of Abasha Regional Electoral Commission N63 of the 1999 Georgian Parliament Elections - Gia Gocholeishvili (Secretary), Sulkhan Chanturia, and Marina Kuntelia; Members of Tkviri Electoral Commission N17 of Abasha Voting RegiGn N63 - Maka Margania (Secretary), Shalva Gvalia, Avtandil Gvalia and the Representative of the Intellectual League "Agordzineba" in the Georgian Central Electoral Commission -Daniel David ashvili; Members of Tsalenjikha Regional Electoral Commission N 68 of the 1999 Georgian Parliament Elections - Goneli Kvaratskhelia (Chairman); Members of Obuji District Electoral Commission N13 of Tsalenjikha Electoral Region N68 - Mediko Kakachia (Chairman), Larisa Tvalavadze, Marina Pipia, and Gogi Chanturia; Member of the International Observers Group, Mark Malen; Interpreter, Tamar Karusanidze; Deputy Governor of Tsalenjikha Region, Robert Kacharava; and Deputy Chairman of the Regional Police General Department of Samegrelo-Zemosvaneti, Tengiz Sichinava,

Considered the case: The constitutional claims of three groups of Georgian Parliament members N134,139,140 against the Central Electoral Commission of Georgia on the constitutionality of the Parliamentary Elections of November 14,1999 in single mandate electoral regions of Abasha (N63), Tsalenjikha (N 68), and Poti (N70).

In this case, the Constitutional Claims of three groups of Georgian Parliament members N134,139 and 140, which were received on June 16 and July 17,2000 for the purpose of common consideration, were united by Ruling 2/134-139-140-142-151/1 of the Second Board of the Constitutional Court of Georgia of February 6,2001.

The basis of the constitutional claims - Article 89, Clause 1, Sub-clause D of the Constitution of Georgia, Article 19, Clause D of the Organic Law on the Constitutional Court of Georgia, Article 37, Clause 1, Sub-clause B and Clause 2 of the Law of Georgia on Constitutional Legal Proceedings - Article 1, Clause 2.

Subject of Dispute

I. With respect to the Constitutional Claim of the members of the Parliament N134 (exact data - total 55 members) - the constitutionality of the arrangement of the second stage of the elections to the Georgian Parliament of November 14, 1999 held by the majoritarian system in Abasha Electoral Region N63 in accordance with Article 49, Clause 1 of the Constitution of Georgia, and the part of Clause V of the "Final minutes of the results of the second stage of the elections to the Georgian Parliament and the re-voting held on November 7 and 14 of 1999" of the Central Electoral Commission of Georgia dated November 19 of 1999, on recognition of Samson (Soso) Chanturia as a member of the Parliament elected by the majoritarian system in Abasha Electoral Region N63;

II. With respect to the Constitutional Claim of the group of members of the Georgian Parliament N139 (exact data - total 53 members) - the constitutionality in accordance with Article 49, Clause 1 of the Constitution of Georgia, of the results of:

a) the second stage of the majoritarian elections held in Poti Single Mandate Electoral Region N70 on November 14,1999.

b) the part of Clause V of the "Final minutes of the results of the second stage of the elections to the Georgian Parliament and re-voting of November 7 and 14 of 1999," related to the election of Peter Beraia as a member of the Parliament in Poti Electoral Region N70,

c) Resolution of November 19,1999 of the Central Electoral Commission of Georgia on the results of the second stage of the elections in Districts N1,2, 5,7, 8, 9, 10,13 and 19 of Poti Electoral Region N 70;

III. With respect to the Constitutional Claim of the group of members of the Georgian Parliament N140 (53 members in total) - the constitutionality in accordance with Article 49 Clause 1 of the Constitution of Georgia of:

a) Resolution N190 of the Central Electoral Commission of Georgia of November 19 of 1999 on the invalidation of the results of re-voting in District N13 of Tsalenjikha Electoral Region N68,

b) The of the majoritarian protocol of Tsalenjikha Regional Electoral Commission N 68 of November 17 of 1999 under which Valeri Chanturia was elected as a member of the Georgian Parliament,

c) the part of Clause V of the "Final minutes of the results the second stage and re-voting of the elections to the Georgian Parliament of November 7 and 14 of 1999" related to the recognition of Valeri Chanturia as a member of the Parliament from Tsalenjikha Electoral Region N68 and the part of Clause VII on the invalidation of the results of the re-voting in District N13 of the same region.

In the Constitutional Claims N139 and N140 of two groups of members of the Georgian Parliament, according to the above mentioned Ruling of the Second Board of the Constitutional Court, the disputed issue - the constitutionality of Resolution 3-1 of the Georgian Parliament of November 20 of 1999 "On recognising the authority of the members of the Georgian Parliament," which recognised the authority of the members of the Georgian Parliament Petre Beraia and Valeri Chanturia, was excluded from consideration by the Plenum of the Constitutional Court of Georgia. This was caused by the fact that consideration of the issue of constitutionality of the decision of the Parliament on recognising the authority of the members of the Parliament is within the competence of a Board of the Constitutional Court of Georgia.

The Plenum of the Constitutional Court of Georgia admitted the case for consideration on the basis of Article 21 Clause 1 of the Organic Law of Georgia on the Constitutional Court of Georgia, taking into account the fact that the controversy in all the three constitutional claims was related to the issue of the constitutionality of the elections.

In the Constitutional Claim of the group of members of the Georgian Parliament N134 it was noted that according to the results of the Parliamentary elections held on October 31 of 1999 (first stage) Tamaz Khoshtaria, a majoritarian candidate, took the second place in Abasha Electoral Region N63 and it was necessary to hold a second stage of elections, which was confirmed by the regional majoritarian minutes of Abasha Regional Electoral Commission N63 on November 2,1999 (form 22/99). Tengiz Kalandadze and Tamaz Khoshtaria had to take part in the second stage as the candidates having the best results. However, at the hearing held on November 7, 1999 the Central Electoral Commission made an absolutely illegal decision about holding of the second stage of the elections in Abasha Electoral Region N 63 between the candidates Tengiz Kalandadze and Samson (Soso) Chanturia.

The Claimants consider that the above mentioned decision was unlawful, due to the fact that Abasha Electoral Commission N63 allegedly satisfied the claim and for the aim of re-checking opened the package presented by Tkviri Electoral Commission N17. After opening the package, the votes were recounted and 20 more votes in favour of Samson (Soso) Chanturia were found. Thus, Samson (Soso) Chanturia took the second place.

The Claimants consider that the disputed decisions of Abasha Regional Electoral Commission N63 and the Central Electoral Commission of Georgia violated the constitutional principles of free, universal and equal elections. In particular, the constitutional right of Tamaz Khoshtaria as a candidate for a member of the Georgian Parliament to have the legal right to participate in the second stage of the elections. In their opinion, the second stage of the elections to the Georgian Parliament (November 14 of 1999) by the majoritarian system in Abasha Electoral Region N 63 was appointed and held with violations of the first parts of Articles 49 and 50 of the Constitution of Georgia.

They also consider that the Central Electoral Commission of Georgia and Abasha Regional Electoral Commission N63 violated the first part of Article 53 and the second and third parts of Article 54 of the Organic Law of Georgia on the Parliamentary Elections of Georgia (this law is applied as of the 1999 Parliamentary elections) and demand to recognise as unconstitutional the second stage of the elections to the Georgian Parliament held by the majoritarian system in Abasha Electoral Region N63 on November 14,1999 and to invalidate their results; to recognise as unconstitutional and to invalidate the part of Clause V of the "Final Minutes of the results of the second stage and the re-voting of the elections to the Georgian Parliament of November 7 and 14,1999" of the Central Electoral Commission of Georgia of November 19,1999 related to recognising Samson (Soso) Chanturia as a member of the Parliament elected in Abasha Electoral Region N63.

It is indicated in the constitutional claim of the group of members of the Georgian Parliament N139 that in Poti Single Mandate Electoral Region N70, the following candidates took part in the second stage of the elections: Roman Melia and Petre Beraia, On November 14, 1999 after the completion of the voting, at about 9.30 p.m. the Electoral District N17 of Poti Single Mandate Electoral Region N70 was destroyed by unidentified persons, and, therefore, it was impossible to count the votes and produce the results at this district. At the session held on November 16, 1999 Poti Regional Electoral Commission N70 discussed the issue of the elections in District N17 and resolved that at this district the elections were not held. The Central Electoral Commission of Georgia did not agree to the decision of the Regional Commission and by Resolution N191/1999 of November 19, 1999 abolished the results of the second stage of the elections in District N17 of Poti Electoral Region N70. Excluding the results of the elections in District N17, in the second stage of the elections Roman Melia received 8 533 votes and Petre Beraia 9 334 votes. The difference between the votes was 801. The number of voters in District N17 was 1 940. According to Article 54, Clause 10 of the Organic Law of Georgia on the Parliamentary Elections of Georgia - "In case of invalidation of the elections in districts, the Central Electoral Commission appoints a new voting for the presented candidates if the total number of the voters is more than the vote difference between the candidates at the first and second places, having the best results. In spite of that, at the session held on November 19,1999 the Central Electoral Commission of Georgia declared Petre Beraia as a member of the Georgian Parliament from Poti Electoral Region N70 in violation of the requirements of the law in case of second stage of elections and without appointing a new voting in District N17.

The Claimants note that in District N8 of Poti Electoral Region N70, at about 11:20 a.m. a fire started in one of the voting boxes and a large part of the bulletins were burnt. After 12 o'clock the elections went on. The district commission calculated the results using the undamaged bulletins. Poti Regional Electoral Commission N70 discussed this issue at the hearing of November 16, 1999, but did not recognise the elections as invalid. They also pointed out that minutes presented from districts N1,2,5,7,8,9,10,13 and 19 of the Poti

Electoral Region N 70 comprised doubtful data. The Claimants consider that the constitutional principles of free, universal and equal elections provided for in Article 49, Clause 1 of the Constitution of Georgia were violated. In particular, the constitutional right of Roman Melia - the candidate for the Parliament- to be recognised as an elected member of the Georgian Parliament, was violated.

Considering the above mentioned, the Claimants demand to recognise as unconstitutional the results of the second stage of the elections held by the majoritarian system on November 14, 1999 in Poti single mandate electoral region N70 as the elections held at Districts N1,2, 5,7, 8, 9, 10, 13 and 19 districts were unconstitutional, and the results of the elections held in District N17 were abolished by the Central Electoral Commission itself, however, it did not appoint a new voting and thus the voters of that district lost their right to express their will and affect the results of the elections.

In the Claim of the group of members of the Georgian Parliament N140 it is indicated that according to Resolution 185/1999 of the Central Electoral Commission of November 5, 1999 in Obuji District N13 of Tsalenjikha Region N68 a re-voting was fixed for November 14, 1999. However, in District N13 the re-voting was not held. It was the result of illegal actions of the regional and district commissions and the state police forces, which was expressed in the following: all the police structures were gathered in the village of Obuji on the day of the elections, they created "block-posts," called the staff of the police, 89 people in total. Armed police were inside the village as well as at the entrance and exit and also around the district commission. A single pass system was arranged, which was issued by Tsalenjikha police department. In fact, in this way, free movement was not permitted inside the village. Apart from that, the voters did not receive a voter's card, which was the main reason for not permitting them to vote in the District. It was a planned event with the purpose of failure to hold the re-voting. According to Resolution N190 of the Central Electoral Commission of Georgia of November 19, 1999, the re-voting in Obuji District, which was not actually held, was invalidated, and thus the constitutional guarantees of the political rights of the voters were neglected.

The Claimants consider that the constitutional principles of free, universal and equal elections provided for by Article 49, Clause 1 of the Constitution of Georgia were violated. In particular, the voters of the above mentioned district were actually deprived of their right to take part in the elections and affect the results of the elections by expressing their will. Therefore, they demand to recognise as unconstitutional: Resolution N190 of November 19, 1999 of the Central Electoral Commission of Georgia on the abolishment of re-voting at Obuji District N13 of the Tsalenjikha Electoral region N68; the part of Clause V regarding ' 'the second stage of the election and the total results of voting of the Georgian Parliament elections held on November 7 and 14 of 1999" by the Central Electoral Commission of Georgia on November 19 of 1999, on recognition of Valeri Chanturia as a member of the Parliament elected in Tsalenjikha Electoral Region N68; and the part of Clause VII on the invalidation of the results of the re-voting in District N13.

The lawyer of the Claimants, Lela Tsanava, in her conclusive speech demanded invalidation of the majoritarian minutes of November 17, 1999 of Tsalenjikha Regional Commission N68, on the basis of which the Central Electoral Commission invalidated of the results of the elections.

With respect to the Constitutional Claim of the group of members of the Georgian Parliament N134, the Respondents noted that in Tkviri District N17 of the single mandate electoral region N63 the voting and calculation of the results of the elections were held in a common way, without any violations on October 31, 1999. Although on November 1 at the Regional Electoral Commission 214 written requests were received form I. Tkvatsiria and D. Gvalia who demanded to abolish the results in Tkviri district, as Samson (Soso) Chanturia received more votes than the 270 votes indicated in the minutes. The Regional Electoral Commission

rejected the request by minutes N 18 at the hearing on November 1, 1999. The written request was taken into consideration, however, the results established by Tkviri Regional Electoral Commission were not invalidated. On November 2, 1999 the Regional Electoral Commission was again requested to open the package of votes for Samson (Soso) Chanturia and re-count the bulletins, as they were sure that Samson (Soso) Chanturia received not 270 but 290 votes. The Regional Electoral Commission, considering Article 24, Sub-clause I of the Organic Law of Georgia on the Parliamentary Elections of Georgia and within the competence provided for by this Article, made a decision to open the sealed package of the bulletins. After the opening 290 and not 270 were found in the package. On November 20, 1999 Minutes N20 on the above mentioned fact were made, which were signed by 10 members of the Regional Electoral Commission, 4 members of Tkviri district commission and one observer.

The Respondents consider that on October 31, 1999 the Tkviri district commission, while counting the results of the voting, violated the constitutional right not of Tamaz Khoshtaria but Samson (Soso) Chanturia for not giving him 20 more votes. The Regional Electoral Commission on November 2 corrected such a violation and the Central Electoral Commission agreed as well.

Considering all the above mentioned, the Respondents consider that the Constitutional Claim of the group of members of the Georgian Parliament N134 is groundless and it should not be satisfied.

With respect to the Constitutional Claim of the group of members of the Georgian Parliament N139, the Respondents declared that the District Electoral Commission of Poti Electoral Region N70 carried out the requirements of the Organic Law and saved the constitutional rights of the voters, when it managed to put out the fire in the voting box and saved the bulletins inside the box. The decision of this commission on the rule of the bulletins counting was quite legal, because the district commission had a full right in that case, when the voting box appeared to be on fire, by a majority of votes to make the decision on counting the damaged and saved bulletins. According to their meaning, the decision of the commission was in accordance with the requirements of Article 52 of the Organic Law of Georgia on the Parliamentary Elections of Georgia.

The representatives of the Respondents think that the Constitutional Court should not consider the minutes made by Poti Regional Electoral Commission N70 on November 16, 1999 and the first part if its resolution, where it is declared that the elections were not held, as Article 53, Clause 3 of the Organic Law of Georgia on the Parliamentary Elections of Georgia recognises the elections only at the level of a single mandate electoral region and not at the level of a district. The representatives of the Respondent do not agree to the Constitutional Claim and the arguments expressed by the Claimants on the number of bulletins in districts N1,2,5,7,8,9,10,13 and 19 of Poti Electoral Region N70. They think that the fact that the minutes presented at the Central Electoral Commission have different data is not the basis for invalidation of the elections, as in the Organic Law of Georgia on the Parliamentary Elections of Georgia nothing indicates that the copy of the regional majority document given to an entrusted person by the candidate for a member of the Parliament has the same legal power as the majority minutes presented by the Regional Electoral Commission.

Considering all the above mentioned, the representatives of the Respondents consider that the Constitutional Claim is groundless and it should not be satisfied.

Regarding constitutional claim of the group of members of the Georgian Parliament N140, the representatives of the Respondents do not agree with the Constitutional Claim and the arguments presented by the Claimants during the Court discussion on unconstitutionality of

the Resolution of the Central Electoral Commission on the invalidation of the elections held in the Tsalenjikha Electoral region N68.

The representatives of the Respondents note that on October 14, 1999 during the voting in the village of Obuji there really were temporary police posts, however, this fact did not impede the process of the elections as their only purpose was to keep the order. Furthermore, they note that at 6.40 a.m. the district commission by voting made a decision on dividing the functions among the members of the commission. Two members of the commission L. Tvalavadze and M. Pipia did not agree to this decision. Because of the threat expressed by these two members of the commission and the candidate to the Parliament G. Tsanava, that in case the election started, bloodshed would happen, the District Electoral Commission at 11.20 a.m. made a decision to close the district.

The Respondents think that in this case, the Central Electoral Commission made the only right decision, when due to the rough violation of the Organic Law, they acknowledged the abolishment of the elections in Obuji district. The rough violation of the Organic Law was expressed in the violation of the requirements of Article 49 of this law and the voting at this district did not start at 7:00 a.m.

Considering all the above mentioned, the representatives of the Respondents consider that the Constitutional Claim is groundless and it should not be satisfied.

Thus, the Respondent - the Central Electoral Commission - considers that the Constitutional Claims of the three groups of members of the Georgian Parliament N134, N139 and N140 should not be satisfied.

After consideration of the case on merits the Plenum of the Constitutional Court of Georgia on the basis of the analysis of data contained in the constitutional claims, the speeches made by the participants of the legal proceedings, the evidence of the witnesses and the written evidence established circumstances necessary for making a decision on all the three constitutional claims (while considering this case, the Plenum of the Court takes into account its Decision N3/ 122, 128 made on June 13,2000 on the constitutionality of the results of the 1999 elections to the Parliament of Georgia held in Khoni Region N55 and Martvili Region N65 by majoritarian system).

I. The Plenum of the Constitutional Court of Georgia considers that the constitutional claim of the group of members of the Georgian Parliament against the Central Electoral Commission of Georgia on the constitutionality of the second stage of the elections to the Parliament of Georgia by a majoritarian system held in Abasha Electoral Region N63 on November 14, 1999 should be satisfied. The Constitutional Court does not consider as lawful participation of the candidate to the Parliament Samson (Soso) Chanturia in the second stage of the elections as well as the appointment and holding of the second stage of the elections in Tkviri District N17 with such a re-calculation of the results as it was made by Abasha Regional Electoral Commission N63.

On November 1, B. Tsomaia - the observer of the district commission appealed to the Regional Electoral Commission with a written request dated October 31, 1999 on the re-checking of the results of the voting. In the written request (Registration N216) he wrote: "Would you, please, check and count the bulletins in favor of Samson (Soso) Chanturia and find out the truth." The Regional Electoral Commission considered this written request on the same day, however, it neglected the content of the request and did not satisfy it as the applicant of the request allegedly demanded "abolishment of the results" (Minutes N18 of the session of Abasha Regional Electoral Commission of November 1, 1999). However, on November 2, the same Commission made a positive decision regarding another written request about counting of the votes.

In its decision of November 2, 1999 Abasha Regional Electoral Commission N63 indicated that after the opening of the sealed package presented by Tkviri District Commission counted only the votes in favour of Samson (Soso) Chanturia. As a result, according to minutes N20 of November 2, 1999, the Commission found twenty more bulletins - 290 bulletins in total instead of 270 bulletins indicated in the district majoritarian minutes. Taking into account these data, the Regional Electoral Commission made changes in the regional majoritarian minutes, which declared Samson (Soso) Chanturia as the second among the candidates to the Parliament in the region and, therefore, the participant of the second stage of elections instead of David Khoshtaria having 4 more votes before that. The Central Electoral Commission of Georgia agreed to this change. The Constitutional Court indicates to the competence of the Regional Electoral Commission that it controls tile fulfillment of the relevant provisions of the Constitution and the Organic Law on the parliamentary elections and provides their uniform use on the territory of the region (Organic Law of Georgia on the Parliamentary Elections of Georgia, Article 24, Clause A), The Regional Electoral Commission did not have to be satisfied only by checking the votes in favor of Samson (Soso) Chanturia. If the Regional Electoral Commission decided to open the sealed package of the District Electoral Commission, at the same time, it had to count the votes given in favor of other candidates, incl uding David Khoshtaria. This fact was also mentioned in the joint request of Tkviri District observers B. Tsomaia, I. Tkvatsiria and D. Gvalia sent to the Regional Electoral Commission on November 2. After the discussion of the request the above mentioned package was opened. Though in the request only the votes in favor of Samson (Soso) Chanturia are mentioned, in the last part it is said in general - "... Please check the box presented in the centre of the region for having no basis for any doubts in this respect."

The Regional Electoral Commission had to find out the origin of the additional twenty bulletins in favour of Samson (Soso) Chanturia having the vital importance, their relation to the number of bulletins received by the district and to the balance of relevant data connected to the bulletins. Without taking into account such circumstances it was impossible to find out the real results of the voting in Tkviri District N17. Considering this, it is groundless to substitute David Khoshtaria with Samson (Soso) Chanturia and giving the latter the right to participate in the second stage of the elections, and to appoint and hold the second stage in itself. In this respect it has to be taken into account that the representative of Respondent L. Begiashvili suggested at the court session to open and check all the bulletins at Tkviri district - "In this way, we will find out the truth about how 20 more bulletins could have been added"; "When the Central Electoral Commission received this presentation, I think, it had to check it then" (the quotations are taken from the minutes of the session).

In relation to the adding of 20 more bulletins in favor of the candidate to the Parliament Samson (Soso) Chanturia, the Constitutional Court also notes that the Regional Electoral Commission along with making the above mentioned decision declared that it had no confidence in the District Electoral Commission: "The Central Electoral Commission has no confidence in Tkviri Electoral Commission N17 and the issue of their authority should be raised" (Minutes N20 of the session of Abasha Regional Electoral Commission N63 of November 2, 1999). The Plenum of the Constitutional Court considers that the electoral procedures conducted by such a commission should not be considered reliable at all.

A sole decision of the Regional Electoral Commission on counting the bulletins and the relevant consent of the Central Electoral Commission excluded the possibility of the candidates to the Parliament to participate in the elections on an equal basis. Thus, the provisions of the Organic Law of Georgia on the Parliamentary Elections of Georgia were violated, according to which (1) "the Georgian Parliamentary elections are held on the basis of equal suffrage" (Clause 1, Article 1) and (2) "the elections to the Georgian Parliament are equal. The citizens of Georgia participate in the elections on an equal basis" (Article 3).

The norms of the Organic Law of Georgia on the Parliamentary Elections of Georgia are the guarantees of proper implementation of the provisions of Article 49, Clause 1 of the Constitution of Georgia. In particular, in relation to Abasha Single Mandate Electoral Region N63, this implies implementation of the requirement of Article 49 of the Constitution that the Parliament should consist of 85 members elected by a majoritarian system on the basis of the equal suffrage (among them, one elected from Abasha Single Mandate Electoral Region N63). Samson (Soso) Chanturia cannot be considered as a member of the Parliament elected on the basis of the equal suffrage.

Thus, the decision of Abasha Electoral Commission and the Central Electoral Commission of Georgia on participation of Samson (Soso) Chanturia as a candidate to the Parliament in the second stage of the Georgian Parliamentary elections, the holding of the second stage of the elections, participation of Samson (Soso) Chanturia in this stage and his election as a member of the Georgian Parliament violates Article 49, Clause 1 of the Constitution of Georgia.

II. The Constitutional Court considers that the constitutional claim of the group of members of the Georgian Parliament N139 has to be satisfied due to the following circumstances:

1. As it became clear from the presented materials and the evidence of the witnesses during the consideration of the case on merits, on November 14, 1999 after the completion of the voting, at about 21.30 p.m. District N17 of Poti Electoral Region N70 was damaged by unidentified persons and therefore it was impossible to count the votes and calculate the results of the elections in that district. At the hearing of November 16, 1999 Poti Regional Electoral Commission considered the issue of District N17 and decided that the elections in this district were not held. The Central Electoral Commission did not agree with that decision of the Regional Electoral Commission and by Resolution N191/1999 of November 19,1999, invalidated the second stage of the elections in District N17. Excluding the results of that district, in the second stage the candidate to the Parliament Roman Melia received 8 533 votes and Petre Beraia 9 364 votes. The difference between the votes was 801 in favor of Petre Beraia. The total number of voters in the District was 1 940.

According to Article 54, Clause 10 of the Organic Law of Georgia on the Parliamentary Elections of Georgia, "In case of invalidation of the elections in the districts, the Central Electoral Commission appoints a new voting for the presented candidates in the region if the total number of the voters in these district is more than the difference of the votes between the first and the second candidates having the best results."

In such conditions it is possible that according to the results of a new voting (before re-voting) the candidate in second place can advance ahead of the candidate in first place, so the re-voting and the voters of such districts, where the results of the elections were abolished, could have had a material influence over the final results of the elections. Thus, the candidate being in the second place before the re-voting can be elected as a member of the Parliament.

Thus, in certain conditions the re-voting is one of the guarantees for the correct accomplishment of the relevant provisions of Article 49, Clause 1 of the Constitution of Georgia. In particular, in respect to Poti Single Mandate Electoral region N 70, this implies accomplishment of the requirement of the said Article of the Constitution that the Parliament should consist of 85 members elected by a majoritarian system on the basis of the equal suffrage (among them, one elected from Poti Single Mandate Electoral Region N70).

The Constitutional Court indicates that according to the materials of the case, the invalidation of the elections in District N17 of Poti Single Mandate Electoral Region N70 caused the situation envisaged by Article 54, Clause 10 of the Organic Law of Georgia on

the Parliamentary Elections of Georgia (the representatives of the Respondent also confirm that). In spite of that, the requirement of Article 54, Clause 10 of the Organic Law was not accomplished in Poti Single Mandate Region. In violation of Article 54, Clause 10 and Article 55 of the Organic Law, the Central Electoral Commission did not appoint a re-voting in District N17. The final results of the elections were calculated without the data of this district and accordingly Petre Beraia was considered as an elected candidate in Poti Single Mandate Region N70.

Due to this violation, the voters of the above mentioned district were deprived of their constitutional right to participate in the elections, and to elect by a re-voting their majoritarian candidate and even affect the results of the elections in the electoral region. Furthermore, this violation breached the constitutional right of Roman Melia, as the possibility of his election as a member of the Georgian Parliament was excluded.

Therefore, the fact that: (a) in violation of Article 54, Clause 10 of the Organic Law of Georgia on the Parliamentary Elections of Georgia a re-voting in District N17 was not held and (b) the majority candidate in Poti Electoral Region N 70 was elected without taking into account the results of the re-voting, violates the requirements of Article 49, Clause 1 of the Constitution of Georgia.

According to the statement of the representatives of the Respondent, in case of invalidation of the results of the second stage of the elections, a re-voting could not be held, as the Law establishes the two weeks term from the "general elections", and this term had expired. In reply the Claimant noted that in the case of holding possible two stages of the elections, each of them has to be considered as separate general elections and the terms should be calculated considering this fact. The Respondent also noted the possible faults in the current Organic Law and the Constitutional Court does not exclude this fact either, moreover, the necessity of perfection of the Organic Law of Georgia on the Parliamentary Elections of Georgia was noted by the Democratic Institutions and Human Rights Office of European Security and Co-operation Organisation in the final conclusion of the observers mission sent to Tbilisi for monitoring the process of elections of October 31 and November 14,1999 (along with a general positive estimation of the elections, the observers consider that "several Clauses of the Organic Law are quite vague and at the same time contradict each other and some of them cause serious concerns"). However, the Constitutional Court considers it is inadmissible to support the violation of constitutional principles and norms and constitutional provisions due to the faults existing in the current legislation. Moreover, the "vague" provisions of the Organic Law were clarified by the changes made in Article 55. In the third Clause of this Article it is clearly stated that "in a single mandate Electoral region the re-voting should be held not later than within 14 days after the general elections. If the results of the voting are invalidated again, within 7 days after the voting, a new voting is held and if the results are invalidated again, the elections are not considered as held, and new elections are fixed according to Article 57 of the Law."

The representative of the Respondent indicated that in the case of the re-voting after the second stage of the elections, there would be not enough time for electing the candidate before the first meeting of the newly elected Parliament. The Respondent considers that if the re-voting was held after the first sitting of the newly elected Parliament, this would not be constitutional, In opposition to this, the Court points to Clause 51 of the Constitution of Georgia, according to which a newly elected Parliament will start its work if the authority of not less than two thirds of the members is approved.

2. In District N8 of Poti Electoral Region N70, a fire started in one of the voting boxes. A big part of the bulletins was damaged. The District Electoral Commission established the rule for counting the bulletins after the opening of the burnt box and at about 12 o'clock the elections went on. The representative of the Respondent considers that the decision of the

District Electoral Commission was absolutely in accordance with the requirements of Article 52 of the Organic Law and it does not establish any contradictory and unlawful rules.

The Court considers that the Resolution made by District N8 on the rule for counting the bulletins after the opening of the burnt box is fully in accordance with Article 52 of the Organic Law of Georgia on the Parliamentary Elections of Georgia and the requirements of Resolution N105/1999 of September 29, 1999 of the Central Electoral Commission "On approval of some electoral forms."

The Constitutional Court does not share the Claimant's opinion that the Central Electoral Commission had to recognise as a rough violation of the law the fact that some bulletins were damaged after the fire in the box in District N 8 and invalidate the results of the elections in the District.

According the Article 54 paragraph 9 of the organic law on "Parliamentary Elections of Georgia, "The Central Electoral Commission can invalidate the elections in the districts where a rough violation of the law occurred." The Constitutional Court notes that there is no legislative explanation of "a rough violation" in the Organic Law on the Parliamentary Elections. It means that in each particular event, the Central Electoral Commission itself determines it. And in this particular case, it was the prerogative of the Central Electoral Commission to make a decision.

3. The Court cannot agree with requirement of the constitutional claim regarding the invalidation of the elections in Districts N1,2,5,7,8,9,10,13, and 19 due to the fact that there is a misbalance in the copies of the majoritarian minutes they have.

The Plenum of the Court considers that' 'misbalance" in the district majoritarian minutes in this particular case cannot be the sufficient basis for the invalidation of the elections, though this causes certain doubts.

III. The Constitutional Court considers that the constitutional claim of the group of members of the Georgian Parliament N140 should be satisfied.

1. On the basis of the materials and evidence of the witnesses presented during the consideration of the case, it was established that on October 14,1999 Obuji District N13 of Tsalenjikha Electoral Region N68, where a re-voting was appointed, the voting was not actually held. The Central Electoral Commission discussed this issue and by Resolution N183/1999 of November 5,1999 invalidated the elections in Obuji District N13 of Tsalenjikha Electoral region N68.

a) The Constitutional Court considers that the resolution of the Central Electoral Commission was based on an incorrect interpretation of the content of the Article 54, Clause 9 of the Organic Law on the Parliamentary Elections of Georgia. On the basis of the mentioned Clause "The Central Electoral Commission can invalidate the elections in the districts, where considerable violation of the law occurred." In particular, with respect to Obuji District, the elections were expressed in the re-voting, which was appointed by the Central Electoral Commission for November 14, 1999. By its disputed resolution the Central Electoral Commission incorrectly interpreted the notion, content and grounds for invalidation of the elections in a district. In this particular case, when the re-voting was appointed in the district, according to the said Clause of Article 54 of the Organic Law, this particular re-voting could have been invalidated and not the whole process of the elections, which is a rather long and multi-stage process (the preparation of the elections, holding of the elections and calculation of the results). In this case, the elections are implied in a narrow, real content - or in other words, the choice of the voter, which is expressed in the voting. The voting is the constitutional (substantial) characteristic feature of the elections. The current new Organic Law on the Parliamentary Elections of Georgia confirms this using the following statements

in respect with the invalidation - "invalidation of the voting," "invalidation of the results of the voting." All these statements imply the invalidation of the elections. Article 73, Clause 2 of the Constitution of Georgia confirms this interpretation of the elections stating: "The President appoints the elections to the Parliament and representative authorities according to the rule prescribed by law." Article 12 of the Organic Law on the Parliamentary Elections" clarifies this constitutional provision ("appointment of the elections"), according to which.. ."The President of Georgia appoints the date of the elections not later than 60 days before the elections." This provision unambiguously shows that the appointment of the elections implies one specific day, namely, the day of the voting. The same is confirmed by Article 24, Clause N of the Organic Law, Article 26, Clause 6; Article 34, Clausel; Article 49, Clause 1; Article 50, Clause 4, etc. Considering such interpretation of the elections in a district, the disputed decision of the Central Electoral Commission on the invalidation of the re-voting in Obuji District N13 is groundless.

It is impossible to talk about the invalidation of the results of the elections where there was no voting. It is impossible to invalidate the will of the voters, which was not expressed. In order to let the voters express their will, the District Electoral Commission is obliged to hold a voting under the Organic Law. The Obuji Electoral Commission, as it was clarified during the court consideration, could not provide holding of the elections. Not a single voter had the opportunity to make his choice. The District Electoral Commission finishes its activity by a dispute regarding division of the functions among the members of the commission and terminated its activity at 11.20. The voting, which according to Article 49 of the Organic Law had to be held on the day of the elections from 7:00 to 20.00, was not held and not a single voter took part in the elections. This is confirmed by the minutes of the sitting of Tsalenjikha Regional Electoral Commission N 68 of November 14,1999 stating: "...the elections in Obuji District N13 were not held."

Despite this, the Central Electoral Commission, by the "Final Minutes of results of the second stage of the elections and the re-voting to the Georgian Parliament held on November 7 and 14,1999," of November 19,1999 invalidated the results of the elections in District N13 of Tsalenjikha Electoral Region N68 and recognised Valeri Chanturia as a member of the Parliament elected to the Parliament from this Region as a result of the re-voting.

Considering all the above mentioned, the resolution of the above mentioned Minutes of the Central Electoral Commission on the invalidation of the results of the elections in Obuji District N13 is groundless. It is nonsense to speak about invalidation of the results of the elections when a re-voting was not held at all. Part of Clause V, according to which Valeri Chanturia was elected a member of the Parliament after the re-voting is incomprehensible either. Such interpretation of the re-voting contradicts its purposes provided for by the Organic Law. After such interpretation of the law, the results of the elections were calculated without are-voting and this obviously violated the norms of the Organic Law, which imperatively envisage holding of a re-voting. Holding of a re-voting means that if it is not held at a specific time it has to be postponed and held at another time.

2. The Court considers that the failure to hold a re-voting in Obuji District N13 of Tsalenjikha Electoral Region N68 was the result of inefficient work of the District, Regional and Central Electoral Commissions. The commissions failed to use their rights conferred to them by the Organic Law and perform all the obligations in order to hold the elections and enable the voters to make their choice. All this is confirmed by Articles 22,49, 50 and other Articles of the Organic Law of Georgia on the Parliamentary Elections of Georgia. Under Article 22, Clause 2, Sub-clause K, the Central Electoral Commission "checks the lawfulness of the decision of the electoral commissions, and, if necessary, repeals them and makes a final decision; in extraordinary cases, a majority of two thirds of its members makes a decision on the termination of the authority of the subordinate electoral commission and delegation of this authority to a group established by the Central Electoral Commission;

according to Article 49, Clause 2 "during the voting it is inadmissible to lock the voting building and to interrupt the voting...." According to Article 50, Clause 3, "the district commission and personally - the Chairman of the Commission, are responsible for organising the voting, the objective expression of the voters' will, providing the secret ballot and the arrangement of the building. On the day of the election the Chairman of the District Electoral Commission directs provision of order in the voting building and is responsible for that. In order to keep the order, his decisions are obligatory for all the persons authorised to attend the process of voting and for the voters..." Furthermore, the electoral Commissions neglected the requirements of Articles 11,16,17,19, and 26 of the Organic Law.

According to the materials of the case, in Tsalenjikha Single Mandate Electoral Region N68 the re-voting could have had a vital effect on the final results of the elections. Therefore, a re-voting in such conditions is one of the guarantees of the proper implementation of Article 49, Clause 1 of the Constitution of Georgia.

Due to the above mentioned violations, the voters in Obuji District N13 of Tsalenjikha Electoral Region N68 could not exercise their constitutional right to participate in the elections, the possibility provided for by the Organic law to elect their majoritarian candidate through a re-voting. Furthermore, this violation breached the constitutional right of the candidate Giorgi Tsanava, as the possibility of his election as a member of the Georgian Parliament was excluded.

