RIGHT TO FREE ELECTIONS

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DG1

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RIGHT TO FREE ELECTIONS

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The European Court has underlined that democracy constitutes a fundamental element of the "European public order". The right to free elections guaranteed under Article 3 of Protocol No. 1 to the European Convention on Human Rights is crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and is accordingly of prime importance to the Convention system. The Convention does not lay down an obligation of abstention or non-interference, as with most civil and political rights, but one of adoption by the state, as the ultimate guarantor of pluralism, of positive measures to guarantee democratic legislative elections. The Court has established that the right to free elections also implies individual rights, including the right to vote and to stand for election.

The present factsheet provides examples of general and individual measures reported by states in the context of the execution of the European Court's judgments concerning: the adoption of legislative measures to ensure voting rights; restrictions on the right to vote; prisoners' voting rights; electoral registration of candidate members of parliament (MPs) and of political parties; and regulation of electoral disputes including effective remedies.

1. THE RIGHT TO VOTE

1.1. Adoption of legislative measures ensuring voting rights

Ensuring the right to vote and stand in local elections
The case concerned a legal void which made it impossible for the applicant, a local politician living in Mostar, to vote or stand in elections. Bearing in mind the large number of potential applicants and the urgent need to put an end to the situation, the Court, under Article 46, considered that the state had to amend the Election Act 2001 in order to enable the holding of fair local elections in Mostar.
In July 2020, the Election Act was amended, in line with OSCE requirements and the Venice Commission recommendations, to enable local elections in Mostar.

BIH / Baralija (30100/18)

Judgment final on 29/01/2020

Final Resolution CM/ResDH(2020)240

Participation of the Gibraltar electorate in European Parliamentary elections
The case concerned the non-enfranchisement of the Gibraltar electorate to elections of the European Parliament as Gibraltar was considered part of the dominions but not of the United Kingdom.
In response to the Interim Resolution ResDH(2001)79 of the Committee of Ministers, the government decided to enfranchise the Gibraltar electorate by proposing new legislation. Parliament adopted the European Parliament (Representation) Act in 2003. This Act provided for the entirety of the UK electoral law, concerning European parliamentary elections, to be applied to Gibraltar for those purposes. Pursuant to its provisions, Gibraltar was to be combined with an existing electoral region in England and Wales to form a new electoral region ("the combined region") for the purposes of European parliamentary elections taking place after 1 April 2004.
In June 2004, the citizens of Gibraltar took part in elections to the European Parliament with a turnout of 57.54%.

UK. / Matthews (24833/94)

Judgment final on 18/02/1999

Final Resolution CM/ResDH(2006)57

1.2. Restrictions of the right to vote

Safeguards concerning restrictions of incapacitated persons' voting rights
The case concerned the unlawful restriction of voting rights of the applicants under partial or full guardianship, solely on the grounds of their mental disability.
To remedy the situation and to prevent further similar violations, the Constitution, in force since 2012, stipulated that courts may only decide on an individual basis if the personal circumstances of the incapacitated person justify a restriction of their voting rights. Furthermore, the 2013 Act of the Civil Code provided for the ex officio mandatory review of the placement under partial or full guardianship within five or ten years as well as the possibility for the interested person to request the revision or termination of their guardianship. The 2013 Act on the Electoral Procedure sets forth the modalities and criteria for the restriction of incapacitated persons' voting rights to be decided by domestic courts in the context of their guardianship proceedings. In application of these constitutional and legal provisions, domestic courts have aligned their case-law with ECHR standards. A ban on voting rights is thus no longer an automatic

HUN / Alajos Kiss group (38832/06)

Judgment final on 08/12/2010

Final Resolution CM/ResDH(2020)317

consequence of either partial or full incapacitation. Domestic courts now must provide specific reasoning as to whether it can be established from the evidence available that the person is unable to exercise the right to vote due to mental impairment. The Code of Civil Procedure guarantees the interested person's right to be personally heard before such a decision is reached.

