

Democratic elections

Criteria for standing in local and regional elections

Congress of Local and Regional Authorities
of the Council of Europe

The Congress



Le Congrès

COUNCIL OF EUROPE



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Foreword

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 most important pillars of any democracy. It is essential therefore that this right, as well as any limitations applicable to it, are carefully and clearly defined.

The political systems of Council of Europe member States express, each in their own way, a certain idea of democracy which 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 practice it. But it remains founded on the principle of free and fair elections.

Since its adoption in 2002, the Venice Commission's Code of Good Practice in Electoral Matters has served as a reference standard for the Congress of Local and Regional Authorities of the Council of Europe in assessing the implementation of existing legislation in this field. However, the Congress considers that the maturity of the political systems of the Council of Europe member States and the increasing expectations of their citizens made it necessary to complement the code by

elaborating conditions of eligibility to stand in elections and good practices for organising them.

The Congress stresses that it is essential for the health of local and regional democracy to give the largest possible share of the electorate the opportunity to stand for election and calls on governments to review their legislation with the aim of eliminating unnecessary restrictions on standing for election.

The report on the criteria for standing for local and regional elections, adopted in 2015 by the Congress, addresses the eligibility requirements relating to the person: age requirement to stand for election, link with the community or the state (residency and nationality), enrolment in electoral registers, candidacy for non-nationals, as well as the situation with regards to military obligations. In addition, the report examines the rules of ineligibility, whether based on functions performed, number of consecutive mandates or judicial decisions, as well as the issue of incompatibility, gender balance in the composition of local and regional assemblies and practical measures.

The Congress of Local and Regional Authorities has conducted regular activities to observe local and regional elections in the Council of Europe member states, and sometimes beyond, since 2001. This activity complements the political monitoring of the European Charter of Local Self-Government, a unique international treaty which is the cornerstone of local democracy in Europe.

The “Democratic Elections” series presents reports adopted by the Congress on recurring and transversal issues relating to local and regional elections.

- ▶ The situation of independent candidates and opposition in local and regional elections (2022).
- ▶ Beyond elections: The use of deliberative methods in European municipalities and regions (2022).
- ▶ Holding referendums at local level (2021).
- ▶ Local and regional elections in major crisis situations (2020).
- ▶ Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe’s municipalities and regions“(2018).
- ▶ Checklist for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level (2017).
- ▶ Criteria for standing in local and regional elections (2015).
- ▶ Electoral lists and voters residing de facto abroad (2015).
- ▶ Voting at 16 – Consequences on youth participation at local and regional level (2015).

Criteria for standing in local and regional elections

Explanatory memorandum

CG/2015(28)7FINAL

26 March 2015

Governance Committee

**Co-rapporteurs: Oleksii HONCHARENKO,
Ukraine (R, SOC) and Viacheslav ROGOV,
Russian Federation (L, ILDG)**

Summary

The right to stand for election at local or regional level is a key component of local and regional democracy. While there needs to be some regulation to weed out spurious candidates, the health of territorial democracy depends on the greatest possible proportion of the electorate being able to stand for election.

The rapporteurs believe that there remain too many restrictions on standing for local and regional elections. The increase in mobility in Europe is raising expectations and highlighting the drawbacks of maintaining practices and regulations that are overly restrictive in this respect. Governments are invited to review their legislation with a view to removing unnecessary restrictions on standing for election.

The Congress therefore asks its committees to work with the Venice Commission in drawing up a supplement to the Code of Good Practice in Electoral Matters to address the issue of criteria for standing in local and regional elections.

INTRODUCTION

The information in this report was supplied by the Group of Independent Experts on the European Charter of Local Self Government in response to a questionnaire on the situation in the domestic law in Council of Europe member states with regard to the criteria for standing for election (Appendix ii). Due to the wide variety of political, legal and administrative systems in Council of Europe member States, some responses to the questionnaire were more complete than others, which is reflected in the report.

For all their diversity, the political and electoral systems of all Council of Europe member states apply the principle of democracy, namely “government of the people, by the people and for the people”. The principle has often been applied and tested initially at local level since it was consistent with immediately discernible objectives or necessities: cohabitation of the different components of the community; need to unite first and foremost to ensure protection and establish new means of securing the community’s well-being.

A number of European countries have adapted their legislation to take account of recent trends in increased social mobility. Others retain restrictive practices that seem increasingly at odds with contemporary society. The health of any democracy depends on its ability to adapt to social realities, and this is a strong argument for the Council of Europe to take a lead in recommending minimum standards and good practice with regard to eligibility to stand for election.

It is thus only logical that the Congress, being responsible, in liaison with the Committee of Ministers, for local and regional

democracy issues in the Council of Europe, should concern itself with this question, on which all the others depend. Indeed, there is no hope of autonomous and effective local and regional democracy without the prior guarantee of free and fair elections.

One of the foremost activities of the Congress in this field is its election observation missions, which it organises at the invitation of the country concerned. These missions and the subsequent reports underline on each occasion the importance and the value of having Europe-wide election standards, against which to measure the degree to which any election is free and fair. They are a way of tangibly sharing a system of common values and assessing together the means by which these are realised. Indeed, principles are of little use unless applied practically and visibly by their main beneficiaries.

In that respect, the Congress enjoys the experience entrenched and shared by its members, and the “good practices” which they have gradually built up and verified on the ground. It can also rely on the outstanding reports of its partners in the Council. Here a special place can worthily be assigned to the Code of Good Practice in Electoral Matters, adopted by the Council of Europe’s Venice Commission in 2002¹ and to the Venice Commission’s 2006 “Report on electoral law and electoral administration in Europe – Synthesis study on recurrent challenges and problematic issues”² which supplements

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1. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023-e)
 2. [http://www.venice.coe.int/webforms/documents/CDL-AD\(2006\)018.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2006)018.aspx)

the former. The Congress can also refer to the OSCE/ODIHR's International Standards and Commitments on the Right to Democratic Elections, published in 2002³.

In the light of these experiences, the Congress has been able to register the positive aspects of these exchanges and today can claim credit for the advances of democratic awareness and practice at the local level, among the most recent members of the Council of Europe too. It is this very maturity of the political systems of Council of Europe states, and the ever-stronger aspirations of its citizens, which convinced the Congress that the time was right to deepen further the democratic processes in the member states, beginning with a review of the criteria for standing for elected political office at local and regional level.

The basic legal qualifications to stand as a candidate are those that apply to voters: national or EU citizenship, being of age, and in full possession of civil and political rights. If any other requirements are laid down, it is important to ensure that these are reasonable, and objective and meet international standards. In order to avoid the nomination procedure being used in a discriminatory way, countries should make sure that it is clearly stated in the law what the qualifications are.

There are two principal categories of restrictions on candidacy: those directly involving a candidate's personal qualifications (such as requirements of property ownership, residency and age) and those indirectly restricting candidates because

3. <http://www.osce.org/odihr/elections/66040> (English only)

they regulate the electoral process (such as deposits and supporting signature requirements).

In general, laying down too many requirements carries with it the risk of creating legislatures or other elected bodies that are dominated by an unrepresentative elite. This report examines the main categories of criteria that are used in most member states. It will focus on each of these in turn, while providing country-specific examples.

ELIGIBILITY REQUIREMENTS RELATING TO THE PERSON

The most obvious is age. It can symbolise the self-confidence of society. Choosing an early age signifies confidence in its system of education and integration, as well as awareness that democracy demands perpetual renewal and can be a school for responsibility.

Age requirement to stand for election

Age of candidacy is the minimum age at which a person can legally qualify to hold certain elected government offices. The current requirements of candidacy age in Council of Europe member states are listed in Appendix i.

Two groups of states are distinguishable: those where the age of eligibility to stand is identical to that of entitlement to vote, i.e. in principle 18 years, and those who differentiate between the two rights. The majority of Council of Europe member states are in the first group, 35 out of 47 countries fix the age of candidacy at 18.