Taking into consideration the facts established as a result of the consideration on merits of the constitutional claims of three groups of members of the Georgian Parliament N134, 139 and 140, guided by Article 89, Clause 1, Sub-clause D of the Constitution of Georgia, Article 19, Clause D, Article 21, Clause 1, Article 23, Clause 4, Article 37, Clausel, Sub-clause B and Clause 2, Article 43, Clause 8 of the Organic Law on the Constitutional Court of Georgia; Article 24, Clause 2, and Articles 32 and 33 of the Law on Constitutional Legal Proceedings ," the Constitutional Court of Georgia

has ruled

a. I. With respect to the Constitutional Claim of the group of members of the Georgian Parliament (55 members in total) N134- the request of the claimants shall be satisfied and the following shall be recognised as unconstitutional and invalid:

a) the results of the elections in Abasha Single Mandate Electoral Region, which was expressed in the fact that according to the majoritarian minutes of November 15,1999 "Samson (Soso) Chanturia is elected as a member of the Georgian Parliament",

b. (b) the part of Clause V of the "Final minutes of the results of the second stage of the elections to the Georgian Parliament and the re-voting held on November 7 and 14 of 1999" of the Central Electoral Commission of Georgia dated November 19 of 1999, on recognition of Samson (Soso) Chanturia as a member of the Parliament elected by the majoritarian system in Abasha Electoral Region N63.

П. With respect to the Constitutional Claim of the group of members of the Georgian Parliament (55 members in total) N139:

1. The request of the claimants to recognise as unconstitutional the results of the second stage of the elections to the Parliament of Georgia held on November 14 by the majoritarian system in Districts N 1,2,5,7,8,9,10,13 and 19 of Poti Electoral Region N70 shall not be satisfied.

2. The request of the claimants to recognise as unconstitutional and invalid:

a) the results of the elections in Poti Single Mandate Electoral Region N70, which was expressed in the fact that according to the regional majoritarian minutes of November 16, 1999, "Petre Beraia has been elected as a member of the Georgian Parliament."

b) the part of Clause V of the "Final minutes of the results of the second stage of the elections to the Georgian Parliament and re-voting held on November 7 and 14 of 1999," related to the election of Peter Beraia as a member of the Parliament in Poti Electoral Region N70, shall be satisfied;

III. With respect to the Constitutional Claim of the group of members of the Georgian Parliament (53 members in total) N140, the request of the claimants to recognise as unconstitutional and invalid:

a) Resolution N190 of the Georgian Central Electoral Commission of November 19, 1999 on invalidation of the results of the re-voting in Obuji District N13 of Tsalenjikha Electoral Region N68,

b) the results of the elections in Tsalenjikha Single Mandate Electoral Region N68, which are expressed, according to the regional majoritarian minutes of November 17, 1999, in the fact that "Valeri Chanturia is elected as a member of the Georgian Parliament,"

c) the part of Clause V of the "Final minutes of the results the second stage of the elections and re-voting in the elections of the Georgian Parliament on November 7 and 14 of 1999" related to the recognition of Valeri Chanturia as a member of the Parliament in Tsalenjikha Electoral Region N68 and the part of Clause VII on the invalidation of the results of the re-voting in District N13 of the same region, shall be satisfied.

IV. This Judgement shall enter into force from the moment of its promulgation at the sitting of the Constitutional Court;

V. The Judgement shall be the final and not subject to appeal or revision;

VI. Copies of the Judgement shall be sent to the Parties, the President of Georgia, the Parliament of Georgia and the Supreme Court of Georgia;

VII. The Judgement shall be published in the official gazette within 7 days after the promulgation.

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GERMANY / ALLEMAGNE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

In the Federal Republic of Germany there are only constitutional and legislative provisions concerning the procedures for the scrutiny of elections. Art. 41 subsection 1 of the Basic Law – the German Constitution (*Grundgesetz*) – states that the scrutiny of elections shall be the responsibility of the *Bundestag* – the federal parliament. It is only against the decision of the German *Bundestag* that complaints may be lodged with the Federal Constitutional Court (Art. 41 subsection 2 of the Basic Law). The Federal Law on the Scrutiny of Elections (*Wahlprüfungsgesetz*) stipulates the procedures for election scrutiny.

However, no constitutional or legislative provisions exist which stipulate those infringements of legal provisions - especially of the Federal Electoral Act (*Bundeswahlgesetz*) and the Federal Electoral Code (*Bundeswahlordnung*) - and of the principles of general, direct, free, equal and secret suffrage (Art. 38 subsection 1 of the Basic Law) that lead to the election being declared null and void. The questions in this context can only be answered according to the conclusions which can be drawn from the respective decisions of the *Bundestag* and the relevant case law of the Federal Constitutional Court. This is due to the fact that there is a multitude of possible violations of the electoral law and that it is nearly impossible to phrase a general and concluding provision.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

Each violation of the legal provisions concerning the whole election procedure – the run-up to the elections, the casting of votes, the counting of votes and the allocation of seats - and of the principles of general, direct, free, equal and secret suffrage leads to an electoral error. But not every electoral error results in the invalidity of the elections.

An electoral error is to be corrected as far as possible, whereas the parliament's legal composition needs to be respected to avoid the challenge of the legitimacy of its previous decisions. In this context, the principle of the least possible intervention applies: it is preferable to try to recount the votes or to recalculate the allocation of seats and to correct it if necessary rather than to repeat the election. Therefore, only those infringements of legal provisions that either had or could have had an impact on the composition of the parliament, that is, on the concrete allocation of seats in parliament, can result in an election being declared (fully or partially) null and void. The possibility of an impact on the composition of the parliament must not only be of theoretical nature; it must be a concrete and obvious possibility. For instance, as a result of this, unlawful denial of a single person's entry in the voters' register will, as a general rule, never result in the cancellation of election results, as a single vote rarely has the ability to influence the result of the election.

Decisions of the Federal Constitutional Court therefore only have an impact on the present elections in cases in which the scrutiny procedure is successful and leads to at least a partial re-allocation of the seats. If an infringement of an electoral provision occurred, but did not influence the results of the election, the establishment of the unlawfulness of the election is only of importance for future elections. The violation of the law is only pointed out in order to prevent the authorities form repeating the mistake during the next elections.

In a recent decision the Federal Constitutional Court ruled that a provision of the Federal Electoral Act was unconstitutional. And although the provision had been applied in the election procedure and had had an effect on the legal composition of the parliament the Federal Constitutional Court did not cancel the election result. It held that in this case the public interest in the continuance of parliament's legal composition outweighed the interest in correcting the electoral error. The allocation of the seats could not have been partially corrected since the election result was affected in its entirety by the electoral error. In addition to that, parliament would not have the chance to correct the unconstitutional provision if the election result was cancelled and the *Bundestag* was dissolved. As a consequence the newly-to-be-elected *Bundestag* would be elected again on the basis of an unconstitutional provision.

To date, none of the formal objections filed with the *Bundestag* and none of the complaints brought before the Federal Constitutional Court has resulted in a federal election being declared null and void.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?)

A person who is not eligible for election as stated in Section 15 of the Federal Electoral Act (*Bundeswahlgesetz*) cannot be validly elected. This person's candidacy is already inadmissible and his or her nomination is to be rejected by the Electoral Board. The admission and election of an ineligible person leads to the invalidity of his or her election. The candidate is nevertheless allocated a mandate with full rights for the time being until his or her seat is withdrawn. The ineligibility of a candidate in the scrutiny procedure results in the loss of the mandate of the candidate concerned. There will be no repetition of the election. According to Section 48 subsection 1 of the Federal Electoral Act the seat is given to the party to which the candidate belonged. If the closed party list of the party concerned does not hold any more candidates the seat remains vacant.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

The Federal Constitutional Court has developed the general rule that the voters need to be free, and uninfluenced by the government, during the decision-making process in an upcoming election. The court has held in several decisions that the principle of free suffrage and the principle of equal opportunities for political parties demand that during the election campaign the government must reduce its public relations measures the more the closer the election day is. A violation of this demand can lead to the invalidity of the election only if it either had or could have had an impact on the election results and the allocation of seats.
An electoral error due to influential behaviour of the government can only be established if there has been a major violation of the principle of free suffrage and the principle of equal possibilities in elections.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

In the German Criminal Code (*Strafgesetzbuch*) there are several regulations regarding crimes connected with elections. It is, for instance, a criminal offence to hinder voters from voting, to falsify ballots or the election results, to violate the secrecy of the ballot, to compel voters to vote in a specific way, to deceive voters or to bribe voters or candidates. Furthermore there are regulations in the Civil Code regarding the election process; members of the works councils, for instance, are not allowed to be party politically active while carrying out their functions. A violation of these regulations or the commission of one of the above mentioned crimes is not

automatically considered an electoral error and does not automatically lead to the cancellation of election results.

4. Can only the candidates' activities (contraventions of the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

The Federal Constitutional Court has ruled that influential behaviour can only lead to an electoral error if the decision-making process for an upcoming election has been influenced considerably by the government or (by means of compulsion or pressure) by political parties, candidates or others and if there was no chance to avert, or compensate for, the influential behaviour. Minor infringements of the principle of free suffrage and the principle of equal opportunities in elections by political parties, candidates or others cannot be considered electoral errors even if this behaviour might be considered unfair or is a violation of the law.
However, the Federal Constitutional Court has never declared an election fully or partially null and void because of influential behaviour on the part of the government, the media or others. The public and the private broadcasting corporations and the media generally enjoy the constitutionally protected freedom of the press (Art. 5 subsection 1 sentence 2 of the Basic Law).

It does not make a difference whether the candidate has knowledge of these activities or if he or she approves or disapproves of them.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention of the law or the entire result of the elections?

So far the Federal Constitutional Court has not declared a federal election partially or fully null and void.

In general, parliament's legal composition has to be respected as far as possible. It is a priority to rather correct an electoral error than to repeat an election. If an election has been partially declared invalid and the repetition of the election is absolutely necessary, the election is repeated in the electoral ward, constituency, or *Land* that is concerned by the electoral error. The electoral results can only be corrected to the extent in which they have been affected by the electoral error. The cancellation of the entire result of an election is only possible if the electoral error is of major significance and the continuation of the incorrectly composed parliament is unacceptable.

The electoral error must be the more significant the more the continuance of the parliament's legal composition is in question. Even if a number of seats have not been obtained in accordance with the law the election results will not be fully cancelled. In the specific constellation the public interest for the correction of the electoral error needs to outweigh the interest for the continuance of the people's decision.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

In Germany there are no regulations concerning the exclusion of a candidate from a repeated election after the cancellation of an election result. And so far this question has never been decided. It is imaginable that a candidate could be excluded from a repeated election if he or she has lost his or her eligibility as stated in Section 15 of the Federal Electoral Act in the meantime.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The scrutiny procedure in Germany is divided. Art. 41 subsection 1 of the Basic Law and Section 1 subsection 1 of the Federal Law on the Scrutiny of Elections provide that first of all, the scrutiny of elections shall be the responsibility of the *Bundestag*, even though this means that it decides as a judge in its own case. This has mainly historical reasons since in 1871 parliament successfully fought to obtain the right to exercise parliamentary self-scrutiny, independently of the crown and its judiciary. The *Bundestag* follows this tradition. The scrutiny procedure by the *Bundestag* is considered rather a review of whether during the election the legal provisions were applied correctly than a political act.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The scrutiny procedure in the *Bundestag* does not involve a judicial body. The decision of parliament is prepared by a special committee, the Committee for the Scrutiny of Elections (*Wahlprüfungsausschuss*), which is composed of Members of Parliament, and which deals exclusively with electoral dispute issues. The committee is composed of nine regular members and nine deputies. In addition to the regular members, one representative of each parliamentary group not represented among the nine regular committee members is granted a permanent advisory status. In contrast to most other standing committees of Germany's federal parliament, the members of the Committee for the Scrutiny of Elections are not elected by the parliamentary groups, but by the *Bundestag* as a whole. Nevertheless, due to convention, the committee reflects the party composition of parliament. The committee is elected for the duration of a legislative term.

Parliament's decisions may be subject to complaints lodged with the Federal Constitutional Court. The two-tiered scrutiny procedure thus combines the principle of parliamentary self-scrutiny and the principle of judicial review.

3. Is there a specific body in charge of the control of the finance in the electoral field?

There is no specific body that is exclusively in charge of the control of finance in the electoral field. But legislative regulations concerning the refund of campaign expenses do exist. The political parties in Germany themselves spend a large amount of money on their election campaigns. Since election campaigns have the constitutional function to inform the public about the political parties and their programmes, the campaign expenses of the political parties are refunded out of the federal budget.

Public election financing is a highly controversial topic in Germany. The regulations on public election financing have been amended several times in the past, in some cases due to rulings of the Federal Constitutional Court. To date according to the Federal Law on Political Parties (*Parteiengesetz*) a party may apply for public party financing provided that it received at least 0.5 percent of the valid votes in the most recent election to the European Parliament or the *Bundestag*, or at least one percent of the valid votes in a *Länder* election, or, if a party did not submit a party list in the most recent election, at least ten percent of the valid votes in a constituency. An additional prerequisite to receive public funding is the delivery of a valid statement of accounts. The basic criterion for the distribution of public funds is the party's degree of societal embeddedness, measured by the electoral performance in the most recent elections (European Parliament, *Bundestag*, and *Länder* legislatures) and individual contributions (including donations and membership fees). A party that qualifies for benefits

receives 0.85 € per year for each valid vote up to a total number of four million votes; for every additional vote a party collects 0.70 € annually. Each individual contribution up to a total sum of 3.300 € per person and year is taken into account through a subsidy of 0.38 € annually. The public subsidies for all parties may currently not exceed the total amount of 133 million € per annum. If this upper limit is reached, the calculated subsidies for the parties are reduced proportionally. Apart from this absolute cap, the subsidies may not rise above a party's own total annual income.

The President of the *Bundestag* is in charge of distributing the maximum total annual amount to the political parties based on the parties' statements of accounts. In their statements of accounts the parties have to state as well how they spend their money. But there is no restriction as to how much money the political parties spend on their election campaigns. And there are also no regulations on the amount of money spent by the political parties on campaign gifts.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

The *Bundestag* and the Federal Constitutional Court are the only bodies in charge of the scrutiny of election results.

5. Who may appeal the decision on certifying electoral results?

According to Section 2 subsection 2 of the Federal Law on the Scrutiny of Elections, the scrutiny procedure before the *Bundestag* shall be instigated upon a formal request made by an eligible voter, by a group of eligible voters, by the Federal Returning Officer (who oversees the federal election), by a state returning officer (there are 16 of them, each responsible for one of the 16 *Länder* in Germany) or by the President of the *Bundestag*.

A complaint against parliament's decision on the validity of an election can be filed, according to Section 48 of the Federal Constitutional Court Act, 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.

The Federal Returning Officer, the state returning officers, the President of the *Bundestag* and groups of eligible voters or groups of candidates may not file a complaint with the Federal Constitutional Court although they are entitled to file a formal objection with the *Bundestag* and even if their objection was rejected by Parliament.

6. What is the time-limit for appealing the decision on certifying electoral results?

The formal objection must be submitted to the *Bundestag* in written form within two months after election day, and reasons must be stated within this time-limit. After this period only the President of the *Bundestag* may file an objection if he or she obtains knowledge of circumstances which might be indicative of an instance of electoral deficiency. The President of the *Bundestag* must file his or her objection within one month after he or she learned about these circumstances.

According to Section 48 of the Federal Constitutional Court Act the complaint about the decision of the *Bundestag* must be lodged with the Federal Constitutional Court within two months of the challenged decision. Not only does the complaint have to be lodged before the time-limit, but the complainant must also state and specify the reasons until this date.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision of certifying electoral results?

There is no time-limit for the decision of the *Bundestag* or for the decision of the Federal Constitutional Court. The scrutiny procedures conducted by parliament and, if applicable, by the Federal Constitutional Court in the ensuing complaint proceedings before the court may well take over one year each.

It is highly controversial how complaints about the decision of the *Bundestag* should be handled if the Federal Constitutional Court has not decided on them before the legislative term has ended. Several years ago the Federal Constitutional Court ruled that the end of the legislative term disposes of these complaints. The scrutiny procedure does not protect individual rights of citizens, but only serves to guarantee the parliament's legal composition. With the end of the legislative term the decision of the Federal Constitutional Court cannot have any effect on the parliament's composition any more. This is also the reason why only those infringements of legal provisions that either had or could have had an impact on the composition of the parliament can result in the cancellation of election results.

To date scrutiny procedures dealing with the election of the 15th *Bundestag* are still pending before the court. These appeals were not decided upon before the election of the 16th *Bundestag*, since the 15th *Bundestag* had been dissolved early after a motion of confidence of the Chancellor had not been supported by a majority in parliament.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

According to the Federal Constitutional Court Act the Federal Constitutional Court itself is entitled to investigate and determine the facts in all types of proceedings before the court. There are no regulations concerning the burden of proof. Thus the appellants do not have to collect evidence and present it to the court.

The Federal Constitutional Court's duty to investigate and determine the facts is on the other hand limited by the complainant's duty to state and specify the reasons of his or her complaint. The relevant facts and the central judicial arguments have to be stated in order to enable the court to decide whether legal provisions have been violated during the election that had or could have had an impact on the parliament's legal composition.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

As a general rule the parliament's legal composition is to be respected as far as possible. The election results must only be corrected to the extent in which they have been affected by the electoral error. If the election is only partially invalid and the repetition of the election is absolutely necessary, the election is repeated only in the electoral ward, constituency, or *Land* that is concerned by the electoral error.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

The *Bundestag* and the Federal Constitutional Court may declare an election fully or partially

null and void even after the elected candidates have been fully installed. To the extent to which the court declares the election void, the Members of Parliament concerned lose their seats. According to Section 48 subsection 1 of the Federal Electoral Act the seat is given to the party to which the Member of Parliament concerned belonged. If the closed party list of the party concerned does not hold any more candidates the seat remains vacant. If the Member of Parliament did not belong to a party with a closed party list, the election will be repeated in that constituency. If the election as a whole is declared null and void, the newly elected parliament is dissolved. In that case, new elections have to be held. However, concerning federal elections, that has never happened in the history of the Federal Republic of Germany.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of election results?

The *Bundestag* as well as the Federal Constitutional Court have already decided in numerous scrutiny proceedings. Most formal objections have thus far been lodged by individual citizens and political parties. On average, about 40 formal objections were filed against each federal election between 1949 and 1990. After 1990 the number of objections increased significantly to 1,453 objections particularly due to the rising number of overhang mandates (if a party wins more constituency seats in a *Land* than it is entitled to on the basis the percentage of valid party-list votes, so called overhang or excess mandates are generated, thus increasing the size of parliament). 520 objections were filed against the election of the 15th *Bundestag*, and until now 195 objections against the election of the 16th *Bundestag*.

The Federal Constitutional Court has decided in over 100 scrutiny proceedings. In most cases the scrutiny proceedings were inadmissible or clearly unfounded. In a number of cases the Federal Constitutional Court has stated that legal provisions have been violated during the election or that legal provisions were not in accordance with the constitution. If the Federal Constitutional Court declares individual legal provisions inconsistent with the constitution this does not automatically result in the invalidity of the election. This can only be the case if the legal provisions in question have been applied in the election procedure and have had a significant impact on the election result.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

To date none of the complaints lodged with the Federal Constitutional Court has resulted in the cancellation of election results.

GREECE / GRECE

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés?

La Constitution grecque de 1975 (telle qu'elle a été révisée en 1986 et en 2001) prévoit, elle même, dans les articles 56 et 57, les inéligibilités et incompatibilités des députés[37] et stipule

[37] (en stipulant que «1. Les fonctionnaires publics et les titulaires de fonction publique rémunérés, les autres employés de l'État servant dans les forces armées et les corps de sécurité, les agents des collectivités territoriales ou d'autres personnes morales de droit public, les organes à membre unique élus des collectivités territoriales, les gouverneurs, sous-gouverneurs ou présidents de conseils d'administration ou administrateurs délégués ou conseillers mandatés de personnes morales de droit public ou de personnes morales étatiques de droit privé ou d'entreprises publiques ou d'entreprises dont l'administration est nommée de manière directe ou indirecte par l'État par un acte administratif ou en tant qu'actionnaire, ou d'entreprises des collectivités territoriales, ne peuvent être proclamés candidats ni être élus députés sans avoir démissionné avant leur proclamation comme candidats. La démission est accomplie par sa soumission écrite seule. Le retour au service actif des militaires démissionnaires est exclu. Les organes supérieurs à membre unique élus des collectivités territoriales de deuxième degré ne peuvent être proclamés candidats ni être élus députés pendant la durée du mandat auquel ils ont été élus, même s'ils démissionnent. 2. Les professeurs des établissements d'enseignement supérieur sont exemptés des restrictions du paragraphe précédent. La loi fixe les modalités de leur remplacement, l'exercice des compétences relatives à la qualité de professeur par l'élu étant suspendu durant la législature.3. Ne peuvent être proclamés candidats ni être élus députés dans toute circonscription électorale où ils ont exercés leurs fonctions ou à laquelle s'étendait leur compétence territoriale au cours des derniers dix-huit mois de la législature de quatre ans :a) les gouverneurs, sous-gouverneurs ou présidents de conseils d'administration ou administrateurs délégués ou conseillers mandatés des personnes morales de droit public, sauf ceux des personnes morales corporatives, des personnes morales étatiques de droit privé et des entreprises publiques ou autres entreprises dont l'administration est nommée de manière directe ou indirecte par l'État par un acte administratif ou en tant qu'actionnaire. b) les membres des autorités indépendantes constituées et fonctionnant en vertu de l'article 101a, ainsi que des autorités qualifiées par la loi comme indépendantes ou régulatrices.c) les officiers supérieurs et de second rang des forces armées et des corps de sécurité. d) les fonctionnaires rémunérés de l'État, des collectivités territoriales et de leurs entreprises, ainsi que des personnes morales et entreprises visées au cas a) qui occupaient un poste de chef d'une unité organique au niveau de la direction ou un autre poste équivalent, comme la loi en dispose plus particulièrement. Les agents cités à la phrase précédente et qui avaient une large compétence territoriale sont soumis aux restrictions de ce paragraphe quant aux circonscriptions électorales autres que celle de leur siège uniquement s'ils occupaient un poste de chef d'une unité organique au niveau de la direction générale, ou un autre poste équivalent, comme la loi en dispose plus particulièrement. e) les secrétaires généraux ou particuliers des ministères ou des secrétariats généraux autonomes ou des régions et tous ceux que la loi leur assimile. Ne sont pas soumis aux restrictions de ce paragraphe les candidats à la députation d'État. 4. Les fonctionnaires civils et militaires en général qui, selon la loi, se sont assujettis à l'obligation de rester en service pendant une période déterminée, ne peuvent être proclamés candidats ni être élus députés durant le temps de leur obligation» (article 56) et que «1. Le mandat de député est incompatible avec les activités ou la qualité de propriétaire ou associé ou actionnaire ou administrateur ou gestionnaire ou membre du conseil d'administration ou directeur général ou de leurs suppléants, d'une entreprise qui : a) réalise des travaux ou des études ou des fournitures de l'État ou assure une prestation de services à l'État ou conclut avec l'État des contrats annexes à caractère de développement ou d'investissement.b) jouit de privilèges particuliers. c) possède ou gère une station de radio ou de télévision ou publie un journal de diffusion nationale. d) exerce en concession un service public ou une entreprise publique ou une entreprise d'utilité commune. e) loue pour des raisons commerciales des biens immeubles de l'État. Pour l'application de ce paragraphe, sont assimilées à l'État les collectivités territoriales, les autres personnes morales de droit public, les personnes morales de droit public, les personnes morales étatiques de droit privé, les entreprises publiques, les entreprises des collectivité territoriales et les autres entreprises dont l'administration est nommée de manière directe ou indirecte par l'État avec un acte administratif ou en tant qu'actionnaire. Est actionnaire d'une entreprise qui tombe sous le coup des restrictions de ce paragraphe toute personne détenant un pourcentage du capital social supérieur à un pour cent. Le mandat de député est également incompatible avec l'exercice d'une profession quelle qu'elle soit. La loi précise les activités qui sont compatibles avec la qualité de député, ainsi que les questions d'assurance et de retraite et les modalités du retour des députés à leur profession après la perte de la qualité de député. Les activités de la phrase précédente ne peuvent en aucun cas

dans l'article 58 que la vérification de la validité et le contentieux des élections législatives, contre la régularité desquelles ont été formés des recours portant, soit sur des infractions électorales quant au déroulement de la procédure électorale, soit sur l'absence des qualités requises par la loi, relèvent de la Cour Spéciale Suprême de l'article 100. A cette Cour resortissent (entre autres), selon l' article 100 paragraphe 1 de la dite Constitution, a) le jugement des recours prévus à l'article 58 et (b) le jugement sur les incompatibilités ou la déchéance d'un député conformément aux articles 56 et 57. La Composition de la Cour est prévue par la Constitution (article 100 paragraphe 2[38]). Quant au contentieux électoral des conseils municipaux et généraux, il appartient celui, en vertu des dispositions du Code des municipalités et des préfectures[39], aux tribunaux administratifs, sous réserve de pourvoi en cassation devant le Conseil d' État.

Les cas dans lesquels les résultats des élections législatives doivent ou peuvent être annulés sont prévus et fixées par la loi[40]. Ainsi l'élection d'un député est obligatoirement annulée, s'il est constaté par la Cour, que lui manquait une des qualités requises par la loi. Dans ce cas son suppléant est déclaré par la Cour le député élu. De même, si la Cour constate une erreur dans le décompte de la totalité des suffrages reçus par un candidat précis (c'est-à-dire dans l' addition des choix de préférence cochées sur le bulletin de vote à côté de son nom), alors elle déclare nulle cette élection et procéde elle même au bon et correct décompte, pourvu qu'il ne s'agisse pas des calculs compliqués et à plusieurs niveaux[41]. Le résultat peut en être la déclaration d'un autre candidat comme élu. Si en revanche une violation de la loi au cours du déroulement de la procédure électorale est constatée, dans ce cas là, l' élection est annulée seulement, si cette violation laisse à la Cour des doutes bien fondés que le résultat concerné aurait été différent sans l'intervention de ladite violation.

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est- à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou exist-t-il des cas dans lesquels l'annulation est obligatoire? Si elle est obligatoire, quels sont les cas?

La réponse à cette question est donnée au sein de la réponse à la question 1 ci-dessus (dernier paragraphe).

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats?

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englober la qualité d'agent ou de conseiller juridique ou autre dans les entreprises visées aux cas a) à d) de ce paragraphe. La violation des dispositions de ce paragraphe entraîne la déchéance de la qualité de député et la nullité des contrats ou actes relatifs, comme la loi le prévoit. 2. Les députés tombant sous le coup des dispositions de la première phrase du paragraphe précédent sont tenus de déclarer, dans les huit jours après que leur élection est devenue définitive, leur choix entre le mandat parlementaire et les activités ou qualités susmentionnées. A défaut d'une telle déclaration faite en temps utile, ils sont déchus de plein droit de leur mandat parlementaire. 3. Les députés qui acceptent l'une quelconque des charges ou des activités mentionnées dans le présent article ou l'article précédent et qualifiées de cas d'inéligibilité ou d'incompatibilité avec le mandat parlementaire, en sont déchus de plein droit. 4. Une loi spéciale détermine les modalités de continuation, de cession ou de résiliation des contrats cités au paragraphe 1, conclus par le député ou par une entreprise à laquelle il participait avant d'acquérir la qualité de député ou en une qualité incompatible avec son mandat» (article 57).

[38] La Cour mentionnée au paragraphe précédent est constituée des présidents du Conseil d'Etat, de la Cour de cassation et de la Cour des comptes, ainsi que de quatre conseillers d'Etat et de quatre conseillers à la Cour de cassation, désignés par tirage au sort tous les deux ans, comme membres. C'est le plus ancien, des présidents du Conseil d'Etat ou de la Cour de cassation, qui préside cette Cour.

[39] Loi N. 3463/2006.

[40] Loi No. 345/1976 portant sur le code dela Cour Spéciale Suprême de l'article 100 et décret portant sur la codification des lois concernant l' élection des députés.

[41] Si tel soit le cas l' élection est annulée et répétée.

a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures)?
b. La violation des lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote)?
c. La violation d' autres lois, telle qu' une violation établie du code pénal ou du code civil dans le domaine électoral?

Peuvent servir de base pour l' annulation des résultats des élections les suivantes violations de la loi: (A) Toute violation des règles sur les inéligibilités et les incompatibilités prévues par les articles 56 et 57 de la Constitution, précités, et les lois réglant les details de leur application. En Grèce il n'y a pas de procédure de récolte des signatures pour la nomination des candidats. (B) La violation de toute sorte de stipulations comprises dans le décret portant sur la codification des lois concernant l' élection des députés précité (voir ci-dessus note (3) ainsi que dans toute autre loi, générale ou spéciale [Par exemple les règles sur l'inscription dans les listes électorales, les sur la campagne, la déontologie de la propagande électorale (en télévision ou aileurs, c'est-à-dire les affiches, les sondages, les tracts, les transparents, etc.), le financement illicite des candidatures, l' excès des dépenses électorales (au delà du plafonnement fixé par la loi[42]), les agissement illégaux des membres du comité qui préside au bureau de vote (dorénavant bureaux de vote) pendant le suffrage (p.e. l'omission de parapher les bulletins de vote sortis de l' urne, non respect de l' impartialité, manquements graves dans la redaction des procès- verbaux électoraux, manque grave de matériel électoral ayant comme résultat l' impossibilité de plusieurs électeurs d' exprimer leur préférence pour un parti ou un candidat ou pour un vote blanc), intimidation par quiconque des électeurs (en général, ou specifiquement pendant l'exercice du droit de vote), la violation du secret et de l'anonymat du vote par l'électeur lui-même (soit en ajoutant un signe discriminatoire - aussi minuscule soit-il - sur son bulletin de vote - qui rend ce bulletin nul - c'est-à-dire les bulletins comportant un signe de reconnaissance, soit en refusant de voter secrètement derrière l' isoloir), la falsification des bulletins de vote, l'utilisation des bulletins non réglementaires, les erreurs des organes compétents en ce qui concerne l'établissement du quotient électoral qui permet à un candidat d' être élu, fautes dans l'établissement du numéro exact des sièges parlementaires à répartir entre les partis politiques dans la deuxième phase de réallocation des sièges, qui est effectuée en vertu de la force électorale des plus puissants parmi eux etc.]. Bien entendu il faut ici répéter, ce qui a été déjà souligné plus haut (voir dernier paragraphe de la réponse à la question (1), que, sauf dans les cas des inéligibilités , des incompatibilités, des déchéances des députés, et des fautes relatives au décompte des suffrages exprimés, la Cour de l'article 100 de la Constitution posséde un grand pouvoir discretionnaire d'annuler ou pas une élection pour violation des lois et des règlements électoraux.

4. Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d' autres personnes peuvent-elles être prises en compte (p.ex. la violation des des règles sur la campagne par les médias ou d'autres personnes en faveur d'un candidat, mais à son insu).

En Grèce, au moins jusqu'à présent, il n' y a pas de prévisions législatives ou de précédents jurisprudentiels sur l'annulation d'une élection à cause des activités des tiers (par exemple violation des règles sur la campagne par les médias ou d'autres personnes en faveur d' un candidat, mais à son insu).

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l' ensemble des résultats des élections?

[42] Loi 3023/2002. Dans ces deux derniers cas la Cour est tenue de prononcer la déchéance du député concerné obligatoirement.

La loi[43] prévoit que la règle prévalente est l'annulation de l'élection du député concerné. Il en est quand même prévu que dans des cas exceptionnels la Cour retient le pouvoir d'annuler l' élection dans toute la circonscription électorale, si les violations de la loi sont de telle ampleur, que l'invalidité de l' élection d' une personne provoque des doutes sur la validité des résultats dans toute la circonscription. Dans ce cas il y a une répétition de l'élection dans la circonscription visée. Il s'agit surtout des cas ayant affaire au systéme électoral (calcul du quotient électoral, réallocation des sièges). Ceci dit, il faut noter que la Cour a très rarement fait usage de cette prérogative et a eu recours à une annulation des résultats dans la circoncription (1 fois dans les derniers 34 ans).

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non?

En cas d'annulation des résultats, ou de déchénce à cause d'inéligibilité ou d' incompatibilité, le candidat concerné peut effectivement se présenter lors des élections postérieures. Il n'y a pas aucune disposition légale stipulant le contraire. La Cour Spéciale Suprême a quand même statué que dans le cas spécial des incompatibilités prévues par l'article 56 paragraphe 3 de la Constitution[44], le candidat ne peut pas se présenter aux élections trois ans durant après sa démission du poste de fonctionnaire etc., qu'il occupait, et ceci même si pendant cette période plus d'une élection nationale législative aient eu lieu (arrêt n° 16/1991).

B. PROCÉDURE POUR L'ANNULATION DES RÉSULTATS DES ÉLECTIONS

1-2. Quelle est l'autorité compétente pour valider les résultats des élections? Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification?

L'autorité compétente pour valider les résultats des élection dans chaque circonscription électorale est le Tribunal de grande instance (justice judiciaire) qui siège dans la capitale du département respectif.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale?

En Grèce il y a un organe spécifique chargé du contrôle des finances en matière électorale. Il s' agit du "Comité du contrôle des finances des partis politiques et des candidats aux élections"[45]. Ce Comité est composée: (a) par un magistrat (du grade de conseiller) provenant de chacune des trois Cours Suprêmes du pays (Conseil d' État, Cour de Cassation, Cour des Comptes) désigné par tirage au sort et (b) un représentant de chaque parti politique ayant des sièges dans l' Assemblée Nationale. Ce Comité, une fois constatée une infraction des dispositions en vigueur au sujet des finances des partis politiques et des candidats aux élections, rapporte le cas à la "Cour Suprême Spéciale de l'article 100 de la Constitution", qui peut imposer la sanction de la déchéance du "coupable" de son poste de député, après avoir suivi la procédure prescrite par le Code régissant le fonctionnement de cette Cour[46].

[43] Article 32 alinéa 2 de la loi 345/1976.
[44] Voir ci-dessus note 1.
[45] Fondé en vertu des disposition de la loi No. 3023/2002.
[46] Loi No. 345/1976.

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections?

Comme il en a été exposé au sein de la réponse à la question 1 de l'unité A, l' organe compétent pour trancher les recours contre la validation des résultats des élections est la Cour Suprême Spéciale de l'article 100 de la Constitution.

5. Qui peut recourir contre la décision de validation des résultats des élections?

Peuvent recourir contre la validation des résultats des élections, seulement, soit: (a) tout électeur inscrit dans les listes électorales de la circonscription précise, la validité des résultats au sein de laquelle est contestée, soit (b) tout candidat au poste de député dans une circonscription précise, qui n'a pas été élu (et qui a été donc considéré comme suppléant).

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections?

Le recours contre la validation des résultats des élections doit être déposé dans un delai de quinze jours, à partir du jour, au cours duquel l'arrêt du Tribunal, compétent pour la validation des résultats de la circonscription précise, a été prononcé en séance publique.

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections?

Il n' y a pas aucun délai impératif, prescrit par loi, dans lequel la Cour Suprême Spéciale serait obligée de rendre sa décision. De toute façon, les litiges relatifs au contentieux des élections sont, par coutume, considérés comme urgents et prioritaires.

8. Est-ce que l' organe judiciaire (l'organe de recours) qui décide de l' annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties?

Selon l'article 30 alinéa 2 de la loi n° 345/1976 le juge rapporteur d' un cas litigieux devant la Cour Suprême Spéciale peut recueillir d' office tout élément de preuve qu'il considére necessaire.

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés?

La loi ne règle pas ce cas. La Cour est donc libre d' agir dans cette hypothèses selon son libre jugement. Or, dans la jurisprudence de la Cour il ne c'est jamais présenté un cas pareil. C'est-à-dire un cas posant le dilemme entre annuler une élection et la faire répéter dans toute la circonscription visée ou l'annuler et la faire répéter dans certains bureaux de votes seulement.

10. Est-ce qu'une autorité (par exemple des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu est entré en fonctions? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu?

La Cour Suprême Spéciale peut annuler des résultats d'une élection, même après que le député concerné soit entré en fonction. Dans ce cas le mandat entamé de ce candidat élu

est considéré rétroactivement comme nul et non avenu. Le candidat proclamé par la Cour à sa place est considéré comme ayant été élu depuis le début du mandat. Bien évidemment les décisions parlementaires auxquelles le député déchu a pris part continuent à être considérées valides, même après sa déchéance.