Lifting of the automatic restriction of voting rights following bankruptcy
This group of cases concerns the automatic suspension of voting rights ordered in bankruptcy proceedings, for a period of five years from the date of the declaration of bankruptcy. The European Court found that this measure, which was applicable to bankruptcies even in the absence of deceit or fraud, resulted in the marginalisation of the applicants and appeared as a moral sanction.
In 2006, the questions raised in the Court's judgments were resolved by Legislative Decree No. 5/2006, which repealed the impugned provisions concerning the suspension of electoral rights as well as other restrictions in the context of bankruptcy proceedings.

ITA / Albanese (77924/01)

Judgment final on 03/07/2006

Interim Resolution CM/ResDH(2007)27

Final Resolution CM/ResDH(2008)45

1.3. Prisoners' voting rights

Abolition of the automatic ban on convicts' right to vote in parliamentary elections
The case concerned the applicant's inability to vote as a convicted prisoner in the parliamentary elections of 2008 due to the general and automatic constitutional ban on prisoners' voting rights irrespective of the length of sentence and the nature or gravity of their offence.
The Constitution and the Electoral Code were amended in 2011 to allow prisoners convicted of less serious crimes to vote. In 2017, a further constitutional amendment narrowed the restriction of voting rights to persons who are serving a sentence in a penitentiary institution for a "particularly serious criminal offence". Related awareness-raising and training activities were organised in the framework of the joint projects of the Central Election Commission (CEC) Training Centre and the Penitentiary and Probation Training Centre. In addition, the CEC Training Center produced manuals which were distributed to the Administration of Penitentiary Facilities for further circulation.

GEO / Ramishvili (48099/08)

Judgment final on 12/03/2019

Final Resolution CM/ResDH(2019)49

Abolition of the automatic and indiscriminate restriction of voting rights during imprisonment
To prevent similar violations, in 2007, the High Court of Cassation and Justice found that, in the light of the European Court's judgment in the case of *Hirst*, the prohibition of the right to vote shall only be imposed by a court decision, after being debated by the parties and after the examination of its compliance with the principle of proportionality. In July 2008, the High Court of Cassation and Justice stated that an assessment of the criteria set by the relevant provisions of the Criminal Code has to be made in order to apply ancillary penalties accompanying the prison sentence and that no automatic decision should be made in this respect. This approach was later embedded in the new Criminal Code, which came into force in 2014.

ROM / Calmanovici (42250/02)

Judgment final on 01/10/2008

Final Resolution CM/ResDH(2014)13

Non-application of the ban on voting rights to inmates of correctional centres for community work
In a ruling of 2016, the Constitutional Court confirmed the imperative nature of the respective constitutional provision and the complex procedure required for its amendment. It noted, however, that the federal legislator may optimise the penitentiary system, so that certain forms of deprivation of liberty would not include a deprivation of the right to vote.

RUS / Anchugov and Gladkov group (11157/04 and 15162/05)

Judgment final on 09/12/13

In 2017, a provision of the Criminal Code in line with the above Ruling introduced a new form of penalty : community work, which may be imposed for the commission of offences of light or medium gravity or in the case of serious but first-time offences. Thus, inmates of correctional centres for community work are now able to vote as their placement in these centres is not classified as deprivation of liberty under domestic law.
Most of the applicants in this group were released and are therefore once again eligible to vote. As for the remaining applicants, their eligibility to vote will depend on the type of their custodial sentence.

Final Resolution CM/ResDH(2019)240

Abrogation of the automatic loss of prisoners' voting rights

TUR / Söyler group (29411/07)

Judgment final on 20/01/2014

Final Resolution CM/ResDH(2019)147

Following the Court's judgment, in 2015, the Constitutional Court partially abrogated the related disqualifications laid down in the Criminal Code. Restrictions of the right to vote or to stand for elections after a person's conditional release are no longer in force. In 2015 and 2018, the Supreme Election Board decided that prisoners on remand, persons convicted of offences committed involuntarily, conditionally released persons, persons whose prison sentences had been suspended and persons released on probation can vote in general elections. Accordingly, solely persons convicted for intentionally committed crimes cannot vote during the execution of their prison sentences.