Conversely, a distinction in the exercise of these rights applies in the other states, with a difference dating back only a few years. In most cases it is because the candidacy age is higher than the age of entitlement to vote. This is the case in Lithuania (eligibility fixed at 20 years), Armenia, Azerbaijan, Cyprus, Monaco, the Russian Federation (21), Romania (23) and Turkey (25).

In other cases, while there are differences, they are reversed as the voting age can be lowered to 16 years for local elections, with the age of eligibility to stand remaining fixed at 18 years. This type of situation is encountered in certain German Länder and in Austria. Quite frequently the age for performing the functions of a local executive body is higher than for membership of a local assembly. In Germany, the office of mayor may be reserved in certain Länder for older persons, up to 27 years of age. In Armenia, mayor's office is reserved for persons of at least 25, and even 30 for the capital city of Yerevan, 25 in Cyprus for discharging the office of mayor or community president, 21 in Greece to be a mayor or president of a region, 25 in The Republic of Moldova for mayoral office, and 25 in Slovakia too, for the offices of mayor or president.

In several of these countries, this question is regularly debated at national as well as at local and regional levels. Campaigns are conducted to lower the age of candidacy to the European norm of 18 years.

In most countries adulthood, when many rights and responsibilities begin, is deemed to commence at 18 years of age. This majority termed civil and criminal majority, is even frequently lower (16 years). To discriminate against young adults, by not

allowing them candidacy rights at the same time as voting rights, is to deprive them of a representative voice, which is against the spirit of universal suffrage.

The rapporteurs believe that the maturity required for candidacy should be determined by voters and voters alone, and that there should be no discrimination against young adults. Voters should be trusted to choose the most appropriate and qualified candidate to represent them.

At the other end of the age spectrum, only certain German Länder and Swiss cantons set maximum age restrictions for local and regional candidates, with limits varying from 60 to 67 years of age. Again, it would seem more appropriate for voters to be left to decide whether advanced age is a valid reason not to elect a candidate.

Criteria concerning the link with the community or the state: residency and nationality

Criterion of residency and of enrolment in electoral registers

The links which are capable of legitimising a candidature in a given community vary greatly according to history, culture and national practice. This is especially true of residence requirements, and it is a question which arises as much for nationals as for non-nationals. Residence is not always a condition of eligibility.

European countries have significant differences with respect to residency criteria. All countries have as a criterion that their nationals, on condition of residing there, may stand in

local and regional elections (with differences as to conditions, particularly duration). In most states, one must be a voter and be registered on an electoral roll. This does not mean being obliged to vote where one is a candidate, and that there is a formal link between the two conditions. The Russian Federation or Turkey, for example, clearly dissociate the two prerogatives, the right to vote and to stand for an election.

In most cases however, the link stipulated is that of residence, and its required duration is not very long as a rule. That is the position of some German Länder where, while the link between membership of the electorate and eligibility is necessary, there is no strict uniformity (if only regarding the required age which is not the same, see below).

The residence requirement is variable: in Germany (obligation to reside in the territorial entity usually for three months for council candidates), in Norway (three months), Armenia (six month residence requirement), Latvia (ten months), Greece (two years), or Azerbaijan (five years).

In many cases no reference is made to a minimum term: the statutes seem to imply a form of permanent residence: Albania, Cyprus, Denmark, Estonia, Finland, Iceland, Lithuania, “the Former Yugoslav Republic of Macedonia”, Serbia and Slovakia. Slovenia also accepts EU citizens who have registered as permanently or temporary resident in the country, the important point is that they must be registered. In this context, the meaning of “residence” appears to be identical with the legal concept of domicile.

The reply by the Netherlands indicates that one must live in the municipality, residence being the sole criterion. In

Romania, one must be a permanent resident. In Sweden, it suffices to be on the electoral register 30 days before the election. The register itself originates from the population register. Similarly, in Denmark it suffices to be on the electoral register seven days before the election. Here again the electoral register is derived from the population register, based on people's permanent residence. In Switzerland, residence is usually necessary and automatically entails payment of a tax.

In Austria, candidates must have their main residence in the municipality; those who have lived there for less than a year can be refused the right of candidacy if their stay in the municipality is only temporary. In Luxembourg, nationals should have resided in the municipality for at least six months and non-nationals should also be resident in Luxembourg for the five years prior to the election.

Permanent residence in the municipality must also be certified in Azerbaijan. British nationals can stand for local election if they meet one of the following residency requirements: they are registered to vote in the local authority area; they have lived or worked in the local authority area for the whole of the previous 12 months; they have occupied land or premises in the area during the whole of the previous 12 months.

In Iceland, the general rule is that any person able to vote can also stand for election. Icelandic citizens must have their legal residence in the municipality, with no criterion of duration. In Croatia, to be able to stand for election to the municipal council, the candidate must be resident in that community on election day. But, to be a candidate in the elections for Head of Municipality, Mayor or County Prefect, a person must

be resident in that community for at least six months before election day.

In Latvia, candidates must comply with at least one of three residency conditions: they have been registered in the administrative territory for the previous ten months; they have been working in the administrative territory for at least the previous four months (in a private or public organisation or self-employed); they own real estate in the administrative territory.

While there is no strict rule in Spain except registration on an electoral list, it would nevertheless seem, as the expert aptly observed, that “tradition and culture make it virtually obligatory to have a link with the municipality”.

The same applies in Ireland, the eligibility criteria state that a candidate must be ‘a citizen of Ireland or ordinarily resident in the State’ whereas a voter must reside in the electoral area concerned. Nor is there any link, enforceable in law, in Malta, or in Italy (with the exceptions of the Region of Valle d’Aosta and the Province of Trento, where a candidate must be a resident for a year without interruption, and the Province of Bolzano, where you have to be resident), The Republic of Moldova, Poland, Portugal, the Russian Federation or Turkey, which precisely corresponds to the absence of a link, mentioned above, between the status of elector and person qualified for election, at least where some countries are concerned. France is the only country identified as having an eligibility requirement involving a tax link with the municipality or region where the candidate wishes to be elected.

Finally, it is appropriate to mention the case of countries where there are ineligibilities precisely on the ground of the functions performed in connection with the territorial entity concerned: employees of the entity whose administration the candidates seek to join, and contractual links with the local authority. This is so in Cyprus, Greece, Finland, France, Italy, Latvia, Liechtenstein, Lithuania, Malta, Norway, the Netherlands, Portugal, Romania (where the list of ineligible persons is long), Slovenia and Switzerland. This pertains to the question of ineligibilities to be addressed below.

Several countries use population registers and electoral lists as a way to verify the residency criteria. In Albania and Estonia, a precondition for eligibility is to be enrolled on the registry of permanent inhabitants of the locality where the candidate wishes to stand for election. In Estonia and Sweden, the population registers also constitute the electoral roll.

In Cyprus, Denmark, Finland, France, Greece, Italy, Latvia, Liechtenstein, Monaco, the Netherlands, Portugal, Spain and 'the former Yugoslav Republic of Macedonia', registration on the electoral roll is a condition for eligibility.

Candidacy for non-nationals still a limited possibility

Despite recent extensions, access to candidacy is still fairly limited for non-nationals. A number of concessions towards countries having cultural, historical or legal ties with the state concerned can be noted, however.

The 28 European Union Member States, together with Iceland, permit resident European Union citizens to stand for

municipal elections (here again with variable residence criteria). This is also the case in the United Kingdom for Commonwealth⁴ citizens. In Iceland, easier conditions are granted to the nationals of a number of countries with close cultural kinship: Danes, Finns, Norwegians and Swedes, for whom it suffices to have had their legal residence in Iceland for at least three years without interruption, whereas the period is five years for all others.

A small number of states display particular openness. In Ireland, to be a local or regional election candidate it suffices to be an Irish citizen or to reside in the entity concerned, with no condition as to nationality. In Sweden, candidates must be enrolled, as we have seen, in the electoral register of the local authority 30 days before polling day, but no nationality criterion is stipulated. In the Netherlands, inhabitants who are not nationals are eligible if they have lived in a municipality for over five years. Similarly, in Luxembourg there is no nationality condition, just a five-year residence condition.