C. JURISPRUDENCE

1-2. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections? Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation? Si oui, quels ont été les motifs d'annulation?

Il y en a une jurisprudence fournie, relative à l' annulation des résultats des élections. Il y en a plusieurs affaires, dans lesquelles Cour Suprême Spéciale a procédé à une annulation [47]. Les cas les plus représentatifs sont les suivants:

1. Violation de la loi concernant la procédure du vote: (A) Omission du président du bureau de vote de parapher des bulletins de vote après le descellement de l' urne et leur extraction (arrêts n° 13/2005, 13/2005, 9/2001, 26/1999, 50/1995, 28/1995). Ce manque de paraphe rend, selon la loi, les bulletins visés nuls. Leur soustraction donc (en tant que nuls) du chiffre total des suffages, obtenus par le candidat concerné, a conduit dans ces cas à la perte de la première place (ou de la place requise pour que quelqu'un soit placé au dessus du seuil du "quotient électoral" requis pour être considéré comme élu) dans la liste des élus du parti et de la circonscription respectifs (fortes opinions dissidentes). (B) Violation du secret et de l'anonymat du vote par l'électeur lui même en ajoutant exprès un signe discriminatoire - aussi minuscule soit-il - sur son bulletin de vote- ce qui rend reconnaissable l'électeur et, par conséquent, le bulletin nul (bulletins comportant des signes de reconnaissance[48]. Déclaration de nullité d' un grand nombre de bulletins de vote pour cette cause (arrêt n° 29/2001). (C) Fautes d'addition des votes obtenus par des divers candidats dans une circoncription (arrêt n° 14/1990).

2. L'article 57 de la Constitution hellénique prévoit que "le mandat de député est incompatible avec l'exercice d'une profession quelle qu'elle soit", ainsi que "les députés, tombant sous le coup des dispositions susmentionnées, sont tenus de déclarer, dans les huit jours après que leur élection est devenue définitive, leur choix entre le mandat parlementaire et les activités ou qualités susmentionnées. A défaut d'une telle déclaration faite en temps utile, ils sont déchus de plein droit de leur mandat parlementaire". En vertu de cet article est annulée l'élection d'un candidat, qui étant avocat au barreau d' Athènes a omis de faire cette déclaration (arrêt n° 11/2003).

3. Selon l'article 56 paragraphe 3 de la Constitution "Ne peuvent être proclamés candidats ni être élus députés dans toute circonscription électorale où ils ont exercés leurs fonctions ou à laquelle s'étendait leur compétence territoriale au cours des derniers dix-huit mois de la législature de quatre ans : a) les gouverneurs, sous-gouverneurs ou présidents de conseils d'administration ou administrateurs délégués ou conseillers mandatés des personnes morales de droit public, sauf ceux des personnes morales corporatives, des personnes morales étatiques de droit privé et des entreprises publiques ou autres entreprises dont l'administration est nommée de manière directe ou indirecte par l'État par un acte administratif ou en tant qu'actionnaire. b) les membres des autorités indépendantes constituées et fonctionnant en vertu de l'article 101.a, ainsi que des autorités qualifiées par la loi comme indépendantes ou

[47] Quoique leur nombre est inférieur à celui des cas où le recours a été rejeté comme non fondé.

[48] Mais il faut qu'il soit patent que le signe- ou le déchrirement ou froissement du bulletin) ait été fait intentionnellement pour dévoiler l' identité de l'électeur. Par conséquent tout signe provoqué par l' hasard, la mauvaise vue, l' âge avancé, l'empressement, l'émotion ou le tremblement des mains de l' électeur ne conduit pas à l' annulation du bulletin de vote respectif. La tendance prédominante de la jurisprudence de la Cour est qu' en cas de doute il y a présomption de validité.

régulatrices. c) les officiers supérieurs et de second rang des forces armées et des corps de sécurité. d) les fonctionnaires rémunérés de l'État, des collectivités territoriales et de leurs entreprises, ainsi que des personnes morales et entreprises visées au cas a) qui occupaient un poste de chef d'une unité organique au niveau de la direction ou un autre poste équivalent, comme la loi en dispose plus particulièrement. Les agents cités à la phrase précédente et qui avaient une large compétence territoriale sont soumis aux restrictions de ce paragraphe quant aux circonscriptions électorales autres que celle de leur siège uniquement s'ils occupaient un poste de chef d'une unité organique au niveau de la direction générale, ou un autre poste équivalent, comme la loi en dispose plus particulièrement. e) les secrétaires généraux ou particuliers des ministères ou des secrétariats généraux autonomes ou des régions et tous ceux que la loi leur assimile. Ne sont pas soumis aux restrictions de ce paragraphe les candidats à la députation d'État". En évocant cette disposition la Cour a annulé: a) l'élection d'un candidat ayant servi, durant les derniers trois ans avant les élections législatives cocernées, au cabinet d'un ministre comme collaborateur contractuel rémunéré (arrêt No. 11/2000), b) l'élection d'une candidate ayant servi durant la même période comme journaliste en vertu d'un contrat de travail à durée illimitée auprès de la société anonyme "Radiotélévision Hellénique"[49], considérée par la Cour comme "entreprise publique" au sens de l'article 56 susmentionné (arrêt n° 21/2000, 40/1991), c) l' élection d' un candidat ayant servi, durant les derniers trois ans avant les élections législatives, en tant que médecin- fonctionnaire du "Système National de Santé"[50] (arrêt n° 21/2000), d) l' élection d'un candidat ayant servi durant la même période comme fonctinnaire public d' une préfecture (arrêt n° 23/2000), e) l'élection d'un candidat ayant servi durant la même période comme employé auprès de la société anonyme "Électricité de Grèce"[51], considérée par la Cour comme "entreprise publique" au sens de l'article 56 susmentionné (arrêt n° 86/1997, 87/1997, 91/1997), f) l'élection d'un candidat ayant servi durant la même période comme "Administrateur-gouverneur adjoint" de la personne morale de droit public "Caisse de Sécurité Sociale" (arrêt No. 9/1995), g) l' élection d'un candidat ayant servi durant la même période au Corps Diplomatique hellénique, h) l'élection d'un candidat ayant servi durant la même période comme membre du conseil administrateur de la société anonyme "Olympic Airways"[52], considérée par la Cour comme "entreprise publique" au sens de l'article 56 susmentionné (arrêt n° 42/1991), i) l'élection d'un candidat ayant servi durant la même période comme membre d'un conseil régional (arrêt n° 2/1990), j) l'élection d'un candidat ayant servi durant la même période comme fonctionnaire-professeur de l'Éducation Nationale (arrêt n° 52/1997). La Cour a, par ailleurs statué que l'acceptation de la part d'un élu des fonctions incompatibles avec celles du député entraîne sa déchéance (arrêt n° 42/1995).

4. Le 9 mai 2005, la Cour suprême spéciale a statué sur l'affaire suivante : Dans un premier temps, la haute juridiction électorale affirma que, selon les articles 98 paragraphe 4, 99 paragraphe 3 et 100 paragraphe 3 de la loi électorale en vigueur, le quotient électoral était calculé sans tenir compte des bulletins de vote blancs. Toutefois, procédant à une nouvelle interprétation de la législation en cause, la haute juridiction électorale examina la conformité à la Constitution des articles litigieux et, par une majorité de 6 voix contre 5, elle considéra que ceux-ci étaient contraires aux principes fondamentaux de la souveraineté populaire et de l'égalité des votes et donc inconstitutionnels. Par conséquent, les bulletins de vote blancs devaient être pris en compte pour le calcul du quotient électoral et la répartition des sièges. En application de cette interprétation de la loi électorale, la Cour suprême spéciale procéda à une nouvelle répartition des sièges dans la circonscription de Pella, qui eut comme résultat le changement de l'attributaire du quatrième siège de cette circonscription de Pella. Cette nouvelle répartition eut des répercussions sur l'attribution des

[49] Dont la totalité des actions appartenaient à l' époque à l' état grec.
[50] L' équivalent du "National Health Service" anglais.
[51] Dont la totalité des actions appartenaient à l' époque à l' état grec.
[52] Dont la totalité des actions appartenaient à l' époque à l' état grec.

sièges dans l'ensemble de la circonscription majeure de la Macédoine centrale, à l'issue de laquelle deux autres députés furent privés de leurs sièges (arrêt n° 12/2005).

5. La Cour a jugé non conforme avec la Constitution grecque (Article 4 paragraphe 1 « clause d' égalité des citoyens » et article 52 statuant que l'Assemblée Nationale doit représenter la volonté populaire) le système électoral en vigueur à l'époque, selon lequel les circonscriptions électorales, dans lesquelles un seul député était à pourvoir, étaient traitées de manière discriminatoire et ceci dans le sens suivant: Une fois établi qui était élu dans cettes circonscriptions[53], le reste des votes exprimés en elles, mais non utilisées (c'est-à-dire les votes exprimés en faveur du candidat non majoritaire), ne comptait plus dans l'addition, à laquelle on procédait pour obtenir le chiffre total des électeurs que le parti auquel appartenait ce candidat était sensé d' avoir obtenu à l' échelle nationale (chiffre servant, par ailleurs, de base pour établir le nombre des sièges à attribuer aux plus grands partis pendant ladite « seconde phase de répartition et d' attribution des sieges ») et ceci contrairement à ce qui se passait pour les "restes" des votes non utilisés exprimés en faveur des candidats du même parti dans les autres circoscriptions (c'est- à-dire celles, dans lesquelles on élisait plusieurs députés[54]), lesquels s'additionnaient et comptaient. A cette occasion la Cour a ordonné qu'on procéde à un nouvel recensement (et de manière conforme avec la Constitution cette fois, c'est- à-dire en prenant en compte les "restes" non utilisés des circonscriptions pourvoyant un seul député) pour établir le chiffre total des électeurs des partis majeurs à l' échelle nationale, qui devait servir de base pour un nouveau calcul de répartition des sièges au sein de ladite "deuxième" phase de répartition et d'attribution des sièges" (arrêt n° 36/1990).

[53] ce qui se faisait moyennant le système majoritaire pur.
[54] ce qui se faisait moyennant le système proportionnel.

HUNGARY / HONGRIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Act 100 of 1997 On Electoral Procedure defines the procedural rules on parliamentary elections, municipal elections and on the election of the Hungarian members of the European Parliament.

In general, electoral committees are entitled to stipulate the result of the voting. The Act determines both the grounds upon which the electoral committees` decisions can be challenged and the procedural rules of the legal remedy. Such a process could be resulted in the cancellation of the electoral result.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

Electoral committees are obliged to cancel the result of the voting if the violation of law influenced the election on the merits. However, it is their (and the courts`) discretion to determine how much the violation influenced the result.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

According to Article 77 of the Act, claims can be launched in three cases:

- violation of electoral law;
- infringement of the principles of elections (Article 71 of the Constitution) and
- infringement of the principles of the electoral procedure (Article 3 of the Act).

The term “violation of electoral law” includes cases when substantial provisions are infringed either committed by the electoral committee, by the candidate or by any other participant of the procedure. But the infringement of the procedural norms can be also deemed as “violation of electoral law” and they may result in the cancellation of the result.

However, according to the jurisprudence of the court, violation of laws different from electoral ones (e.g. a criminal offence) can be considered only in this respect if it also conflicts with electoral law.

In a case the petitioner claimed that the local government had no legal basis to establish the local electoral committee, due to its internal misdemeanour. The Supreme Court rejected the petition on the ground that the operation of the local government has no link with electoral laws, so their violation cannot be ground of judicial remedy in the election process.

4. Can only the candidates’ activities (contraventions to the law) lead to cancellation

or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Both are possible. Electoral committees and courts focus on the violation of laws and on the question whether it influenced the result of the voting.

On these conditions they cancel the result of the elections regardless whether the candidate was responsible for the infringement.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law or the entire result of the elections?

The cancellation affects the entire result of the election in the constituencies concerned.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Generally, the candidate concerned is not excluded from standing for the repeated elections. The only possible case when candidates are excluded from the repeated elections if they lose their eligibility because of the offence they have committed. As for the electoral and criminal laws this is a rather hypothetical option.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

Electoral Committees. There are four different kind of them:

- canvassing committees;
- local electoral committees (LEC);
- county electoral committees (CEC) and
- national electoral committee (NEC)
-

Certifying the results is a task of the canvassing committees at the polling stations, the LEC-s at the constituencies, the CECs at the counties and the NEC at the entire country.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Yes, it is. County courts supervise the decisions of CECs and the Supreme Court is the forum of judicial remedy against the decision of the NEC.

3. Is there a specific body in charge of the control of finance in the electoral field?

General elections are financed from the central budget. So it is the government being entitled to decide on financial issues concerning the elections.

And there are specific bodies also for the control of finance, called electoral offices. They are to grant the technical and logistic background for the elections.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

On first instance, the petitioner could turn to an electoral committee of higher level i.e. to the

CEC against the decision of the LEC and to the NEC against the decision of the CEC.
And on second instance the decision of the CEC can be challenged at county courts and the decision of the NEC at the Supreme Court (see B.2.)

5. Who may appeal the decision on certifying electoral results?

Anyone could launch a claim against the decision of the electoral committee without stating any legal interest.

6. What is the time-limit for appealing the decision on certifying electoral results?

The appeal has to be received by the competent body in three days, in parliamentary elections in one day.

The reason of the difference could be that parliamentary elections have two rounds so it is crucial to have a final result as soon as possible.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

Both the electoral committees and the courts are to decide on the appeal in three days, in parliamentary elections in one day.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The court observes the case in an administrative proceeding. In such a procedure the court is not entitled to collect any evidence or to consider any circumstance except for the ones that are presented by the parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

The cancellation is not limited to the polling stations concerned; the election should be repeated in the whole constituency.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

No, they cannot. Act 100 of 1997 on electoral procedure sets very short deadline for the appeal and it is not possible for the candidate to have been fully installed. Having the time given for appeal elapsed, there is no possibility to challenge the result of the elections.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Yes there is. However it is rather seldom in parliamentary elections and none of the petitions aiming cancellation were successful. It occurs more often in the elections of local governments.

2. If so, are there any cases which resulted in cancellation? If yes, what were the

reasons for cancellation?

Three cases were found when the result of the election was cancelled. All of them concerned local governmental elections, i.e. the election of the mayor and of the members of the local convention.

In two cases the results were cancelled because of the violation of procedural rules (in one case the register of voters was not set correctly and in the other case the identity of the voters was not controlled). There was also a case when the result was cancelled due to illegally influencing the voters.

KOREA / COREE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The Public Official Election Act (hereinafter the "POEA") regulates elections of the president, National Assembly members, local council members, and the heads of local government.

Under the POEA, there are two types of election litigation:

(i) In the presidential election and the election of National Assembly members, **an elector, political party (limited to a political party which has recommended a candidate), or candidate** that has an objection to **the validity of the election** may file a lawsuit with the Supreme Court against the chairman of the constituency election commission concerned within 30 days from the election day (Article 222(1) of the POEA); or

(ii) In the presidential election and the election of National Assembly members, **a political party (limited to the party which has recommended a candidate) or candidate** that has an objection to **the validity of the decision of the elected** may file a lawsuit with the Supreme Court against the elected person or the chairman of the constituency election commission when the elected person was ineligible for registration as a candidate, or when an Election Commission made a wrong decision on the elected person by violating the relevant provision of the POEA, such as miscalculating ballot papers (Article 223(1) of the POEA).

While the former is to nullify the election in whole or in part, the latter is to disqualify the elected. These types of election litigation also apply to local elections, but the litigation procedures are different as discussed in more detail below.

Article 224 of the POEA provides that even where there is a violation of election-related laws in an election lawsuit, the Supreme Court or the appellate court shall decide or rule for whole or partial invalidation of the election, or the disqualification of the elected only when it is deemed that such violation had a substantial effect on the result of election.

In addition to the above election litigation, election shall be nullified *de jure* when an elected person is sentenced to imprisonment or a fine exceeding 1 million won (approximately 1,000 US dollars) for violating the election law (Article 264 of the POEA), or when any election campaign management or accountant in charge of the election campaign office is sentenced to imprisonment or a fine exceeding three million won on account of an excessive disbursement of election expenses or violation of certain election provisions (Articles 263(1) and 265 of the POEA).

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

In election litigation, courts make decision on the invalidation of the election or disqualification of the elected only when they find that a) there is an illegal activity and b) the election result would have turned out differently if the illegal activity had not occurred. Therefore, the courts have discretion in deciding the nullification of the election result.

As mentioned earlier, if the elected or his/her campaign management violates the election law

and is sentenced to imprisonment or a certain amount of fine, the elected would be disqualified automatically. In this case, courts would exercise discretion in determination of sentencing.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?)

Article 192 of the POEA provides for the invalidation of election due to forfeiture of eligibility:

i) a person who is ineligible for election on the election day shall not be elected;
ii) where an elected person becomes ineligible for election before his term begins, the election shall be invalidated;
iii) when a political party recommends its members as a candidate in excess of the full number to be elected by constituency, the ratio and the precedence of the recommendation of female candidates to run in the election of the proportional representative local council members, or the number of recommending electors is insufficient;
iv) when the elected is found to have failed to submit a written report on the properties subject to registration under the Public Service Ethics Act, a report on military service records, a certificate of the payment or default of income tax, property tax and comprehensive real estate tax for the last five years by the candidate, his/her spouse and lineal ascendants and descendants, and a certificate of criminal records of punishment of an imprisonment;
v) when a public official running for the election fails to resign his/her office within certain period of time prescribed under the POEA;
vi) when the party-recommended candidate secedes from the party, changes to another party, or is a member of two or more parties, or the political party to which he/she belongs is dissolved or cancels its registration;
vii) when an independent candidate becomes a member of a political party; or
viii) when a person is found to have registered as a candidate in violation of the provision which prohibits a person who fails to be elected as a candidate of the relevant political party through intra-party competition from registering as a candidate to run in the relevant election of the same constituency.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

One of the requirements to nullify an election is the existence of the illegal activity in the course of an election. Illegal activities exist a) when an election commission violates applicable law and orders; b) when an election commission knowingly dismisses any correction measure to serious election offenses by a candidate or a third party and this inaction or acquiescence is determined to affect the election result; or c) when a court determines that a candidate or a third party's election offenses are serious enough to undermine the freedom and fairness of an election.[55]

Article 264 of the POEA provides that the elected shall be disqualified if the elected is sentenced to imprisonment or a fine exceeding 1 million won on account of committing the crime provided for in the POEA or violating election expense-related provisions under the Political Fund Act.

Methods of election campaign are strictly regulated and the election campaign period is limited under the POEA. Therefore, if the elected performs election campaign in manners which are

[55] National Election Commission, *Legal Solution to Disputes about Election Results in Korea*, 8.

not allowed under the POEA or before the campaign period prescribed under the POEA, he or she would have good possibility of meeting the threshold for disqualification.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election-related activities?

A person falling under any of the following as of the election day shall be ineligible for election (Article 19 of the POEA):

i) a person who is declared incompetent;
ii) a person who commits an election crime, contributes or receives political fund in violation of the Political Fund Act, violates election expense-related provision under the Political Fund Act, or commits bribery under the Criminal Code in connection with his/her duties while in office as the President, member of the National Assembly, member of local council, and head of local government and for whom five years have not passed since a fine exceeding one million won is sentenced and the sentence becomes final or ten years have not passed since the imprisonment was sentenced and the decision not to execute the sentence became final or since the execution of the sentence was terminated or exempted;
iii) a person whose voting franchise is suspended or forfeited according to a decision by court or pursuant to other Acts;
iv) a person who is sentenced to imprisonment without prison labor or a heavier punishment and whose sentence is not invalidated; or
v) a person whose eligibility for election is suspended or forfeited according to a decision by court or pursuant to other Acts.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Sometimes the activities of others may lead to cancellation of the election. Especially the POEA focuses on commitment of election expense-related crime by election campaign manager or family of the candidate. Articles 263 and 265 of the POEA provides as follows:

Article 263(1). When any election campaign manager or accountant in charge of the election campaign office is sentenced to imprisonment or a fine exceeding three million won on account of an excessive disbursement of 1/200 or more of the restricted amount of election expenses publicly announced as provided in Article 122, the election of the candidate concerned shall become invalidated.

Article 265. If an election campaign manager, accountant in charge of an election campaign office, or lineal ascendant or descendant or spouse of the candidate has committed a crime of corrupt practice and inducement by interest toward voters or candidates, or a crime of illegal giving or receiving of the political funds, and is sentenced to imprisonment or a fine exceeding three million won, the election of the candidate concerned (excluding the candidate for the presidency, the proportional representative National Assembly member and the proportional representative local council member) shall become invalidated.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

As explained above, there are two types of election litigation; one is to challenge the validity of the election itself and the other is to challenge the validity of the decision of the elected. In the former case, when a court finds merit in the complaint, it makes decision to nullify the election in

whole or in part. Yet, in the latter case, when a court finds merit in the complaint, it makes decision only to invalidate the decision of the elected, but with the election itself being valid.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

According to Article 266(2) of the POEA, a person whose election is invalidated pursuant to Articles 263 (invalidity of election due to excessive disbursement of election expenses) or 265 (invalidity of election due to election crime by election campaign manager) shall not become a candidate for the relevant special election.

Furthermore, when the elected is disqualified because he/she commited an election crime, contributed or received political funds in violation of the Political Fund Act and was sentenced to imprisonment or a fine exceeding one million won, he/she shall not be eligible for election for the following period:

i) five years since the sentence of a fine exceeding one million won became final;
ii) ten years since the sentence of imprisonment and the decision not to execute the sentence became final; or
iii) ten years since the execution of the sentence was terminated or exempted.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

An election commission is established as an independent constitutional agency for the purpose of managing fair elections and national referenda. The National Election Commission (hereinafter "NEC") is composed of nine members. Three members are appointed by the President, three are elected by the National Assembly, and the other three are nominated by the Chief Justice of the Supreme Court. The chairperson and the resident commissioner are elected from among the commissioners, and, as is its custom, a Justice of the Supreme Court is elected to be the chairperson.[56]

The election commission has four-tier structure consisting of the NEC at the top and 16 Si (special metropolitan, metropolitan city)/Do(Province) Election Commissions, 248 Gu (ward)/Si (city)/Gun (county) Election Commissions and 3,574 Voting District Election Commissions in each Eup/Myun/Dong to guarantee more convenient votes.[57]

In the presidential election, the NEC shall decide the candidate who has obtained a majority of the valid votes as the elected person and notify the Speaker of the National Assembly thereof (Article 187(1) of the POEA).

In an election of a local constituency National Assembly member, the constituency election commission shall decide the person who has obtained a majority of the valid votes as the elected person and notify the Speaker of the National Assembly thereof (Article 188(1) of the POEA).

In cases of proportional representative National Assembly members, the NEC shall allocate the seats to each political party which has obtained 3/100 or more of the total valid votes in the election for a proportional National Assembly member or five or more seats in the general election for the local constituency National Assembly members (hereinafter "seat-allocated party") in proportion of the votes obtained by the relevant seat-allocated party in the election for

[56] http://www.nec.go.kr/english/NEC/nec_organization_nec.html.
[57] *Id.*

the proportional representative National assembly members (Article 189(1) of the POEA).

In local elections, the constituency election commission shall decide the elected person (Articles 190(1), 190-2(1), and 191(1) of the POEA).

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Though the Election Commission is established in accordance with the Article 114 of the Constitution, it is not a judicial body. A court is not involved in the certifying procedure itself. As discussed in detail below, a court reviews the legitimacy of the decision of the elected when a complainant brings a lawsuit before the court.

3. Is there a specific body in charge of the control of finance in the electoral field?

The NEC gives national subsidy for political parties, supervises the establishment and dismissal of commissions, consigns and distributes political funds and monitors the operating status of parties' funds to guarantee smooth fundraising and transparency according to the Political Fund Act.[58]

4. What is (are) the competent body(ies) for deciding on complaints against the certification of election results?

In cases of presidential elections and general elections for the National Assembly, the Supreme Court has the jurisdiction over election litigation. On the other hand, in cases of local elections, the jurisdiction over election litigation is divided: (i) for Si/Do governor election and proportional Si/Do council member elections, the Supreme Court; and (ii) for district Si/Do council member, Gu/Si/Gun governor elections, and proportional and district Gu/Si/Gun council member elections, the Court of Appeals.

5. Who may appeal the decision on certifying electoral results?

In an election lawsuit to challenge the validity of the election, an elector, a political party which has recommended a candidate, or a candidate may file a lawsuit.

On the other hand, in an election lawsuit to challenge the validity of the decision of the elected, a political party which has recommended a candidate, or a candidate may file a lawsuit.

One thing to note is that in local elections, an elector, a political party which has recommended a candidate, or a candidate may file an administrative petition to a competent electoral management body, and such petition is a precondition to bring a lawsuit. This is to settle the disputes in a timely fashion by an administrative entity as well as to relieve the workload of courts. If the petitioner objects to the adjudicator's decision, he/she may bring a lawsuit to a competent court.[59]

6. What is the time-limit for appealing the decision on certifying electoral results?

In cases of presidential elections and general elections for the National Assembly, a plaintiff shall file a lawsuit within 30 days from the election day or from the declaration of the elected.

[58] http://www.nec.go.kr/english/NEC/nec_role.html.
[59] *See* Election Commission, *supra* note 1 at 2.

In cases of local elections, a complainant should file an administrative petition to a competent electoral management body within 14 days from the election day or from the declaration of the elected. If a petitioner or a petitioned objects to the adjudicator's decision, he/she may bring a lawsuit to a competent court within 10 days from reception of the decision for a petition or 10 days after the termination of the decision-making period in a competent election commission, which is 60 days upon receipt of the petition.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

Article 225 of the POEA provides that any petition or lawsuit on an election shall be decided or judged promptly in preference to other litigations, and, in a lawsuit, the court shall render a decision within 180 days after the lawsuit is filed.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The court may examine evidence *ex officio* and consider the facts not averred by the parties (Article 227 of the POEA).

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

If a judgment or decision on the partial invalidation of the election becomes final, the competent constituency election commission shall hold a re-election for the voting district concerned where the election has become invalid and then decide a newly elected person (Article 197(1) of the POEA). In this regard, it seems that if the violation of the law is limited to few polling stations, only the results of the concerned polling stations would be invalidated by the court.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

As for the election litigation to nullify the election or disqualify the elected, the POEA requires prompt resolution of such litigation and therefore prescribes the time-limit for the plaintiff to file a lawsuit and for a court to make a decision. Therefore, in this case, it is not likely that the election would be invalidated after the elected candidate is fully installed. However, if the election is invalidated or the elected is disqualified for ineligibility by the court, a re-election shall be held (Article 195(1) of the POEA). If the court decides to disqualify the elected for the reason of illegality in deciding the elected, or if the elected is disqualified *de jure* for excessive disbursement of election expenses, election crime of the elected, or election crime of election campaign manager, the constituency election commission shall immediately re-decide on the elected (Article 195(1) of the POEA).

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

As for election litigation over which the Supreme Court has original jurisdiction, the number of cases filed annually is as follows:

Relevant Election	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
total	2	2	28	-	2	5	8	1	-	-
National Assembly Member	1	2	28	-	2	1	8	1	-	-
President	1	-	-	-	-	3	-	-	-	-
Head of Local Gov't	-	-	-	-	-	1	-	-	-	-

(Source: statistics from Judicial Annual Report 2007 by the Supreme Court of Korea, available at http://www.scourt.go.kr/justicesta/JusticestaListAction.work?gubun=10)

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

- Supreme Court Decision 79Su4 Delivered on July 10, 1979

The Election Commission for the voting district distributed to five voters, including the plaintiff, ballot papers on which the signature of the chairperson of the relevant Election Commission was missing. Five votes which turned out to be invalid later were in favour of the plaintiff. If the relevant Election Commission had distributed valid ballot papers with the signature of the chairperson, the number of votes obtained by the plaintiff would have exceeded those obtained by the elected. In this case, the Supreme Court found that the fault of the Election Commission had affected the result of election and invalidated the election.

- Supreme Court Decision 88Su122 Delivered on May 26, 1989

In an election for a local constituency National Assembly member, the Election Commission accepted an illegal application for registration of a candidate, and, as a result, votes were made for four candidates although only three of them were legal candidates. The Supreme Court invalidated the election on the ground that the administration of the election in the instant case by the Election Commission was illegal.

LATVIA / LETTONIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. **Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?**
2. **Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?**
3. **What kind of contravention of the law can serve as a basis for cancellation**
   a) **Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?**
   b) **Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?**
   c) **Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?**
4. **Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?**
5. **Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?**
6. **If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?**

In Latvia there are three possible types of elections – elections for European parliament, elections for national Parliament (Saeima) and elections for local government. Each of the above mentioned elections is regulated by a separate law.

Elections to the European parliament Law Article 50 states that the submitter of the list of candidates, as well as the nominated candidates have the right within a period of seven days from the day of taking of the decision (about electoral results) by the electoral commission to appeal this decision in court in accordance with the procedures set out in the Administrative Procedures Law. This law does not give further explanations on the terms under which electoral results may be cancelled and what are the borders of the competence of administrative court. All particularities are left to the courts. Still no such cases have arisen in practice until now.

The law also does not provide for the regulation according to whether the candidate "guilty" for the cancellation of electoral results is excluded from standing for the repeated elections. Still as the right to be elected may only be limited by law, such limitations might not be imposed without corresponding legal regulations.

The Saeima Election Law Article 51 provides that the person who has submitted the list of candidates has the right of appeal against the decision of the Central Election Commission about the certification of electoral results within three days after such a decision has been taken. According to Article 54 of the same law, this kind of application must be submitted to the Department of Administrative cases of the Senate of Supreme Court of Latvia, and the Senate must consider the case within a timeframe of seven days. Still the law does not provide for the terms under which electoral results may be cancelled and what are the borders of the competence of the Senate.

This law does not give further explanations on the terms under which electoral results may be cancelled and what are the borders of the competence of administrative court. Still this issue

was considered by the Department of Administrative cases of the Senate while reviewing electoral results of elections for 9-th Saeima (Parliament). The description of the decision follows in part “C”.

The law also does not provide for the regulation according to whether the candidate “guilty” for the cancellation of electoral results is excluded from standing for the repeated elections. Still as the right to be elected may only be limited by law, such limitations might not be imposed without corresponding legal regulations.

The law also provides for an exception in the principle of objective investigation generally used in administrative process in Latvia. Namely, in reviewing electoral results the parties are obliged to provide sufficient evidence for their declarations. This does not ban the court from collecting evidence, but the court is also not obliged to do so, bearing in mind the short term for the consideration of the case.

The Criminal Law certifies that a person who knowingly commits interference with the unrestricted exercise of the right to elect representatives, the right to be elected, or the right to freely participate in a national referendum organized in accordance with the laws of the Republic of Latvia, by the use of violence, fraud, threats, bribes, or other illegal means, and a person who commits falsification of election or referendum documents, or knowingly miscounting votes or knowingly commits violation of the right of secret ballot, where committed by a State official or a member of the Election Committee, must be punished. Following, after receiving a decision of a criminal court on one of the above mentioned matters, the Central Election Commission within the term of five days evaluates, whether the crime has had any influence on the distribution of places, and makes a decision either to redistribute the places or not redistribute the places. This decision may be challenged in the Department of Administrative cases of the Senate. The court must make a decision within 30 days.

The Election Law On City and Town Councils, District Councils and Pagasts Councils according to the amendments of April 26, 2007, provides for a more detailed regulation for the cancellation of electoral results. Article 45.[1]states that the person who has submitted the list of candidates and the candidates registered have the right of appeal against the decision of the city, town, district or pagasts election commission about the certification of electoral results within three days after such a decision has been taken. The application must be submitted to the Central Election Commission who has to make a decision within three days. The decision of Central Election Commission may be appealed to the Administrative District court again within three days. The court must take a decision within seven days.

In case the court finds that in the process of organizing elections, counting votes or calculating results, the law has been breached to such extent as to influence the division of posts between political organizations, the court is entitled to abolish the decision about the certification of electoral results. While doing so the court also makes one of the following decisions:

1. to obligate Central Election Commission to recount the votes;
2. to obligate Central Election Commission to announce repeated voting (in separate polling-station);
3. to obligate Central Election Commission to announce repeated elections.

The law also provides for an exception from the principle of objective investigation generally used in administrative process in Latvia. Namely, in reviewing electoral results the parties are obliged to provide sufficient evidence for their declarations. This does not ban the court from collecting evidence, but the court is also not obliged to do so, bearing in mind the short term for the consideration of the case.

The Criminal Law certifies that a person who knowingly commits interference with the unrestricted exercise of the right to elect representatives, the right to be elected, or the right to

freely participate in a national referendum organized in accordance with the laws of the Republic of Latvia, by the use of violence, fraud, threats, bribes, or other illegal means, and a person who commits falsification of election or referendum documents, or knowingly miscounting votes or knowingly commits violation of the right of secret ballot, where committed by a State official or a member of the Election Committee, must be punished. Following, after receiving a decision of a criminal court on one of the above mentioned matters, the city, town, district or pagasts election commission within the term of five days evaluates, whether the crime has had any influence on the distribution of places, and makes a decision either to redistribute the places or not redistribute the places. This decision may be challenged in the Central Election Commission, which may be challenged in Administrative District court. The court must make a decision within 30 days.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The elections of the European Parliament and Saeima are certified by the Central Election Commission.

The elections of city, town, district or pagasts councils are certified by the city, town, district or pagasts election commission. The decision of city, town, district or pagasts election commission may be appealed to the Central Election Commission.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Although the competent authorities certifying electoral results are not judicial bodies in the sense of courts or bodies similar to courts, they are public administration institutions. Central Election Commission, its competence, procedure of election and dismissal of members of the Central Election Commission are prescribed by a special law. The members of Central Election Commission are public officials bearing all the restrictions and obligations associated with the office. Thus the court is not involved in the procedure of certifying electoral results unless the above described appeal procedure takes place.

3. Is there a specific body in charge of the control of finance in the electoral field?

In Latvia a special Law on Financing of Political Organisations (Parties) is in force regulating the provisions for the financing of political organisations (parties) and associations thereof. The Bureau for the Prevention and Combating of Corruption is performing the control and monitoring over the implementation of this Law.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

If the election results are certified by the city, town, district or pagasts election commission, its decision may be appealed to the Central Election Commission.

The decision of the Central Election Commission may be challenged in administrative court, the instance depending on the type of elections as described in section “A”.

5. Who may appeal the decision on certifying electoral results?

The decision on certifying electoral results may be appealed either by the persons who have submitted the list of candidates or by the candidates registered in the lists for the elections.

6. What is the time-limit for appealing the decision on certifying electoral results?

The time – limit for appealing the decision on certifying electoral results according to the laws is three (Saeima, city, town, district or pagasts elections) or seven (European parliament) days from the day electoral results have been certified.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

There is no time limit for the judiciary to make a decision about the elections of European Parliament. In other cases the time limit is seven days.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Due to the strict time limits it is prescribed by law that the parties must present evidence to their declarations. Nevertheless, also the court according to the Administrative Procedure Law is entitled to collect evidence if necessary and possible according to the particular circumstances.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

The Election Law On City and Town Councils, District Councils and Pagasts Councils is the only one providing for more detailed regulation in the field of competence of the court examining the case. According to this law the court may take one of the following decisions:

- to obligate Central Election Commission to recount the votes;
- to obligate Central Election Commission to announce repeated voting (in separate polling-station);
- to obligate Central Election Commission to announce repeated elections.

Most likely this procedure will be readjusted also for other types of elections. The court makes the decision according to the possible width of consequences of the ascertained breach of law.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

The Criminal Law certifies that a person who knowingly commits interference with the unrestricted exercise of the right to elect representatives, the right to be elected, or the right to freely participate in a national referendum organized in accordance with the laws of the Republic of Latvia, by the use of violence, fraud, threats, bribes, or other illegal means, and a person who commits falsification of election or referendum documents, or knowingly miscounting votes or knowingly commits violation of the right of secret ballot, where committed by a State official or a member of the Election Committee, must be punished. Following, after receiving a decision of a criminal court on one of the above mentioned matters, the city, town, district or pagasts election commission or Central Election Commission within the term of five days evaluates, whether the crime has had any influence on the distribution of places, and makes a decision either to redistribute the places or not redistribute the places. Thus the consequences depend on the evaluation as to whether the crime has had influence on the distribution of places.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Under the provisions of Saeima Election Law the Senate was required to consider a case on the legality of the procedure of elections of 9-th Saeima. The elections took place on October 7, 2006, and the results were challenged by four parties or submitters of lists of candidates. The decision by the Senate was taken on November 3, 2006.