Abolition of the blanket restriction on voting rights of convicted prisoners

UK. / Hirst No. 2 group (74025/01)

Judgment final on 06/10/2005

Final Resolution CM/ResDH(2018)467

In its 2005 judgment in *Hirst (No. 2)*, the Grand Chamber of the European Court held that the domestic legislation that imposed a blanket ban on the right to vote of all convicted prisoners in detention, irrespective of the length of their sentence, the nature or gravity of their offence and their individual circumstances, violated the Convention. In its pilot judgment of *Greens and M.T.*, final in 2011, the Court concluded that the authorities needed to introduce legislative proposals to amend the blanket ban on prisoner voting.
In 2017, after having examined all options available through parliamentary and other procedures, and in light of the impossibility of passing legislation through Parliament, the authorities decided that a range of administrative measures was the best approach to credibly, effectively and swiftly address the issue. The Committee of Ministers considered those measures to be adequate, particularly in the light of the wide margin of appreciation in this area. Policy and guidance to the prison service made it clear that two categories of previously effectively disenfranchised convicted prisoners – those on temporary licence and on home detention curfew – were now able to vote. Electoral Registration Officers were also informed of the changes. Furthermore, the warrant of committal to prison in England, Wales and Northern Ireland was amended in order to ensure that prisoners be notified of their disenfranchisement at the point of sentence.
In summary, the implementation of these measures means that:
a. prisoners on remand can vote;
b. prisoners committed to prison for contempt of court can vote;
c. prisoners committed to prison for default in paying fines can vote;
d. eligible prisoners released on temporary licence can vote;
e. prisoners released on home detention curfew can vote; and
f. prisoners are notified of their disenfranchisement at the time of sentence.

2. THE RIGHT TO STAND FOR ELECTION

2.1 Electoral registration of parliamentary candidates and political parties

Clarification of the Electoral Code requirements for parliamentary candidate registration

ARM / Sarukhanyan (38978/03)

Judgment final on 27/08/2008

Final Resolution CM/ResDH(2014)108

This case concerned the annulment of the applicant's parliamentary candidacy on the grounds that he had falsified his property declaration when registering as a candidate in the 2003 parliamentary elections. The Court concluded that this disqualification had been a disproportionate interference.

As a response to the Court's findings in this judgment, in the 2011 Electoral Code, the submission of a property and income declaration is no longer a required precondition for a candidate's registration and no sanction is foreseen for non-compliance. A candidate is entitled to challenge acts or omissions by electoral commissions before the higher electoral commissions, administrative and constitutional Courts.

Clarification of the grounds of "registration ineligibility" for parliamentary candidates

BGR / Petkov and Others (77568/01+)

Judgment final on 11/09/2009

Final Resolution CM/ResDH(2022)373

The case concerned the failure or refusal of the electoral authorities to comply with the Supreme Administrative Court's final and binding judgments by virtue of which they were required to reinstate the three applicants on the lists of candidates for parliamentary elections. They had been struck off the candidate lists by the relevant regional electoral commissions on account of allegations that they had collaborated with the former state security agencies.

To prevent similar violations, the 2014 Election Code excluded the possibility to withdraw candidates or a list of candidates on account of links with the former state security agencies at any time. It clarified the situations in which it is possible to withdraw or erase a candidate from the lists of candidates in parliamentary elections on the grounds of "registration ineligibility", for example in the case of multiple registrations on lists for more than two regions or more than one political party. The Central Electoral Commission and the respective regional electoral commissions may decide to erase a candidate from a list following a request by a political party. This decision can be challenged within three days before the Supreme Administrative Court, which should deliver a final judgment within three days.

A post-election remedy is regulated by the Constitution, which provides that the lawfulness of parliamentary elections may be challenged before the Constitutional Court. However, the candidates cannot apply to that court directly but through the persons or bodies who have standing to do so. According to the 1991 Constitutional Court Act, persons or bodies who have a standing to refer a matter to the Constitutional Court are (i) a fifth of the two hundred and forty members of parliament, (ii) the President, (iii) the Council of Ministers, (iv) the Supreme Court of Cassation, (v) the Supreme Administrative Court and (vi) the Prosecutor General.