Besides, distinctions may be drawn according to the types of office for which candidatures are entered.

In Armenia, only the mayor of Yerevan need be a national; for any other local election, foreign residents may stand if they meet the criterion of six months' residence in the locality.

4. The Commonwealth comprises 53 member states: www.thecommonwealth.org/member-countries. To be deemed able to stand for election, Commonwealth citizens should not require an authorisation to enter or reside in the United Kingdom, or otherwise should have obtained an indefinite residence permit for the United Kingdom.

In Cyprus, France, Italy, Lithuania and Slovenia, resident EU nationals can be elected municipal councillors but cannot be candidates for the office of mayor. The main justification is tied to the fact that the mayor can be called upon to perform functions on behalf of the state, thus participating in the exercise of sovereignty. In Poland, they cannot stand for election to district councils and regional assemblies; in the Slovak Republic they cannot be candidates for the presidency of the regional assembly.

In Albania, Azerbaijan, Liechtenstein, Monaco, the Republic of Moldova, the “former Yugoslav Republic of Macedonia”, the Russian Federation, most Swiss cantons and Turkey, only citizens are entitled to stand for local and regional elections. The electoral code of Azerbaijan furthermore excludes citizens with dual nationality. Likewise, the rules of ineligibility also apply to persons who have commitments abroad, or any other legal or political obligation arising from a permanent, regular or standing affiliation linked with the fact that they have lived abroad for over five years.

It is hard to find a rule which accounts for these contrasting situations. It has been argued for example that countries were all the more willing to accept the participation of foreign residents at local and regional level, the stricter they were about the conditions for acquiring their nationality (Sweden for example). The proposition could be reversed in other situations (France for example, a country which places a premium on “integration”). This kind of comment ought not to be generalised. For example, it has also been pointed out that certain countries were equally strict both about foreigners’ access to

the vote and about acquisition of nationality (German Swiss cantons for example).

Whereas it is natural that member States, for cultural and historic reasons, should have different nationality and residency requirements, the rapporteurs believe 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.

The Council of Europe has worked to improve the suffrage rights of foreign nationals through its 1992 Convention on the Participation of Foreigners in Public Life at Local Level (CETS No. 144). The difficulty of this subject for member States to address can be seen in the small number of countries which have ratified this treaty.⁵ Out of the eight countries which have ratified the Convention, two of them have declared that they are not bound by Chapter C, which grants all foreign residents the right to vote and to stand for election in local authority elections, provided that they fulfil the same requirements as apply to nationals and have been lawful and habitual residents in the state concerned for the five years preceding the elections.

The rapporteurs believe that a great deal of work remains to be done in many member states to improve the local and regional electoral rights of foreign nationals legally residing in and contributing to their society.

5. Convention on the Participation of Foreigners in Public Life at Local Level (CETS No. 144).

Situation as regards military obligations

The introduction of a criterion like this may be surprising in that issues of gender parity would seem to militate against its recognition, as military service has long been a male preserve. A large number of countries have already abolished it.

It appears logical nonetheless to mention it to the extent that it still survives and takes on a symbolic value for some (it was long the symbol of a “preparation” for life in society, hence a factor in the individual’s maturity).

In virtually all countries, there is no link with ineligibility, among other reasons because there is no conscription: this is so in Albania, Armenia, Austria, Azerbaijan, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and “the Former Yugoslav Republic of Macedonia”.

A few countries have a special situation. Croatia, Estonia and the Republic of Moldova only provide that serving military personnel cannot stand in an election. In The Russian Federation, national service obligations must have been met, which is valid for both sexes. Likewise, the law in Turkey stipulates fulfilment of one’s military obligations, but for men only.

This question nevertheless remains fraught with ambiguity. Having met national service obligations is not necessarily synonymous with military service. It is nevertheless apparent on reading the replies that this is how the question has been construed. It is possible to contemplate situations in which

candidacy is possible only if candidates have met a national type of obligation in the form of days devoted, or other contributions made, to the public interest.

RULES OF INEGIBILITY TO STAND

Distinction between ineligibility and incompatibility

In most democratic countries there are conditions of eligibility for local elections. Moreover they are often portrayed as rules of ineligibility owing to the legal presumption that the citizens, on principle, qualify for election. These are the rules which can prevent, restrict or prohibit participation in an election for local election candidates, or their election if they do stand.

These rules on ineligibility should be distinguished from the rules relating to incompatibility, that is from the rules against discharging a local mandate at the same time as other mandates, whether national or local, or at the same time as holding certain occupations. Whereas incompatibilities are relative in their effect and compel the elected candidate to relinquish one of the mandates already held, or else the new mandate gained or the functions performed, the rules on ineligibility in principle have an absolute effect and either preclude putting up a candidature or lead to termination of the mandate when election has occurred despite non-compliance with these conditions.

Cases of ineligibility to stand are assessed on polling day and are of a public law nature, signifying that they cannot be

retroactively made good: for example, a candidate who at the date of election has not reached the minimum age of candidacy and has been elected cannot stand as from the date of reaching the stipulated age.

The cases of ineligibility and incompatibility alike are not a question of custom but are statute-based and need very special provisions. Very often, in democratic countries, the rules on ineligibility and incompatibility are narrowly interpreted so as not to interfere with one of the essential rights of public life, that of standing for elections.

Moreover, therein lies an essential difference between the conditions laid down for “being a constituent” and for “being a candidate”. In the first instance it is a matter of verifying affiliation to the community; in the second, of organising as transparent and sincere a ballot as possible. The first is a right to participate; the second is placed in the context of a “competition”. This ineligibility may be due to a prohibition linked with the office (duty of impartiality) or to the imbalance in relation to the other candidates which might be created by the position held. This ineligibility may be absolute (over the whole territory and permanent, e.g. for a member of a constitutional court). It may be relative in spatial extent, and only concern the constituency where the function is performed, or in time, for a certain period after relinquishing office.

Cases of ineligibility relating to functions performed

From a perusal of the replies given, it sometimes seems difficult to distinguish what pertains to ineligibility and what

pertains to incompatibility. An effort has been made to distinguish, as the Venice Commission's Council for Democratic Elections wished, cases of ineligibility in the strict sense from incompatibilities between certain functions and the mandates for which those concerned were candidates. This is especially true of municipal employees or persons financially connected with the local authority. The solutions may vary.

All that is considered here are the examples where the person concerned must have resigned before the election. This is a particularly severe condition since the person concerned is expected to relinquish her/his functions without knowing the outcome of the vote. It may nevertheless be considered the most logical solution because the point at issue is the influence which the exercise of one's function may have on the sincerity of the ballot. It is a most dissuasive measure and leaves room only for highly motivated persons as they are ready to run a major risk for participating. Conversely, this type of measure can be seen as guaranteeing that a "non-elected technocracy" will not be supplanted by an "elected technocracy" in which too large a number of former public servants would participate in deliberations.

In Armenia, the list of occupations which carry ineligibility to stand for elections is very specific and exhaustive: members of the Constitutional Court, judges, prosecutors, police officers, members of the National Security Service and the Judicial Acts Compulsory Enforcement Service, rescue, tax and customs authorities, correctional institutions, as well as military servicemen and members of electoral commissions may not stand as candidates for the office of mayor or member of a local Assembly. In Azerbaijan, serving military

personnel, clergy and judges are considered ineligible to stand for election.

Spain deems ineligible to stand for local elections, among others, members of the royal family, presidents of the Supreme Court, the Constitutional Court and the Court of Audit, the ombudsman and deputy ombudsman, members of the judicial system, military personnel and the governor of the central bank. The same applies in France, for example to members of the Constitutional Council or of certain independent authorities such as the defender of rights or the members of the new high authority for the transparency of public life.

A similar list of occupations carrying ineligibility exists in Cyprus and also includes serving politicians.

Ireland specifically disqualifies members of the EC Commission, MEPs, Judge/Advocate General/Registrar of the EC Court of Justice and members of the EC Court of Auditors, as well as Irish ministers, judges, the Auditor General, members of the Garda and defence forces, civil servants and employees of local authorities or the Health Service Executive who do not have express permission in their terms of employment to stand for election.