First, the Senate had to decide upon its competence, because, as mentioned earlier, the law does no provide for appropriate provisions. The Senate interpreted Article 1 of the Constitution of Latvia stating that Latvia is an independent democratic republic, in the light of the principles of democracy and concluded that one of the principles to adapt to the situation is the principle of the division of powers. The principle of the division of powers provides for the judiciary to control to certain extent activities of legislative and executive powers. Thus in a democratic society persons interested must be entitled to a judicial procedure of verification of electoral results. According to the Law on Administrative Procedure, the substance of administrative procedure in court shall be court control of the legality and validity of administrative acts issued by institutions or actual actions of institutions within the scope of freedom of action. Thus the Senate admitted that it is entitled to control the legality of the decision of the Central Election Commission, ensuring the observance of human rights, including electoral rights.

Second, the Senate had to decide on the electoral results. Starting from the analysis of the principle of legitimacy the court admitted that the will of the people must be the basis for every decision of public administration. Thus the will of the people expressed in the electoral procedure is crucial for the legitimacy of the Parliament. According to the principle of equal elections each person has one vote and each candidate has equal expectations to be elected. The attitude of public authorities to the candidates should be neutral.

One of the arguments of the applicants was that two of the parties participating in the elections had received benefits from private persons (so-called “third persons”) exceeding the limits prescribed by law, and thus gaining more privileges in the period of electoral campaign. The Senate decided that the money that several persons had used to finance the promotion of particular political parties but not donating directly to those parties may be referred to the spendings of the parties promoted if there is a direct ling between them. In one of the cases the person responsible for the campaign of the political party in question was also the responsible person in the entity legally not connected to the political party but in fact financing its promotion campaign. In the second case the Senate found out that the members of the promoted political party had donated significant amount of money to the entity legally not connected to the political party but in fact financing its promotion campaign, and thus the link was also established. Thus the Senate admitted that the two political parties had exceeded the limits of spendings prescribed by law.

Still the possible consequences of the above mentioned actions were not considered as significantly influencing the results of the elections, because all political parties were able to participate in public discussions in mass media, the information about so-called “third persons” and their activities was publicly available and the people thus were entitled to take informed decisions on their choice in the elections. Therefore the principle of equal elections was not violated to such extent as to significantly influence the result of the elections.

Another issue the Senate evaluated was the question about equal rights of parties to agitate before the elections. As according to the law the particular time for agitation of each party was determined by the principle of chance (by drawing lots), the Senate did not find any violations in this realm. Also in distributing the time of public debates and evaluating which persons to invite, public media according to the Senate is entitled to evaluate the significance of particular

political parties, using such criteria as the results of previous elections, the amount of members of the parties, the agedness of the party, etc.

As a result the electoral results of the 9-th Saeima were not cancelled.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

On March 2005 Administrative court of first instance announced a decision abolishing the results of Rēzekne city elections. The issue examined by the court was concerned with the possible buying off the votes, thus significantly and unlawfully influencing electoral results. The court evaluated testimonies of several witnesses, a video material, showing possible buying off votes, the statement of the police about the initiation of criminal proceedings on the matter, the announcement of the chair of Rēzekne election commission before the elections informing about the principles of the elections and impossibility to control particular votes, information about the activity of voters in Rēzekne, showing that the activity had been particularly big these elections.

The court acknowledged that the choice of voters in Rēzekne with a great deal of certainty might have been influenced by means of buying off votes, and these breaches might have influenced electoral results. The freedom of will of voters is a compulsory precondition for democratic elections. If persons are paid for their choice, the court admitted that someone else has made the choice for them, thus violating the freedom of will of voters.

The court decided to obligate Central Election Commission to announce repeated elections of Rēzekne city council.

LIECHTENSTEIN

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?

Oui. article 59 alinéa 1 de la Constitution de la Principauté de Liechtenstein et article 64 de la loi sur les droits du peuple [Volksrechtegesetz (VRG), LGBl. 1973 n° 50].

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?

L'annulation doit découler d'une violation de la loi [violation d'une norme obligatoire] ou se baser sur d'autres circonstances tels que : Influence contraire à la loi ; activités illicites ; graves irrégularités. Le tout toujours sous la condition que ces circonstances aient eu une influence notable sur le résultat de l'élection.

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats ?

a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?

Oui, si cela a eu une influence déterminante sur le résultat [article 64 ch. 3 lit a et ch. 4 VRG]

b. La violation de lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote) ?

Non déterminé, cf. réponse question 2

c. La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?

Possible dans l'interprétation de l'article 64 ch. 3 lit a, b, c ou d VRG ; cf. réponse à question n° 2.

4. Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (p.ex. la violation des règles sur la campagne par les médias ou d'autre personnes en faveur d'un candidat, mais à son insu) ?

La loi parle de « violation » en général ; non seulement de la part des candidats.

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des résultats des élections ?

Lorsque l'élection est contestée pour l'absence de qualités requises dans la personne d'un candidat, seule son élection est nulle. La requête peut concerner plusieurs candidats dont l'élection pourrait être annulée.

A côté l'annulation de toute l'élection peut être requise (cf. réponse à question 2).

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?

Non spécifié. Mais si le candidat en question a commis une action apte à entraver son éligibilité (voir code pénal) alors une participation à une élection répétée serait exclue.

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Quelle est l'autorité compétente pour valider les résultats des élections ?

Le Parlement (article 59 Constitution) valide l'élection de ses membres.

2. Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?

En cas de recours ; alors le Parlement tiendra compte des décisions relatives de la Cour Constitutionnelle.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?

Non.

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?

L'autorité compétente est la Cour Constitutionnelle [Staatsgerichtshof] ; cf. article 64 ch. 6 VRG et article 59 Constitution.

5. Qui peut recourir contre la décision de validation des résultats des élections ?

Un groupement d'électeurs par son mandataire [article 64 alinéa 1 VRG].

Selon l'article 65 VRG le Gouvernement peut lui-même dénoncer des irrégularités constatées et saisir la Cour Constitutionnelle.

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections ?

Trois jours à partir du jour de l'élection, celui-ci n'étant pas compté pour annoncer au Gouvernement l'intention d'attaquer le résultat de l'élection et un délai supplémentaire de cinq jours pour introduire la demande avec les demandes concrètes et l'exposé des faits sur lesquels les demandes se basent, ainsi que les moyens de preuve. Le groupement a droit à prendre vue des dossiers électoraux.

La demande est à transmettre , ensemble avec les dossiers électoraux, immédiatement à la Cour Constitutionnelle qui ouvre une instruction.

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?

Non.

8. Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties ?

La Cour Constitutionnelle conduit une instruction est n'est pas limitée aux moyens produits par les parties.

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?

Selon l'article 66, alinéa 3 VRG seule l'élection de la circonscription touchée est annulée [au Liechtenstein il n'y a que 2 circonscriptions].

10. Est-ce qu'une autorité (p. ex. des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu est entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

Non. Par contre la perte du mandat d'un élu entré en fonction est possible pour différentes raisons. Techniquement il ne s'agît pas de l'annulation d'une élection.

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?

En matière de votation.

2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

Non.

LITHUANIA / LITUANIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

In the Republic of Lithuania, 3 kinds of national elections take place:

a) elections to the Seimas (Lithuanian Parliament),
b) elections of the President of the Republic;
c) elections to municipal councils.

The Constitution of the Republic of Lithuania, adopted in the Referendum of the Nation on 25 October 1992, consolidates the principles and the most important conditions of organizing the elections (in Chapter V we will find the provisions regarding the principles of the elections to the Seimas, in Chapter VI - regarding the principles of the elections of the President of the Republic, and in Chapter X - regarding the democratic principles of the elections to municipal councils (Article 119)).

The Constitutional Court of the Republic of Lithuania, which is the official interpreter of the Constitution, has revealed the contents and meaning of the principles of elections in its jurisprudence. The doctrine of the constitutional grounds of the institute of democratic elections, which is formulated in the jurisprudence of the Constitutional Court of the Republic of Lithuania, is rather fragmentary, only a few constitutional principles of electoral right have been revealed. The Constitutional Court has held that elections may not be regarded as democratic, nor their results as legitimate and legal, if the elections are held by trampling on the principles of democratic elections established in the Constitution, and by violating democratic electoral procedures (Constitutional Court conclusion of 5 November 2004 and ruling of 1 October 2008). According to the jurisprudence of the Constitutional Court, a duty arises for the legislator to establish a democratic system of elections which would also include establishment of the results of elections and the procedure for consideration of disputes of elections, as well as other relations of elections.

The cases when the results of elections must or may be annulled are enshrined in the following laws:
the Republic of Lithuania Law on Elections to the Seimas,
the Republic of Lithuania Law on Presidential Elections,
the Republic of Lithuania Law on Elections to Municipal Councils,
the Republic of Lithuania Law on the Central Electoral Commission, etc.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

In case of violation of a law, the Central Electoral Commission has broad discretion to recognise the results of elections in the electoral constituency as invalid; this is provided for in the provisions of the laws on the elections to the Seimas, to municipal councils and of the President of the Republic.

For example, under Article 91 “Declaration of elections as invalid” of the Law on Elections to the Seimas, the Central Electoral Commission may declare the election results in the constituency null and void, if it has established that severe violations of Paragraph 1 of Article 51 of this Law or other laws which were committed in the constituency or polling district, that the falsification of

documents or the loss thereof had an essential influence on the election results, and the following essential results cannot be determined from the vote counting records or other election documents: 1) in a single-member constituency - the candidate who gets a mandate or the candidates who participate in the second poll; 2) in the multi-member constituency - the lists of candidates which take part in the distribution of mandates, or the number of mandates due to the list of candidates can be determined at the exactness of only more than one mandate. The election cannot be declared invalid if the indisputably determined election results allow to determine essential election results.

According to paragraph 5 of Article 74 of the Law on Presidential Elections, the Central Electoral Commission may declare the presidential election results null and void, if it has established that severe violations of this Law which were committed after the announcement of the date of presidential elections until the end of election campaigning as set in this Law, as well as in the course of voting or falsification of documents had an essential influence on the presidential election results. In this case, a run-off presidential election shall be conducted in accordance with the procedure laid down in paragraph 6 of Article 77 of this Law.

According to Article 85 “Declaration of the elections invalid” of the Law on Elections to Municipal Councils, the Central Electoral Commission may declare the election results in the constituency invalid if it establishes that severe violations of this Law committed in the polling district or constituency, or the falsification of documents or the loss thereof had an essential effect on the election results, and the following essential results cannot be determined from the vote counting records or other election documents: it is possible to establish the number of lists of candidates participating in the distribution of mandates or the number of mandates going to a list of candidates only by more than one mandate accuracy.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

The violations of the Law on Elections is the ground for annulment of the results of elections. The Criminal Code of the Republic of Lithuania and the Republic of Lithuania Code of Administrative Violations of Law establish sanctions for not following the prohibitions provided for in the legal acts.

4. Can only the candidates’ activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

The declaration of the election results in the constituency as invalid may be determined not only by the actions of the candidate himself, but also by the actions of other persons, regardless of the status of this person.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The elections are recognized as null and void in a specific constituency.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The laws on elections do not provide for such prohibition.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

Sub-paragraph 4 of paragraph 1 of Article 3 of the Republic of Lithuania Law on the Central Electoral Commission provides for that the Central Electoral Commission shall establish and announce the final results of elections and referendum.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Central Electoral Commission of the Republic of Lithuania is not a judicial institution. Under paragraph 1 of Article 2 of the Republic of Lithuania Law on the Central Electoral Commission, the Central Electoral Commission shall be a permanent supreme state institution for organizing and conducting elections and referendums, provided for in the Constitution of the Republic of Lithuania.

3. Is there a specific body in charge of the control of finance in the electoral field?

The use of finances during the elections shall be controlled by the Central Electoral Commission (under sub-paragraph 5 of paragraph 1 of Article 3 of the Republic of Lithuania Law on the Central Electoral Commission, one of the tasks of the Central Electoral Commission shall be, in the manner and forms prescribed by law, to control financing of political parties and political organisations (hereinafter referred to as parties), political campaigns); however, it is not specific in the sense that it has been created not only for the implementation of this one function.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?
5. Who may appeal the decision on certifying electoral results?
6. What is the time-limit for appealing the decision on certifying electoral results?

After voting, depending on the institution that is elected, the Central Electoral Commission may appeal against the decisions which were adopted upon termination of voting or a refusal to consider complaints:

(a) regarding the elections to *municipal councils* – Article 81 “Complaints against the Decisions of Electoral Commissions which Have Been Adopted after the Closing of Voting” of the Republic of Lithuania Law on Elections to Municipal Councils. After the official proclamation of the final election results until the first sitting of a newly elected municipal council the parties which have nominated the lists of candidates, candidates for councillor and municipal councillors may appeal to the Supreme Administrative Court of Lithuania against any decisions of the Central Electoral Commission or its other activities, within 5 days after the adoption of the decision of the Central Electoral Committee or after the contested activity has become known. Its decision shall become effective from the moment of its announcement.

(b) regarding the elections of the *President of the Republic* – the Seimas of the Republic of Lithuania may apply to the **Constitutional Court of the Republic of Lithuania** with a request, whether the Law on Presidential Elections was not violated **not later than within 3 days** following the day of official announcement of the results of elections of the President of the Republic.

Article 77 "Inquiry Concerning the Violation of the Law on Presidential Elections" of the Republic of Lithuania Law on Presidential Elections provides for that not later than within 3 days of the official proclamation of the election results the Seimas of the Republic of Lithuania may appeal to the Constitutional Court of the Republic of Lithuania with the inquiry whether or not this Law has been violated during the elections of President of the Republic. The Constitutional Court of the Republic of Lithuania shall investigate and evaluate the decision only of the Central Electoral Commission or its refusal to investigate complaints concerning the violations of this Law in the cases when decisions have been adopted or other actions of the Central Electoral Commission have been performed after the closing of voting during the election of President of the Republic. This inquiry referred to in paragraph 1 of this article shall be investigated by the Constitutional Court of the Republic of Lithuania not later than within 72 hours of its submission to the Constitutional Court. This term shall include non-working days as well. Following the conclusions of the Constitutional Court of the Republic of Lithuania, the Seimas of the Republic of Lithuania shall adopt the final decision concerning the violation of the Law on Presidential Elections.

If the Constitutional Court of the Republic of Lithuania makes a conclusion that the Central Electoral Commission has severely violated the Law of the Republic of Lithuania on Presidential Elections or has falsified election documents, and this has had an essential influence on the establishment of the presidential election results, the Seimas of the Republic of Lithuania may pass one of the following resolutions:

1) to declare the presidential election results invalid - when, from the vote calculation records, it is impossible to establish real election results; or
2) to establish real final presidential election results according to the vote calculation records confirmed by electoral commissions, provided that the decisions of the electoral commissions concerning confirmation of these records have not been appealed against in the Supreme Administrative Court of Lithuania, and the Supreme Administrative Court of Lithuania has not annulled the decisions of the electoral commissions concerning confirmation of these records.

(c) regarding the *elections of members of the Seimas* – parties which have nominated candidates for a Seimas Member, as well as candidates for Seimas Members, may lodge complaints against the decisions of the Central Electoral Commission or against the refusal of the Central Electoral Commission to investigate complaints (about the violations of the Law on Elections) **not later than within 24 hours** after the official announcement of the election results to the Seimas or the President of the Republic.

The Seimas as well as the President of the Republic may apply to the Constitutional Court with the inquiry whether the Law on Elections to the Seimas has been violated **not later than within 3 days** of the official announcement of the election results.

Article 95 "Inquiry Concerning the Violation of the Law on Elections to the Seimas" of the Republic of Lithuania Law on Elections to the Seimas provides for that not later than within 3 days of the official announcement of the election results or the announcement of the decision of the Central Electoral Commission concerning occurring or filling a vacancy in the Seimas, the Seimas of the Republic of Lithuania as well as the President of the Republic may appeal to the Constitutional Court with the inquiry whether the Law on Elections to the Seimas has been violated. The Constitutional Court shall investigate and evaluate the decision of the Central

Electoral Commission or its refusal to investigate complaints about the violations of the Law on Elections to the Seimas in those cases when decisions have been adopted or another deed of the Committee has been performed after termination of voting.

This inquiry shall be investigated by the Constitutional Court not later than within 72 hours of its submission to the Constitutional Court. Non-working days shall be included in this time period.

Basing itself on the conclusions of the Constitutional Court, the Seimas of the Republic of Lithuania shall adopt the final decision concerning the violation of the Law on Elections to the Seimas. If the Constitutional Court makes a conclusion that the Law on Elections to the Seimas has been severely violated or election documents have been falsified and this has had an essential influence on the establishment of the election results, the Seimas of the Republic of Lithuania may pass one of the following resolutions:

1) to declare the elections in a single-member constituency or multi-member constituency invalid - when, from the vote counting records, it is impossible to establish essential election results; or
2) to establish real essential election results according to the vote counting records or other election documents submitted by electoral committees.

The Seimas shall also pass a resolution on legally and illegally elected Members of the Seimas.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

The Supreme Administrative Court shall investigate these complaints not later than within 5 days.

The Constitutional Court shall investigate requests (regarding the Elections of the President or the elections of Members of the Seimas) not later than within 72 hours, also including non-working days.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Under paragraph 4 of Article 57 of the Law on the Proceedings of Administrative Cases (which is applied for consideration of cases at the Supreme Administrative Court of Lithuania), the evidence shall be submitted by the parties to the proceedings and other participants in the proceedings. As necessary, the court may advise the said persons should submit additional evidence or upon the request of these persons or on its own initiative compel the production of the required documents, demand that the officers give explanations.

Under Article 34 of the Law on the Constitutional Court, parties to the case shall present evidence; the Court may propose that they present additional evidence.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

The results of elections shall be recognized as invalid in a constituency.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Under paragraph 6 of Article 63 of the Constitution, the powers of a Member of the Seimas shall cease, when the election is recognised invalid, or if the law on election is grossly violated.

Article 88 of the Constitution, in which the cases of termination of powers of the President of the Republic (expiration of the term of office, taking place of the pre-term election of the President of the Republic, President's resignation from office, death of the President, removal of the President from office according to the procedure for impeachment proceedings and when the Seimas, taking into consideration the conclusion of the Constitutional Court, adopts a resolution stating that the state of health of the President of the Republic does not allow him to hold office) are provided for, does not specially provide for such ground of discontinuity of powers.

In Article 87 of the Law on Elections to Municipal Councils which provides for discontinuity of powers of a Member of a Municipal Council before the term, such ground of discontinuity of powers is not specially provided for. The powers would discontinue, if a violation of the laws on elections would determine, for example, a conviction with regard to the member of a municipal council, etc.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

The Constitutional Court has adopted a few rulings in which the concept of the principles of democratic elections was formulated and the constitutionality of the laws which regulate elections was assessed (see: Constitutional Court rulings of 8 November 1993, 7 July 1994, 30 May 2003, 25 May 2004, 19 January 2005, 10 May 2006 and 9 February 2007).

The Constitutional Court has considered the violations of the Law on Elections to the Seimas a few times and in these cases, it has adopted conclusions (see: Constitutional Court conclusions of 23 November 1996, 5 November 2004 and 7 November 2008). The constitutional jurisprudence of this field is not rich; in the considered cases, the Constitutional Court mainly concentrated on the investigation of circumstances, under which appealing against the decisions of the Central Electoral Commission was grounded.

The Supreme Administrative Court of Lithuania which considers the decisions of the Central Electoral Commission regarding the elections to municipal councils has formulated the principles of consideration of such cases in its jurisprudence which is also not very rich.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

In Lithuania, the results of elections organized on the national level have never been annulled.

LUXEMBOURG

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. **Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?**
2. **Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?**
3. **Quel type de violation de la loi peut servir de base pour l'annulation des résultats ?**
    a. **Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?**
    b. **La violation de lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote) ?**
    c. **La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?**
4. **Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (p.ex. la violation des règles sur la campagne par les médias ou d'autre personnes en faveur d'un candidat, mais à son insu) ?**
5. **Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des résultats des élections ?**
6. **Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?**

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. **Quelle est l'autorité compétente pour valider les résultats des élections ?**
2. **Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?**
3. **Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?**
4. **Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?**
5. **Qui peut recourir contre la décision de validation des résultats des élections ?**
6. **Quel est le délai pour recourir contre la décision de validation des résultats des élections ?**
7. **Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?**
8. **Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties ?**
9. **Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?**

10. Est-ce qu'une autorité (p.ex. des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu est entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?
2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

Notons d'ores et déjà que les dispositions législatives et constitutionnelles relatives à l'annulation des élections communales ou nationales au Luxembourg ne sont pas assez précises pour permettre des réponses détaillées à chacune des questions. C'est pour cette raison que la soussignée se limite à énumérer et à commenter les dispositions qui existent en la matière.

Quant aux élections législatives, la Constitution luxembourgeoise dispose en son article 57 que « La Chambre vérifie les pouvoirs de ses membres et juge les contestations qui s'élèvent à ce sujet. » Ainsi, la Chambre des Députés se prononce seule sur la validité des opérations électorales. Selon une interprétation du Conseil d'Etat du 27 décembre 1911, le juge de l'élection est également le juge de la validité des actes administratifs qui ont précédé l'élection. Or, il ne ressort pas des textes sur quelle base, pour quels motifs et selon quelle procédure les élections législatives pourraient être annulées. Les dispositions restent également muettes sur les questions de savoir si une annulation doit découler d'une violation de la loi, sur les répercussions d'une éventuelle violation ou encore sur les moyens de recours. L'article 282 de la loi électorale du 21 février 2003 ajoute que « La Chambre des Députés se prononce seule sur la validité des opérations électorales qui sont régies par la loi nationale. Toute réclamation contre ces opérations doit être formulée, sous peine de forclusion, par écrit et introduite dans les dix jours de l'élection auprès du Secrétaire général de la Chambre des Députés. »

Les dispositions relatives aux élections communales sont quelque peu plus complètes. D'une manière générale, on peut dire que les articles de la loi électorale prévoient un recours devant le Tribunal administratif contre les opérations électorales. Les articles en question sont libellés comme suit (Loi communale modifiée du 13 décembre 1988):

Article 276.- Tout électeur peut introduire auprès du Tribunal administratif un recours contre l'élection qui a eu lieu dans sa commune. Le recours doit être introduit sous peine de forclusion dans les cinq jours de la date de la proclamation du résultat.

Article 277.- Le tribunal statue au fond, dans les vingt jours suivant la date à laquelle il a été saisi. Le greffe du tribunal donne avis de ce recours, par lettre recommandée, à l'administration communale concernée qui informe les candidats et le public par les voies ordinaires.

Article 278.- Dans les cinq jours suivant la décision du Tribunal administratif, le ou les requérants peuvent faire appel devant la Cour administrative qui statue d'urgence et en tout cas dans le mois. Ce recours est suspensif.

Le greffe de la Cour administrative donne avis de l'appel, par lettre recommandée, à l'administration communale concernée qui informe les candidats et le public par les voies ordinaires.

La requête en intervention doit être présentée sous peine de déchéance, dans les trois jours de la publication de l'appel par la commune.

Article 279.- Lorsqu'une élection est définitivement déclarée nulle, le ministre de l'Intérieur fixe jour dans la huitaine à l'effet de procéder à de nouveaux scrutins dans les soixante jours.

La soussignée tient à souligner que l'annulation d'élections est une opération extrêmement rare au Luxembourg. Un exemple date des années 30, pour lesquelles il ressort de la Pasicrisie luxembourgeoise que le Comité du contentieux du Conseil d'Etat a annulé les élections communales de la Ville de Dudelange en date du 24 janvier 1935 (cf. annexe).

MALTA / MALTE

A. LEGAL BASIS FOR CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

There are both constitutional and legislative provisions which stipulate the terms under which electoral results have to be cancelled. Under the Constitution (section 56) the Constitutional Court is empowered to annul an election if corrupt and illegal practices have prevailed to such an extent as to effect the electoral result. Under the electoral Polling ordinance there are then a number of grunds enumerated in sections 61and 62 of the Ordinance which detail the basis on which an election of a member of the house can be voided by the courts. These are principally commission of illegal or corrupt practices or incurring into a disqualification.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

In the first instance, that is in the constitutional provision there appears to be a discretion in the hands of the Court both in weighing the extent that corrupt and illegal practices have been committed and whether these have influenced the result. In the case of the provisions of the electoral polling ordinance the nullity of the election is mandatory, it would only effect the election of the particular candidate effected by the circumstances of the case but would otherwise leave the election intact. That is if a candidate has committed a corrupt practice his election would be voided but the election would not and the runner up would presumably be elected in his place. There are situations involved where the court, such in the case of an illegal practice, would still have a discretion whther to void the elecetion or otherwise.

3. What kind of contravention of the law can serve as a basis for cancellation

- **a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?**
- **b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?**
- **c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?**

As to the kind of contravention of the law as can serve as a basis of cancellation I would say that under Maltese law any of the matters cited in the questionnaire can serve as a basis for cancellation. For example if a person is disqualified from being a member of the house, then his election will be voided. It will also be voided or liable to be voided if he has committed illegal or corrupt practices. In the latter instances I would say these are violations of the electoral laws and regulations, and violation of the criminal law in relation to election related activities.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

The answer to this question depends on what type of nullity of election you are dealing with. If it is a voiding of an election under the constitutional provisions then you would have to take into account the whole picture and gauge its effect on the electoral process and not limit yourself specifically to the activities of the candidate. Where on the other hand the election is questioned

under the provisions of the electoral polling ordinance the contravention must relate to the candidate or his election agent.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Again this depends on what type of cancellation you are speaking of. Under the constitution an election voided under section 56 would involve the cancellation of the election in one particular district or in the whole territory depending upon the allegation made and the evidence adduced. In cases of election being voided under the electoral polling ordinance this would only effect the election of the particular candidate concerned but the election itself would be allowed to stand. Whether a candidate is excluded from again contesting an election will depending upon whether he has committed a corrupt or illegal practice which entails such disqualification. For example "Any person who commits the offence of personation, treating, undue influence, or bribery or aids, abets, counsels, or procures the commission of the offence of personation, and any candidate or election agent who knowingly makes the declaration, as to election expenses required by Article 50, falsely, shall be guilty of a corrupt practice and shall be liable, on conviction, …and shall in consequence of such conviction become incapable, for a period of seven years from the date of his conviction of being registered as a voter or voting at an election under this Ordinance, or of being elected a member, and if at that date he has been elected member, his election shall, subject to the provisions of Article 55 of the Constitution of Malta, be vacated from the date of such conviction."

B. Procedure for Cancellation of electoral results

1. Which authority is competent to certify the electoral results?

The authority competent to certify the electoral results is the Electoral Commission.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No court at all is involved in certifying an electoral result, unless the matter is refered to a court as a result of a contestation.

3. Is there a specific body in charge of the control of finance in the electoral field?

There is no specific body in charge of the finance in the electoral field.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

In the event of disputes relative to the validity of elections the jurisdiction would be vested in the Constitutional Court or the ordinary courts depending upon how the problem presents itself.

5. Who may appeal the decision on certifying electoral results?

There is no appeal from the certification of an electoral result but challenges may arise by voters resorting to the appropriate legal procedures.

6. What is the time-limit for appealing the decision on certifying electoral results?

In the case of an allegation that the election has been tainted by corrupt or illegal practices under section 56 of the constitution three days from the publication of the result odd the election.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

There is no time limit set for the judiciary when seized of an electoral dispute.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Evidence would have to be presented by whoever has complained about the result. In the event of criminal proceedings for corrupt or illegal practices the evidence would be adduced by the police.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

In the event that there is a limited breach then if the procedure resorted to is the one under section 56 the Court would have to weigh whther these were of such a nature as to effect the electoral result. But where the voiding of the election of a particular candidate is concerned it is sufficient that he be found guilty of committing a single corrupt practice.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Well if a candidate is found guilty of having committed a corrupt practice after his election, his election will be voided and a bye election as provided for under Maltese law would take place.

C. CASE LAW

1. Is there any case-law concerning the cancellation of electoral results?
2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

There are a number of case dealing with issues relevant to elections or electoral law, but there is no case over the last 50 years where an election of a member of the House of Represetatives has been canelled.

MOLDOVA

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Yes.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

- *Parliamentary elections may be cancelled* - if Constitutional Court would establish that during the elections or the counting of votes' process were committed violations of Electoral Code, which influenced the results of the elections and the assignation of mandates.

- *Local elections may be cancelled* – if during the electoral procedure were committed violations of the electoral code, which influenced results of the elections and the assignation of mandates.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

No.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

Yes.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

Yes.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

N/A.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

N/A.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Yes.
- *Parliamentary elections* – according to paragraph 2 of Article 93 of the Electoral Code in the case of the repeated elections the electoral candidates who are guilty of violations of electoral rules are sanctioned and excluded from the ballot paper, on the basis of final court's decision.

- *Local elections* – according to paragraph 2 of Article 138 of the Electoral Code in the case of the repeated elections the electoral candidates who are guilty of violations of electoral rules are excluded from the ballot paper, on the basis of final court's decision.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

- *Parliamentary elections* Constitutional Court: (Article 92 of Electoral Code);
- *Local elections* Central Electoral Commission (Article 137 of Electoral Code).

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

Yes.

According to the provisions of Article 137 of Electoral Code the Central Electoral Commission based on the judgment delivered by the respective court shall take the decision on the declaration of elections as null.

3. Is there a specific body in charge of the control of finance in the electoral field?

Yes.

- *The Parliament* – after elections, the Central Electoral Commission shall present to the Parliament, within the shortest term possible, a report on the administration of the allocated financial means together with the advisory opinion of the Court of Audit (Article 35 paragraph 3).

- *Court of Auditor and Main State Tax Inspectorate* – may be asked by the Central Electoral Commission and district electoral council may request the Court of Audit or the Main State Tax Inspection of the Ministry of Finance to exercise control over the income sources, correctness of record and the due usage of finances by the electoral candidates (Article 38 paragraph 9).

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

This is only the case for *local elections* – where the local courts are competent to decide on complaints against the certification of election results.

5. Who may appeal the decision on certifying electoral results?

Electoral candidates may appeal the decision on certifying electoral results.

6. What is the time-limit for appealing the decision on certifying electoral results?

a) *Parliamentary elections*

In the case of parliamentary elections Constitutional Court validates or invalidates the legality of elections, during 10 days after receiving all documents from Central Electoral Commission, but not sooner than the final examinations by the courts of all presented complains.

b) *Local elections*

In the case of local elections the Courts within 10 days after receiving the reports the district election councils, confirm or refute by a decision the legality of elections in each constituency and transmit their decisions within 24 hours after adoption to the Central Electoral Commission and to the district electoral councils, which published final results (paragraph 2 Article 135 of Electoral Code).

The law as well establishes that, complains against the decision of the electoral body regarding the final results of the elections and the assignment of the mandates are examined by the courts simultaneously within the procedure of the validation of the elections (paragraph 3 Article 67).

The decision of the courts may be appealed during 3 days from the pronouncement of the decision.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

Yes.

This is the case for the decisions on certifying *local electoral results* which may be appealed in recourse order and shall be considered within a 3-days term since the getting of the respective file (paragraph 7 Article 68 of Electoral Code).

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

a) In the case of deciding the cancellation of parliamentary election results – the parties are the one who present the evidence.

b) In the case of deciding the cancellation of parliamentary election results – the parties are the one who present the evidence.

According to the provisions of Article 67 paragraph 5 of Electoral Code the contestations lodged with the courts shall be examined in compliance with the provisions of the Civil Procedure Code and Law on administrative jurisdiction.

In accordance with the above mentioned laws the complains lodged with the courts should include the circumstances on which the plaintiff bases its claim, the evidence demonstrating the circumstances (Article 166 of Civil Procedural Code).

Still the court orders, at the request of the parties and other participants in the process, the presentation of evidence to support the adoption of decisions and legal grounds (Article 9 of Civil Procedural Code).

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

If the court had established the elections' legality, but there were found calculation errors, the court ex officio or upon the request of the parties in trial shall annul entirely or partly the protocol and shall exclude the electoral competitor which got less validly expressed votes, replacing him with another electoral competitor, which got a bigger validly expressed votes, in a decreasing order (Article 68 paragraph 3).

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

No.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Yes.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

The general reason for cancellation of the elections was the fact that the elections were attended by less then 1/3 of the persons registered in the electoral lists.

THE NETHERLANDS / PAYS-BAS

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The Netherlands Constitution provides in Article 58 that each House of Parliament shall examine the credentials of its newly appointed members and shall decide with due reference to rules to be established by Act of Parliament any disputes arising in connection with the credentials or the election itself. Pursuant to Article 59, all other matters pertaining to the right to vote and to elections shall be regulated by Act of Parliament. This Act is the Elections Act (*Kieswet 1989*).[60]

There are no constitutional or legislative provisions which stipulate explicitly the terms under which electoral results have to be or may be cancelled. The chairperson of the central electoral committee announces the result of the election as quickly as possible. The announcement is made at a public meeting of the central electoral committee.[61] The Elections Act does regulate re-counts by the central electoral committee, before the result of the election is announced.[62] After all the procedures have been completed, an official report is immediately drawn up. The official report includes the result of the election and all the objections made.[63] The chairperson of the central electoral committee sends a copy of the official report to the representative assembly in relation to which the election was held.[64] It is the representative assembly in relation to which the election has been held that settles disputes which arise in connection with the credentials or the election itself.[65]

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

It follows from section P 21, 1st paragraph, of the Elections Act that, before the results of the election are announced, the central electoral committee may decide, either *ex proprio motu* or in response to a reasoned request from one or more voters, to conduct a re-count of the ballot papers from all or from one or more of the polling districts, if there are serious grounds for suspicion that errors in the count that might affect the allocation of seats have been made by one or more electoral committees. A re-count is a possible consequence of a serious violation of the law. It follows from the rules set out under "A 1", that the decision to cancel the results of the election rests with representative body concerned. It has a final say.

3. What kind of contravention of the law can serve as a basis for cancellation

Certainly not every contravention of the law justifies cancellation.[66]

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[60] The Elections Act contains provisions governing the elections of members of the House of Representatives (the Lower House or *Tweede Kamer*) and the Senate (Upper House or *Eerste Kamer*) of Parliament (the States General), the Dutch members of the European Parliament and of the members of provincial and municipal councils. The full text (in English) is available from the website of the Electoral Council: <www.kiesraad.nl/contents/pages/3426/vertalingkieswet070809.pdf>.
[61] Section P 20, 1st paragraph, of the Elections Act.
[62] Section P 21 of the Elections Act, see below, under 2.
[63] Section P 22 of the Elections Act.
[64] Section P 24 of the Elections Act.
[65] Section V 4 of the Elections Act.
[66] Cf. under "C".

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

It may be doubted whether established non-compliance with eligibility criteria leads to cancellation of the election results. Section V 4, 2nd paragraph, of the Elections Act states explicitly that the examination of the credentials does not extend to the validity of the lists of candidates or the combinations of lists. However, irregularities may lead to non-admission of the candidate concerned.[67]

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

If elections take place in contravention of the electoral laws and regulations, this may lead to cancellation of the election results. A vote not held in accordance with the law must considered to be invalid.[68] However, non-compliance *as such* does not suffice.[69] The Electoral Council may give an opinion about alleged irregularities and their possible consequences, as is shown by the following example.

Prior to the national elections of November 2006 irregularities had occurred; special inspections by the Ministry of the Interior and Kingdom Relations carried out prior to polling day resulted in the submission of two voting machines regarded as possibly 'suspicious' to the Netherlands Forensic Institute (NFI). Neither machine was used during the elections. Subsequent to the elections independent auditors carried out an inspection of a random sample of voting machines, resulting in the submission of five additional voting machines to the NFI for investigation. The NFI did not find indications of manipulation of any of the seven voting machines that were designed to influence the results. The Electoral Council (the central polling station) needed this information to assess whether any irregularities had occurred. In the event that irregularities had been established this could have given cause to a different assessment of the course of the elections and, possibly, of the election results, the Council wrote in its annual report.[70] Although the Electoral Council's legal duties in this respect are restricted to the announcement of the number of votes cast for each grouping and candidate, followed by the resultant allocation of the seats, the Council was of the opinion that it was also desirable to give an opinion on the reliability of the results. The Council held the opinion that the results from the investigations and the objections that had been lodged did not give cause to doubts about the reliability of the election results, although it was fully aware that, pursuant to Article 58 of the Constitution, the decision as to the validity of the voting rests with the House of Representatives of the States General to which it had submitted its recommendations. It follows from this example that irregularities with regard to the automated calculation of the election result may, under circumstances, lead to a recommendation as to the cancellation of the results by the Electoral Council.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

Violation of criminal law (Book 2, title IV of the Penal Code or the penalty provisions in chapter Z, part 1, of the Elections Act) does not necessarily affect the validity of the election results, especially since criminal proceedings in which such a violation is determined are usually very lengthy.