Prevention of late amendments of conditions for parliamentary candidacy

BGR / Ekoglasnost (30386/05)

Judgment final on 06/02/2013

Action Report DH-DD(2020)193

The case concerned the inability of a political party to submit two documents required by the electoral law, enacted shortly before the holding of parliamentary elections in June 2005, in order to present its candidates. The Court found that the one-year period advocated by the Venice Commission for the adoption of substantial amendments to electoral law had not, in this case, been observed. The adoption of new conditions for participation in an election, just before the date of the poll, may have the effect of disqualifying parties that enjoy significant popular support and thus benefit political formations already in power.

To prevent similar violations, a detailed legal analysis of the judgment was made available to the parliament and all administrative bodies involved in the process of preparing amendments to electoral legislation as well as to the Central Electoral Commission and its regional bodies. Extensive awareness-raising activities were organised with the Constitutional Court ruling on disputes concerning the lawfulness of parliamentary elections.

Registration on the electoral lists of Cypriot nationals of Turkish origin

CYP / Aziz (69949/01)

Judgment final on 22/09/2004

Final Resolution CM/ResDH(2007)77

The case concerned the discrimination of a member of the Turkish-Cypriot community residing in the government-controlled area of Cyprus on account of the fact that the constitutional provisions providing for two separate (Greek and Turkish) electoral lists were ineffective. In its judgment, the Court recalled that Article 63 of the 1960 Cypriot Constitution provided for separate electoral lists for the Greek-Cypriot and Turkish-Cypriot communities. Nonetheless, the participation of Turkish-Cypriot parliamentarians was suspended from 1963, from which time the relevant articles of the Constitution providing for the parliamentary representation of the Turkish-Cypriot community and the quotas to be respected by the two communities became impossible to implement in practice. It further observed that, despite the fact that the relevant constitutional provisions had been rendered ineffective, there was a notable lack of legislation to resolve the resulting problems.

The Law of 2006 on "the exercise of the right to vote and to be elected by members of the Turkish community with habitual residence in the free territory of the Republic" gave effect to the right to vote and to be elected in parliamentary, municipal and community elections of Cypriot nationals of Turkish origin habitually residing in the Republic of Cyprus. In addition, Cypriot nationals of Turkish origin now have the right to vote in presidential elections. Thus, in the parliamentary elections of 2006, 270 Turkish Cypriots cast their ballot and one Turkish Cypriot stood for election.

Abrogation of the constitutional prohibition for members of parliament to exercise other professional activities

GRC / Lykourezos (33554/03)

Judgment final on 15/09/2006

Final Resolution CM/ResDH(2010)171

The case concerned the forfeiture of a lawyer's parliamentary seat due to the post-election change of the Constitution by virtue of a Special Supreme Court decision in 2003 in application of Article 57 of the Constitution, as amended in 2001, prohibiting members of parliament from exercising other professional activities.

In 2008, the impugned constitutional provision was abrogated, providing, however, that a special law could identify specific professional activities, the exercise of which could be prohibited to members of parliament.

Abolition of "permanent and irreversible" ban from standing for parliamentary elections for persons removed from office through impeachment proceedings

LIT / Paksas (34932/04)

Judgment final on 06/01/2011

Final Resolution CM/ResDH(2022)253

The case concerned the permanent and irreversible nature of the applicant's disqualification from standing for elections to Parliament as a result of his removal from presidential office following impeachment proceedings conducted against him in accordance with the Constitutional Court's ruling of 25 May 2004 and the Seimas Elections Act of 15 July 2004.

In 2012, first attempts were made to lift the applicant's permanent ban when the Constitutional Court declared the relevant provision unconstitutional and held that constitutional amendments were necessary to make domestic law ECHR-compliant. In 2016, the Constitutional Court reaffirmed its position. Subsequently, several attempts to adopt the necessary constitutional amendments failed in the Seimas (notably in the beginning of 2014, in December 2015, in June and in October 2018). Finally, the draft law, which could not be submitted to the plenary of the Seimas on time for the applicant to be able to stand as a

candidate in the October 2020 elections, was formally approved in June 2021 and a first vote held in January 2021.
Upon request by the Supreme Administrative Court, in April 2022, the Court delivered an advisory opinion on the relevant criteria concerning parliamentary mandate impeachment proceedings underlining that "they should be identified mainly from the perspective of the requirements of the proper functioning of the institution of which that person seeks to become a member…". Ultimately, the constitutional amendment aimed at implementing the Court's judgment was adopted in the Seimas in the second vote and came into force in May 2022. The new Electoral Code, reflecting this amendment, came into force in September 2022. Hence, any person removed from office or whose mandate as a member of the Seimas has been revoked by the Seimas through impeachment proceedings will not be subjected to a "permanent and irreversible" ban from standing for parliamentary elections but will be able to stand for elections to the Seimas after a period of "at least ten years".