In Italy, the following cannot be elected in the territory in which they perform their duties: government commissioners, prefects and deputy prefects, religious ministers and clergy, members of bodies that exercise institutional control over public administration, the judiciary, health administrators, mayors, presidents of provinces or regions, municipal, provincial and regional councillors from another territory, province or region, directors of joint-stock companies with a majority

shareholding in the community concerned and directors and employees of a consortium or a firm managed by the community concerned.

Certain countries, like Finland and Portugal, limit ineligibility to civil servants of a certain grade, and in Sweden only the chief executive of a local authority cannot be elected to the municipal council while in office. In Estonia, only serving members of the armed forces are disqualified from standing in local elections. In Croatia, police officers, members of the military and staff are ineligible.

In England, Wales and Northern Ireland, all municipal employees are ineligible, including those who hold certain posts in schools, fire services, police or health services, a similar list of ineligible employees is applied in Luxembourg. Greece also requires employees of the local authorities to resign from their positions before the campaign period opens and it also does not allow contractors of the local authority to stand for election if they hold contracts worth more than 5,000 Euros.

In Liechtenstein, if two candidates are related, in a direct line or up to the third collateral line, through marriage, through living in a registered or de facto partnership, or who are relatives to the second degree, including family-in-law members, only the one who obtains the most votes will be elected to the municipal council. Members of government, administrative and constitutional courts as well as employees in a position of chief executive to the municipal council are also barred as standing as candidates.

Latvia excludes people who have held staff positions in State security, intelligence, or the counter-intelligence service of

the former USSR, the Latvian Socialist Soviet Republic or some foreign state.

In France, certain functions or occupations within the commune or a neighbouring commune may be subject to a “relative ineligibility” for a varying period. This ineligibility can be six months (e.g. magistrates), one year (chief veterinary inspectors, sub-préfets) or three years (préfets) according to function or occupation. This list of functions or occupations was extended as from 23 March 2014. In the case of municipal or commune elections, an employee of the commune should have resigned by the date of the election.

Cases of ineligibility relating to the number of consecutive mandates

Few countries limit the number of consecutive mandates. Where such restrictions exist, they only concern specific mandates. In Italy for example, presidents of regions and provinces and mayors cannot be immediately re-elected if they have already held two consecutive mandates; in Portugal, the president of the executive body cannot hold more than three consecutive mandates in the same body (be it a municipality or a parish).

Very few countries seem to apply a time limit to local mandates, for instance by not permitting more than “x” mandates to be served at a time. Armenia, Austria, Azerbaijan, Denmark, Spain, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Malta, The Republic of Moldova, Norway, the Netherlands, Poland, Romania, Serbia, Sweden, Slovakia, Slovenia

and “the Former Yugoslav Republic of Macedonia” have no such rules.

It is therefore a matter of coincidence in time and does not concern the question, sometimes confused with it, whether or not the same elected candidate can stand or be elected in two territorial entities at the same tier, for example in two municipalities at the same time.

Portugal nevertheless requires that the same elected representative should not serve more than three mandates, but this requirement apparently concerns executive offices alone. Prior to the last local elections in Portugal, the Constitutional Court found that a person who had served three consecutive mandates as president of one municipality could still present themselves as a candidate to be president of another municipality.

In some Swiss cantons, mandates are limited to two or three at a time. In Turkey, while there are no statutory conditions, rules may be laid down by certain political parties to stipulate that three mandates at the most be held.

Cases of ineligibility subsequent to a judicial decision

This question is plainly one of the most sensitive as it can result in denial of the right to stand for reasons not directly related to the election. It may indeed be very tempting for a political power to strip opponents of this right by invoking grounds derived from criminal law, in the knowledge that the “opposition” can quite easily be incriminated on the pretext of unworthy or “antisocial” conduct.

States differ considerably as to whether or not this condition is taken into account.

Likewise, the question whether the perpetration of certain offences should automatically entail withdrawal of eligibility, or whether this should be imposed case by case, receives fairly divergent replies illustrating differences in the perception of the link between seriousness of the criminal offence and disqualification from standing for an election, even where regarded as local.

A common automatic exclusion from standing for local and regional election applies to citizens convicted of a criminal offence in relation to elections. Ireland only excludes people who are currently serving a prison sentence of more than six months. In Ireland there is automatic exclusion of people convicted of an offence linked to a local authority.

In the United Kingdom, people sentenced to imprisonment (including suspended sentences) of three months or more in the five years before the election are ineligible to stand as are those who are subject to a bankruptcy restrictions order. People who have committed a corrupt or illegal practice under electoral law are disqualified from standing for election.

Some countries have a blanket ban on people who have been convicted of a crime, such as in Armenia, and in the Republic of Moldova all people who have been imprisoned are automatically ineligible to stand for election.

In Azerbaijan, those who have been convicted of a serious crime and imprisoned for more than 12 years are ineligible to stand.

Usually, in Austria, ineligibility results from someone being convicted of a criminal offence that was intentionally committed, provided that the sentence is imprisonment for more than one year. The ineligibility is an automatic “additional” sentence and usually ends six months afterwards.

Several countries take a case-by case approach to criminal convictions leading to ineligibility to stand for election, such as Luxembourg, where ineligibility follows a specific decision of a court, and Denmark, where some criminal convictions can render a person ineligible to stand for election for three years, possibly increased to five years depending on the crime committed.

In Norway, ineligibility is limited to offences against the state and offences related to electoral procedures. France also limits ineligibility to certain convictions, in particular those which can impact a person’s credibility as an elected officer, such as convictions for fraud and election offences. However, the period of exclusion cannot exceed 10 years.

In Poland, persons sentenced to imprisonment for an intentional indictable offence or intentional tax offences are automatically ineligible for election.

In the Russian Federation, criminal convictions cannot render a person ineligible to stand for election if the sentence has been completed.

In Spain, criminal convictions can render a person ineligible to stand for election, such a disqualification being one of the types of penalties that can be ordered by criminal courts for the offences of rebellion, terrorism, crimes against the

public administration or against the state institutions, political-administrative corruption (bribery, embezzlement, etc.). However, convictions of these crimes do not automatically lead to loss of eligibility; it is imposed on a case-by-case basis and can be mitigated. 'General' disqualification means automatic removal from elected office and ineligibility to stand for local, regional or national elections; this ineligibility may last from six to 26 years. A 'specific' disqualification also leads to automatic termination of the elected office the offender holds and disqualifies the offender from running for the same elected position (as was held at the time of the offence) for between three months and 20 years.

In Iceland, some criminal offences that fulfil certain criteria laid down in law lead to automatic loss of eligibility to stand for local election. Lithuania excludes people who have a court-imposed sentence which has not been completed 65 days before elections. However, all candidates must declare all convictions of serious criminal offences from Lithuanian or foreign courts, and campaign posters of the candidate, or posters listing candidates' names, must contain the following note next to the surname of the candidate concerned, 'Has been found guilty of a criminal act by the court'.

In Cyprus, a person declared bankrupt who has not been discharged is also ineligible to stand for elections, as is a person who has been convicted during the last five years (for municipalities) or 10 years (for communities), prior to the official announcement of the candidates, of a criminal offence involving dishonesty or immorality. For the communities, the law also provides that a person who has been deprived of the

right to be a candidate by a court judgment regarding any offence relating to elections cannot participate.

In Malta, persons are automatically ineligible to be candidates in local elections when they are sentenced to more than 12 months' imprisonment (including suspended sentences); undischarged bankrupts are also ineligible. In Monaco, persons are automatically ineligible when they have committed certain crimes on a pre-established list.

In 'the former Yugoslav Republic of Macedonia', only persons who have been sentenced by a final court decision to at least six months' imprisonment but have not yet started to serve the sentence, or those who are serving a sentence, are ineligible to stand in local elections.