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[67] Cf. Royal Degree (hereafter: RD) 18 December 1916, nr. 60 (*Gemeentestem* 3409). Admission of a new (municipal) council member was quashed as a consequence of an invalid nomination.
[68] RD 4 October 1974, nr. 3, *Administratiefrechtelijke Beslissingen* 1975, 17.
[69] RD 21 June 1900, nr. 56, Weekblad van de Burgerlijke Administratie 2665.
[70] See Electoral Council, *Annual report 2006*, <www.kiesraad.nl/contents/pages/90654/annualreport2006.pdf>, p. 20-22.

It must be assumed that criminal investigations into irregularities during the election, the outcome of which is unknown, does not provide a ground for non-admission of new members, as the Elections Act does not provide for such a ground.[71]

Section V 12 of the Elections Act stipulates: The decision on the admission of persons appointed to be members of a provincial council or a municipal council shall be taken without delay. Section V 11 of the Elections Act stipulates: Membership of a person appointed as a member of a representative assembly shall commence as soon as his admission has become final. It must be assumed, that after official admission of the person appointed, no cancellation of his or her appointment is possible any longer.[72]

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

When assessing whether there are reasons to cancel election results, not only the candidates' activities but also activities of others must be taken into account.[73]

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

A cancellation may lead to a re-count which will affect the entire result. The representative assembly may decide on a re-count of the ballot papers from all or from one or more of the electoral districts.[74]

A system of proportional representation is used in all Dutch elections, according to which the distribution of seats in a representative assembly corresponds to the distribution of votes in the entire constituency. In other words, a party obtaining 10% of the votes cast also obtains 10% of the seats. In distributing the seats between the parties, the whole country, province or municipality, depending on the type of election, is treated as a single constituency.

For elections in relation to the House of Representatives the country is divided into 19 electoral districts. This division is of a purely technical nature, and is primarily designed to allow the political parties to put up candidates who are well known in a particular part of the country. In determining the results of an election, however, the votes cast for a particular political party in the various electoral districts are all counted together.[75]

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Article 4 of the Constitution provides: Every Dutch citizen shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies, subject to the limitations and exceptions prescribed by law. The Elections Act does not limit the right to stand for repeated elections in case the results of an election are cancelled. Whether a candidate is excluded from standing for elections depends on whether he or she has been convicted for serious offences related to constitutional duties and rights with application of section 28, 1st paragraph, opening and under 3, of the Penal Code in conjunction with section

[71] RD 12 July 1963, Administratiefrechtelijke Beslissingen 1964, p. 86.
[72] See under "B 10".
[73] See under "C".
[74] See section V 4, 4th paragraph, of the Elections Act.
[75] For a full account of the Dutch system of proportional representation, see Electoral Council, *Elections in the Netherlands*, <www.kiesraad.nl/contents/pages/6154/electionsindenetherlands.pdf>, p. 6-7.

130 of the Penal Code.[76]

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The central polling station is competent to certify the electoral results. The Electoral Council acts as the central polling station in parliamentary elections.[77] The Constitution vests in the House of Representatives the final word in resolving election disputes and validating the election results.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Electoral Council is not a judicial body, but an adviser to the Government and both Houses of Parliament on practical matters relating to elections. The courts are not involved in the certifying procedure; they are, however, involved in disputes concerning registration of parties for elections and composition of the lists of candidates.

It should be noted that the OSCE is of the opinion that it would be useful to review the legal system of electoral complaints, so as to provide complainants with the opportunity to submit complaints concerning all aspects of the electoral process, to have their complaints heard by a competent administrative or judicial body, and to appeal to a competent court, in line with broadly accepted practices.[78]

3. Is there a specific body in charge of the control of finance in the electoral field?

Political parties holding at least one seat in Parliament may apply for a subsidy based on the Political Parties (Subsidies) Act (*Wet subsidiëring politieke partijen 1999*). Subsidies and gifts must be accounted for in their annual reports. Currently, the Electoral Council has no supervisory powers.[79]

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

Objections arising from serious irregularities can be lodged by voters at the polling stations a) or when the representative assembly examines the credentials of elected candidates(c).[80] The administrative courts have been given only limited possibilities to offer legal protection in electoral disputes b); see under "B 2". However, it may be argued that a tort action may be brought before the civil courts (d).

Ad a. Voters may lodge objections with the polling station committee. The OSCE wrote in its report on the Dutch parliamentary elections of 22 November 2006 that there is a strong tradition

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[76] Section 28, 1st paragraph, opening and under 3, of the Penal Code: An offender may in the judgment, in cases specified by law, be deprived of the following rights: (3) to elect the members of general representative bodies and to stand for election to these bodies. Section 130 of the Penal Code: Upon conviction of any of the offenses in sections 121 and 123, deprivation of the rights in section 28, paragraph 1 (1)-(3), may be imposed (1st paragraph); Upon conviction for any of the offenses defined in sections 122, 124 and 129, deprivation of the rights in section 28, paragraph 1 (3), may be imposed (2nd paragraph).

[77] And in elections to the European Parliament.

[78] OSCE, Final Report on the 22 November 2006 Parliamentary Elections in the Netherlands, <www.osce.org/documents/odihr/2007/03/23602_en.pdf>, p. 26.

[79] At the moment a Bill is under consideration on the financing of political parties (Regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen. Wet financiering politieke partijen).

[80] Also see Electoral Council, *Preventing corruption and fraud in Dutch elections*, <www.kiesraad.nl/uk/collectie_homepage/preventing> (under h).

in Dutch legal culture of handling complaints informally. Indeed, the objection procedure does imply internal review by the administration only.

After the polling stations close at 09 PM, the votes cast are counted by the staff of the polling stations. Any voter who wishes to do so may attend the counting. The electoral committee decides on the validity of the ballot papers.[81] The chairperson makes known immediately the reason for a declaration of invalidity and any doubts about validity, and the decision taken thereon.[82] A ballot paper must be revealed if one of the voters present so wishes. The voters may object verbally to a decision.[83] Immediately after the votes have been counted, the chairperson announces in respect of each list both the number of votes cast for each candidate and the total number of votes cast. Verbal objections may be made by the voters present.[84] Objections registered by voters during the count must be included in the official report drawn up by the polling station staff.[85]

The mayor of each municipality passes on the official reports from the polling stations to the main polling station of the electoral district. Two days after election day the main polling station announces at a public session the total number of votes cast and the number of votes cast for each list and each candidate.[86] The principal electoral committee determines, in respect of each list, the number of votes cast for each candidate and the sum of these numbers. The sum is referred to as the total vote.[87] The chairperson announces the results thus obtained.[88] The voters present may raise verbal objections.[89] Objections registered by voters are included in the official report.[90] Each main polling station forwards a copy of this official report to the central polling station.[91]

The central polling station then uses these reports to calculate the election result, which is announced as soon as possible at a public session.[92] A re-count may take place.[93] An official report is drawn up of this session, containing the election result and any objections registered by voters.[94]

Ad b. It is not possible to appeal to the administrative courts against decisions on such objections.[95] No claims can be brought relating to the conduct of voting, the counting of votes and the determination of the result of elections of members of representative bodies. On the basis of Article 8:4, under g, of the General Administrative Law Act (hereafter: GALA[96]), no

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[81] Section N 8, 1st paragraph, of the Elections Act. Ballot papers other than those which may be used in accordance with provisions laid down by or pursuant to this Act are invalid (section N 7, 1st paragraph, of the Elections Act). Ballot papers on which the voter has not indicated unequivocally for which candidate he has voted, by colouring the white spot in the box entirely or partly red, and ballot papers to which additions have been made from which the voter can be identified shall also be invalid (section N 7, 2nd paragraph, of the Elections Act).

[82] Section N 8, 2nd paragraph, of the Elections Act.

[83] Section N 8, 3rd paragraph, of the Elections Act.

[84] Section N 9, 1st paragraph, of the Elections Act.

[85] At polling stations where voting machines are in use, the votes are not counted by hand since the machine provides figures for the total number of votes cast, per list and per candidate, and for the number of invalid votes (abstentions). These data are then incorporated in the polling station's official report.

[86] Section O 1, 1st paragraph, of the Elections Act.

[87] Section O 2, 1st paragraph, of the Elections Act.

[88] Section O 2, 2nd paragraph, of the Elections Act.

[89] Section O 2, 3rd paragraph, of the Elections Act.

[90] Section O 3, 2nd paragraph, of the Elections Act.

[91] Unless it is serving as the central polling station itself, as is the case in provincial council elections where the province forms a single electoral district, and in municipal council elections.

[92] Section P 20, 1st paragraph, of the Elections Act.

[93] Section P 21 of the Elections Act.

[94] Section P 22, 1st paragraph, of the Elections Act. See also Electoral Council, *Elections in the Netherlands*, <www.kiesraad.nl/contents/pages/6154/electionsindenetherlands.pdf>, p. 11-12.

[95] Idem.

[96] The full text (in English) is available from the website of the Council of State:

appeal may be lodged against a decision on the numbering of lists of candidates, the validity of electoral alliances, the voting procedure, the counting of votes and the establishment of the results in elections of members of representative bodies, and the declaration of who is elected to a vacant seat.

The GALA applies, if no specific Act of Parliament provides otherwise. The Elections Act provides that complaints on voter registration, registration of a name for a political group and validation of candidate lists are settled by the Administrative Jurisdiction Division of the Council of State. However, such disputes arise prior to the elections. It is assumed that their outcome does not provide a legal basis for the cancellation of electoral results.

Ad c. Pursuant to Article 58 of the Constitution, in national elections the decision as to the validity of the voting rests with the House of Representatives of the States General. No judicial review of such decision is envisaged.[97]

Section V 4 paragraph 1 of the Elections Act provides that the representative assembly in relation to which the election has been held shall examine the credentials and decide whether to admit the appointee as a member of the assembly. In doing so, it shall ascertain that the appointee fulfils the requirements for membership and holds no position incompatible with membership, *and it shall settle any disputes which arise in connection with the credentials or the election itself*. If the appointee will have reached the requisite age for membership before the first meeting of the newly elected assembly, account will be taken of this in reaching the decision. The examination of the credentials of members of the House of Representatives or Senate shall be regulated in the rules of procedure of the relevant House.[98]

Ad d. No judicial review is envisaged of the decision to the validity of the voting in national elections for the House of Representatives.[99] Until the coming into force of the Local Authorities (Separation of Powers) Act (*Wet dualisering gemeentebestuur*) on 7 March 2002[100] and the Provincial Authorities (Separation of Powers) Act (*Wet dualisering provinciebestuur*) on 12 March 2003,[101] appeal to the Administrative Jurisdiction Division of the Council of State was available for invalidating the results of the elections for the municipal and provincial councils resoectively. The Council of State would act as a first and final instance court. The Administrative Jurisdiction Division of the Council of State has no jurisdiction under the revised Water Authorities Act either.[102]

Ad e. It follows from the above, that currently legal remedies offered by the administrative courts are basically unavailable. However, with regard to the determination of the results, at least in theory, voters may bring a tort action[103] before the civil courts, according to a brochure

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<www.raadvanstate.nl/over_de_raad_van_state/algemene_wet_bestuursrecht>

[97] See section 1:1, 2nd paragraph, opening and under b, of the GALA (in conjunction with the sections 1:3, 1st paragraph and 8:1 of the GALA).

[98] Section V 4 of the Elections Act further provides, *inter alia*, that the examination of the credentials shall not extend to the validity of the lists of candidates or the combinations of lists (2nd paragraph) and that, in the case of the admission of a person appointed to fill a casual vacancy, the examination shall not extend to points involving the conduct of the election or the determination of the result (3rd paragraph) and that, for the purposes of the examination referred to in the 1st paragraph, the representative assembly may decide on a re-count of the ballot papers from all or from one or more of the polling districts or provinces (4th paragraph).

[99] See section 1:1, 2nd paragraph, opening and under b, of the GALA (read in conjunction with the sections 1:3, 1st paragraph and 8:1 of the GALA).

[100] Bulletin of Acts and Degrees (*Staatsblad*) 2002, 112.

[101] Bulletin of Acts and Degrees (*Staatsblad*) 2003, 118.

[102] See section 21 (formerly section 30a) of the Water Authorities Act (Bulletin of Acts and Degrees (*Staatsblad*) 2007, 581) and sections 2.64-2.107 of the Water Authorities Degree (Government Gazette (*Staatscourant*) 2007, 497).

[103] Section 6:162 of the Civil Code provides that a person who commits an unlawful act towards another (which can be imputed to him) must repair the damage which the other person suffers as a consequence.

of the Electoral Board.[104] Claimants may face difficulties, though, in terms of (jurisdiction of the court or) admissibility. No recent case-law (from 2000 onwards) has been reported, but in 1970 the President of the The Hague District Court held (in interlocutory proceedings) that the civil courts lacked jurisdiction in cases dealing with the course of events at polling stations.[105] The legislator had vested the power to make a final decision with the representative body and, in doing so, had dealt with the matter exhaustively. In the view of the President of the The Hague District Court, interlocutory (civil) proceedings would be an option, though, if the people taking the decisions in the course of the internal administrative review proceedings colluded.

5. Who may appeal the decision on certifying electoral results?
6. What is the time-limit for appealing the decision on certifying electoral results?
7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?
8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Given the current state of the law ('no judicial appeal body') answers to the questions posed under 5-8 cannot be given.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

It seems to follow from the above, that if the violation of the law is limited to irregularities at just a few polling stations, only the results of the electoral district(s) to which the polling stations concerned belong may be cancelled.[106]

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Pursuant to section V 11 of the Elections Act the membership of a person appointed as a member of a representative assembly commences as soon as his admission has become final. It stems from this section that no authority may cancel the results of an election after the elected candidate has been fully installed. Section V 4, 3rd paragraph of the Elections Act supports this proposition, because in the case of the admission of a person appointed to fill a casual vacancy, the examination shall not extend to points involving the conduct of the election or the determination of the result.

Until a couple of years ago, in provincial and municipal elections appeal was available. There is one case in which the municipal council's decision to admit new members was quashed: irregularities on a large scale were examined and established by the Procurator General with the Court of Appeal; they had not been brought to light at the time of the elections, but were thought to possibly have influenced the election results.[107]

C. CASE-LAW

[104] See Electoral Council, *Preventing corruption and fraud in Dutch elections*, <www.kiesraad.nl/uk/collectie_homepage/preventing> (under h).
[105] President of the The Hague District Court 2 July 1970, *Nederlandse Jurisprudentie* 1970, 341 (Van Dooren v Mayor of The Hague).
[106] Cf. under "A 5" and RD 3 September 1947, nr. 142, *Gemeentestem* 4934 (see below, note 50).
[107] RD 31 August 1962, Bulletin of Acts and Degrees (*Staatsblad*) 349.

1. Is there any case-law concerning the cancellation of electoral results?

There is case-law concerning the cancellation of (provincial and municipal) electoral results, but it is rather old, as currently appeal (to an administrative or judicial body) in cancellation cases is unavailable. Overviews can be found in manuals on the Elections Act.[108] Here follows an anthology.

A re-count will only be considered if there are serious grounds for suspicion that errors in the count that might affect the allocation of seats have been made.[109] The mere fact that there are very small differences does not justify a re-counting of the votes. According to the former Jurisdiction Division of the Council of State (*Afdeling rechtspraak van de Raad van State*, hereafter: JD), this followed from legislative history.[110] And touting does not affect the validity of elections.[111]

If the results of the election may have been affected, invalidity can even be the consequence of a refused poll card in the case two candidates obtained the same amount of votes[112] or in the case of participation in the elections by someone who was ineligible to vote.[113] However, distribution of 'deceitful pamphlets', threats and gifts have at one occasion been considered to be appalling, and possibly influencing the voters, but not affecting the legal validity of the voting itself, the secrecy of which was secured.[114]

A candidate's act may lead to a negative decision by the representative council as to the validity of the election, as was the case when a candidate had distributed vouchers for free drinks at a tavern prior to the elections.[115] However, also the malfunctioning of objects or activities of others than the candidates may lead to invalidities. A municipal council once amended the results of an election after administrative failure: a faltering voting machine. By Royal Degree (*Koninklijk Besluit*, hereafter: RD) it was determined that the council was competent to decide that corrections needed to be made and that this would lead to a new determination of the results by the central polling station.[116]

There is also a case of invalidity as a consequence of assistance provided by the chairman of the polling station to persons who were not in need of help (from a physical point of view).[117] Besides, there are cases in which invalidity followed from a lack of certainty in relation to the correctness of the counting of votes: in one case after the ballot papers had been left unattended at the polling station[118] and in another case after the sealed package of ballot papers had been opened by unauthorized civil servants.[119]

Neither the non-folding of the ballot paper,[120] nor the correction of printer's errors on polling

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[108] P.J. Stolk & W.M.B. Stoker (ed.), *Kieswet*, Den Haag: Vermande/Samson; Schuurman & Jordens/A.F. Hendriks (ed.), *Kieswet*, Deventer: Kluwer 2005.
[109] See section P 21 of the Elections Act and under "A 2". Cf. RD 3 September 1947, nr. 142, *Gemeentestem* 4934. One voter casted two votes; this fact could have influenced the result. The voting in this electoral district was invalid. A new voting was held. Cf. RD 10 December 1909, nr. 27, *Weekblad van de Burgerlijke Administratie* 3159.
[110] Jurisdiction Division (hereafter:JD) 26 April 1990, *Administratiefrechtelijke Beslissingen* 1991, 639.
[111] A note of appeal (in an administrative court) can be lodged against decisions relating to voting by proxy.
[112] Provincial Executive of South-Holland (Gedeputeerde Staten van Zuid-Holland) 12 August 1913, nr. 3, Weekblad van de Burgerlijke Administratie 3350.
[113] RD 29 December 1913.
[114] RD 22 December 1939, Administratiefrechtelijke Beslissingen 1940, p. 313.
[115] RD 24 december 1909, Weekblad van de Burgerlijke Administratie nr. 3162.
[116] RD 30 October 1974, nr. 36, *Administratiefrechtelijke Beslissingen* 1975, 18.
[117] RD 22 February 1913, nr. 21, *Gemeentestem* 3209. Contrast with RD 1 December 1917, nr. 69, *Weekblad van de Burgerlijke Administratie* 3578.
[118] JD 17 August 1982, Administratiefrechtelijke Beslissingen 1982, 566.
[119] JD 30 December 1983, nr. RO3.83.7362/Sp334.
[120] RD 29 May 1908, Bulletin of Acts and Degrees (*Staatsblad*) 190.

cards or ballot papers[121] renders an election invalid. The same was held with respect to (partly) non-deliverance of candidate lists to voters' addresses. It was neither alleged, nor assumed that the election's result had been influenced.[122] This conclusion was also arrived at in a case in which two (out of three) polling station officers had shortly left the polling station in order to get refreshments.[123]

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

There are cases which have resulted in cancellation by the legislative assembly.[124] In former times, such decisions could be reviewed in administrative law proceedings (in case of provincial and municipal elections) but that is no longer the case.

[121] Provincial Executive of Limburg (*Gedeputeerde Staten van Limburg*) 19 August 1927, *Gemeentestem* 3962.
[122] RD 1 February 1963, nr. 5.
[123] Provincial Executive of South-Holland (Gedeputeerde Staten van Zuid-Holland) 12 August 1913, nr. 3, Weekblad van de Burgerlijke Administratie 3350.
[124] See above, under "C 1". See for instance RD 30 October 1974, nr. 36, *Administratiefrechtelijke Beslissingen* 1975, 18.

PORTUGAL

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS*

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?

LEPR – Article 116
LEAR – Article 119
LEALRAA – Article 122
LEALRAM – Article 126
LEOAL – Article 160
LEPE – Article 13 et article 119 de la LEAR

La CRP, dans cette matière détermine :

Article 113, nº 7 – L'examen de la régularité et de la validité des actes des campagnes électorales appartient aux Tribunaux.

Article 223, nº 2.c) – O Tribunal Constitucional est compétente pour :

(…)

c) contrôler, en dernière instance, la régularité et la validité des actes des campagnes électorales, dans les conditions prévues par la loi ;

(…)

La loi du Tribunal Constitucional (loi nº 28/26) détermine :

Article 102 – Contentieux électoral

1. Les décisions des réclamations ou protestations relatives aux irrégularités au cours des votes et dans les résultats partiels relatifs aux élections de l'Assembleia da República, des assemblées régionales ou des organes du pouvoir local sont susceptibles de recours devant le Tribunal Constitucional, qui juge en séance plénière.

2. La procédure relative au contentieux électoral est régie par les lois électorales.

3. (…).

La loi nº 71/78 a créée la Comissão Nacional de Eleições (Commission nationale d'élections), l'entité administrative indépendante qui garantit l'impartialité des pouvoirs publics face aux candidatures, l'égalité de la propagande pendant les périodes électorales et a aussi pour mission de vérifier le respect de la procédure électorale pendant le jour des élections. Bien qu'elle ne dispose pas de pouvoir pour appliquer des sanctions en matière d'irrégularités électorales, sa mission comprend aussi le devoir de dénoncer ces irrégularités, soit auprès du Ministère Public, soit auprès de l'opinion publique, ce que rend plus facile les recours contre les actes électoraux des candidatures qui ont subi des préjudices dus à des irrégularités.

* Voir à la fin un tableau explicatif des termes portugais dans le texte.

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?

LEPR

Les résultats de la votation, dans un bureau de vote, seront jugés nuls si :
- des illégalités ont été commises pendant son fonctionnement
- et celles-ci ont une influence dans le résultat générale de l'élection.

LEAR/LEALRAA/LEALRAM

Les résultats de la votation dans un bureau de vote et les résultats de la votation dans l'ensemble du cercle électoral ne sont considérés nuls que quand :
- des illégalités ont été commises et enregistrées, qui peuvent influencer le résultat final de l'élection dans le cercle électoral

LEOAL

Les résultats de la votation dans un bureau de vote et les résultats de la votation, dans l'ensemble du cercle local, ne seront jugés nuls que quand des illégalités, qui ont eu lieu et ont été enregistrées, peuvent influencer le résultat final de l'élection dans le respectif organe local.

On vérifie que, dans les cas où les illégalités viennent modifier la volonté librement exprimée dans les urnes, l'élection sera annulée.

En conséquence, la nullité a son origine dans la violation de la loi (illégalité). Cependant, on prend en considération seulement les illégalités, qui influencent le résultat final de l'élection.

La décision de nullité ce n'est pas une décision discrétionnaire, une fois qu'elle est toujours liée à une condition référée, laquelle est bien objective.

Il faut encore remarquer que la nullité est restreinte à une certaine zone, le bureau de vote ou le cercle électoral, où l'illégalité a été pratiquée. D'un autre côté, on ne peut pas affirmer que la nullité a un caractère obligatoire, car, une fois que les conditions référées ont été vérifiées, elle dépend de la volonté des parties légitimes (l'auteur de la réclamation, les partis politiques, les candidats et ses mandataires), que dans le cercle ont disputé l'élection, et de la demande d'annulation déposée dans les délais légaux. De la même façon, le Tribunal Constitucional n'examine pas des recours contentieux que dans le cas d'irrégularités, qui ont eu lieu pendant la votation, si les mêmes ont été objet de réclamation ou de protestation déposée, pendant l'acte où elles ont été pratiquées, et aussi analysées par l'Assemblée de dépouillement général (sauf quand elles sont objet de la connaissance officieuse par le Tribunal Constitucional)

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats ?

a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?

Non, ce type de violation de la loi ne peut pas servir de base pour l'annulation des résultats.

Dans le cas d'un nombre insuffisant de signatures, les candidatures sont rejetées tout de suite par la Comissão Nacional de Eleições, et de ce fait le problème de l'annulation des résultats

électoraux ne se pose pas.

Il faut encore faire référence au cas spécial des règles de parité dans la composition des listes, déterminées par la loi organique nº 3/2006, qui exige une représentation minimum de 33,3 % de chacun des sexes dans les listes. Selon l'article 3 de cette loi, le mandataire de la liste est notifié, par la Comissão Nacional de Eleições, à fin de corriger la liste, chaque fois qu'elle ne respecte pas ce limite minimum.

Dans le cas où la correction due ne serait introduite dans la liste, l'article 4 de la loi organique nº 2/2006 détermine les sanctions suivantes :

- L'affichage public des listes avec l'indication de leur violation de la présente loi ;
- La divulgation, par le « site » de la Comissão Nacional de Eleições sur l'Internet, avec l'indication de leur violation de la présente loi ;
- La réduction des montants des subventions publiques pour les campagnes électorales.

Quand cette loi a été approuvée par l'Assembleia da República, le 20 avril 2006, le Presidente da República a émis son veto politique, sur cette loi, qui devait entrer en vigueur, le 2 juin 2006, avec l'argument que la sanction de réduction des montants des subventions publiques était excessive et non proportionnelle à l'irrégularité à sanctionner.

Cependant, l'Assembleia da República a utilisé, par la suite, le pouvoir qui lui a donné par l'article 136, nº 2 de la Constitution, pour confirmer, par une votation à une majorité absolue, cette loi qui est ainsi entrée en vigueur.

Jusqu'à présent, ni le Presidente da República, ni aucune autre entité avec le pouvoir de demander la fiscalisation successive de la constitutionnalité a suscité cette question, auprès du Tribunal Constitucional.

b. La violation de lois et de règlements électoraux (en particulier, des règles sur la campagne et sur les procédures de vote) ?

La violation des normes des lois électorales qui règlent la votation, seulement, en ce qui concerne les illégalités pratiquées pendant la votation.

c. La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?

Non.

4. Est-ce que seules les activités des candidats (violation de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (p. ex., la violation des règles sur la campagne par les médias ou d'autres personnes en faveur d'un candidat, mais à son insu ?

En premier lieu, c'est l'activité des membres des bureaux de vote qui peut donner origine à des illégalités. Mais elles peuvent englober l'activité d'autres sujets, s'il existe la possibilité que ces sujets falsifient les résultats.

La violation des normes, par exemple sur la propagande, la neutralité et l'impartialité, ainsi que sur le traitement par les media n'ont pas le potentiel pour servir de fondement à la nullité de la votation, si l'on prend en considération le texte de la loi qui règle cette matière.

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des

résultats des élections ?

La nullité, une fois déclarée, affecte la (totalité de la) votation dans un certain bureau de vote ou dans un certain cercle/circonscription électorale donnant origine à la répétition de la votation, ultérieurement.

Les situations qui donnent origine à des conséquences qui retombent sur un seul candidat ont leur origine, par exemple, dans l'inéligibilité survenue ou dans la perte du mandat (après son élection).

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?

Ce cas de figure ne s'applique pas. La nullité n'a pas de conséquences sur l'éligibilité des candidats. D'ailleurs, la répétition de la votation se réalise avec les mêmes candidatures qui, au début, se sont présentées à l'élection.

Les situations qui limitent la présentation des candidatures ne concernent pas cette question.

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Quelle est l'autorité compétente pour valider les résultats des élections ?

L'Assemblée de dépouillement général, l'entité qui réalise le comptage des résultats des élections.

Son Président, normalement un magistrat judiciaire et/ou le Président du Tribunal Constitucional (dans les élections présidentielles et européennes) fait la proclamation des résultats.

2. Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?

Bien que l'Assemblée de dépouillement général ne soit pas une autorité judiciaire, elle est présidée par un juge (AR/ALRAA/ALRAM/AL).

Dans le cas de l'élection du Presidente da República et du Parlement européen elle est présidée par le Président du Tribunal Constitucional et dans sa composition siègent aussi deux juges du Tribunal Constitucional.

L'intervention du Tribunal Constitucional n'a lieu que dans le cas durecours contre une décision prise par l'Assemblée de dépouillement général.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?

Oui, le Tribunal Constitucional qui compte sur la collaboration de l'Entidade das Contas e Financiamentos Políticos. Cependant, cette matière ne concerne pas la nullité des élections.

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?

Le Tribunal Constitucional en dernier ressort.

5. Qui peut recourir contre la décision de validation des résultats des élections ?

Les auteurs de réclamation, protestation ou contre-protestation concernant une irrégularité vérifiée, les candidats, leurs mandataires ou représentants et les forces politiques candidates ont de la légitimité pour déposer un recours contre la décision de validation des résultats des élections.

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections ?

Le délai pour déposer un recours est :

Dans le cas de l'élection présidentielle, d'un jour, après l'affichage de l'arrêté des résultats, par l'Assemblée de dépouillement général.

Dans le cas de l'AR/ALRAA/ALRAM/PE, 24 heures, après l'affichage de l'arrêté des résultats par l'Assemblée de dépouillement général.

Dans le cas de AL, le jour suivant à l'affichage de l'arrêté des résultats, par l'Assemblée de dépouillement général.

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?

Dans le cas de PR/AL, dans les deux jours qui suivent la fin du délai prévu au numéro antérieur.

Dans le cas de AR/ALRAA/ALRAM, dans les 48 heures qui suivent la fin du délai prévu au numéro antérieur.

8. Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office, ou ceux-ci doivent-ils être présentés par les parties ?

Le recours contentieux doit indiquer tous les fondements de fait et de droit et avoir comme pièces jointes tous les éléments de preuve, nommément, la photocopie du compte-rendu du bureau de vote où l'irrégularité a eu lieu. Le recourant doit déposer le recours dans les délais prévus par la loi.

La seule exception à l'obligation de jonction des moyens de preuve concerne les recours qui ont pour objet des actes de procédure, qui ont eu lieu dans les Regiões Autónomas, lesquels peuvent être déposés avec la justification par courrier électronique ou fax, pouvant les moyens de preuve être envoyés postérieurement.

La présentation des preuves incombe au recourant. Malgré le fait qu'il est admis que les moyens peuvent ne pas être présentés comme pièces jointes au recours, ils ne peuvent pas être présentés après que le Tribunal Constitucional ait prise sa décision, sauf s'il l'a prise avant le terme du délai, dont il dispose pour prendre la décision (Arrêté nº 716/97). Un des éléments qui doit être joint au recours c'est le compte-rendu des opérations de la votation et du dépouillement, si l'irrégularité concerne la votation ou le dépouillement partiel, et le compte-rendu du dépouillement général, dans les cas où l'irrégularité a eu lieu dans cette phase de la procédure électorale.

La jonction de la copie ou de la photocopie du compte-rendu (copie intégrale) du bureau de

vote, où l'irrégularité a eu lieu, est une condition formelle du recours, qui, dans le cas de sa non vérification, implique que le recours ne soit pas pris en considération, selon certaines décisions du Tribunal Constitucional (pour toutes voir l'Arrêté nº 14/90).

L'obtention de la copie ou de la photocopie du compte-rendu des opérations de vote et de dépouillement partiel se fait auprès des services du membre du Governo Regional responsable pour les questions électorales, auxquels sont envoyés tous ces documents (article 117, nº 1)

Ne non respect de l'exigence légale de spécifier les fondements de fait (avec l'identification claire et précise des irrégularités) et de droit du recours, ainsi que la non jonction des moyens de preuve implique que le Tribunal Constitucional ne prenne pas en considération le recours (voir l'Arrêté nº 6/98).

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?

Non, seulement les résultats des bureaux de vote concernés.

10. Est-ce qu'une autorité (par exemple des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu soit entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

Non, ce cas de figure ne se présente pas.

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?

Oui.

2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

Dans la recherche effectuée, malgré la rapidité, on a trouvé un seul arrêté qui prend la décision d'annuler la votation (Arrêté nº 3/90) dans le cas des élections municipales de 1989 (voir ci-dessous nº 1).

Malgré cela, nous avons trouvé d'autres arrêtés qui, bien qu'ils n'aient pas pris des décisions d'annuler les votations, sont importants en ce qui concerne les fondements de cette question (voir ci-dessous nº 2).

Finalement, nous pouvons référer que les autres arrêtés retrouvés (en nombre considérable n'ont pas pris en considération le recours en raison de l'écoulement du délai de dépôt du recours, du manque de preuves des irrégularités, ainsi que du dépôt prématuré du recours (avant l'affichage des arrêtés du dépouillement général).

Point 1

Arrêté nº 3/90

Le bureau de vote de Gondiães a décidé, comme on peut lire dans son compte-rendu que « tout citoyen électeur retraité ou porteur d'une anomalie physique notoire qui demande permission d´être accompagné, par une personne de son entière confiance, pour voter,

obtiendrait cette permission ».

Malgré une protestation contre cette délibération ait été déposée, le bureau l'a maintenue et appliquée.

Après le dépôt de la protestation, le nombre d'ordre des électeurs qui ont voté accompagnés a été enregistré, ainsi que le nombre d'ordre de ses accompagnants, quand il s'agissait de citoyens électeurs de la Freguesia de Gondiães.

Dans ce bureau de vote se sont présentés 310 électeurs.

Dû à la décision ci-dessus en analyse, qui autorisait « tous les citoyens retraités ou porteurs d'anomalie physique notoire à voter accompagnés », à compter du moment de la protestation, 79 citoyens électeurs ont voté accompagnés.

Tribunal Constitucional :

(…)

De toute façon, les votants, qui ont bénéficié de la délibération en question, qu'ils soient 77 ou 59, ont excédé la différence entre le parti qui a déposé le recours et le parti vainqueur du suffrage dans l'élection du Município de Cabeceiras de Basto.

(…)

Tenant en considération que les 50 voix qui séparaient le Partido Social Democrata (Parti social démocrate) et le Partido Socialista (Parti socialiste), on vérifie que le résultat du dépouillement du bureau de vote de Gondiães peut manifestement influencer le résultat de l'élection, quand on sait qu'à Gondiães, ont voté, selon la décision protestée, 77 électeurs, ou alors dans l'hypothèse plus restreinte et improbable, 59 électeurs, dans les deux cas, toujours en nombre supérieur à celui de la moitié de la différence des totaux finaux globaux des deux forces politiques en présence.

Ceci étant, on doit dire, avant de poursuivre l'appréciation de la question en dispute, que l'objet du recours concerne seulement la question de l'irrégularité de la votation, qui a son origine dans la délibération sur la forme de votation des « citoyens électeurs retraités ou porters d'anomalie physique notoire », une fois que c'est seulement sur cette question que le recourant a produit preuve de la concrétisation de toutes les conditions, desquelles dépend la poursuite du recours contentieux électoral.

Decreto-Lei nº 701-B/76

Ainsi, étant donné que la faculté donnée aux bureaux de vote d'autoriser l'électeur à voter accompagné ne leur attribue pas un pouvoir discrétionnaire, car cette faculté doit être exercée seulement, dans les limites étroites et vinculées établis par la loi.

(…)

La délibération du bureau de vote de Gondiães s'est éloignée de ce strict rituel légal, en violant, de forme claire et manifeste, les dispositions de l'article 70 du Decreto-Lei nº 701-B/76.

(…)

De cette façon, le bureau de vote de Godiães a transformé une situation que la loi considère exceptionnelle – la votation de l'électeur accompagné – en une situation de presque normalité,

en s'abstenant, dans la pratique, d'accomplir les déterminations sur la vérification concrète et individualisée constantes de l'article 70 du Decreto-Lei nº 701-B/76.

(…)

Arrivés à ce point, nous pouvons anticiper que sont réunies toutes les conditions desquelles dépendait le fondement du recours et de lui donner suite.

En effet, il est suffisamment acquis, en outre, que la délibération, illégalement formulée, a dirigé toute la procédure de votation, a élargi au-delà de ce qui est permis les situations de vote accompagné et a provoqué un résultat électoral faux.

Il n'est pas nécessaire de référer que cette falsification parait dériver, avant tout, du fait apparemment anomal d'un nombre expressif de 77 électeurs avoir voté accompagné, dans un univers électoral de 310 votants, à partir de 11h 00, et, de la même façon, il n'est pas important de considérer l'hypothèse d'un ou quelques-uns parmi ces électeurs rentrer, éventuellement, dans les limites que la loi établi pour le vote accompagné.