Narrowing the scope of restrictions of eligibility to stand for parliamentary elections

LVA / Adamson (3669/03)

Judgment final on 01/12/2008

Final Resolution CM/ResDH(2014)279

The case concerned the ineligibility for election of a former member of a military unit affiliated to the KGB before the break-up of the USSR, in application of a sub-section of the Parliamentary Elections Act which had been extended in 2004 for another ten years. The Court found that the authorities had exceeded their acceptable margin of appreciation and that the ban had been clearly arbitrary in respect of the applicant.
To prevent similar violations, amendments to the Parliamentary Elections Act adopted in 2009 and 2014 narrowed the scope of eligibility restrictions so that they currently apply only to persons who were formerly directly involved in the KGB's primary functions.
The applicant successfully stood for elections in 2009 to the Riga City Council and was elected member of parliament in the 2010, 2011 and 2014 elections.

Amendments to Electoral Code lower limits for donations to and foreign funding of political parties

MDA / Political Party "Patria" and Others (5113/15)

Judgment final on 04/11/2020

Final Resolution CM/ResDH(2022)13

The case concerned the arbitrary interference in 2014 with the applicants' and the applicant political party's electoral rights on account of the latter's unfounded disqualification from participating in the parliamentary elections on the grounds of alleged financial irregularities, as well as insufficient procedural guarantees against arbitrariness of the domestic proceedings.
To prevent similar violations, the relevant regulations of the Central Electoral Commission and the Electoral Code were amended between 2014 and 2016, in particular by lowering the limit for donations and by introducing the possibility of funding from foreign sources. In 2016 and 2019, the Plenary Supreme Court delivered an explanatory judgment and an advisory opinion to unify judicial practice as regards electoral proceedings. Moreover, the Central Electoral Commission did not lodge any further requests to withdraw any political party from the parliamentary elections.
As concerns individual measures, in 2020, the applicant party lodged a revision request of the domestic courts' decisions at the origin of the violation found. In 2021, the Supreme Court of Justice admitted the request, quashed the appellate court's impugned judgment and dismissed the action against the applicant party as manifestly ill-founded. Thus, the applicants' and the applicant party's rights at national level have been restored.

Legal amendment allowing nationals with more than one nationality to stand in parliamentary elections

MDA / Tanase (7/08)

Judgment final on 27/04/2010

The case concerned the unjustified and disproportionate interference on account of a legislative ban imposed on nationals with dual or multiple nationalities to stand as candidate MPs. In 2009, *i.e.* before the European Court's Grand Chamber judgment, the impugned law

that prevented elected members of parliament with multiple nationalities from taking seats in Parliament was amended to lift the unjustified bans.

Final Resolution CM/ResDH(2012)40

Impartiality of the bodies competent to examine the conditions of participation of ethnic minority organisations in parliamentary elections

ROM / Ofensiva Tinerilor (16732/05)

Judgment final on 15/03/2016

Final Resolution CM/ResDH(2017)9

The case concerned the refusal to register an ethnic minority association's list of candidates to parliamentary elections and the inability to challenge that decision in court.

The 2004 Law on the Election of the Senate and the Chamber of Representatives and the functioning of the Permanent Electoral Authority was amended in 2015, establishing the conditions of participation of ethnic minority organisations in parliamentary elections, one of the criteria being the granting of "public utility" status to the association by government decision and the presentation of a list of members that includes at least 15% of the total number of citizens that have declared themselves to belong to the respective national minority at the last census. The term "national minority" in the law refers to an ethnicity that is represented in the Council of National Minorities. The task of the Central Electoral Bureau is to verify compliance with these legal conditions.