The Italian penal code provides that there can be a permanent ban on holding public office (hence, ineligibility to stand for election) for those sentenced to prison for longer than five years. Persons convicted of certain crimes are also ineligible (such as conspiracy, crimes against public administration or abuse of public office and public services). For less serious crimes it is at the discretion of the judge to decide how long the ban should last. New premises for ineligibility have recently been introduced: conviction for certain crimes (conspiracy, crimes against the public administration and abuse of power, with a sentence of imprisonment for more six months, intentional offenses carrying a sentence of imprisonment for more than two years) or when a person is suspected of belonging to a mafia association.

In the Netherlands, it is also at the discretion of the judge on a case-by-case basis. If someone is sentenced to more

than five years and if the crime was considered to be a crime against the foundations of the state, the person can be ruled ineligible.

In Turkey, the rules concerning ineligibility are the same for national and local elections. People sentenced to imprisonment for more than a year (with the exception of convictions for negligence) are ineligible to stand for election, as well as people convicted of the following criminal offences: embezzlement, peculation, bribery, robbery, fraud, counterfeiting, abuse of faith, fraudulent bankruptcy, smuggling, public bid rigging, revealing state secrets, participating in or provoking genocide or crimes against humanity and terrorism. However, citizens held in prison awaiting sentence remain eligible to stand for election.

Only in Slovenia and Sweden do criminal convictions have no impact on eligibility. Although there is a wide variety of practices and procedures in member states, there are some practices that are common to several countries and can be seen as good practice, such as decisions on ineligibility following criminal convictions being taken on a case-by-case basis and such exclusion being for a limited time.

Another common practice is that people currently undergoing a prison sentence are ineligible to stand for election. However, it is important that this imprisonment follows a final judgement as this practice can be abused in the run-up to elections; candidates in some countries have found themselves imprisoned on trumped-up charges, leading to their ineligibility, and find themselves proven innocent and released after election day.

In Poland, persons who have been sentenced for disclosing information from documents of the state security bodies between 1944 and 1990 are ineligible to be candidates.

This rapid overview nevertheless demonstrates the importance of this particular ground of ineligibility.

It would no doubt be desirable to remind all countries concerned that a recent leading judgment of the European Court of Human Rights prohibits the enforcement of systematic incidental penalties following criminal convictions. Each case of ineligibility must be the subject of a specific court decision. The importance of proportionality between the offence and the additional penalty incurred should also be borne in mind.

Lastly, it will be observed that the development of legislation linked with moral enhancement of public life will probably result in more cases of ineligibility, albeit on new foundations and directly in connection with the election.

INCOMPATIBILITIES

Incompatibilities differ from ineligibility chiefly in that the former are assessed once election is attained, meaning that they are no impediment to candidacy.

In Latvia for example, members of parliament and government, judges, auditors and military personnel can be candidates in local elections but are required to resign their positions if elected. Lithuania also allows the members of certain professions to stand, subject to resignation if elected. In Croatia there is a list of over 60 positions which are

considered incompatible with the representative and the executive branch of local and regional government.

Some countries show more understanding than others towards candidates who are municipal employees, considering them to perform functions which are incompatible but do not as such disqualify them.

In Scotland, council employees may stand for election to the council they work in, but if elected, they need to resign from their post on the next working day after being elected, the resignation being effective immediately. Municipal employees and persons contracted to local authorities can stand for elections in Cyprus on the understanding that if elected they will resign from the position or terminate their contractual relationship or provision of services.

The list of functions which render citizens ineligible to stand for local and regional elected office is long and varied. The cultural and historical differences between countries are clear and understandable. However, the most appropriate and least discriminatory method, which is used in several countries to manage conflict of interests between functions and roles, is to make these functions incompatible with holding local and regional elected office, on the understanding that those performing a function incompatible with the mandate sought will immediately relinquish the function if elected.

This question of incompatibilities which, it has been pointed out, is strictly legal, should not moreover be confused with the new legislations on prevention of conflicts of interest which are aimed at verifying the elected representative's independence in the discharge of his mandate, which may

prompt him to relinquish certain of the functions or activities disclosed in his declaration on commencement of mandate.

THE GENDER ISSUE: PARITY AND QUOTAS

Under this heading we have consolidated the replies to the fairly simple question whether candidates of either sex can stand for election, and to the more complex one of parity or quotas which invites far more varied replies.

Equality in respect of the right to stand for election is present in all member States.

Regarding the second question, states where parity, quotas and so-called affirmative action are unknown should be distinguished from those which have established such rules, in the belief that they were the best way of ensuring real equality between women and men, at least in electoral matters.

The first category (where there is no affirmative action) includes: Austria, Azerbaijan, Cyprus, Denmark, Estonia, Germany, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Slovakia and Sweden. Nor are there quotas in Portugal, Romania, the Russian Federation, Switzerland or Turkey. In Finland, while no quota exists for local assemblies, it applies to local executives and groups of candidates.

Some replies emphasise that the political parties may be making endeavours towards this in spite of everything, outside all legal constraints (cf. Germany). Accordingly, in the Republic of Moldova a law invites the parties to represent men and women without discrimination.

In contrast to these countries, others employ the quota technique with fairly wide variants. Only ten countries seem to apply quotas of women and men at local and regional elections. Thus in Armenia, parity on a group basis is only stipulated for election to the Yerevan municipal council. The law provides that there may not be over 80% of representatives of one gender per group of five candidates.

In Albania, 30% of the candidates on a list must be of the opposite sex and financial penalties apply. In Spain, the quotas are 40% but this rule is not applicable to municipalities with fewer than 3,000 inhabitants. In Greece, it is one-third, 35% in Poland for elections to the municipalities and districts, and 40% in Slovenia for multi-seat elections.

In “the Former Yugoslav Republic of Macedonia”, the electoral code provides that one of the three consecutive places on the lists must be set aside for a candidate of the under-represented sex so as to ensure that both sexes are represented. In Serbia, assessment per group of three candidates is also the basis for determining that one candidate must be of the other sex, for elections conducted by proportional representation. In Slovenia, if there are three candidates for election at least one of them must be of the opposite gender. If there are more than three, 40% must be of the opposite gender and in the first half of electoral lists, alternation of genders must be observed.

Very few countries impose complete parity for lists of candidates in local elections, at least where the elections are held with list voting. That is so in France, at least for elections conducted with list voting, as is precisely the case with most local

and regional elections (département council elections were an exception until a recent reform providing for the combined election of one candidate of each sex in each constituency).

In most cases the penalty is inadmissibility of the list, or refusal to register it. Sometimes the penalties may be financial, as in Albania.

Finland also has gender quotas for election to local executive organs but not local council elections.

In Italy, only the electoral laws for the Veneto and Sicily regional councils require exact parity through strict alternation between men and women on the lists of candidates. However, there are gender quotas for the other regional elections: Lazio, Puglia, Marche, Campania, Tuscany and Sicily (the last only for the provincial electoral districts) as well as the Trento and Bolzano provincial elections where candidate lists cannot contain more than two thirds (66.6%) of the same sex. In the Valle d' Aosta however, the maximum amount allowed is 80% and in the Friuli-Venezia Giulia region 60%. Similar standards are in force throughout Italy for municipal elections in towns with a population of more than 5,000 (for smaller towns the law says simply that the lists must contain candidates of both sexes).

In Spain, all electoral lists presented by political parties in the local, regional or national elections must have a 'balanced' structure, meaning that the number of candidates of each gender cannot be fewer than 40% of the total number of candidates. However, this general rule does not apply in local elections when the population of the municipality in question

is under 3,000; or when the population of an island is under 5,000.

The Council of Europe Congress is the first political assembly in Europe to have introduced, as of 2008, a minimum requirement of 30% female representation in its 47 national delegations as a condition for participation in its work. It strongly advocates gender quotas which it perceives as a means to give women a chance to enter political arena and to ensure that they have a head start in an area that has been traditionally reserved for men. Special attention should be given to the character of closed or open lists, as closed lists are more efficient but are not always possible.

ADMINISTRATIVE CONDITIONS FOR ACCEPTANCE OF CANDIDATURES: DEPOSITS AND

There are states where no party support or financial deposit is stipulated: Azerbaijan, Estonia, Finland, France, Germany, Greece, Luxembourg, Monaco and Sweden. In Ireland candidates must supply either a certificate of political affiliation or statutory declarations by 15 assentors registered as local electors in the electoral area concerned or lodge with the relevant returning officer a deposit of 100 Euros.