La délibération du bureau de vote, en modifiant les critères définis par la loi et en mettant de coté le devoir de faire la vérification, concrètement et individuellement, a donné origine à une procédure de votation viciée et clairement illégale.

Parallèlement, étant vérifiées toutes les conditions dont dépendait l'acceptation du recours, il y a lieu de conclure dans le sens d'annuler l'acte électoral recouru.

La décision :

En vertu des fondements exposés, il est décidé d'annuler la votation qui a eu lieu, le 17 décembre 1989, dans le bureau de vote de Gondiães, Município de Cabeceiras de Basto, concernant l'élection de la Câmara Municipal de Cabeceiras de Basto, avec ses conséquences.

Point 2

Arrêté nº 471/89 du Tribunal Constitucional

Le Partido da Democracia Cristã (Parti de la Démocratie Chrétienne), candidat à l'élection du Parlement européen, qui a eu lieu de 18 juin 1989, a déposé un recours en nullité de cette élection, en tout le territoire national, en arguant en substance, que dans la période immédiatement antérieure à la campagne électorale – couramment désignée par pré-campagne – il n'a pas été garantie l'égalité de traitement à toutes les candidatures (nommément, dans les média, et en spécial à la RTP) avec une discrimination négative des partis politiques, qui ne siègent pas à l'Assemblée de la République, par rapport à ces qu'y siègent.

Le Tribunal Constitucional déclare :

Cette compétence (celle de déclarer nulle une élection pour le Parlement européen) – d'ailleurs comme la généralité de sa compétence litigieuse en matière électorale – doit être exercée par la voie du recours, ce qui implique que la question, qui se prétend qu'il analyse, ait été auparavant soumise à l'analyse d'un autre organe (un organe d'administration électorale) et objet d'une délibération de la part de celui-ci – délibération qui sera l'objet d'un recours.

Cette règle générale trouve une manifestation claire, dans le contentieux électoral du Parlement européen, exactement dans l'article 13, nº 1 et 2, de la loi nº 14/87. Peut-être qu'elle

pourra avoir des exceptions dans des situations peu nombreuses, où dû à la nature de la matière en question et même par exigence constitutionnelle, il soit nécessaire d'exclure l'admissibilité d'une intervention préalable d'un quelconque organe administratif (une situation exceptionnelle de ce type a été admise par ce Tribunal, mais d'ailleurs, seulement de façon majoritaire, dans l'arrêt nº 9/86 (in Diário da República, II Série, du 21 avril 1986).

Étant donné que, dans le cas en examen, on n'est pas en présence d'une quelconque situation de ce type singulier – la vérité c'est que le Partido da Democracia Cristã ne vient pas contester dans le présent recours, en deuxième voie, une quelconque délibération d'un autre organe prise sur la question, qu'il soulève, de la « nullité » de l'acte électoral du 18 juin 1989 : il vient, en première ligne, invoquer cette nullité devant ce Tribunal.

Ainsi, pour cette raison – et indépendamment de savoir si les « illégalités » prétendues, arguées par le recourant, qui ne respectent pas aux irrégularités de la « votation », au sens propre, étaient encore susceptibles d'appréciation, en ce moment. Ainsi, indépendamment du mérite de leur fondement – le Tribunal ne peut pas connaître l'objet de la demande de déclaration de la nullité de l'élection.

Arrêté nº 715/97 – Acte de propagande en jour de réflexion

Recours « contre les illégalités qui ont eu lieu, la veuille de l'élection et qui l'ont viciée » demandant une décision « ordonnant la répétition de l'élection dans le Município d'Ílhavo ».

Les déclarations du vice-président du « Illiabum Club », X, faites le 13 décembre 1997, dans une émission sportive de la « Radio Terra Nova », où le Président de la « Câmara Municipal de Ílhavo » (Maire d'Ílhavo), élu par le Partido Socialista (Parti socialiste), dans les élections de 1993, est critiqué, en même temps qu'il est demandé, à toutes les personnes assistant au match de basket, qui « se trouvent effectivement tristes et ennuyées, à cause le cette situation où nous nous trouvons effectivement […] de voter, demain, de façon à que le PS ne mérite de notre part une votation de reconnaissance par le travail qu'il n'a pas réalisé ».

Le Tribunal Constitucional déclare :

En vérité, le Tribunal Constitucional est seulement compétent pour connaître d'un recours contentieux contre « les irrégularités qui ont eu lieu pendant la votation et lors des dépouillements partiel et général », quand elles ont été l'objet de réclamation ou protestation déposée pendant l'acte où elles se sont vérifiées.

Ce que le recourant soumet à ce Tribunal, ce n'est pas un recours contre un fait ou un acte irrégulier, qui a eu lieu pendant la votation ou le dépouillement partiel ou général de la votation.

Bien au contraire, il soumet un recours contre un acte relatif à la propagande électorale, réalisée la veuille du jour des élections (et, pour cette raison, déjà après que la campagne électorale ne soit terminée) et pas pendant la votation, pour l'examen duquel le Tribunal Constitucionnel n'a pas de compétence et qui, selon les articles 102 à 105 du Decreto-Lei nº 701-B/76, ne constitue pas une matière qui puisse être l'objet d'un recours contentieux.

Cette matière constitue, au contraire, un illicite électoral, dont la sanction n'est pas l'invalidité de l'acte, mais des sanctions d'une nature différente. Par conséquence, il faut conclure que le présent recours ne peut pas être examiné.

Arrêté nº 860/93 – Vote pluriel

Recours déposé du fait de, pendant les élections des organes des Autarquias Locais, qui ont eu lieu le 12 décembre 1993, l'électeur X avoir voté dans le bureau de vote de Portela de

Cabras, dans le Concelho de Vila Verde, ainsi que dans le bureau de vote de la Freguesia de Anais, Concelho de Ponte de Lima.

Le Tribunal Constitucional déclare :

En vérité, la situation décrite dans le recours de vote pluriel peut être examinée dans une double perspective. D'un coté, le vote pluriel est une infraction relative à l'élection, prévue et punie, par l'article 125, du Decreto-Lei nº 701-B/76. Dans ce cas, l'infraction en question a une projection spécifiquement criminelle et les tribunaux communs doivent l'examiner et la juger. De l'autre coté, le vote pluriel intègre, sans aucun doute, une illégalité vérifiable, pendant la votation et, selon l'article 105 du même Decreto-Lei, c'est au Tribunal Constitucional d'en connaitre et décider.

Cependant, l'article 105 est clair quant aux conditions, selon lesquelles le recours auprès du Tribunal Constitucional produit les conséquences qu'il prévoit : les illégalités en question ne seront aptes à provoquer la nullité de l'élection, comme le recourant prétend, que dans le cas où elles peuvent influencer le résultat général de l'élection de l'organe municipal considéré.

Cependant, la projection spécifique dans le résultat électoral n'est pas prouvé dans le recours, une fois que le recourant n'a pas joint le compte-rendu du bureau de vote de la Freguesia de Portela das Cabras, ni le compte-rendu de l'Assemblée de dépouillement général du Concelho de Vila Verde, de façon à qu'ils puissent constituer des éléments de démonstration cabale et irréfutable comme l'illégalité invoquée peut avoir eu une influence effective dans le résultat électoral.

Selon l'article 103, nº 3 du Decreto-Lei nº 701-B/76, c'est au requérant qui incombe de joindre au recours tous les moyens de preuve nécessaires pour le jugement. L'impossibilité de vérifier la relevance de la situation décrite dans le recours pour le résultat de l'élection en question, ne permet pas que le Tribunal prenne connaissance de la demande.

Arrêté nº 718/97 du Tribunal Constitucional

Le recours contentieux contre la délibération, du 14 décembre 1997, du bureau de vote nº 2 de la Freguesia de Ponta Garça, où est demandée l'annulation de cette délibération « dans la partie où elle a déterminé la continuation de l'acte électoral après la régularisation de la composition du bureau » et la « déclaration de nullité des élections dans l'Assemblée générale électorale de Ponta Garça, selon l'article 105, nº 1, de la LEOAL ».

Quand il est arrivé, au bureau de vote nº 2, pour exercer son droit de vote, il a constaté que le même fonctionnait avec un Président et deux délégués de la liste du Partido Social Democrata (qui étaient aussi des candidats) et, séance tenante, il a déposé une protestation écrite, demandant la suspension immédiate des opérations électorales, dans la mesure où le bureau n'avait pas de quorum pour fonctionner.

Le bureau a délibéré, par unanimité, de suspendre l'acte électoral jusqu'à ce que le bureau soit constitué selon les conditions légales de fonctionnement, ce qui est arrivé une heure après. Une fois constitué régulièrement, le bureau a délibéré de continuer les opérations électorales.

Le Tribunal Constitucional déclare :

Devant le recours déposé, il est évident qu'il ne réuni pas les conditions pour être soumis à l'examen du Tribunal.

Les recours déposés en matière de contentieux électoral, selon la loi électorale des organes des municipalités locales (Decreto-Lei nº 701-B/76) concernent les irrégularités vérifiées

pendant la votation et le dépouillement partiel ou général, ne peuvent être examinés « que si elles ont été l'objet d'une réclamation ou protestation déposée dans l'acte où elles se sont vérifiées » (article 103, nº 1 du même diplôme légal).

Selon l'article 103, nº 3, « la demande de recours spécifiera les fondements de fait et de droit du recours et présentera comme pièces jointes tous les éléments de preuve, y incluse la copie ou la photocopie du compte-rendu du bureau de vote où l'irrégularité a été vérifiée ».

Dans le cas présent, une fois qu'il n'a pas été jointe la copie ou la photocopie du compte-rendu du bureau, où éventuellement aurait été pratiquée l'irrégularité dénoncée, tel omission implique que le recours ne peut pas être examiné et cela, indépendamment, de savoir si le recours a été déposé dans le délai prévu et s'il y a eu, dans l'Assemblée de dépouillement général, le dépôt d'une réclamation ou protestation, une fois que le recourant, sur qui incombe le devoir de faire preuve de la matière de fait, n'a pas produit de pièces jointes dans le recours.

Arrêté nº 302/2007

En ce qui concerne le recours relatif aux Eleições Regionais da Madeira, le Tribunal Constitucional n'a pas examiné sa demande, car il a considéré que le recours a été déposé en violation du délai légal pour sa présentation.

«En premier lieu, on examinera la question relative au délai légal pour la présentation du recours.

Selon l'article 125, nº 1 de la loi organique nº 1/2006 du 13 février, le recours doit être déposé dans un délai de 24 heures, comptées de l'affichage de l'arrêté, référé à l'article 119 de la même loi. L'arrêté avec les résultats du dépouillement général a été affiché dans le hall du Palácio de São Lourenço le 11 mai 2007 à 15h30m (voir le document 40). Le dépôt du recours a été enregistré au Greffe do Tribunal Constitucional le 14 mai 2007 à 14h 24m.

Le 11 mai 2007 était un samedi. Étant donné que le terme du délai, fixé en heures par la loi, a eu lieu pendant la fin de semaine (samedi), la dernière heure du délai s'est transférée au premier jour ouvrable suivant, qui coïncidait avec l'heure d'ouverture du Greffe du Tribunal Constitucional, dans le cas présent, les 9h 00, du 14 mai 2007.

Étant donné que le recours a été enregistré, par le Greffe du Tribunal Constitucional, à 14h24m, du 14 mai 2007, il faut conclure que le délai n'a pas été respecté, tel qu'il est compris par la jurisprudence uniforme et unanime de ce Tribunal. (Voir, entre autres, les Arrêtés nº 6/98, 1/98, 450/05 e 444/05 qui citent une jurisprudence abondante dans ce sens – www.tribunalconstitucional.pt).

Il faut encore éclaircir que, dans le cas présent, n'est pas applicable au comptage du délai en question, l'article 279.d), ni l'article 296 du Code Civil. En effet, il s'agit, dans le cas présent d'un délai en heures, imposé pour permettre un dépouillement rapide des résultats électoraux, qui constitue un corollaire du principe démocratique.

TABLEAU EXPLICATIF
DES TERMES PORTUGAIS DANS LE TEXTE

	Português	Français
AAG	Assembleia de Apuramento Geral	Assemblée de dépouillement général
AL	Assembleia Legislativa	Assemblée législative
ALRAA	Assembleia Legislativa da Região Autónoma dos Açores	Assemblée législative de la Région Autonome de Azores
ALRAM	Assembleia Legislativa da Região Autónoma da Madeira	Assemblée législative de la Région Autonome de Madère
AR	Assembleia da República	Assemblée de la République
Autarquia Local	Designação geral que abrange o Município e a Freguesia	Désignation générale qui englobe le Município et la Freguesia.
Concelho	Divisão administrativa do território	Division administrative territoriale
CRP	Constituição da República Portuguesa	Constitution de la République portugaise
Entidade das Contas e Financiamentos Políticos		Entité des comptes et des financements politiques
Freguesia	Divisão administrativa do território. Existem várias Freguesias num Concelho	Division administrative territoriale. Il peut y avoir plusieurs Freguesias dans un Concelho
LEAR	Lei eleitoral da Assembleia da República	Loi électorale de l'Assemblée de la République
LEALRAA	Lei eleitoral da Assembleia Legislativa da Região Autónoma dos Açores	Loi électorale de l'Assemblée législative de la Région autonome de Azores
LAELRAM	Lei eleitoral da Assembleia Legislativa da Região Autónoma da Madeira	Loi électorale de l'Assemblée législative de la Région Autonome de Madère
LEOAL	Lei eleitoral dos órgãos das autarquias locais	Loi électorale des organes des autarquias locais
LEPE	Lei eleitoral do Parlamento Europeu	Loi électorale du Parlement européen
RAA	Região Autónoma dos Açores	Région Autonome de Azores
RAM	Região Autónoma da Madeira	Région Autonome de Madère
PR	Presidente da República	Président de la République
RTP	Rádio Televisão Portuguesa	Radio télévision portugaise
TC	Tribunal Constitucional	Tribunal constitutionnel

ROMANIA / ROUMANIE

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?

Dans le cas des élections présidentielles, la Constitution de la Roumanie prévoit que la Cour constitutionnelle veille au respect de la procédure d'élection du Président de la Roumanie et confirme les résultats du suffrage; alors, l'instance constitutionnelle apprecie si les élections présidentielles ont été correctes ou pas. La Loi sur l'élection du Président de la Roumanie (Loi n° 370/20.09.2004, publiée au Journal Officiel n° 887/29.09.2004) va plus loin et prévoit que la Cour constitutionnelle annule les élections le cas où le vote et la proclamation des résultats a eu lieu par le biais de la fraude de nature à modifier l'attribution du mandat ou, selon le cas, l'ordre des candidats qui peuvent participer au deuxième tour du scrutin. Face à une telle situation, la Cour disposera la répétition du tour de scrutin le deuxième dimanche après le jour de l'annulation des élections. La requête pour l'annulation des élections peut être introduite par les partis politiques et les candidats qui ont participé à ces élections dans un délai de maximum 3 jours à partir de la fin du vote. La requête est irrecevable si la personne qui a saisi la Cour est impliquée dans la fraude.

Dans le cas des élections législatives, la Loi sur l'élection de la Chambre des députés et du Sénat (Loi n° 35/2008, publiée au Journal Officiel n° 196/13.03.2008), définit la fraude électorale comme toute action illégale qui a lieu avant, durant ou après la fin du vote ou pendant le dépouillement des votes ou du dressement des procès verbaux, ce qui a comme résultat le détournement de la volonté des électeurs et la création d'avantages concretisés par des mandats supplémentaires pour un compétiteur électoral.

En matière d' élections législatives et locales, c'est le Bureau électoral central qui annule les élections lorsqu'il constate que le vote ou la proclamation des élections a eu lieu par le biais d'une fraude électorale

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?

Si l'autorité competente constate l'existence d'une fraude, elle est obligée d'annuler les élections.

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats?

- **a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?**
- **b. La violation de lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote) ?**
- **c. La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?**

La fraude électorale comme toute action illégale qui a lieu avant, durant ou après la fin du vote ou pendant le dépouillement des votes ou du dressement des procès verbaux, ce qui a comme résultat le détournement de la volonté des électeurs et la création d'avantages

concretisés par des mandats supplémentaires pour un compétiteur électoral. Ainsi, la notion est très large.

4. Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (par exemple la violation des règles sur la campagne par les médias ou d'autre personnes en faveur d'un candidat, mais à son insu) ?

La loi ne le précise pas, mais nous pensons que seulement les activités des candidats et des partis politiques qui les soutiennent sont prises en considération.

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des résultats des élections ?

La loi ne le précise pas.

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?

La loi ne précise pas, mais à notre avis, s'il n'a pas commis une infraction qui ait entraîné la perte des droits électoraux, oui.

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Quelle est l'autorité compétente pour valider les résultats des élections ?

En ce qui concerne les élections présidentielles, la Cour constitutionnelle de la Roumanie est l'autorité compétente pour valider les résultats des élections.

En matière d' élections législatives et locales, c'est le Bureau électoral central qui a cette compétence.

2. Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?

La Haute Cour de Cassation et de Justice designe 5 juges qui font partie du Bureau électoral central.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?

Oui, il s'agit de l'Autorité électorale permanente.

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?

Il n'y a pas un tel recours. Les résultats des élections sont soit validés, soit invalidés.

5. Qui peut recourir contre la décision de validation des résultats des élections ?

Ce n'est pas le cas.

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections ?

Ce n'est pas le cas.

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?

Ce n'est pas le cas.

8. Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties ?

Ce n'est pas le cas.

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?

Le Bureau électoral central dispose l'annulation des élections seulement pour les bureaux de vote concernés.

10. Est-ce qu'une autorité (p.ex. des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu est entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

Non. La requête pour l'annulation des élections doit être faite dans un délai de 24 heures à partir de la clôture des urnes. La solution de la requête pour l'annulation des élections doit être faite jusqu'au jour de la publication du résultat des élections au Journal Officiel de la Roumanie.

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?

Oui, il y a eu des cas, pour les élections locales.

2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

Le fait que dans certaines communes on a permis le vote des citoyens que n'avaient pas le domicile dans ces localités.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

A. BASE LEGALE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Existe-t-il des dispositions constitutionnelles ou législatives qui prévoient les cas dans lesquels les résultats des élections doivent ou peuvent être annulés ?

La Constitution de la Fédération de Russie ne contient pas de dispositions établissant les fondements sur lesquels les résultats des élections doivent ou peuvent être annulés.

Cependant, la Loi fédérale du 12 juin 2000 « Sur les garanties essentielles des droits électoraux et du droit de participation au référendum des citoyens de la Fédération de Russie » (ci-après : la Loi fédérale « Sur les garanties essentielles... ») prévoit les conditions générales dans lesquelles les résultats des élections doivent ou peuvent être annulés (article 77). Ses dispositions sont adaptées et reproduites par la Loi fédérale du 18 juin 2005 « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie » (article 92) et par la Loi fédérale du 10 janvier 2003 « Sur l'élection du Président de la Fédération de Russie » (article 85).

Dans son Arrêt du 15 janvier 2002 n° 1-P relatif à l'affaire de vérification de la constitutionnalité de quelques dispositions de l'article 64 de la Loi fédérale du 19 septembre 1997 « Sur les garanties essentielles des droits électoraux et du droit des citoyens de la Fédération de Russie de participer au référendum » et de l'article 92 de la Loi fédérale « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie », la Cour Constitutionnelle a indiqué qu'en déterminant les voies et les formes de la protection judiciaire d'un droit violé, la loi devrait garantir la protection du droit électoral tant actif que passif et la responsabilité des commissions électorales pour des actions illicites qui empêchent une bonne réalisation de ces droits. Une décision judiciaire visant à rétablir le droit électoral passif ne peut jamais être interprétée comme une atteinte au droit électoral actif des citoyens qui participent au vote, mais, au contraire, doit servir la protection de ce droit. Une telle protection doit être efficace non seulement en cas où des violations du droit d'être élu ont été détectées avant le début du vote, mais aussi postérieurement et, donc, cette protection n'exclut pas, comme une voie de rétablissement du droit mentionné, l'annulation des résultats du vote et des résultats des élections en général pour assurer les élections réellement libres. En ce cas, l'appréciation de ce que la volonté réelle des électeurs trouve sa reflexion adéquate dans les résultats des élections ne peut pas se réduire seulement à une vérification formelle de la authenticité des bulletins, de la régularité de votation et de ses résultats quantitatifs, c'est-à-dire au contrôle des résultats du vote réalisé. L'annulation des résultats des élections est possible encore dans d'autres cas : si, par exemple, des conditions nécessaires pour garantir une manifestation libre de volonté des électeurs n'ont pas été assurées.

Postérieurement, cette position juridique a été confirmée par d'autres décisions de la Cour Constitutionnelle de la Fédération de Russie (cf. par exemple les Sentences du 5 juin 2003 N° 215-O, du 12 avril 2005 N° 114-O et du 24 janvier 2006 N° 39-O).

2. Est-ce que l'annulation doit découler d'une violation de la loi (c'est-à-dire que l'autorité compétente peut agir de manière discrétionnaire) ou existe-t-il des cas dans lesquels l'annulation est obligatoire ? Si elle est obligatoire, quels sont ces cas ?

En vertu de l'article 77 de la Loi fédérale « Sur les garanties essentielles... »,

- si, pendant la réalisation du vote ou la détermination des résultats du vote, des violations de la loi réglementant la réalisation des élections respectives ont été commises, la commission supérieure peut, avant de procéder à la constatation des résultats du vote et des élections en général, annuler la décision de la commission inférieure sur les résultats du vote et des élections en général et, à son tour, peut prendre une décision sur la répétition du dépouillement ou, si les violations commises ne permettent pas de déterminer avec certitude les résultats de manifestation de la volonté des électeurs, sur la déclaration de la nullité des résultats du vote et des élections en général (paragraphe 1er) ;
- après la constatation des résultats des élections par la commission supérieure, la décision de la commission inférieure relative aux résultats des élections ne peut être annulée que par un tribunal ; autrement, le tribunal peut rendre une décision sur la modification du procès-verbal de la commission concernant les résultats du vote ou des élections et/ou du tableau récapitulatif (paragraphe 1.1) ;
- après avoir annulé la décision de la commission électorale sur les résultats des élections, l'instance judiciaire correspondante peut prendre la décision sur la répétition du décompte des votes des électeurs, si, au cours de la définition des résultats des élections, ont été commises des violations de la Loi fédérale « Sur les garanties essentielles... » ; si les violations commises ne permettent pas de déterminer avec certitude les résultats de manifestation de la volonté des électeurs, cette instance judiciaire peut déclarer les résultats du vote et ceux des élections en général comme nuls (paragraphe 1.2).

Il s'ensuit des dispositions mentionnées ci-dessus de la Loi fédérale « Sur les garanties essentielles... » que l'annulation des résultats des élections n'est possible qu'en cas de violations de la loi qui réglemente la réalisation des élections respectives, si ces violations ont été constatées par un organe compétent : une commission électorale ou une juridiction.

3. Quel type de violation de la loi peut servir de base pour l'annulation des résultats ?

a. Une violation établie des règles relatives à l'éligibilité (y compris, le cas échéant, un nombre insuffisant de signatures) ?

b. La violation de lois et de règlements électoraux (en particulier des règles sur la campagne et sur les procédures de vote) ?

c. La violation d'autres lois, telle qu'une violation établie du code pénal ou du code civil dans le domaine électoral ?

La Loi fédérale « Sur les garanties essentielles... » (article 77.2) prévoit que le tribunal peut annuler la décision de la commission électorale sur les résultats des élections respectives après la détermination de ces résultats, quand les suivants faits établis par le tribunal ont eu lieu :

a) un candidat déclaré comme élu ou une association électorale dont la liste de candidats reçoit l'accès à la distribution des mandats de député ont dépensé, en outre de son propre fonds électoral, un montant dépassant de plus de 10% la limite d'utilisation des ressources du fonds électoral, établie par la loi ;

b) un candidat déclaré comme élu ou une association électorale dont la liste des candidats a été admise à la distribution des mandats de député avaient eu réalisé la corruption des électeurs et cette infraction ne permet pas de révéler une volonté réelle des électeurs ;

c) en réalisant la propagande électorale, un candidat déclaré comme élu ou une association électorale dont la liste des candidats a été admise à la distribution des mandats de député ont dépassé le cadre de restrictions prévues par l'article 56.1 de

la Loi fédérale[125], ce qui ne permet pas de découvrir une volonté réelle des électeurs ;
d) un candidat déclaré comme élu ou un dirigeant de l'association électorale dont la liste des candidats a été admise à la distribution des mandats de député ont tiré avantage de leur fonction ou de leur poste et cette infraction ne permet pas de révéler une volonté réelle des électeurs.

En outre, conformément à l'article 77.3 de la Loi fédérale « Sur les garanties essentielles... » une juridiction de l'instance correspondante peut aussi annuler la décision de la commission électorale sur les résultats du vote et sur les résultats des élections dans un poste électoral, sur un territoire, dans une circonscription électorale, dans une collectivité locale, dans un sujet de la Fédération de Russie ou au niveau de toute la Fédération de Russie au cas de violation des règles d'élaboration des listes d'électeurs, des modalités de formation des commissions électorales, des modalités de vote et de décompte des voix (y compris l'empêchement de l'observation de ces procédures), de dépouillement des résultats des élections, en cas de refus à enregistrer un candidat ou une liste de candidats, si un tel refus a été déclaré non légitime après le jour de scrutin, et en cas d'autres infractions de la législation électorale, si celles-ci ne permettent pas de révéler une volonté réelle des électeurs. En ce qui concerne les dispositions supracitées, la Cour Constitutionnelle de la Fédération de Russie a noté, lors de l'examen d'une plainte, que ces normes, en elles-mêmes, ne portaient pas atteinte aux droits constitutionnels du requérant et n'interdisaient pas aux tribunaux de rendre les décisions bien fondées sur la base de l'établissement des faits pertinents relatifs à l'organisation et à la réalisation des élections (Sentence du 12 avril 2005 N° 114-O).

Ainsi, en évoquant les fondements d'annulation judiciaire de la décision d'une commission électorale sur les résultats des élections correspondantes, la législation fédérale prévoit les violations de la loi électorale par rapport à l'éligibilité, aux règles de réalisation des campagnes électorales et des procédures de vote. La liste des fondements indiqués est exhaustive et ne comprend pas directement les violations du code pénal ou du code civil eu égard aux actions réalisées dans le cadre des élections.

4. Est-ce que seules les activités des candidats (violations de la loi) conduisent à l'annulation ou les activités d'autres personnes peuvent-elles être prises en compte (p.ex. la violation des règles sur la campagne par les médias ou d'autre personnes en faveur d'un candidat, mais à son insu) ?

Selon le sens de la Loi fédérale « Sur les garanties essentielles... » (articles 77.2 et 77.3), à l'annulation des résultats des élections peuvent conduire les violations commises par un candidat ou par une association électorale qui a présenté la liste de candidats admise à la distribution des mandats de député, ainsi que les violations commises par d'autres participants de la campagne électorale. Dans ce dernier cas, la Loi fédérale ne spécifie pas, comment les activités des candidats ou de leurs mandataires (ou des personnes non mandataires) doivent ou peuvent être interdépendantes.

[125] Cet article stipule que les abus de la liberté des médias ne sont pas admissibles pendant la réalisation de la propagande électorale. Les programmes électoraux des candidats et des associations électorales, ainsi que les autres matériels de propagande, les discours des candidats, de leurs représentants autorisés et des mandataires des associations électorales aux réunions, aux meetings et dans les médias ne doivent pas contenir des appels et incitations à la prise du pouvoir par violence, à la modification par violence de l'ordre constitutionnel et à la violation de l'intégrité de la Fédération de Russie et ne doivent pas aussi faire propagande de la guerre. Sont interdits la propagande incitant à la haine et à l'hostilité sociale, raciale, nationale ou religieuse et les abus de la liberté des médias, commis sous une autre forme définie par les lois de la Fédération de Russie. La propagande visant à la défense des idées de justice sociale ne peut pas être considérée comme incitation à la discorde sociale. Il est interdit de mener une propagande qui viole la législation de la Fédération de Russie relative à la propriété intellectielle.

La Loi en question fait noter spécialement que les violations de la présente Loi fédérale, lesquelles avaient eu contribué à l'élection ou qui avaient eu pour but d'inciter les électeurs à voter pour un candidat qui n'a pas été élu par le vote ou pour les listes de candidats qui n'ont pas pris part à la distribution des mandats de député, ne peuvent pas servir de fondement pour l'annulation de la décision sur les résultats des élections ou pour la déclaration des résultats du vote et des élections en général comme nuls (article 77.5).

5. Est-ce que l'annulation affecte uniquement le résultat du candidat qui est impliqué dans la violation de la loi ou est concerné par elle, ou l'ensemble des résultats des élections ?

La Loi fédérale « Sur les garanties essentielles... » établit ce qui suit :

- l'annulation, par une commission électorale ou par un tribunal, de la décision sur les résultats des élections au cas où les violations commises ne permettent pas de révéler la volonté réelle des électeurs mène à la déclaration des résultats des élections dans la circonscription électorale correspondante comme nuls (article 77.6) ;
- si les élections se réalisent dans une circonscription multinominale, les violations commises par quelques candidats et prévues par le paragraphe 2 du présent article peuvent entraîner l'annulation de la décision sur les résultats des élections seulement par rapport à ces candidats (article 77.7) ;
- pendant le vote des listes de candidats, les violations de la part de quelques associations électorales, prévues par l'article 77.2 de la présente Loi fédérale, peuvent entraîner l'annulation judiciaire de la décision sur l'accès de ces associations à la distribution des mandats et, par conséquent, le repartage des mandats (article 77.8).

En surplus, la Loi fédérale « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie » établit :

- que la violation, par un groupe régional de candidats, de l'interdiction de dépasser le plafond des dépenses, en utilisant le fonds électoral de la filiale régionale correspondante du parti politique, de plus de 10% de la limite de toutes les dépenses, établie par la Loi fédérale, conduit à l'annulation judiciaire de la décision sur l'attribution des mandats à ce groupe régional de candidats et à la rédistribution des mandats à l'intérieur de la liste fédérale de candidats (article 92.9);
- que l'annulation judiciaire de la décision sur les résultats des élections des députés à la Douma d'Etat, au cas où les violations commises ne permettent pas de révéler la volonté réelle des électeurs, entraîne la déclaration des résultats des élections comme nuls (article 92.6).

La Loi fédérale « Sur les élections du Président de la Fédération de Russie » contient une norme pareille, en vertu de laquelle l'annulation judiciaire de la décision sur les résultats des élections, au cas où les violations commises ne permettent pas de révéler la volonté réelle des électeurs, entraîne la déclaration des résultats des élections du Président de la Fédération de Russie comme nuls (article 85.5).

Donc, selon la règle générale, l'annulation des résultats des élections est possible par rapport aux candidats et aux associations électorales (ou leurs groupes régionaux) qui ont violé la loi. Cependant, d'après le sens des dispositions des Lois fédérales « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie » et « Sur les élections du Président de la Fédération de Russie », on ne peut pas exclure la possibilité de la déclaration de la nullité générale des élections des députés à la Douma d'Etat et du Président de la Fédération de Russie.

6. Si les résultats d'une élection sont annulés, le candidat concerné peut-il se présenter lors des élections répétées ou non ?

Ni la Constitution de la Fédération de Russie, ni la législation fédérale ne contient de dispositions sur l'interdiction aux candidats dont l'élection a été annulée de présenter sa candidature lors des élections répétées.

B. PROCEDURE POUR L'ANNULATION DES RESULTATS DES ELECTIONS

1. Quelle est l'autorité compétente pour valider les résultats des élections ?

En raison du niveau des élections, les résultats de ceux-ci sont à valider par la commission électorale du niveau correspondant (article 70.1 de la Loi fédérale « Sur les garanties essentielles... »).

2. Si l'autorité compétente pour valider les résultats des élections n'est pas une autorité judiciaire, est-ce qu'un tribunal est impliqué dans la procédure de certification ?

Dans le cadre des élections réalisées en conformité avec la législation, la participation d'une juridiction à la procédure de certification des résultats n'est pas prévue par les lois en cas de l'absence des violations des droits électoraux des citoyens de la Fédération de Russie.

3. Est-ce qu'un organe spécifique est chargé du contrôle des finances en matière électorale ?

Pour contrôler le financement dans le domaine électoral, on crée les services de contrôle et révision auprès des commissions électorales, en recrutant les dirigeants et le personnel des organes et institutions de l'Etat, y compris ceux de la Banque centrale de la Fédération de Russie, de la SBERBANK de la Fédération de Russie, des directions générales (banques nationales) de la Banque centrale de la Fédération de Russie dans les sujets de la Fédération. Ces organes et institutions doivent mettre leurs spécialistes à la disposition des commissions électorales sur demande de celles-ci, dans le délai d'un mois à partir de la date de publication officielle de la décision sur la convocation des élections ou d'un référendum. En ce cas, les spécialistes et les experts financiers sont attachés à la Commission centrale électorale pour un délai de cinq mois au moins et aux autres commissions électorales pour un délai minimal de deux mois (article 60.2 de la Loi fédérale « Sur les garanties essentielles... »).

4. Quel est l'organe compétent (quels sont les organes compétents) pour trancher les recours contre la validation des résultats des élections ?

Les résultats des élections sont validées par la décision de la commission électorale correspondante. Cependant, les juridictions sont en droit d'annuler une décision de la commission électorale sur les résultats des élections, si, lors du dépouillement, on a commis des violations de la Loi fédérale « Sur les garanties essentielles... ». Au cas où les violations commises ne permettent pas de déterminer avec certitude les résultats de manifestation de volonté des électeurs, l'instance judiciaire peut déclarer les résultats des élections comme nuls (article 77.1.2 de la Loi fédérale « Sur les garanties essentielles... »). La Cour suprême de la Fédération de Russie est compétente, en qualité de la première instance, pour juger les contestations des décisions (ou des abstentions d'adopter une décision) de la Commission centrale électorale de la Fédération de Russie (paragraphe 1er de l'alinéa 1 de l'article 27 du Code de procédure civile de la Fédération de Russie). Les mêmes compétences par rapport aux décisions ou omissions des commissions électorales des sujets de la Fédération de Russie (indépendamment du niveau des élections) et des

commissions électorales de circonscription, dans le cadre des élections des organes législatifs (représentatifs) des sujets de Fédération, appartiennent, respectivement, à la cour suprême de la République faisant partie de la Fédération, aux juridictions de territoire, de région, de villes de l'importance fédérale, de régions autonomes et de district autonom (paragraphe 4 de l'alinéa 1 de l'article 26 du Code de procédure civile).

5. Qui peut recourir contre la décision de validation des résultats des élections ?

Le droit de recourir à une juridiction contre les décisions sur les résultats des élections appartient aux électeurs, aux candidats et à leurs mandataires, aux associations électorales et à leurs mandataires, aux partis politiques et à leurs sections régionales, à d'autres associations sociales, aux observateurs et aux procureurs, si ces personnes considèrent que la décision correspondante de la commission électorale a porté atteinte aux droits électoraux des citoyens de la Fédération de Russie (article 259.1 du CPC).

6. Quel est le délai pour recourir contre la décision de validation des résultats des élections ?

En vertu de l'article 260 du CPC, on peut présenter le recours à une juridiction dans un délai de trois mois à partir du jour où le requérant a connu ou devait connaître une infraction des lois électorales ou une violation de ses propres droits électoraux (alinéa 1). Après la publication des résultats des élections, la déclaration sur la violation des droits électoraux des citoyens de la Fédération de Russie peut être présentée à une juridiction dans le délai d'un an à partir du jour de publication officielle des résultats des élections respectives (alinéa 4).

7. Existe-t-il un délai dans lequel l'autorité judiciaire (l'autorité de recours) doit rendre une décision sur les recours relatifs à la décision de validation des résultats des élections ?

Un recours contre la décision d'une commission électorale sur les résultats du vote ou sur les résultats des élections doit être examiné et tranché dans un délai de deux mois dès le jour de sa présentation à la juridiction (article 260.8 du CPC).

8. Est-ce que l'organe judiciaire (l'organe de recours) qui décide de l'annulation des résultats des élections peut recueillir des éléments de preuve d'office ou ceux-ci doivent-ils être présentés par les parties ?