As regards the lack of impartiality of the bodies competent to examine the legal requirements to be complied with when submitting a candidacy, Law no. 208/2015 provided that the decisions by the Central Electoral Bureau are not final and may be contested in court.

Legal amendments allowing correction of errors in candidate MPs' registration information

RUS / Russian Conservative Party of Entrepreneurs and Others group (55066/00)

Judgment final on 11/04/2007

Final Resolution CM/ResDH(2018) 17

The group of cases concerned the disproportionate interference with the applicant party's right to stand for federal parliamentary elections due to the cancellation of its registration following the withdrawal of one of its top three candidates as well as the unlawful refusal to register a candidate for the elections because of his alleged failure to submit accurate information regarding his employment and party membership.

In 2000, the Constitutional Court had declared unconstitutional the impugned provisions of the 1999 Elections Act, which constituted the source of the violation. Subsequently, the 1999 Elections Act was replaced by the Elections Acts of 2002, 2005 and 2014 without similar provisions.

Moreover, in 2006, the Basic Guarantees of Electoral Rights Act of 2002 was amended to oblige the election commissions to provide a candidate with an opportunity to correct or submit relevant information regarding his/her CV. Similar provisions are contained in the Elections Act of 2014 which also obliges the Central Election Commission to verify the accuracy of the information and, if it is inaccurate, to inform the mass media and the relevant District Election Commission.

Stricter procedural requirements for the dissolution of a political party by the Constitutional Court

TUR / Kılıçgedik and Others (4517/04)

Judgment final on 14/03/2011

Action Report DH-DD (2020)443

The case concerned the dissolution by the Constitutional Court, in March 2003, of the HADEP party and its ban on the applicants from becoming founding members, ordinary members, leaders or auditors of any other political party for a period of five years on account of their actions and statements against the indivisible integrity of the Republic of Türkiye.

In its judgment, the Court considered that, since the penalty inflicted on the applicants in this case was based on a legal norm which was open to wide interpretation, it could not be regarded as proportionate to any of the legitimate aims relied on.

Prior to the facts of the case, in 2001, the Constitution had been amended providing that, instead of dissolving a party, the Constitutional Court may rule that it be deprived of state allowances. In 2002, the Political Parties Act was amended to add less stringent sanctions than

the party dissolution so as to avoid the automatic restriction of certain leading parliamentary members' political rights.
In 2010, the Constitution was amended, introducing the requirement of a two-thirds majority for a Constitutional Court decision to dissolve a political party. In 2011, the requirement of the two-thirds majority vote was also enshrined in the Law on the Establishment and Rules of Procedure of the Constitutional Court. In practice, no political party has been dissolved after 2009.

Clarification of residence requirement for participation in parliamentary elections

UKR / Melnychenko (17707/02)

Judgment final on 30/03/2005

Final Resolution CM/ResDH(2019)13

The case concerned the arbitrary rejection by the Central Electoral Commission (CEC), upheld by the Supreme Court, of the applicant's registration as a parliamentary candidate on the grounds that he had submitted false information about his place of residence and his absence from Ukraine for over five years, although he had obtained a valid registered place of legal residence (*propiska*).
The Court found that, taking into account the relevant domestic legislation and practice, the requirement of residence in Ukraine was not absolute. It considered that the decision of the Central Electoral Commission to reject the applicant's MP candidacy as untruthful, although he still had a valid registered place of official residence in Ukraine (*propiska*), was in breach of Article 3 of Protocol No. 1.
The notion of "*propiska*" was repealed with the 2003 Law "on Freedom of Travel and Free Choice of Residence" and the 2011 Law on Parliamentary elections. Today, to stand in parliamentary elections a citizen must, *inter alia* have resided on the territory of Ukraine for at least five years prior to his nomination. Conditions for determining the place of a person's permanent residence are established by the Tax Code. The CEC checks information about the parliamentary candidates' residence. Examples of the administrative courts' compliant judicial practice with regard to complaints about refused registrations were submitted.