Other states make the admissibility of candidacy contingent on a choice between the support of a party or political group or a certain number of citizens' signatures. Either one of these conditions may be prescribed, or left for candidates to choose. But in these cases there is no additional requirement to make a financial deposit.

In others it is necessary to obtain supporting signatures whose number varies according to the size of the municipality. In Denmark for example, it is 25 signatures minimum and 150 maximum for the largest city, Copenhagen. In Italy, all electoral lists (except for elections in towns with less than 1,000 inhabitants) are supported by a number of voter signatures, which also varies depending on the population of the area and the type of local authority.

In Latvia, in municipalities with a population over 5,000, candidates have to be on a political party list, whereas in smaller municipalities members of the community can form an electoral association (alternative to a political party). In such cases the list of candidates submitted should be signed by at least 20 supporters from the community who are not standing for election.

In local elections in Serbia, lists of candidates have to be supported by at least 30 voters per candidate and the number of candidates on the list has to be at least one-third of the total number of councillors elected (local assemblies are free to determine the number of members; the law sets a minimum of 19, and a maximum of 75 for municipalities and 90 for cities, with a maximum of 110 councillors being allowed for Belgrade). In the Autonomous Province of Vojvodina, its 120 assembly members are elected according a mixed system. Half the candidates are elected using the majority system and have to be supported by at least 200 voters. The other half of the assembly are elected through the proportional system, and each list of candidates has to be supported by 6,000 voters, except in the case of political parties and coalitions of

parties of national minorities, who can propose candidates if their list is supported by 3,000 voters.

In Lithuania, candidates are obliged to provide signatures of support from not less than 20% of the voters of the municipality in which they wish to stand. Between 100 and 1700 voter signatures are required, according to the size of the municipality. A similar requirement exists for independent candidates in the Republic of The Republic of Moldova.

In 'the former Yugoslav Republic of Macedonia', candidates and lists of candidates can be supported by political parties or groups of voters. Only lists submitted by groups of voters need be supported by signatures. The number of signatures required varies from 100 (for a town with a population of 10,000) to 1,000 signatures (for the capital Skopje).

Liechtenstein also requires that candidates be supported by an electoral group of voters.

In Slovenian local assembly elections, candidates or lists of candidates can be supported by a political party, or by representatives of the Italian and Hungarian national community (minimum of 15 members of the community) or by Roma community representatives (minimum of 15 members of the community or a body of the Roma Association. Candidate lists require endorsement by 1% of voters in a constituency (not less than 15 but not more than 1,000); single candidates also need signatures of 1% of voters (and not less than 15). Candidates in mayoral elections need a minimum of 2% of voters' signatures (up to a maximum of 2,500) or support of a political party.

In Spanish municipal elections, candidates must be supported by a political party or citizen grouping. In most cases, candidates are included in a closed list put up by a political party, but it is possible for a group of independent candidates to form an electoral group (*agrupación de electores*). These electoral groups must collect a number of supporting signatures, equivalent to 1% of the registered voters. For local elections other than municipal, such as island councils, Basque provinces and regional elections, different conditions may be established according to the applicable (regional) legislation.

To stand for election as a councillor in Croatia, candidates who are members of a political party do not require any signatures. However, a citizen's group need to provide signatures for the candidate list; the amount can vary from 25 in the smallest communities, to 2,500 in the largest (Zagreb). Anybody standing for election as Municipality Head, Mayor or County Prefect, regardless of whether they belong to a political party or are standing as independent candidates, also has to provide signatures, the number varying from 35 to 5,000 in (Zagreb).

In Iceland there are two types of elections for representatives of municipal councils. Restricted elections by proportional representation are generally contested by several electoral lists. However, if there is no list of candidates or too few candidates, unrestricted elections can be held, where an election is not limited to declared candidates, but open to all electors eligible to vote (except those legally exempt from the obligation to serve and who have declared their refusal). When elections are restricted there must be, in general, support for each list. No supporters are required in municipalities with 100 residents or less, but in the bigger municipalities the number

of supporters required is linked to the population of the municipality and decided by law, varying from 10 supporters (municipalities with 101-500 residents) to 160 supporters (municipalities with over 50,000 residents). Supporters must also be voters in the municipality, and each voter may only declare support for a single list in each election. If elections are unrestricted, no supporters are required, since there are no formally declared candidates.

Similarly, in some Swiss cantons there are no formal candidate lists and voters are required to write a name on the ballot paper. Whereas all those eligible to vote in the canton are eligible to be candidates, in practice there are usually some 'known' candidates who have actively campaigned for election.⁶

In Latvia, all electoral lists are required to pay a deposit, the amount depending on the population of the municipality (128 Euros for the smallest and 850 Euros for the largest, Riga). If at least one member of the list is elected the deposit is returned, but if none is elected the deposit is transferred to the budget of the local authority.

In Malta, candidates must pay a deposit of 90 Euros (but this may be increased to 700 Euros). This deposit is returned if the candidate obtains at least one-tenth of the number of votes polled divided by the number of councillors to be elected.

In Turkey, candidates supported by political parties pay the party a certain amount, depending on the post (mayor,

6. OSCE/ODIHR Election Assessment Mission Report, Swiss Confederation, Federal Assembly Elections, 23 October 2011.

councillor, etc.). Independent candidates have to pay a deposit which is equal to the salary of the most senior civil servant, which can be a large sum. The deposit is only returned if the candidate withdraws from the election or wins.

It is standard practice to require independent candidates to have supporting signatures. This can be an effective way to ensure serious candidatures; however, it is important that the number of supporting signatures required is not unachievably high.

Few countries ask for a financial deposit to stand for election. Where this occurs, it is important that the sum is not such as to exclude certain parts of the population from running for election. Also, it can be expected that part of the deposit should be returned to candidates if they lose the election; indeed, citizens' willingness to contribute to their community by giving their time and energy to regional and local political life should not cost them money.

As in many areas, it is all a matter of proportion, and over-finicky formalities ought not to weigh against the feasibility of exercising fundamental rights. Besides, it is all a matter of the spirit inspiring the execution. Exchanges in the Venice Commission's Council for Democratic Elections, particularly with the representatives of OSCE/ODIHR, have shown that where an obligation to lodge supporting signatures applied, it was probably advisable to allow the voter freedom to set his signature to different lists. Besides the fact that acceptance of a signature is a democratic act allowing this right to be exercised by candidates of different origin and thus ensuring pluralism (although the fact that it may also serve to weaken

a given candidate's position cannot be concealed), plurality is also a way of preserving the secrecy of the ballot.

VERIFICATION OF CANDIDATURES AND RIGHT OF APPEAL

States are apparently divided into two broad categories, those where oversight of compliance is entrusted to an ordinary court and those with a reviewing authority, whose nature can vary, either administrative or independent, in which case review is often anticipative.

This second limb of the alternative is the more common. In this second situation, it is not excluded that remedies before the courts or before a "supreme court" may be possible

A third situation is encountered where the task of verifying mandates is assigned to the local bodies themselves. This situation exists in Luxembourg, with the right of appeal to the administrative court once the election is over. This is also the case in the Netherlands, where the municipal councils themselves verify the validity of the elections, with the possibility of appeal to the court in the event of contestation, which is frequent.

In Romania, the municipal council rules at first instance, here too with possible appeal to the court. A similar situation exists in Croatia, where all candidates are verified by the Electoral Committee (Municipal, Town, or County). The State Electoral Committee decides on appeals for County elections, while County Electoral Committee decides on appeals for municipal and town elections in their territory. It is also possible to appeal a State or County Electoral Committee's decision to the Constitutional Court of the Republic of Croatia.

Whatever the procedures followed, the sanction in virtually all cases is disqualification of candidates or lists.

