

## THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

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### Recommendation 375 (2015)<sup>1</sup> Criteria for standing in local and regional elections

1. The right to stand for election, whether at local, regional or national level, and thereby to participate in the management of public affairs, is one of the chief mainstays of any democracy. It is essential therefore that this right is carefully and clearly defined, together with any limitations applicable to it.

2. The political systems of Council of Europe member States express, each in its own way, a certain idea of democracy, a consubstantial dimension of the Council of Europe and one which singles it out among international organisations.

3. Democracy cannot be reduced to a specific and immutable blueprint; it must constantly regenerate, adapting to new circumstances and to the social and political development of the societies that practise it. But it remains founded on the principle of free and fair elections.

4. Since its adoption in 2002, the Code of Good Practice in Electoral Matters of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) has served as the reference standard of the Congress for framing new legislation and assessing the way in which it is implemented. This code of conduct remains valid for all that concerns electoral participation.

5. Today, however, the Congress considers that the maturity of the political systems of Council of Europe member States, and the ever stronger expectations of its citizens, make it necessary to complement the code with one dealing with conditions of eligibility to stand and good practice for organising elections.

6. The first condition requiring consideration is of course the age at which a person can stand for election. For most Council of Europe member States, the age of candidacy in local and regional elections is 18 years. However, several countries apply stricter standards, particularly for the election of mayors. At the other end of the age scale, certain new trends towards setting a maximum age limit can be noted.

7. The Congress considers that the setting of the age, but also the whole of the conditions laid down for allowing a person to receive the votes of the duly registered constituents, must primarily and optimally comply with the principle of trust without which there can be no living democracy. This trust is predicated on the strength of the principle of equality; it must concern both the candidate's ability to discharge the functions of responsibility and the voters' ability to choose those who will best represent them.

8. The second set of main criteria relates to the link between the potential candidate and the territorial community in respect of which he or she seeks votes. These include questions of nationality, which underpin citizenship, but it is possible, particularly at local level, to envisage qualifying this criterion by taking into account the integration of non-nationals into local life. This is moreover encouraged by the Council of Europe through the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

9. The diversity is reflected in the legal rules applicable to election candidates. In that respect a clear distinction should be drawn between what pertains to the rules known as "grounds of ineligibility" and what arises from the "rules governing incompatibilities". These two sets of rules are complementary and, besides not always being consistent in terms of rationale, their practical implications may prove very different.

10. Ineligibility may be linked with the function performed, or again to the assessment of the candidate's probity. The principal criterion is that the function performed be incapable of impairing the "sincerity" of the ballot. Authorising certain office-holders to stand as candidates would risk giving them an unjustified advantage over their competitors. That is the reason why it is impossible for the holders of certain public offices to stand for election.

11. Ineligibility may also be subsequent to a judicial decision. It is generally a matter of a penalty incidental to a criminal conviction, but not always, such as in the case of bankruptcy in certain countries. Pursuant to the general principles developed by the case law of the European Court of Human Rights, this additional sanction should not be automatic, and the offence must be sufficiently serious or associated with the electoral process.

12. Incompatibility is consistent with another rationale: it concerns independence in the discharge of the mandate, and certain functions or activities exercised prior to election. Ineligibility is ascertained before, but incompatibility after, election: the functions and activities may end automatically (candidature signifying that the candidate has intended to give preference to the post sought), or termination may very briefly carry a "right of option" for the candidate.

13. The question of gender balance in the composition of local and regional assemblies deserves special attention. Gender quotas, which exist in several member States, have proven particularly useful in increasing the representation of women in local and regional politics. This is a practice that the Congress fully supports, having successfully applied a gender quota of 30% to its national delegations, thereby ensuring that both sexes are well represented in its work and debates.

14. Finally, close attention should be paid to practical measures which may form admissible obstacles to freedom of candidature, such as the concrete conditions of registration, payment of a deposit or collecting a number of signatures, which in themselves are not to be criticised where intended to weed out frivolous candidacies. However, it is obvious that they ought not to have the effect of restricting freedom

to stand through discriminatory financial conditions, or of excluding political opponents. Their level of severity should be proportionate.

15. These ideas and new practices – which the Congress cannot possibly consider obligatory – are part of a wider tendency to assess the functioning of political life and strengthen citizen control over it. They meet the so-called “transparency” objectives which, in the view of the Congress, call for general reflection and practical measures. They may indirectly concern the conditions of candidacy (an obligation, if elected, to declare assets or interests) and constitute guarantees for faultless democratic functioning in contemporary society.

16. While acknowledging that it is natural that member States, for cultural and historic reasons, have different nationality and residency requirements, the Congress believes that electoral regulations need to keep pace with the changes in society and, in particular, the increasing number of citizens who are relocating to live and work on a permanent basis in other countries.

17. The Congress bears in mind:

a. Statutory Resolution CM/Res(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto;

b. the Venice Commission’s Code of Good Practice in Electoral Matters (2002);

c. the Venice Commission’s “Report on electoral law and electoral administration in Europe” (2006);

d. its Recommendation 273 (2009) on equal access to local and regional elections;

18. The Congress thanks the Venice Commission and the Council for Democratic Elections for their comments on the draft report.

19. The Congress therefore recommends that the Committee of Ministers invite the governments of member States to:

a. review their domestic legislation with regard to local and regional elections, in order to ensure that:

i. the minimum age at which a person may stand for election to any elected office at local and regional levels be no greater than 18 years in all member States;

ii. there be no maximum age limit for standing in local and region elections;

iii. the length of residency requirements for nationals standing for election, where a minimum length of residency is applied, should be as short as administratively possible;

iv. requirements of financial deposits and supporting signatures, where applied, specify amounts that are reasonable and proportionate to the size of the electoral district;

v. independent candidates be allowed to stand in all local and regional elections, without unduly restrictive requirements of financial deposits and supporting signatures;

vi. those countries that currently apply an automatic ban on standing for election following certain criminal convictions, review their legislation in order that any decision of ineligibility require a specific judicial decision of limited duration, and be proportionate to the seriousness of the offence committed, in conformity with the case law of the European Court of Human Rights;

vii. citizens be permitted to run for election regardless of whether they hold a function that is deemed incompatible with elected office, with the condition that anybody who holds such a function resign from the said function on being successfully elected;

b. consider practical measures to increase the proportion of women standing for election, such as the use, in party list elections, of gender quotas and other measures that are compatible with preference voting systems;

c. take steps to encourage foreign nationals, legally residing in and contributing to society, to participate actively in their communities, through initiatives such as foreign residents’ councils and by improving their local and regional electoral rights.

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1. Debated and adopted by the Congress on 26 March 2015, 3rd Sitting (see Document CG/2015(28)7FINAL, explanatory memorandum), co-rapporteurs: Oleksii Honcharenko, Ukraine (R, SOC) and Viacheslav Rogov, Russian Federation, (L, ILDG).