La procédure relative aux affaires de protection des droits électoraux des citoyens est la même que par rapport aux causes fondées sur les relations de droit public (article 245.4 du CPC). Conformément à l'article 249 du CPC, la charge de preuve de la régularité de la décision contestée incombe à l'organe qui a pris cette décision (alinéa 1). Cependant, en examinant les affaires fondées sur les relations de droit public la juridiction peut se faire communiquer d'office des éléments de preuve dans le but d'un tranchement regulier de l'affaire. Les fonctionnaires qui manquent aux injonctions judiciaires concernant la présentation des preuves sont soumis à l'amende dont le montant peut atteindre 10 salaires minimaux établis par la loi fédérale (alinéa 2).

9. Si la violation de la loi est limitée à quelques bureaux de vote, est-ce que les résultats de toute la circonscription doivent être annulés, ou seulement ceux des bureaux de vote concernés ?

En vertu de l'article 77 de la Loi fédérale « Sur les garanties essentielles... », une instance judiciaire correspondante peut annuler la décision d'une commission électorale sur les résultats des élections dans un poste électoral, dans un territoire, dans une circonscription

électorale, dans une collectivité municipale, dans un sujet de la Fédération ou bien dans la Fédération toute entière en cas de violations des règles d'élaboration des listes des électeurs, des modalités de formation des commissions électorales, des modalités de vote ou de décompte des voix (y compris l'empêchement à l'observation de ces procédures), de dépouillement des résultats des élections et en cas d'un refus illicite à enregistrer un candidat ou une liste de candidats, si cette illicité a été déclarée après le jour du vote, et en cas d'autres infractions aux lois électorales, si ces infractions ne permettent pas de révéler la volonté réelle des électeurs (alinéa 3). Les violations de la Loi fédérale « Sur les garanties essentielles... », lesquelles avaient eu contribué à l'élection ou qui avaient eu pour but d'inciter les électeurs à voter pour un candidat qui n'a pas été élu par le vote ou pour les listes de candidats qui n'ont pas pris part à la distribution des mandats de député, ne peuvent pas servir de fondement pour l'annulation de la décision sur les résultats des élections ou pour la déclaration des résultats du vote et des élections en général comme nuls (alinéa 5). L'annulation, par une commission électorale ou par une juridiction, de la décision sur les résultats des élections au cas où les violations commises ne permettent pas de révéler la volonté réelle des électeurs mène à la déclaration des résultats des élections dans la circonscription électorale correspondante comme nuls (alinéa 6).

10. Est-ce qu'une autorité (p.ex. des administrations électorales ou des organes de recours judiciaires) peut annuler les résultats d'une élection après que le candidat élu est entré en fonctions ? Si oui, quelle est la conséquence de cette décision quant au mandat du candidat élu ?

Les lois admettent l'annulation judiciaire des décisions des commissions électorales sur l'élection des candidats (ou des listes de candidats) en cas de certains faits ci-dessus exposés (article 77.2 de la Loi fédérale « Sur les garanties essentielles... », article 85.2 de la Loi fédérale « Sur les élections du Président de la Fédération de Russie », article 92.4 de la Loi fédérale « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie ») dans les délais établis (v. plus haut). Il s'en suit qu'en cas où une décision judiciaire entre en vigueur dans le délai établi, le candidat élu concerné n'est pas en droit d'entrer en fonctions et, si telle entrée en fonction a eu lieu, son mandat doit cesser.

C. JURISPRUDENCE

1. Existe-t-il une jurisprudence relative à l'annulation des résultats des élections ?

Dans la Fédération de Russie, il n'y a pas des statistiques centralisées en ce qui concerne la jurisprudence relative à l'annulation des résultats des élections. Mais on sait que l'annulation des résultats des élections des députés à la Douma d'Etat et du Président de la Fédération de Russie n'a jamais été réalisée.

2. Dans l'affirmative, est-ce que certaines affaires ont conduit à l'annulation ? Si oui, quels ont été les motifs d'annulation ?

Les décisions judiciaires portant sur l'annulation (ou sur le refus d'annulation) des résultats des élections n'ont eu lieu que par rapport à quelques candidats aux députés de la Douma d'Etat (et seulement pendant la période où étaient en vigueur les lois fédérales, actuellement devenues caduques) ou à d'autres échélons des organes du pouvoir public.

On peut en citer quelques exemples :

1. Il s'ensuit de l'Arrêt de la Cour Constitutionnelle de la Russie du 15 janvier 2002 N° 1-P que le citoyen T. a contesté la constitutionnalité de l'article 64.3 de la Loi fédérale du 19 septembre 1997 "Sur les garanties essentielles des droits électoraux et du droit de

participation au référendum des citoyens de la Fédération de Russie » et de l'article 92.3 de la Loi fédérale du 26 juin 1999 « Sur les élections des députés à la Douma d'Etat de l'Assemblée fédérale de la Fédération de Russie » en ce qui concerne les pouvoirs d'un tribunal de l'instance correspondante d'annuler les décisions de la commission électorale sur les résultats du vote et sur les résultats des élections dans une circonscription électorale, notamment en cas de telles violations des lois électorales que le refus illicite d'enregistrer un candidat, mais seulement si cette violation rendait impossible de définir avec certitude les résultats de l'expression de la volonté des électeurs.

Selon les pièces déposées à la Cour, le Tribunal du territoire de Stavropol a fait droit au recours du citoyen T. contre le refus de la commission électorale de la circonscription de territoire de Stavropol de l'enregistrer comme candidat aux élections de 1999 à la Douma d'Etat. La même décision du tribunal a chargé la commission électorale d'examiner, avant le 24 octobre 1999, la question relative à l'enregistrement du citoyen T. comme candidat aux députés. Cependant, la commission électorale a réitéré son refus d'enregistrement du requérant comme candidat aux élections.

Le second recours du citoyen T. contre la dernière décision de la commission électorale a été débouté par le Tribunal de territoire de Stavropol. Postérieurement, après l'intervention de la Cour suprême de la Fédération de Russie qui agissait comme instance de contrôle, le même Tribunal a déclaré la décision de la commission électoral par rapport au citoyen T. comme nulle dès le moment de son adoption.

Comme les élections à la Douma d'Etat ont déjà terminé, le citoyen T. a présenté au Tribunal de territoire de Stavropol la demande de déclarer comme nuls les résultats des élections dans la circonscription uninominale de Stavropol où il devait être candidat. Mais le requérant a été de nouveau débouté au motif que le refus illicite de l'enregistrer comme candidat aux députés n'avait pas eu d'effet sur l'authenticité de la détermination des résultats de l'expression de la volonté des électeurs. Ensuite, la Cour suprême de la Fédération de Russie n'a pas modifié cette décision du Tribunal.

Le requérant a affirmé dans sa plainte déposée devant la Cour Constitutionnelle qu'en cas de refus de l'enregistrement d'un citoyen comme candidat aux députés il était impossible en principe de définir, au cours des élections, la manifestation de la volonté des électeurs et que, par conséquent, les dispositions contestées, en vertu desquelles les résultats du vote et des élections peuvent être déclarées par une juridiction comme nuls seulement au motif de l'impossibilité de déterminer avec certitude l'expression de la volonté des électeurs, interdisent l'exercice du droit d'être élu aux organes du pouvoir d'Etat et, pour cette raison, sont contraires à l'article 32.2 de la Constitution et aux actes internationaux sur les droits de l'homme.

La Cour Constitutionnelle a déclaré les dispositions contestées des lois fédérales comme non conformes à la Constitution parce qu'en cas d'un refus illicite de l'enregistrer un citoyen comme candidat aux élections, elles limitaient les pouvoirs du tribunal d'annuler les résultats du vote et des élections et de déterminer la manifestation réelle de l'expression de la volonté des électeurs, en substituant une telle détermination par la formelle « définition de l'authenticité des résultats de l'expression de la volonté des électeurs qui ont participé au vote », ce qui aboutissait au refus d'une protection judiciaire efficace des droits électoraux des citoyens.

2. Les positions juridiques exprimées dans l'arrêt cité de la Cour Constitutionnelle ont été réaffirmées par ses Sentences du 12 avril 2005 N° 114-O, du 5 juin 2003 N° 215-O, du 23 juin 2005 N° 284-O, du 24 janvier 2006 N° 39-O adoptées à l'occasion des recours en annulation des résultats de diverses élections. Par exemple, il s'ensuit de la Sentence de la Cour du 12 avril 2005 N° 114-O que le tribunal de district Bagrationovski de la Région de

Kalininegrad a annulé la décision d'une commission électorale municipale sur les résultats du vote réitéré dans le cadre des élections du chef de l'administration locale et a déclaré ces élections comme nulles. Ce faisant, le tribunal se fondait sur les faits établis de corruption en masse des électeurs au profit d'un candidat (citoyen S.), ainsi que sur d'autres infractions de la législation électorale. Ensuite, le Tribunal de région de Kalininegrad a rejeté le recours en cassation contre cette décision, déposé par le citoyen S.

3. Le 30 juillet 2004, la chambre civile du Tribunal de région de Moscou a annulé la décision du tribunal de la ville de Serguiev Possad et celle de la commission électorale du district de Serguiev Possad sur les résultats des élections du chef de la collectivité municipale et a déclaré ces élections comme nulles. Cette décision judiciaire a été motivée par les violations des lois électorales, commises par un candidat, en particulier le dépassement du plafond des dépenses électorales et l'utilisation illicite de ses privilèges de fonctionnaire afin de vaincre les élections.

4. Le 30 juin 2005, le tribunal fédéral de district de la Région de Moscou a fait droit à la demande du citoyen F. sur l'annulation de la décision de la commission électorale territoriale qui avait eu validé le procès-verbal des résultats du vote pendant les élections réitérées du chef de la collectivité locale et sur la déclaration des résultats de ces élections comme nuls. Cette décision judiciaire a été motivée par des violations systémiques des lois électorales, telles que la réduction des délais des élections et de la période de campagne électorale, ainsi que par des violations relatives aux délais et modalités de formation des commissions électorales.

Pendant les années 2002 à 2007, la Cour suprême de la Russie a examiné près de 200 recours en cassation dans le cadre de différends relatifs à l'invalidation des résultats des élections à des niveaux divers. Dans tous les cas, les décisions des instances judiciaires inférieures n'ont pas été révisées et les recours correspondants ont été rejetés.

SERBIA / SERBIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The Constitution of the Republic of Serbia stipulates that the electoral right enjoys legal protection in accordance with the law (Article 52, paragraph 3).

The Law on election of deputies (RS Official Gazette, Nos. 35/2000, 69/2002, 57/2003, 72/2003, 18/2004, 85/2005, 101/2005 and 109/2006) regulates the election of deputies to the National Assembly of the Republic of Serbia.

The Law on election of the president of the Republic (RS Official Gazette, No. 111/07) governs the election of the President of the Republic of Serbia.

The Law on local election (RS Official Gazette, No.129/07) regulates the election and termination of mandates of councillors of assemblies of local self-government units (municipalities, cities and the City of Belgrade).

Given that both the Law on election of the President of the Republic and the Law on local election stipulate that the provisions of the Law on election of deputies have to be applied corresondingly to issues which are not specificly regulated by the above laws, the answers to the questions in this Questionnaire are essentially based on the legal arrangements set out in the Law on election of deputies.

With regard to the terms under which electoral results may be cancelled, we wish to point out that the Law on election of deputies prescribes that a polling committeee has to be disbanded and an election (i.e. voting) repeated if:

- a polling committee has been composed in an illegal manner;
- there have occurred violations of the legal provisions relating to voting in person, voting only once in an election, voting by use of certified ballot papers and to prohibition to display symbols of political parties or other propaganda material at a pollling station or in the 50-meter vicinity of the polling station (Article 55);
- there is no control sheet in the ballot box (Article 67);
- there has occurred a violation of the legal provision, which prohibits members of a polling committee from exercising influence on voters (Article 69);
- alterations have been made in electoral registers on the day of election (Article 71);
- it is established that a number of ballot papers in the ballot box is larger than the number of voters who have voted (Article 74).

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

It follows from the provisions of the above Law that the cancellation of voting is compulsory whereas the Republic Electoral Commission can act in its discretion in a small number of cases. In this sense, we point to Article 58 of the same Law which stipulates that the Republic Electoral Commission has to decide whether the voting is to be repeated at the polling station where the legal provision relating to secret voting has been contravened.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

The contravention of the election laws and regulations (b) constitutes a basis for the cancellation of electoral results.

4. Can only the candidates' activities (contraventions of the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention of campaign rules by media or other in favour of, but without the knowledge of a candidate)?

The Law on election of deputies prescribes that from the day of calling an election the radio and TV broadcasting organizations founded by the Republic of Serbia are under obligation to allocate air-time within their political-information programmes which can be heard and seen throughout the territory of the Republic of Serbia, for the introduction of the submitters of electoral lists and candidates, as well as for the presentation and explanation of their electoral programmess in accordance with the provisions of that Law.

The above Law further states that such organizations must not, under any circumstances, enable the introduction of candidates, and presentation and explanation of programmes of submitters of electoral lists in the commercial, entertainment or any other program (Article 49 paragraph 1).

However, the same Law does not prescribe any sanction in the form of cancelling electoral results due to the violation of obligations set out in Article 49 of the above–mentioned law.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The Law on election of deputies stipulates that if the Republic Electoral Commission cancels electoral results at a particular polling station, the voting must be repeated only at the polling station in question (Article 90 paragraph 1).

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The above Law does not contain any provision which prescribes that the candidate concerned with the cancellation of the results of an election is prohibited from standing for the repeated elections.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

The electoral results are certified by the Republic Electoral Commission in the procedure for the election of deputies and the President of the Republic or by electoral commissions of local self-government units in the procedure for electing councillors to assemblies of local self-government units.

The Law on election of deputies prescribes that, within 96 hours from the closing of polling stations, the Republic Electoral Commission must enter the following data on the record: the total number of voters listed in the electoral register; the number of voters who have voted at polling stations; the total number of ballot papers distributed to polling stations; the total number of unused ballot papers; the total number of invalid ballot papers; the total number of valid ballot papers, and total number of votes cast for each individual electoral list (Article 78 paragraph 1).

The Republic Electoral Commission must publish data on the overall results of the election of deputies in the Official Gazette of the Republic of Serbia (Article 85).

The Republic Electoral Commission must issue a deputy a certificate confirming his/her election (Article 87).

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Law on election of deputies stipulates that an appeal can be filed to the Supreme Court of the Republic of Serbia with respect to the decision of the Republic Electoral Commission to admit or dismiss a complaint (Article 97 paragraph1).

According to the Law on local election, in the process of electing local authorities an appeal against the decision of the electoral commission may be filed to the competent district court within 24 hours from the delivery of the decision (Article 54 paragraph 1)

3. Is there a specific body in charge of the control of finance in the electoral field?

The Law on financing of political parties (RS Official Gazette, Nos. 72/03 and 75/03) stipulates that the submitter of the proclaimed electoral list or a proposer of the candidate must, within 10 days from the day of holding the election, submit to the Republic Electoral Commission a full report on the origin, amount and structure of the resources raised and spent for the election campaign.

The Law on election of deputies provides that the Supervisory Board performs general supervision of actions of political parties, candidates and the media in the course of conducting election-related activities. The above Board consists of 10 members, half of which are appointed by the National Assembly of the Republic of Serbia at the proposal of the Government of the Republic of Serbia, while the other half are appointed from among prominent public figures at the proposal of deputies' groups at the National Assembly, provided that they are not members of bodies of the political parties, which take part in the election (Article 99 pargraphs 1 and 2).

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

The Supreme Court of Serbia is a competent body to decide on complaints in the process of electing deputies to the National Assembly of the Republic of Serbia, and the district courts have the legal power to decide on complaints in the process of electing local authorities.

5. Who may appeal the decision on certifying electoral results?

The Law on election of deputies stipulates that every voter, candidate for deputy and submitter of an electoral list is entitled to the protection of his electoral rights in accordance with the procedure set out in that law (Article 94).

6. What is the time-limit for appealing the decision on certifying electoral results?

An appeal must be filed to the Supreme Court within 48 hours of the receipt of a decision of the Republic Electoral Commission concerning the appeal lodged due to the violation of the electoral rights in the course of the voting or due to irregularities which have occurred in the process of proposing candidates or in the voting procedure.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

The Supreme Court makes a decision on the appeal within 48 hours of the receipt of the appeal with accompanying documents (Article 97 paragraph 5)

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The Law prescribes that the Republic Electoral Commission must submit an appeal and all required documents to the Supreme Court of Serbia within 24 hours from the receipt of the appeal (Article 97, paragraph 3).

The provisions of the Law on administrative disputes (FRY Official Gazette, No. 46/96) are applied correspondingly to the court proceedings, which deal with appeals filed in the electoral process (FRY Official Gazette, No. 46/96). These provisions regulate, among other things, the issue of collecting evidence by the court in the procedure for controlling the legality of a disputed administrative document.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

The Law on election of deputies stipulates that if the Republic Electoral Commission cancels an election at a particular polling station, the voting must be repeated only at that particular polling station (Article 90, paragraph 1)

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

The Constitution of the Republic of Serbia allows to file an appeal to the Constitutional Court of Serbia against a decision brought in connection to the certification of mandates. The latter is to make a decision on the above appeal within 72 hours (Article 101, paragraph 5), which may result in the loss of mandates.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?
2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

The Supreme Court of Serbia has been the judicial body to cancel electoral results in the domestic judicial practice so far. This can be illustrated with its judgments in cases Už. 52/07 and Už. 53/07, whereby the appeals were accepted and the decisions of the Republic Electoral Commission cancelled. The explanatations of the above judgments stated, among other things,

that the Supreme Court found that the Republic Electoral Commision had failed to establish all the facts which were relevant to the existence of conditions for the proclamation of the overall electoral results, although it should have done so, either in its refuted decision, or before issuing the report on the electoral results... According to the Supreme Court's view, the Republic Electoral Commission was not authorized to cancel *ex officio* electoral results at a particular polling place without complaint.

With regard to the competence of the Constitutional Court in electoral disputes, we wish to point out that the current Constitution (2006) [the previous one (1990) contained the identical constitutional arrangement] stipulates that the Constitutional Court must decide on electoral disputes which are not within the competence of the courts of law (Article 167, paragraph 2, item 5) It follows from the above that the Constitution establishes that this Court has supsidiary competence for deciding on electoral disputes. Given that the competence of regular courts for deciding on complaints against decisions of the Republic Electoral Commission or the municipal electoral commissions is provided by the Law on election of deputies, the Law on election of the President of the Republic and the Law on local election, there are hardly any decisions relating to the cancellation of the electoral results in the case-law of the Constitutional Court so far.[126]

However, for the purpose of this seminar, we will present a case we consider interesting from a number of legal aspects. The case-law refers to the decision of the Constitutional Court, Ref. IU-28/97 of 10 July 1997 which did not accept an initiative for launching a procedure for determining the non-constitutionality of the Law on the proclamation of the provisional results of the election of councillors to municipal and city assemblies, as stated in the OSCE Mission Report (RS Official Gazette, No. 5/97).

In view that the disputed Law and the decision of the Constitutional Court presented the culmination of an electoral dispute which had been shaking Serbia for more than three months, this work gives an account of the legal facts relevant to the understanding of this problem. It deals with the legal aspect of the dispute which arose in connection with the outcome of the local election of municipal authorities held in November 1996 and attracted great attention of both domestic and foreign public.This work is not intended to consider a political dimension of the three opposition political parties (the Democratic Party, the Serbian Renewal Movement and the Civil Union of Serbia), which took part in this election, although it may be described as historic in relation to the development of multiparty system in Serbia. Namely, it was in this election that the opposition took over the power in the biggest Serbian cities. The cancellation of such electoral results brought about massive protests of democratic opposition supporters in the cities and towns throughout the country which had lasted for more than three months and ended after the passage of a special law recognizing the victory of the opposition.

For the sake of conciseness, the work deals only with the case of the City of Belgrade although the identical problems occurred in two other Serbian cities (Niš and Novi Sad), as well as in 19 municipalities. [127]

I

1. On 19 November 1996 the Belgrade Electoral Commission proclaimed the provisional results of the election of councillors to the Belgrade City Assembly. According to these results, the coalition Zajedno (Together) comprised of the three opposition parties had won an absolute majority of votes.

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[126] This issue is extensively elaborated in the paper "Electoral disputes within the competence of the Constitutional Court" by Dr Bosa Nenadić, published in the proceedings from the conference "Constitutional issue in Serbia," held in Niš, May 2004, p. 267-291.

[127] The above data are taken from THE ELECTORAL FRAUD - a legal aspect, a study by the group authors, published by Medija centar, Belgrade, 1997.

Upon the proclamation of such an electoral outcome, the Socialist Party of Serbia (SPS) lodged 461 complaints to the Belgrade Electoral Commission, seeking a cancellation of the votings at a large number of polling stations. Most of these objections were based on the allegations that the propaganda material of the Zajedno coalition had been displayed in less than 50-meter vicinity from the polling places in question, or that the Zajedno activits had been campaigning for their candidates near the polling stations.

The Law on territorial organization and local self-government (RS Offiicial Gazette, Nos. 4/91, 79/92, 82/92 and 47/94) in force at the time of the election presribed that electoral results must be cancelled and the election repeated due to the above-stated reasons.

Acting on the complaints lodged, the Belgrade Electoral Commission rejected a majority of them, and admitted a small number of the complaints. As a result of that, the "Zajedno" coalition had 60 councillors out of the total number of 110 in the Belgrade Assembly.

2. After that SPS turned to the First Municipal Court and filed appeals against all the Belgrade Electoral Commission's decisions dismissing its complaints The Court delivered judgments, which allowed 45 appeals and cancelled the votings at 236 polling stations, the result of which was cancelling the election of 33 candidates, mainly from the Zajedno coalition electoral list. Apart from the cancellation, the above Court passed a judgment ordering the repetition of the election, and set 27 November 1996 as the date of repeated voting.

3. The Zajedno coalition in return filed to the Supreme Court of Serbia a total number of 45 applications for extraordinary revision of the enforceable judgments of the First Municipal Court cancelling the electoral results.

In its judgments of 26 November 1996, the Supreme Court of Serbia refused all the applications filed for extraordinary revision of the enforceable judgments of the First Municipal Court. The Supreme Court stated in the explanations of its judgements hat the First Municipal Court had duly applied the provisions of the corresponding objective laws, regulating the court proceedings in cases when the court of law must assess the legality of documents and actions of the bodies responsible for holding the election, while adjusting the application of such laws to the particularities of the electoral process.

In addition to the application for extraordinary revision of the enforceable judgment, the Zajedno coalition took actions against 45 judgments of the Fist Municipal Court, seeking a review of the proceedings. In its judgments of 3 December 1996, the First Municipal Court dismissed all 45 actions for review.

4. The Belgrade Electoral Commission and the Zajedno coalition filed to the Supreme Court of Serbia applications for extraordinary revision of the enforceable judgments, stating that the court of first instance had violated the rules of judicial proceedings by not ordering a repetition, although it was obvious that the principle of contradiction had been violated by the failure to submit to the Zajedno coalition, as a party concerned, SPS' appeals for response. The second reason was based on the allegation that the court of first instance had violated the material law due to its wrong assessment that the records containing the decisions on the complaints submitted by the political parties in the electoral process ought to have been signed by all the members of the electoral commission, while the applicant took the view that the signatures of the president of the commission and of the recording secretary on the records were enough.

In its judgments of 7 December 1996, the Supreme Court of Serbia refused all the applications for extraordinary revision filed by the Belgrade Electoral Commission and the Zajedno coalition. With regard to the allegations of the applicant relating to the violation of the principle of

contradiction, the Supreme Court held that the failure to pass on the appeals for response did not have the character of violation, which could be qualified as incapacitating the participation in the proceedings before the court, because such participation was provided by taking part in the activities of the electoral commission and therefore could not constitute the grounds for review of the judicial proceedings. As for the reason relating to the form of records, the Supreme Court took the view that it was not so relevant as to cause the Court to bring a different decision, because the decision was made acting on the appeal and on the evidence enclosed in the judicial proceedings and, therefore, the above judgment was based on the assessement of such evidence and on the response to the appeal of the electoral commission.

5. On 14 January 1996 the Belgrade Electoral Commission, on its own initiative, brought a decision on cancelling the judgments of the First Municipal Court of 23 November 1996 by treating them as administrative documents, and at the same time cancelled its decisions on holding a third and all successive rounds for the election of councillors to the Belgrade Assembly.

SPS and the Serbian Radical Party (SRS) brought an action against the Belgrade Electoral Commission's decision before the First Municipal Court of Belgrade, stating that the above Commission, as an administrative body, exceeded its authority, by treating the judicial documents – the judgments of the First Municipal Court – as administrative documents.

In its judgment Ref. 3R 146/97 of 14 January 1997 the First Municipal Court admitted the action brought by SPS and SRS with an explanation that the Belgrade Electoral Commission was not competent to cancel the court judgments.

6. On 14 January 1997, the Zajedno coalition brought, for the second time, an action for review of the judgments passed by the First Municipal Court on 23 November 1996. However, on that occasion, upon acting on 45 actions, the First Municipal Court delivered 10 judgments admitting the review of the proceedings, forwarded SPS' appeals to the Zajedno coalition for response and brought a judgment based on merit, contrary to its judgments of 23 November 1996 !

II

During the above battle of wits, the protagonists of which were SPS - Zajedno coalition – the Belgrade Electoral Commission – the First Municipal Court – the Supreme Court of Serba, an OSCE Mission headed by former Spanish President Phelipe Gonzales arrived in Belgrade at the inivitation of the President of the Republic of Serbia. Mr. Gonzales explained that he and his delegation had a mandate to conduct a fact finding mission.

The report made by the expert group within the said mission stressed two facts; firstly, rather than demonstrating willingness to establish the facts, the courts had cancelled the electoral results due to the procedural shortcomings, such as non-signing of the records of the electoral commission; secondly, a possibility that any citizen could file a complaint against the irregularity of voting at a polling station, which might lead to the cancellation of the voting at that polling station, was not in accordance with Article 25 of the International Covenant on Civil and Political Rights, which was signed and ratified by Yugoslavia and, therefore, constituted a part of the country's federal law. It followed from the above that it was necessary to find remedies in order to rescind the judgments passed by the courts, which had carelessly cancelled citizens' will due to the minor procedural faults without establishing the facts first.

On the basis of such an expert report, Mr Gonzales compiled a report for the OSCE President in which he enlisted the municipalities where the Zajedno coalition had won, and demanded that the solution be reached in "the spirit of dialogue and cooperation of the parties concerned ".

III

The solution was found by means of passing the Law on the proclamation of provisional results of the election of councillors to municipal and city assemblies, as listed in the OSCE Mission Report (RS Offical Gazette, No. 5/97), known to the public as the "*Lex specialis*"!

As the above law contains only 4 articles, it is quoted in full below:

Article 1

This law confirms the unofficial results of the 17 November 1996 election of the councillors to the assemblies of the municipalities of Pirot, Kraljevo, Užice, Smederevska Palanka, Vršac, Sokobanja, Pančevo, Jagodina, Zrenjanin, Lapovo, Šabac, Stari grad, Vračar, Savski Venac, Zvezdara, Rakovica, Palilula, Čukarica i Voždovac, as well as of the councillors to the assemblies of the cities of Kragujevac, Niš and Belgrade.

Article 2

The municipal or the city electoral commissions shall establish an indivudual election of councillor based on the results referred to in Article 1 of this law within 3 days from the entry into force of this law.

If the electoral commission fails to establih an individual election of councillor within the above time-limit, the same shall be done by the Ministry of Justice within next 48 hours.

An administrative dispute may not be conducted against decisions of the municipal and city electoral commissions and decisions of the Ministry of Justice.

Article 3

The President of the National Assembly shall call constitutive sessions of the municipal assemblies covered by this law, not later than 5 days from the publication of the established electoral results.

Article 4

This law shall enter into force on the day after the date of its publication in the Official Gazette of the Republic of Serbia.

IV

The Constitutional Court assessed the constitutionality of the "Lex specialis" in case Ref. IU - 28/97. Such an assessment was initiatated by the representation of a citizen, who, among other things, stated that by passing that law, the National Assembly sanctioned the falsified electoral results proclaimed by the electoral commissions in the course of November 1996. In this connection, the initiator disputed the above law from the aspect of the provisions of the Criminal Law of the Republic of Serbia, stipulating that falsification of electoral results constitutes a criminal offence. According to the initiator, the anticonstitutional nature of this law was also beyond any doubt because the proclamation of the final results of the election of councillors to municipal and city assemblies could not be executed by a special law, but only by amendments to the Law on territorial organization and local self-government.

Proceeding from the provisions of the Constitution of the Republic of Serbia which establish that the National Assembly enacts laws (Article 73, item 2) and that the Republic of Serbia regulates and provides the exercise and protection of freedoms and rights of man and citizen, as well as that the system of local self-government is regulated by law (Articles 72 and 113), the Constitutional Court assessed that the disputed law was a temporary act, adopted for one-time application, and that its enforcement had been terminated upon the expiry of the statutory time-limits for initiating electoral disputes in connection with its application.

Particular relations, which were governed by the Law on territorial organization and local self-government in a general manner were thus regulated by the disputed law in a special manner.

Above all, this law regulated the issues of establishing and proclaiming the final electoral results, as well as the question of legal protection in local election. In this connection the Constitutional Court found that that there were no constitutional impediments to the National Assembly to enact that kind of special law because its constitutional authority for enacting laws was given in a general manner, without narrowing down its legisaltive rights according to the type of law. As for the part of issues governed by the Law on territorial organization and local self-government in a general manner, the Consititutional Court held that the National Assembly was authorized to statutorily regulate them in a special manner. Therefore, the inititatior's allegations in this respect were ungrounded.

The initiator's allegation that the disputed Law was in direct contradiction to the Serbian Criminal Law because it purpotedly sanctioned the falsification of electoral results was also ungrounded. The Law in question did not contain provisions regulating criminal liability nor could anyone be released from criminal liability by virtue of its provisions. In addition, the Constitutional Court was not competent to decide on the interrelation of these two laws or on the alleged contradiction of the provisions of the law governing criminal issues and the law constituting a special electoral regulation on the election of local authorities. It was a matter of the National Assembly's appropriate assessment to enact any such law that would regulate the issues for which it was constitutionally authorized.

The constitutionality of the above *Lex specialis* cannot be brought into question from the aspect of the constitutional principle, which guarantees every individual the right to appeal or to appply other remedy against a decision concerning his right or interest founded on law. In addition, the Court took into account a constitutional provision stipulating that the Constitutional court decides on electoral disputes which are not within the competence of the courts of law or other state bodies (Article 125, item 7). It follows from the above that the above law did not rule out the constitutional and legal protection, which is directly provided by the Constitutional Court by virtue of the above-stated constitutional provision.

SLOVAKIA / SLOVAQUIE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

Pursuant to the Article 129 of the Constitution of the Slovak Republic, the Constitutional Court of the Slovak Republic (hereinafter referred to as "Constitutional Court") decides whether the election of the President of the Slovak Republic, the elections to the National Council of the Slovak Republic, and the elections to the local self-government bodies have been held in conformity with the Constitution and the law.

The Constitutional Court may under paragraph 59 et seq. of the Act No. 38/1993 on the Organization of the Constitutional Court, on the Proceedings before the Constitutional Court and the status of its Judges (further referred to as "Act on Constitutional Court") declare the elections to the National Council of the Slovak Republic, to the European Parliament or to the local self-government bodies invalid, quash the challenged election returns, cancel the decision of the election committee and declare elected the person who was elected in the proper manner, or reject the complaint.

In accordance with paragraph 63.a et seq. of the Act on Constitutional Court, the Constitutional Court may under a claim of unconstitutionality or unlawfulness of the elections of the President of the Slovak Republic, declare the elections invalid and order new elections under special regulation, or reject the complaint.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

The cancellation of elections results is only a possible consequence of an established violation of law.

The Constitutional Court applies its power to declare the elections invalid or to quash the election result only if an infringement of the electoral law was caused by the manner influencing a free competition of the political powers in democratic society. For the application of this competency, gross or serious infringement, eventually multiple infringements of the legal provisions related to the electoral preparation and process, are required. The infringement of the electoral law shall reach intensity eligible to establish consequence based on unlawful election results (decision of the Constitutional Court PL. ÚS 14/99).

Unlawfulness of elections must be proven in the proceedings on electoral issues subject to paragraph 59 et seq. of the Act on Constitutional Court and it must have a causal relationship to those consequences of the violation of rights, which are also a violation of the constitutional electoral right and its principles (PL. CC 21/94).

3. What kind of contravention of the law can serve as a basis for cancellation

- **a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?**
- **b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?**
- **c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?**

Within the proceeding at the Constitutional Court concerning electoral results, the basis of their possible declaration for invalid, is the infringement of the electoral laws and regulations, campaign rules and rules of voting procedures.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Depending on the relevant legal case, even the Activities of other people, apart from the candidate, may among other reasons lead to the cancellation of the elections results. As mentioned in the point 2 of this letter, the Constitutional Court takes into consideration the intensity and repeating of the infringement of the law.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The decision of the Constitutional Court on cancellation of the elections results affects the entire results of the elections.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

In case the results of the election are cancelled, the candidate concerned may stand for the repeated elections.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

Central Electoral Committee as the highest institution responsible for the running of the elections is the competent authority to investigate and publish election results.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The courts are not involved in the certifying procedure.

3. Is there a specific body in charge of the control of finance in the electoral field?

Ministry of Finance of the Slovak Republic, The Supreme Audit Office of the Slovak Republic and independent civil associations are in charge of the control of finance in the electoral field.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

The Constitutional Court decides on complaints alleging unconstitutionality or unlawfulness of the elections.

5. Who may appeal the decision on certifying electoral results?

Pursuant to the paragraph 59 et seq. of the Act on Constitutional Court, complaints alleging unconstitutionality or unlawfulness of elections to the National Council of the Slovak Republic, to the European Parliament and to organs of local administration, or against the results of such

elections, may be submitted by not less than one fifth of all members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, any court in connection with its decision-making, the Attorney-General of the Slovak Republic, 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.

A complaint against the result of elections to the National Council of the Slovak Republic, to the European Parliament or to the local self-government bodies, may be submitted also by a rival candidate who has gained at least 10 % of votes. A complaint may also be submitted by at least 10 % of voters in the relevant electoral district.

Complaint claiming unconstitutionality or unlawfulness of the elections of the President of the Slovak Republic may be lodged by less than one fifth of all members of the National Council of the Slovak Republic, the Government of the Slovak Republic, the General Prosecutor of the Slovak Republic and by a candidate who failed in the elections.

6. What is the time-limit for appealing the decision on certifying electoral results?

The motion for commencement of proceeding shall be lodged within ten days after the election results are announced.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

There is no time limit for the Constitutional Court to provide a decision in a legal case concerning the elections.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

The parties are obliged to determine the evidences to prove their claims. The court decides on which marked evidence shall be examined. The court may examine other evidences as proposed by the participants if their examination is indispensable for the decision on merits.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

If unconstitutionality or unlawfulness of elections or of the results of the elections is proven, such a decision is concerning the whole constituency.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

The Constitutional Court may cancel the results of an election after the elected candidate is fully installed.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?
2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

All the decisions concerning the elections are published on the internet site of the Constitutional Court of the Slovak Republic, www.concourt.sk. The Constitutional Court decided several times on cancellation of the electoral results.

SWEDEN / SUEDE

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

There are no constitutional but other legislative provisions (the Elections Act, Swedish Code of Statutes 2005:837) stipulating the terms under which electoral results shall be cancelled.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

Cancellation is in principle a compulsory consequence of a violation of law, if it may be deemed that it is justified by what has occured having had an effect on the outcome of the election. However, it could be said that there are discretionary elements in the sense that the election shall be revoked to the extent that is necessary. And it is also stipulated that if rectification can be achived by a renewed counting or some other such less intrusive measures, the Election Review Board (ERB) shall, instead of cancellation, assign the deciding authority to implement such rectifications.

3. What kind of contravention of the law can serve as a basis for cancellation

The criteria for cancellation are

I) if upon the preparation and implementation of the election for which an authority is responsible there has been a deviation from the prescribed system, or

II) if someone has
- impeded voting,
- corrupted votes cast or
- improperly acted at the election in some other way.

The criteria in 3 II) corresponds to those of a criminal offence in our Criminal Code.