Many countries have instituted electoral commissions, which are more or less similar in name and apparently identical or comparable in substance, which can verify the admissibility of the lists and register or reject them (Albania, Armenia, Austria, Azerbaijan, Iceland, Italy, Lithuania, Malta, and Turkey). Appeals against the decisions of these bodies are then possible either before the Constitutional Court (Malta), or an administrative court (Lithuania and “the Former Yugoslav Republic of Macedonia”), or a special chamber responsible for elections of the Tirana Court of Appeal (Albania); in Italy, in some cases it is possible to appeal to the administrative court and in other cases to ordinary courts. Equivalent rules are found in the Russian Federation, Serbia, Slovakia and Slovenia. In Denmark, verification of candidatures is performed by the electoral bureau whose decisions may be referred to a court, but the reply to the questionnaire states that this has never happened.

In Monaco, it is the Mayor’s office which verifies the respect of eligibility conditions with possible appeal before the ordinary court. In addition to the sanction of disqualification there is the possibility of imprisonment and/or a fine.

In other states the system of oversight is close to the above but entrusted to local electoral commissions with possible appeal to a national body where one exists, then a remedy before a higher court. This is the case in Spain where there is a specific electoral administration having control over the functioning of the elections, present at various levels, with

possible remedies before the supreme courts. It is also the case in Austria, where the Constitutional Court determines the lawfulness of the election, in Cyprus (remedy before the Supreme Court of Cyprus), Estonia (remedy before the Supreme Court), Finland, Latvia, Liechtenstein (remedy before the Constitutional Court) and the Republic of Moldova.

In Poland however, while the decisions of the local electoral commissions are indeed appealable before the national electoral commission, its decisions are not subject to appeal. That is the case in Norway too.

A few states assign review to the ordinary court (Germany, Greece and Portugal). This is also the case in France, but attention should be drawn to the function of oversight performed by the prefect as state representative overseeing the propriety of the elections. His decisions can be referred to the administrative court, but any voter or candidate may also petition it.

Special situations exist, as for example in Ireland, where a Returning Officer declares ineligibility, the decision on which can only be reviewed by the High Court which only verifies the legality of the procedure. Again, in Ireland, a 1500 euro fine is prescribed for anyone acting as a local authority member while not fulfilling the requirements for it. Sweden also has an original system since there are no specific rules about verifying the conditions to be met in order to stand for election. Indeed, entry in the tax authority's register 30 days before the election is what determines the right to vote, hence, also to stand. In the event of contestation, an appeal is

possible before the administrative court, where ordinary law is applicable.

There remains an aspect which it has not be possible to address in this report and would warrant a supplement. This concerns the measures which are not intended simply to define the “legal and material” framework of an election but to facilitate access to candidacy. This is not a novel goal but one which has taken on new proportions over the last few decades and has several facets:

- ▶ Assistance of a material (printing) or financial kind, for example reimbursement of at least a certain proportion of the expenses incurred, depending on the election result (idea of a minimum percentage of votes);
- ▶ Regulation of electoral expenses to avert any risk that the question of resources might cause unacceptable discrimination between candidates or between the parties that they represent. This limitation may concern both the amount and the origin of the funds or resources used (private or public). This balance between candidates thus converges with the older objective of averting pressure from the established power;
- ▶ Regulation of campaigns is sometimes accompanied by introduction of a public funding system for political parties or campaigns. This does not have unanimous approval, since it commits public funds and can be regarded as a step towards placing political life on a professional footing. It is a matter of appreciation, chiefly pertaining to the different countries’ habits and tradi-

tions, but must be mentioned in this report which aspires to be general in its scope.

CONCLUSION

This brief survey of eligibility conditions in member states shows that, while there remain significant variations in practice from country to country, there is an emerging consensus as to what constitutes good practice. It would be useful to analyse not only what is the situation at a given point in time, but what have been the major developments in legislation and practice in recent years. The Council of Europe has a clear role to play in developing minimum standards and identifying good practice in this area.

APPENDICES

Appendix i: Age requirements for candidates in local and regional elections in member states

| Country | Lower age limit | Further details |
|------------------------|--|-----------------|
| Albania | 18 | |
| Andorra | 18 | |
| Armenia | 21 (local assembly) 25 (mayor) 30 (mayor of Yerevan) | |
| Austria | 18 | |
| Azerbaijan | 21 | |
| Belgium | 18 (21) | |
| Bosnia and Herzegovina | | |
| Bulgaria | 18 | |
| Croatia | 18 | |
| Cyprus | 25 (mayor) 21 (council) | |
| Czech Republic | 18 | |
| Denmark | 18 | |

| | | |
|----------------------------|--|---|
| Estonia | 18 | |
| Finland | 18 | |
| France | 18 | |
| Georgia | 21 | |
| Germany | 18 except mayoral elections | Maximum age for elections of mayor and in certain Lander 67 years |
| Greece | 18 21 (mayor or regional president) | |
| Hungary | 18 | |
| Iceland | 18 | |
| Ireland | 18 | |
| Italy | 18 21 (Valle d'Aosta and Sicilia) 25 (Friuli-Venezia Giulia) | |
| Latvia | 18 | |
| Liechtenstein | 18 | |
| Lithuania | 20 | |
| Luxembourg | 18 | |
| Malta | 18 | |
| Republic of Moldova | 18 25 (mayor) | |
| Monaco | 21 | |

| | | |
|---|---|--|
| Montenegro | 18 | |
| Netherlands | 18 | |
| Norway | 18 | |
| Poland | 18 25 (mayors, heads of municipalities, presidents of towns) | |
| Portugal | 18 | |
| Romania | 23 | |
| Russian Federation | 21 | |
| San Marino | 18 | |
| Serbia | 18 | |
| Slovak Republic | 18 25 (mayors) | |
| Slovenia | 18 | |
| Spain | 18 | |
| Sweden | 18 | |
| Switzerland | 18 can vary 27 (Geneva canton) | Some cantons and municipalities have a maximum age limit on some mandates, which vary from 60 to 74 years. |
| "The former Yugoslav Republic of Macedonia" | 18 | |

| | | |
|----------------|----|--|
| Turkey | 25 | |
| Ukraine | 21 | |
| United Kingdom | 18 | |

Appendix II: Questionnaire on conditions for standing in local elections in Council of Europe member states

I. Questions on the legal rules relating to eligibility and ineligibility to stand for election

1. The nature of the provisions governing eligibility to stand for election

a. Are the rules on ineligibility laid down in the Constitution?

Are they the same – wholly or partially – as those applicable to national elections?

In the case of a positive answer to the previous question, must local elections be regarded as political elections?

In the case of a negative answer to previous question, are local elections regarded as administrative or professional elections?

b. Are the rules on ineligibility laid down in a law or in a code having legislative force?

In the case of a positive answer to the previous question, is this law an ordinary law or a higher-ranking law (e.g. an organic law, as in France, or the like)?

c. In federal states, regionalised states and states with autonomous regions, are the rules on ineligibility to stand in local elections laid down in a federal law, in the Constitutions of the federated states or in laws of the federated states (or in regional laws)?

Regarding the previous question, are there significant differences from one state to another, from one community to another or from one region to another?

NB: The replies to this question should be worded in general terms. The following questions provide the opportunity for more detailed replies.

d. Are the rules on ineligibility laid down in another type of instrument (e.g. decision of the executive)?

2. The scope of the provisions on ineligibility

a. Are they general provisions applicable to all local elections or are they specific to one level of government (if so, which one?)

b. If they are specific to one category of elections, is there a level of local administration for which the conditions of eligibility are stricter? Why?

II. Conditions of eligibility relating to candidates' personal circumstances

1. The requirement to be entitled to vote:

a. Is the right to stand for election necessarily linked to the right to vote?

If so, and independently of the other questions asked below, is it necessary to be on the electoral roll?

In the case of a positive reply to the previous question, must this be the electoral roll of the local authority in which the candidate is standing for election?

2. The possible existence of conditions relating to gender:

- a. Are local elections open to candidates of both sexes?
- b. If not, why is a distinction made?

3. The possible existence of a nationality condition:

- a. In the case of local elections only, are only nationals of the national, central or federated state eligible to stand for election?
- b. In states other than European Union member States, are non-nationals entitled to vote in local elections? If so, to what local elections does this apply (municipal elections only? other local elections?)

In the case of a positive reply to the previous question, is the right to stand for election restricted to mandates as a member of a local assembly? Or does it extend to other municipal offices?

- c. In European Union member States, are the conditions imposed by EU law complied with in terms of recognising

the right of EU nationals to stand in municipal elections? If not, why?

In the case of a positive reply to the previous question, what is the legal status of the rules giving EU nationals the right to vote in local elections (constitution, legislation or other?)

In the case of a positive reply to question c-, is the right to stand for election restricted to mandates as a member of a local assembly? Or does it extend to other municipal offices?

In these same states, not including municipal elections, is the right to vote in local elections recognised?

d. Are inhabitants of a local authority entitled to vote in local elections regardless of their nationality?

If so, are there residence conditions? If so, what period of residence is required? other conditions?

4. The possible existence of an age requirement:

a. Is the age requirement for standing in local elections the same as the requirement for voting?

If not, what age is set?

b. Do legal or other provisions draw any distinction between different local elections?

c. Is there a maximum age above which it is no longer possible to be elected to a local mandate? If so, what is it?

5. Requirements relating to national service:

a. In order to stand in local elections, must candidates have fulfilled national service obligations, where they exist?

If the reply to the previous question is positive, is the obligation fulfilled even if the period of national service has not been completed?

b. Does this condition of eligibility apply equally to candidates of both sexes?

6. Possible impact of criminal convictions:

a. Can criminal convictions render a person ineligible to stand for election?

If so, is there a prior list of the criminal offences concerned? Or can any conviction be accompanied by the additional penalty of ineligibility to stand for election?

In the case of a positive reply to the first question, do convictions lead automatically to loss of eligibility, or must the courts impose a penalty of ineligibility on a case-by-case basis?

Do the convictions that can lead to ineligibility include all kinds of criminal offences or are they restricted to offences against electoral legislation or concerning the funding of election campaigns?

7. The possible requirement of a link with the local authority:

a. Do legal or other provisions require candidates to have a positive link with the local authority in which they are standing for election?

If so, what form does this link take?

Address?

Residence? If so, for how long?

Tax link with the local authority concerned? For how long? What type of tax is taken into account? Necessarily a local tax?

Are these conditions alternative or cumulative? Are candidates free to choose?

b. Conversely, are there links with the local authority which preclude standing as a candidate in local elections?

If so, what kind of links?

Position or occupation held within the local authority concerned? Or in another local authority? What is the period of ineligibility?

Position or occupation held in the geographical area of the local authority concerned or another local authority? What is the period of ineligibility?

Other reasons?

8. Possible restriction on the number of successive mandates:

- a. Do legal or other provisions set a limit on the number of successive mandates a person may hold? If so, how many successive mandates may the same person hold?
- b. Where such a condition exists, does it apply equally to all local elections or only to some of them?

III. Conditions of eligibility relating to the presentation of candidates

NB: These conditions of eligibility are only taken into account if failure to comply with them renders candidates or the list of candidates ineligible

1. Conditions relating to representation of both sexes:

- a. Do constitutional, legal or other provisions require exact parity between men and women when candidates are put forward on a list, as paired candidates or on a ticket (e.g. full member/deputy)?

When this condition is set, does exact parity have to be achieved through strict alternation (e.g. woman/man/woman/man etc.) or on a group basis (groups of four, six or more)?

- b. Do constitutional, legal or other provisions impose a system of quotas by sex, requiring a percentage of at least x% of persons of different sex on lists of candidates?

c. Where constitutional, legal or other provisions lay down such rules, are there penalties for failure to comply with them?

If so, what form do these penalties take?

Disqualification of the list or candidates?

Financial penalties?

Others?

2. Conditions relating to support from a political party or grouping:

a. Must candidates in local elections be supported by a political party or grouping?

If so, how is this support manifested?

Membership of the political party or grouping

A certain number of signatures expressing support, or any other form of support?

Are there differences between the different local elections?

b. Must candidates pay a deposit in order to stand for election?

If so, is it a large sum of money?

If so, can the deposit be paid by the political party or grouping?

On what conditions is the deposit refunded? (e.g. only if the percentage of votes cast exceeds a certain lower limit). Other conditions?

IV. Arrangements for verifying compliance with conditions of eligibility

1. Possible existence of a specific procedure:

a. Is responsibility for verifying compliance entrusted to a specific state authority (whatever the level of the state) or to a judge?

If a specific authority is responsible for verifying compliance, can it declare candidates ineligible or must it refer the matter to a court?

If candidates are declared ineligible by this authority, are there arrangements for appealing to a court? What type of court? What form does this appeal take?

2. Penalties in the event of non-compliance with the conditions:

a. Is the penalty always ineligibility of candidates who fail to meet the requirements?

b. Are there other penalties on top of ineligibility (e.g. criminal sanctions)?

Resolution 382 (2015)

Criteria for standing in local and regional elections

Debated and adopted by the Congress
on 26 March 2015

The right to stand for election is a key component of local and regional democracy. While there needs to be some regulation to weed out spurious candidates, the health of territorial democracy depends on the greatest possible proportion of the electorate being able to stand for election.

2. Democracy cannot be reduced to a specific and fixed blue-print; it must constantly renew itself, adapting to new circumstances and to the social and political development of the societies that practice it.

3. The Venice Commission's Code of Good Practice in Electoral Matters has served as the reference standard for the Congress to assess the implementation of existing and new legislation in this field.

4. Today, however, the Congress considers that the maturity of the political systems of Council of Europe member states, and the ever-stronger aspirations 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 at the local and regional level.

5. As recent fruitful exchanges of the Congress with the Council for Democratic Elections and the Venice Commission have shown, it is time to deepen the democratic processes of member states, starting with the definition of new standards for the criteria required to run for political elections at local and regional levels.

6. The Congress, supported by its Group of Independent Experts on the European Charter of Local Self Government, will continue to develop its cooperation with the

Venice Commission on constitutional, human rights and justice, issues which raise questions on the standards of democracy at local and regional level.

7. The Congress:

a. asks its committees to work with the Venice Commission and the Council for Democratic Elections, to complement the Code of Good Practice in Electoral Matters with a document of good practice for criteria for standing in local and regional elections, in the same spirit as the measures proposed in the recommendation related to this resolution;⁷

b. suggests that this new document also take into account the rules of election campaigns and the good practices inspired by concern for greater transparency in political life, particularly as regards its financing;

c. proposes that further follow-up should be given to the issues of conflict of interests and campaign resources at the local and regional level;

d. asks its Monitoring Committee to verify the criteria for standing for local and regional elections in the course of its visits in the member states.

7. Congress Recommendation 375(2015) on criteria for standing in local and regional elections.

Recommendation 375 (2015)

Criteria for standing in local and regional elections

Debated and adopted by the Congress
on 26 March 2015

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 practice it. But it remains founded on the principle of free and fair elections.

4. Since its adoption in 2002, the Venice Commission's Code of Good Practice in Electoral Matters 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 access to 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 aspirations 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 in 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 (CETS 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 with the same motivations, 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 be liable to give 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 an 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 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 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 (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 therefore, bearing 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;

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. Congress Recommendation 273 (2009) on Equal access to local and regional elections;

18. Thanks the Venice Commission and the Council for Democratic Elections for their comments on the draft report;

19. 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 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 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.

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 most important pillars of any democracy.

The Congress of Local and Regional Authorities of the Council of Europe calls on governments to review their legislation with the aim of eliminating unnecessary restrictions in order to give the largest possible proportion of the electorate the opportunity to stand for election.

The report on criteria for standing for local and regional elections addresses eligibility requirements relating to the person, ineligibility rules, the issue of incompatibility, as well as gender balance and practical measures.

The “Democratic Elections” series presents reports adopted by the Congress on recurring and transversal issues relating to local and regional elections.

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member States, including all members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 46 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 612 elected officials representing more than 130 000 local and regional authorities.