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

If there is an established non-compliance with eligibility criteria it has consequenses for the candidate in question who will lose his or her seat but it does not lead to cancellation. The criterion "insufficient number of signatures" is not applicable.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

As follows of the answer to 2. contraventions of the electoral laws and regulations can be a basis for cancellation. It should be mentioned that we have no specific campaign rules.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

As follows of the answer to 2 a violation of the Criminal Code can serve as a basis for cancellation but there is no such connection with the Civil Code.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

Also activities of other persons than candidates, with or without the knowledge of a candidate, can lead to cancellation.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

A cancellation followed by a re-election affects all the candidates in the constituency.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

If there is a cancellation the candidate in question is not formally excluded from standing in a re-election. However, it is to presume that the party will not nominate him or her as a candidate in the re-election if the candidate has acted improperly in connexion with the ordinary election.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?
2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

The Central Election Authority (CEA) certifies the electoral results concerning the Swedish Parliament (Riksdag) and the European Parliament. The elections to municipal and county council assemblies are certified by the respective County Administrative Board (CAB). None of these bodies is formally judicial. No court is involved. The ERB, which is a judicial body, examines the certificates, issued by the CEA, for members of the Riksdag and the European Parliament and for substitutes for those members.

3. Is there a specific body in charge of the control of finance in the electoral field?

We have a legislation on economic support from the state to the political parties. The support is related mainly to the number of seats that the party has in the Riksdag. Since we have no other specific legislation on electoral campaign financing we have no specific body controlling such matters.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

There is only one competent body for deciding on complaints against the certification of election results and it is the ERB.

5. Who may appeal the decision on certifying electoral results?

A decision on certifying electoral results may be appealed against by

I) any person who, according to the electoral roll, was entitled to vote in the election, and

II) a party that participated in the election.

6. What is the time-limit for appealing the decision on certifying electoral results?

The time limits for appealing the decision on certifying electoral results are as follows:
no earlier than on the day after the election and
no later than within ten days after the electoral result was certified.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

There is no formal time limit set up for the ERB to decide on appeals. However, it is quite evident that appeals concerning electoral results are urgent matters and they are handled as such.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

According to the Elections Act authorities and others who assisted in connection with the election shall provide the ERB with the information and statements requested by ERB. Most of the evidencies are collected that way, sometimes after explicit requests from the ERB. But also the parties provide the ERB with information.

And, if the ERB considers that it is necessary that someone is questioned as a witness at court, the ERB can order a witness hearing to be held at a district court. However, this possibility has not been used so far.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

A re-election cannot be limited to certain polling stations but must include the whole constituency.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

A decision through which someone has been appointed as a member of the Riksdag or a county council or municipal assembly or as a substitute also applies even if the decision has been appealed against. If someone else has been appointed as a member or substitute as a result of the appeal, the decision applies as soon as the election or the count is concluded by which the member or substitute was appointed.

C. CASE LAW

Since ERB started in 1975 (before that the Supreme Administrative Court decided on complaints concerning general elections) the board has had about 70 cases concerning elections to the Riksdag (10 elections). In more than ten of these cases the ERB has found deviations from the prescribed system in the preparation or implementation of the election for which an authority is responsible. In most cases it har been disorder of some kind in polling stations or mistakes concerning marking in the electoral rolls. In none of these cases the ERB deemed that the irregularities had had any effect on the outcome of the election (the numbers

of votes in question were too small). Therefore the ERB has not decided on any re-election to the Riksdag so far.

In the elections to the regional and local assemblies the number of votes in each constituency is smaller and the margins, when it comes to the distribution of seats, normally smaller. Consequently very few votes often can affect the outcome of an election. In these elections we have had some cases, very shortly resumed in the following, in which the ERB has decided on re-election or renewed counting.

1976:11
County Council Assembly. Mistakes concerning the distribution of seats. Renewed counting.

1980:7
Municipal Assembly. Improper action at the election concerning voting by messenger. Very small margins. One vote could have an effect on the outcome. Re - election.

1985:33
Municipal Assembly. Irregularities concerning at least 20 votes given in advance. Re - election.

1985:43
Municipal Assembly.The laying out of ballot papers in polling stations for a certain political party was stopped by the Municipal Election Board, which regarded the name of this political party as political propagande (written appeal), which is forbidden within the polling stations, according to the Elections Act. The ERB declared that the rule prohibiting political propaganda was not applicable on ballot papers and ordered re - election.

1988:5
County Council and Municipal Assemblies. Confusion of ballot papers from different elections. Renewed counting.

1994:34
County Council Assembly. Nearly 500 postal votes were not delivered from the Post to the Election Committee. Renewed counting.

1994:55
Municipal Assembly. A number of votes were counted twice. Renewed counting.

1998:32
Municipal Assembly. A seat was given to wrong person. Renewed counting.

2002:39
Municipal Assembly. Five votes in advance were not delivered from the Post to the Election Committee in time. The margins were very small. One vote could have had effect on the outcome. Re - election.

2006:26
Municipal Assembly. Personal votes attributed to wrong candidates. Renewed counting.

2006:27
Municipal Assembly. Decision concerning personal registration influenced eligibility. Renewed counting.

2006:30
Municipal assembly. Irregularity in counting. One vote. Affected the outcome. Renewed counting.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / « L'EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE »

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

The terms concerning the cancellation and repetition of the election are stipulated in the separate section of the **Electoral Code of "the former Yugoslav Republic of Macedonia"**[128]. In "the former Yugoslav Republic of Macedonia" legislative electoral framework are existing **only legislative, but not constitutional provisions** which regulate the issues on the cancellation of the electoral results.

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

According to the **Article 151, item 1 of the Electoral Code and adopted law amendment**[129], **the State Election Commission with decision**, **under the official duty**, **or under the submitted objection**, make cancellation of the voting at the polling station if:

1. The electoral board is not organizing the voting on a manner established in the Code;
2. The principle of secrecy of voting is disturbed;
3. The voting is interrupted more than three hours;
4. The police is not responding to the intervention request submitted by the electoral board when need it and this made an influence on the performing of the voting in the electoral board;
5. The number of the ballot papers into the ballot box is bigger than number of the voters who have voted and
6. Some person or persons votes in the name of other(s) person(s).

On the Article 151 of the Electoral code, is added new item 2 according to which "The State election commission in the cases stipulated in the lines **1, 2, 5 and 6 of this article**, when decides in the objections procedure, is obliged to perform control on the whole electoral material, if the referring facts are contended into the electoral report".

The State election commission will repeat the voting with decision at the polling stations where the election is cancelled **only if the total number of the enrolled voters in the polling stations on the level of electoral constituency, city, or district has an influence at the overall results.**

This means that the cancellation is compulsory only if the total number of the enrolled voters in polling stations on the level of electoral constituency, city, or district where the voting results have been cancelled has an influence at the overall election results.

3. What kind of contravention of the law can serve as a basis for cancellation?

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?)

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[128] See: **Electoral Code** ("Official Gazette of the Republic of Macedonia", No. 40/2006, **and Constitutional Court Decision, U. No. 87/2006-0-0, 15.11.2006.**

[129] See: **"Official Gazzette of the Republic of Macedonia", No. 136, 30.10.2008.**

No, this could not serve as a basis for cancellation, but the candidate with insufficient number of signatures could not submit the candidature to run in the electoral process. **The State Election Commission would not accept the submitted candidature with insufficient number of signatures.**

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedure)?

Contravention of the electoral laws could be a reason for the cancellation of the elections if the contravention have an influence or could make an influence to the overall election results. Abovementioned reasons are directly referred as contravention of the rules of voting procedure stipulated into the Electoral Code.

As far as the electoral campaign is concerned, **neither the State Election Commission, nor the Administrative Court has the legal powers to cancel the election results if the contraventions happened in the electoral campaign.**

This could be a basis for processing the offences procedure in front of the regular courts.

c) Contravention of other laws, such as established violation of the criminal or the civil code in relation to election related activities?

Such contraventions are under the jurisdiction of courts and under the relevant regulations. The State Election Commission is not competent to decide in such cases.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by the media or others in favor of, but without the knowledge of a candidate)?

The State Election Commission is only competent to decide on contraventions of the Electoral Code, no matter whether they were committed by the candidates or political parties.

During the campaign the SEC has no power other than to proclaim that certain activities were contrary to a fair electoral campaign. All other disputes are under the jurisdiction of the courts. The SEC have no real sanctions for the contravention of the Electoral Code **except to cancel electoral activities in the cases of irregularities that essentially influenced in the final election results**.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law or the entire result of the elections?

Since “the former Yugoslav Republic of Macedonia » has the proportional electoral system, the candidates are referred on the party lists. The possible cancellation of the voting results at a certain polling station affects the entire result of the elections at the polling station.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

The State election commission, nor other competent institution has no authority to exclude a certain candidate from standing in the repeated elections. The SEC is obliged to accept the candidature of each candidate who fulfills the prescribed legal requirements.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

In the parliamentary and presidential elections, the State Election Commission is competent authority to certify the final electoral results, and in the local elections the City commission of Skopje or District election commissions.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No, only electoral commissions are competent to certifyes the electoral results. The courts have no competence in the process of certification of the electoral results.

3. Is there a specific body in charge of the control of finance in the electoral field?

The organizer of the electoral campaign is obliged, immediately, or not later than 15 days after finishing the electoral campaign to submit total financial report for the electoral campaign. The financial report have to be submited to the State Election Commission, to the State Audit Office, to the State Anti-Corruption Commission and to the Assembly of "the former Yugoslav Republic of Macedonia" and for the local elections to the Municipality council and to the City council of Skopje.

The State Audit Office controls the financing regularity of all political parties involved in the elections. If the State Audit Office find any irregularities into the financial report submitted by the organizer of the electoral campaign, this Office is obliged to inform the competent bodies for initialization of the appropriate procedure. The audit reports of the financial reports for the electoral campaign the State Audit Office is obliged to announced in its web-site.

4. What is (are) the competent body(ies) for deciding on complaints against the certification of election results?

The State Election Commission decides on complaints in the first and Administrative Court in the second instance.

The SEC announced the final results of the elections in the period of 24 hours counting from the day when they become final.

Each authority representative of the party list have right in the procedure of voting, summing and certifying of the election results for President of the Republic and for parliamentary elections to submit objection in front of the SEC, and for local elections in front of the District election commissions or City election commission of Skopje in the period of 48 hours after voting is finished.

The SEC, the District election commissions or City election commission of Skopje are obliged in the period of 48 hours after receiving of the objection to make a decision.

Against this decision the complaint could be submitted in front of the Administrative court of "the former Yugoslav Republic of Macedonia" 48 hours after the receiving the decision.

The Administrative Court confirms or modifies the decision of the State Election Commission, and in the complaint procedure could decide in the borders of the complaint reasons under the comments and arguments proposed and enclosed to the complaint, as well as the whole electoral material.

5. Who may appeal the decision on certifying electoral results?

Each authority representative of the party list could lodge a complaint against the decision on certifying the electoral results from the SEC. Against the SEC decision a complaint could be submitted in front of the Administrative Court of "the former Yugoslav Republic of Macedonia".

6. What is the time-limit for appealing the decision on certifying electoral results?

The SEC, the District election commissions or City election commission of Skopje are obliged in the period of 48 hours after receiving of the objection to make a decision.

Against this decision the complaint could be submitted in front of the Administrative court of "the former Yugoslav Republic of Macedonia" 48 hours after the receiving the decision.

The Administrative Court of "the former Yugoslav Republic of Macedonia" is obliged to deal with the submitted complaint in the period of 48 hours of its reception.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

The Administrative Court of "the former Yugoslav Republic of Macedonia" is obliged to deal with the complaint in the period of 48 hours of its reception.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

When deciding the cancellation of election results, the State Election Commission[130] is obliged to perform control on the whole election material, **if the referring facts are contended into the electoral reports**. Also, the Administrative court is obliged to decide in the complaint procedure according with the collected official evidences by the electoral commissions and the SEC, and not according to the materials presented by the political parties.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

The SEC is obliged to cancel only the results of the concerned polling stations where violations have been noticed in the electoral reports and not the results of the polling stations in the whole constituency.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

No, in "the former Yugoslav Republic of Macedonia" legal framework and practice there is no manner to cancel the results of an election after the elected candidate is fully installed.

[130] In the cases when the electoral board is not organizing the voting on a manner established in the Code, when the principle of secrecy of voting is disturbed, when the number of the ballot papers into the ballot box is bigger than number of the voters who have voted and when some person or persons votes in the name of other(s) person(s).

C. CASE-LAW OF THE SUPREME COURT OF "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (1999-2008)

1. Is there any case-law concerning the cancellation of electoral results?

1. In all performed elections for President of the Republic, parliamentary and local elections, **in the period of 1999-2008**, the Supreme Court of "the former Yugoslav Republic of Macedonia" had decided on the basis of its competencies to the appeals submitted against the decisions of the State, City or District Election Commission.

In **1999,** in the procedure of the presidential election, the Supreme Court deal with **58 election subjects of which 25 appeals have been accepted**.

During **2000**, in the local election, the Supreme Court received **69 election subjects of which 28 appeals have been accepted.**

In **2002**, in the parliamentary elections, the Supreme Court received **20 election subjects of which 5 appeals have been accepted**.

In **2004**, in the presidential election, of **45 subjects only 3 appeals have been accepted.**

In **2005**, local elections, of **187 election subjects, 40 appeals have been accepted**.

In **2006,** parliamentary elections, **of 45 election subjects only 12 appeals have been accepted**.

In **2008**, parliamentary election, **only 2 appeals have been accepted and the decisions of the State Election Commission have been modified. The voting has been nullified.**

In "the former Yugoslav Republic of Macedonia" election, according to the stated data always have been existed the electoral subjects under which the Supreme Court proceeded after the submitted appeals. In part of those subjects, the Supreme Court accepted the appeals, nullified the voting and decided to repeat the voting.

2. What does the Supreme Court practice says on the issue of the reasons for nullification of the voting in the polling station?

1. **With the decision No. 10/99 from 27.11.1999**, the Supreme Court have partly accepted the appeal, modified the decision of the State Electoral Commission No. 34-542/2 from 23.11.1999, and nullified the voting in the polling stations No. 432 and others in the electoral constituency No. 52, and decided to repeat the voting.

The Supreme Court decided on the above mention manner because at the polling stations where the voting was nullified, **at the day of election the public order was disturbed**. As a consequence of disturbance, in the polling stations **some voters have voted several times, and have voted for others** so the principles of secrecy and equality of the electoral right were violated.

2. **With Decision No. 26/99 from 26.11.1999**, the Supreme Court has partly accepted the appeal, modified the decision of the State Electoral Commission No. 34-541/2 from 23.11.1999, and accepted the objection of the authorized representative. The Court cancelled the voting results in the polling stations No. 2415 and others in the electoral constituency No. 66 and decided to repeat the voting. The nullification has been connected **with irregularities concerning the electoral right, respecting the principle of secret ballot and universal suffrage**.

3. **With Decision No. 38/2004 from 6.5.2004**, at the presidential election, the Supreme Court accepted the appeal, modified the decision of the State Election Commission no. 07-514/2, 2.5.2004, and nullified the voting in three polling stations. The Supreme Court found some **procedural irregularities made by the electoral boards connected with the validity of the election reports issued by the electoral boards.** Also, in other two polling stations the number of the voter lists did not corresponded with the data contented in the electoral register.

4. **With Decision No. 168/2005 and 169/2005**, the Supreme Court has partly accepted the appeal, modified the decision of the District Election Commission - Studenicani from 12.04.2005, and nullified the voting results in two polling stations. **The nullification has been connected with the irregularities made in the election report which has not been signed by the members of the electoral board**. Also, the Court noticed irregularities concerning the electoral right, respecting the principle of secret ballot and universal suffrage.

5. **With Decision No. 25/2006 from 12.07.2006**, the Supreme Court has modified the decision of the State Election Commission No. 10-1170/2 from 09.07.2006 and nullified the voting results in the polling station 0461 in the Electoral unit no. 6, district of Vrapchishte because of electoral irregularities.

6. **With Decision No. 108/2008 from 22.06.2008**, the Supreme Court has nullified the voting in the polling station No. 2039-District Brvenica, Electoral district No. 6. The Court made a statement that in the electoral register for the polling station No. 2039 were signed 427 voters, have been voted 424 voters and were notified 432 voters in the report for summing the results of the electoral board. The Court made conclusion that the electoral board has not performed the voting according to the Electoral Code.

7. Due to the above-mentioned decisions of the Supreme Court of “the former Yugoslav Republic of Macedonia”, it could be concluded that the voting have been nullified because of the following irregularities done during the voting:

1. voting in the name and on the behalf of others;
2. family or proxy voting;
3. voting by the party activists;
4. disabling of the official representatives to be present at the polling stations;
5. disproportion between the enrolled voters in the Electoral register and the number of voters which had used the electoral right;
6. disproportion between the number of the voting lists and the data contained in the Electoral register;
7. irregularities connected with the technical failures made during the voting in the polling stations and by the members of the electoral boards, etc.

3. Recommendations for Improvement of the Electoral Code

1. The legislator **has to provide new legislative basis for nullification and repetition of the voting in the Electoral Code** directed not only in the part where reasons, which are directly concerned on the voting procedure, are stipulated, but also on a questions concerning the electoral right protection.

2. In the Electoral Code should be incorporated more basis for nullification of the voting relating with the electoral irregularities.

Therefore, I could suggest stipulation of new basis for nullification and repetition of the voting into the Code in this sense:

- If any state body or person directly or indirectly involved into the electoral process has stopped the voter to realize its electoral right (passive or active) this could be treated as

a basis for nullification of the voting;
- Contraventions related with the procedure and criteria for the candidates involved in the elections;
- Contraventions made in the process of organizing and running of the electoral campaign;
- Contraventions related with the financing of the electoral campaign;
- Contraventions done in the procedure of preparing and distributing of the election material;
- Contraventions in the Electoral register (injuries made in the procedure of its updating);
- Contraventions done in the process of summing of the election results and transferring into the mandates;
- Contraventions made in the procedure of publishing of the electoral results.

3. The **position of the State Election Commission should be strengthened** on the manner that this Commission could decide to nullify the election results in the cases when the injury of the electoral right is notified.

The actual practice in "the former Yugoslav Republic of Macedonia" on this matter has shown the **inconsistence between the interpretation and application of the articles stipulated into the Electoral Code from the State Election Commission concerning the nullification of the election results**. Also, the Supreme Court has not formulated the general opinions and statements concerning this issue;

4. If in the court procedure is proved that the voting in polling station is nullified because the candidate was involved in the irregularities into the electoral process, this candidate has to be eliminated in repeated election. This article will have preventive action in the sense of decreasing or preventing of the election irregularities;

5. If in the court procedure is proved that the candidate took its mandate while performing electoral irregularities, he/she must be deprived from the right to verify its mandate.

TURKEY / TURQUIE

A. LEGAL BASIS FOR THE CANCELLATION ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

Article 79 of the Constitution gives the sole competence in all electoral matters to the Supreme Board of Elections. Such competence covers both the administrative (taking all measures to ensure the fair and orderly conduct of the electoral process) and the judicial (ruling on the complaints and appeals concerning electoral matters) aspects of elections, including the cancellation of the election results. In its composition, the Supreme Board of Elections is an entirely judicial body: It is composed of 7 main and 4 substitute members, 6 of whom are selected by the General Assembly of the Court of Cassation by secret vote and the absolute majority of its full membership, and 5 by the General Assembly of the Council of State (the highest administrative court) again by secret vote and the absolute majority of its full membership. Two members each from the two high courts are designated as substitutes by the drawing of lot. The details concerning the Supreme Board of Elections are regulated in the Law No. 298 dated 26 April 1961 on the "Fundamental Provisions on Elections and Electoral Registers". This law is applicable to all elections, parliamentary as well as local elections (henceforth referred to as Law No. 298).

The Law No. 298 provides for an elaborate system of election boards, at the apex of which is the Supreme Board of Elections. In each province there is a Provincial Electoral Board composed of three highest ranking judges serving in the provincial capital. Political parties active in the province have representatives on the Board without voting rights. In each sub-province (ilçe) there is a sub-provincial electoral board presided by the highest ranking judge serving in the sub-province, and composed of four representatives of political parties with the highest votes in the last parliamentary elections and two senior public officials. Finally, for all polling districts, there is a polling booth electoral board whose members are appointed by the Supreme Board of Elections (Articles 9-27).

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. **Which authority is competent to certify the electoral results?**
2. **If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?**
3. **Is there a specific body in charge of the control of finance in the electoral field?**
4. **What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?**
5. **Who may appeal the decision on certifying electoral results?**
6. **What is the time-limit for appealing the decision on certifying electoral results?**
7. **Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?**
8. **Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?**
9. **If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?**
10. **May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?**

Electoral boards are competent to rule on all complaints (şikayet) and appeals (itiraz) concerning electoral matters. Complaints concern administrative irregularities in the electoral process, and appeals can be made against irregularities that may affect the outcome of elections such as those concerning the composition of electoral boards, voters' lists, eligibility conditions of the candidates, irregularities in the voting and counting processes. Appeals can be made by all citizens eligible to vote, by political parties, their observers, candidates, and deputies. Appeals and complaints are made to the competent election board, and unless the Law specifies that their decisions are final, they are ultimately decided by the Supreme Board of Elections upon further appeal (Articles 110-132). However, in cases where the irregularity is deemed to affect the outcome of elections, the appeal is decided in any case by the Supreme Board of Elections, even if the application is not made in due time and even if the Law states that the decision of the lower level electoral board is final (Article 130). The Supreme Electoral Board examines the appeals on the file, but it may also collect evidence on its own initiative and may request information and documents from competent authorities. The decisions of the Supreme Board of Elections are final; there can be no appeal to any judicial or other authorities (Article 132).

C. CASE-LAW

1. **Is there any case-law concerning the cancellation of electoral results?**
2. **If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?**

The review by the Supreme Board of Elections may result in the cancellation of the election of an individual candidate (for parliament or a local office) or the cancellation of an election in an entire constituency. The first situation involves the cases where the candidate does not meet the eligibility conditions. Under Article 76 of the Constitution, those who have not completed the age of 25, are not graduates of primary school, have not completed their military services, are banned from public service, and those who have been convicted of one of the crimes enumerated in the same Article are not eligible to become a member of Parliament. The Supreme Board considers these cases as those of "full illegality" (tam kanunsuzluk) leading to the cancellation of the election of an individual candidate (tutanak iptali, cancellation of election

credentials). If the cause for ineligibility has existed before the election, but is discovered after the election, the Board still rules in favor of cancellation . If such cause materializes after elections, however, it will no longer be a case of cancellation, but a case of forfeiture of parliamentary membership in accordance with Article 84 of the Constitution.

With regard to the cancellation of election in an entire constituency, the Supreme Board has a wide margin of appreciation. The chief criterion it employs is whether the irregularity is grave enough to affect the outcome of the election. In case of cancellation, voting is repeated at a later date without, however, repeating the nomination process and bringing the voter lists up to date.

UNITED KINGDOM / ROYAUME-UNI

A. LEGAL BASIS FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Are there constitutional or legislative provisions which stipulate the terms under which electoral results have to be or may be cancelled?

There are no constitutional provisions in the UK relating to elections. There are however a number of statutory provisions that govern the electoral process. British parliamentary and local electoral results can be challenged under the provisions of Part III of the Representation of the People Act 1983 (the 1983 Act). Electoral results can be declared void under section 144 of the 1983 Act (parliamentary elections) and section 145 of the 1983 Act (local elections).

2. Is the cancellation only a possible consequence of an established violation of law (i.e. the competent authority can act in its discretion) or are there cases when the cancellation is compulsory? If it is compulsory, which are these cases?

The election court is required to either: i) declare the election void, or ii) determine that the member whose election was complained of was validly elected; or iii) determine that another individual was validly elected: see section 144(1) and section 145(1) of the 1983 Act.

3. What kind of contravention of the law can serve as a basis for cancellation

a) Established non-compliance with eligibility criteria (including, if applicable, the insufficient number of signatures?

The following acts can render an election result void:

1. Where the candidate is disqualified from standing i.e.: an alien (see section 3 of the Act of Settlement 1700 (as amended) and the common law; individuals suffering from a mental illness (see common law); peers who are exempted from the provisions of the House of Lords Act 1999 under section 2 of that Act; members of the clergy who are Lords Spiritual i.e., sit in the House of Lords (see House of Commons (Removal of Clergy Disqualification) Act 2001); bankrupts (section 1(4) of the House of Commons Disqualification Act 1975); various officers e.g., civil servants, acting returning officers, members of the armed forces, full-time police officers, members of legislatures outside the Commonwealth, certain judicial office holders, tribunal members and members of other commissions or bodies (see Schedule 1 Part IV of the House of Commons Disqualification Act 1975); prisoners who have been convicted in the UK or elsewhere of an offence and who was sentenced or ordered to be imprisoned or detained indefinitely or for more than one year while detained in either the UK or the Republic of Ireland or if unlawfully at large would otherwise be detained (see section 1 and 2(1) of the Representation of the People Act 1981); individuals who have been found guilty of either personally or through their agents of a corrupt or illegal practice (disqualified for five years from report being made by election court of the corrupt or illegal practice) (see section 159(1) of the 1983 Act);

2. Where the candidate is ineligible to stand e.g., has not yet reached the statutory minimum age (currently 18 years of age) to stand (see section 17 of the Electoral Administration Act 2006);

3. Irregularities at the poll such that the election was not conducted substantially in accordance with electoral law and the acts or omissions giving rise to the irregularity affected

the result. For examples, see **C (2)** below.

b) Contravention of the electoral laws and regulations (with special attention to the campaign rules and the rules of voting procedures)?

The following acts, which constituted corrupt or illegal practices, can render an election void (see sections 60, 82(6), 115(1), 159, 164 and 165 of the 1983 Act and the common law:

1. General corruption;
2. Bribery;
3. Treating i.e., the provision of refreshments (usually alcoholic) with the intention to influence a voter so that their vote is not cast freely but rather is cast under a corrupt influence;
4. Intimidation or Undue influence e.g., threats or use of violence, temporal or spiritual injury, damage, harm or loss, duress, abduction, or the use of any fraudulent device so as to '*restrain the liberty of the voter, so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills*' per Willes J in *Lichfield Case* (1869) 1 O'H & M 25;
5. Personation i.e., where an individual votes either in person or via post as some other person, whether that other person is alive, dead or fictitious;
6. False declaration as to election expenses incurred;
7. Making false statements on documents delivered to a returning officer regarding the candidate's name, date of birth, or home address knowing it to be false;
8. Placing a false signature, purporting to be that of an elector who either proposes, seconds, or assents to a candidate's nomination, on documents delivered to a returning officer;
9. Candidate employing a corrupt agent or canvasser.

c) Contravention of the other laws, such as established violation of the criminal or the civil code in relation to election related activities?

Not applicable.

4. Can only the candidates' activities (contraventions to the law) lead to cancellation or can the activities of others be taken into account (e.g. contravention to campaign rules by media or other in favour of, but without the knowledge of a candidate)?

The acts of agents or employees of the candidate can lead to an election result being declared void: see section 158(2) and 159(1) of the 1983 Act.

5. Does the cancellation affect only the result of the candidate who is involved or concerned by the contravention to the law of the entire result of the elections?

The election court's power to declare an election void is limited to the election complained of in the petition challenging the election i.e., it simply relates to the single candidate whose election is complained of and not to the electoral process as a whole. Procedurally if a challenge was to be made to an election as a whole petitions would have to be brought challenging the validity of each individual *prima facie* successful candidate, with each challenge being heard by an election court sitting in the constituency or local government area for which the candidate was said to have been elected: see sections 123(3) and 130(1) of the 1983 Act.

6. If the results of an election are cancelled, is the candidate concerned excluded from standing for the repeated elections or not?

An individual found personally guilty of a corrupt practice in a parliamentary or European parliamentary election is incapable of election to Parliament or the European Parliament for five years from the date of the election court's report: see section 160(4)(b) of the 1983 Act and Regulation 107 of the European Parliamentary Elections Regulations 2004. Where an individual is found guilty of a corrupt practice in a local government election is incapable of holding any elected office for five years: see section 173 of the 1983 Act.

The same prohibition arises where an individual is found personally guilty of an illegal practice in respect of parliamentary or European parliamentary elections except the period of incapacity is three years: see section 159 of the 1983 Act. In respect of a finding of such conduct in respect of local government elections the period of incapacity is equivalent to the period of time for which the individual was improperly elected: see section 159 of the 1983 Act.

B. PROCEDURE FOR THE CANCELLATION OF ELECTORAL RESULTS

1. Which authority is competent to certify the electoral results?

It is the role of the Returning Officer to declare the result of an election: see rule 50 of the Parliamentary Elections Rules, Schedule 1 of the 1983 Act (re., parliamentary elections); rule 56, Schedule 1 of the European Parliamentary Elections Regulations 2004; rule 50, Schedule 2 of the Local Elections (Principal Areas) Rules 2006.

2. If the competent authority to certify electoral results is not a judicial body, is a court involved in the certifying procedure?

No (except in those circumstances where the election's validity is challenged).

3. Is there a specific body in charge of the control of finance in the electoral field?

Electoral finance is regulated by the Electoral Commission, which was established under Part I of the Political Parties, Elections and Referendums Act 2000. It is an independent body answerable to Parliament.

4. What is (are) the competent bod(ies) for deciding on complaints against the certification of election results?

Parliamentary Elections[131]
An election court is the competent authority to certify parliamentary elections as void. An election court is a court of record and has all the jurisdiction, powers and authority of a judge of the High Court of England and Wales or Northern Ireland or a judge of the Court of Session in Scotland. It is constituted of two judges: see section 123 of the 1983 Act.

Local Elections
An election could is the competent authority to certify local elections as void. An election court for local elections has the same powers as an election court dealing with challenge to a parliamentary election. The election court is constituted of duly appointed Commissioners (appointed on an annual basis by those judges who are on the rota of judges eligible to constitute parliamentary election courts). Commissioners must be individuals who have are eligible for judicial-appointments that require a seven-year professional legal qualification i.e., individuals eligible for appointment as judges of the County Court and above.

[131] Challenges to European parliamentary elections are governed, *mutatis mutandis*, by the provisions governed elections to the UK Parliament: see the European Parliamentary Elections Regulation 2004.

5. Who may appeal the decision on certifying electoral results?

Parliamentary Elections
The following can challenge the result of a parliamentary election (see section 120 of the 1983 Act):

i) An individual who voted as an elector in the election or who was eligible to do so;
ii) An individual claiming to have had a right to be elected or returned (i.e., re-elected) at the election;
iii) An individual alleging that he or she was a candidate at the election.

Local Elections
A local government election can be challenged by a petition brought by four or more persons who voted as electors in the election or who were eligible to vote in the election or by an individual alleging that they were a candidate at that election: see section 128(1) of the 1983 Act.

6. What is the time-limit for appealing the decision on certifying electoral results?

Parliamentary Elections
The general rule is that an election result must be challenged by petition within 21 days after the election was held: see section 122(1) of the 1983 Act.

If the petition challenges an election on the ground of a corrupt practice, which specifically alleges a payment of money or other reward has been made or promised by the individual elected, or by someone on his behalf or was made or promised with his knowledge, after the election the challenge can be made at any time within 28 days after the alleged payment or promise of payment: see section 122(2) of the 1983 Act. The same time limit prevails where an illegal practice is alleged to have taken place in similar circumstances since the election took place: see section 122(3) of the 1983 Act.

If the petition alleges that election expenses were allowed on the ground of an illegal practice, the petition may be presented within 14 days of:

a) The day on which the appropriate officer receives the return and declarations as to election expenses by the candidate and his election agent; or
b) Where the return and declarations are received on different days, the last of those days; or
c) Where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them and the excuse was allowed at different times, the date of the allowance of the last excuse: see section 122(4) & (5) of the 1983 Act.

Local Elections
The general rule is that an election result must be challenged by petition within 21 days after the election was held: see section 129(1) of the 1983 Act.

If the petition challenges an election on the ground of a corrupt practice, which specifically alleges a payment of money or other reward has been made or promised by the individual elected, or by someone on his behalf or was made or promised with his knowledge, after the election the challenge can be made at any time within 28 days after the alleged payment or promise of payment: see section 129(2) of the 1983 Act. The same time limit prevails where an illegal practice is alleged to have taken place in similar circumstances since the election took place: see section 129(3) of the 1983 Act.

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a) The day on which the appropriate officer receives the return and declarations as to election expenses by the candidate and his election agent; or
b) Where the return and declarations are received on different days, the last of those days; or
c) Where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them and the excuse was allowed at different times, the date of the allowance of the last excuse: see section 129(4) & (5) of the 1983 Act.

7. Is there a time-limit set up for the judiciary (the appeal body) to make a decision on the appeal on the decision on certifying electoral results?

No.

8. Does the judicial body (the appeal body) deciding the cancellation of election results have the authority to collect evidence or should it be presented by the parties?

Evidence is obtained and presented by the parties as it would be in any other form of civil proceeding: see sections 139 & 140 of the 1983 Act.

9. If the violation of the law is limited to few polling stations, do the results of the whole constituency have to be cancelled or only those of the concerned polling stations?

If violations only relate to the votes cast at a limited number of polling stations it will not necessarily result in an election being held to be void. If, for instance, votes cast at individual polling stations are rendered void, they may simply not be taken account of in calculating the total number of votes cast: sections 49(5), 157(2) & 166(1) of the 1983 Act.

10. May any authority (i.e. election management bodies or judicial appeal bodies) cancel the results of an election after the elected candidate is fully installed? If yes, what is the consequence of this decision regarding the mandate of the elected candidate?

Yes. An electoral court can render an election void after an elected candidate has taken up the elected office, see time limits in **(6)** above

If the election is rendered void the elected candidate's mandate is cancelled as from the point in time when the election court determines the petition.

C. CASE-LAW

1. Is there any case-law concerning the cancellation of electoral results?

Yes.

2. If so, are there any cases which resulted in cancellation? If yes, what were the reasons for cancellation?

Yes, for the following reasons:

i) Afzal v Election Court & Others [2005] EWCA Civ 647, election avoided by election

court, on basis of corrupt and illegal practices (vote-rigging, postal ballots). Decision overturned on ground that election court failed to follow proper Article 6 ECHR compliant procedure;

ii) *In The Matter Of A Local Government Election For Thebordesley Green Ward Of The Birmingham City Council Held On 10th June 2004 And In The Matter Of A Local Government Election For The Aston Ward Of The Birmingham City Council Held On 10th June 2004*, election avoided by election court, on basis of corrupt practices (vote-rigging, fraudulent procured absentee ballots);

iii) *Galway County Case* (1872) O'M & H 46; *Tipperary County Case* (1875) O'M & H 19, elections avoided on grounds that candidate elected was not qualified to stand;

iv) *North Norfolk Case* (1869) 1 O'M & H 236; *Norfolk Case* (1871) 2 O'M & H 38, election avoided on grounds that candidate or candidate's agent knowingly or ought reasonably to have known that an individual they employed was subject to an incapacity arising out of e.g., a conviction for engaging in a corrupt practice;

v) *Renfrew* (1874) 2 O'M & H 213, *Halifax* (1892) 4 O'H & M 203, *North Lonsdale* (1910) 6 O'H & M 97, *Gloucester* (1911) 6 O'M & H 101, election avoided through Returning Officer's failure to ascertain and declare the candidate with the majority of the lawfully cast votes elected;

vi) *Howes v Turner* (1876) 1 C.P.D 670, election void as a number of candidates and electors misled as to the closing date of nominations and the date of the election due to procedural irregularities arising from actions of election officials;

vii) *Gunn v Sharpe* [1974] QB 808, election void where due to a failure to stamp ballot papers with the official mark over half the eligible electors were effectively disenfranchised,

viii) *Ipswich Case, Bantofts Case, Beckhams Case* (1835) K and O 332, 380 & 382, election void where votes were received after the polls closed;

ix) *Mayo* (1874) O'M & H 191, election void where returning officer improperly refused to accept candidate's nomination until after election agent appointed;

x) *Haverfordwest Case, Davies v Kensington (Lord)* (1874) LR 9 CP 720, election void where returning officer improperly refused to accept candidate's nomination until candidate provided security for the returning officer's expenses,

xi) *Morpeth* (1774) 1 Douglas 147, election void were returning officer compelled by a mob to return the wrong candidate,

xii) *New Ross* (1853) 2 PR & D 188, election void where candidate coerced into withdrawing candidacy following intimidation,

xiii) *Staleybridge Case* (1869) 1 O'H & M 66, an election can be avoided on the grounds of intimidation or undue influence where it can be shown that rioting or violence was such as to stop to election being an entirely free election or where the rioting etc was caused by the candidate's or his agent's actions.