3. REGULATION OF ELECTORAL DISPUTES INCLUDING EFFECTIVE REMEDIES

Enhancement of procedural guarantees in post-election disputes and right to an effective remedy

BEL / Mugemangango (310/15)

Judgment final on 10/07/2020

Action Plan DH-DD(2022)508

Action Plan DH-DD(2022)1430

The case concerned the absence of "a procedure offering adequate and sufficient safeguards to prevent arbitrariness and to ensure (…) effective examination" of the complaint of the applicant, a candidate for election to the Parliament of the Walloon Region in 2014, who sought a recount of the ballot papers for his electoral constituency, after having lacked 14 votes to obtain a seat.

The judgment was transmitted directly to all parliaments concerned. Two ministers of the federal government were chosen to coordinate its execution. The Coordination Committee (consisting of the federal, regional and community governments) was subsequently informed. In accordance with the Agreement of the Federal Government, a draft "declaration of revision of the Constitution" was approved in April 2021 and presented to the federal parliament. It is expected that this draft proposal will be submitted to the federal parliament in March 2024 (40 days before the May 2024 elections, according to the rules to modify the Belgian Constitution). It foresees the possibility of an appeal to the Constitutional Court concerning the complaints lodged during the validation of the credentials of elected representatives. Nevertheless, the final choice will be made by the constituent assembly, which will be formed after the results of the next elections, in May 2024. In December 2021, the Constitutional Court was invited to prepare texts for the revision of the Constitution and the special laws concerned.

In the meantime, each parliamentary assembly is expected to analyse the means by which they could put in place and/or enhance procedural safeguards in case of post-election complaints during the next elections.

Establishment of detailed procedures for the invalidation of election results

GEO / The Georgian Labour Party (9103/04)

Judgment final on 08/10/2008

Final Resolution CM/ResDH(2016)42

The case concerned the cancellation of the election results in two electoral districts without providing relevant and sufficient reasons or the possibility of legal remedies.

The European Court found that the then Georgian Labour Party's right to stand for legislative election had been infringed on account of the Central Electoral Commission's (CEC) decision to cancel the election results in the Khulo and Kobuleti electoral districts, which amounted to their illegitimate and unjustified exclusion from the country-wide vote tally.

In 2014 and 2015, amendments were introduced to the Election Code, providing for detailed criteria for the invalidation of election results. A mechanism was put in place for prompt dispute settlement, including as regards the deadlines for the initiation of complaints. The law defines procedures for checking the legitimacy of the decisions and acts of the election commissions by the CEC and, in the event of violation, cancelling or amending them, ordering a ballot recount or calling for an election re-run. The decisions of the election commissions are subject to judicial review.

Legislative amendment providing rules for the calculation of blank ballot papers

GRC / Paschalidis group (27863/05)

Final judgment on 10/07/2008

The case concerned an unforeseeable reversal of the Special Supreme Court's well-established case-law resulting in the forfeiture of the applicants' parliamentary seats. Under the electoral law applicable at the material time, only those ballot papers recognised as valid could be taken

into consideration for the calculation of the electoral ratio and the attribution of seats. However, in a judgment of 2005, the Special Supreme Court upheld a novel interpretation of the law, that not only the valid ballot papers, but also the blank ballot papers should be taken into account for the calculation of the electoral quotient, which amounted to a breach of the principle of legitimate trust and lawfulness. The unforeseeable manner in which the Special Supreme Court had interpreted and applied the electoral law had impaired the essence of the rights guaranteed under Article 3 of Protocol No. 1.
In 2006, Parliament adopted a clarifying legislative amendment, providing that blank ballot papers were not to be taken into account for the calculation of the electoral quotient to avoid any imprecision that may result from the Special Supreme Court's 2005 judgment.

Final Resolution CM/ResDH(2012)31

Clarification of rules for the allocation of ethnic minority MPs' seats and effective remedy introduced

ROM / Grosaru (78039/01)

Judgment final on 02/06/2010

Final Resolution CM/ResDH(2016)322

The Court found that the lack of clarity in the electoral legislation pertaining to members of national minorities and the absence of sufficient guarantees as to the impartiality of the bodies responsible for examining the applicant's complaints had breached the very essence of the rights guaranteed by Article 3 of Protocol No. 1. Furthermore, the applicant's right to an effective remedy had been breached on account of the lack of judicial review as regards the interpretation of the electoral legislation in question.
To prevent similar violations, the law of 1992 was repealed and, in 2015, a Law on the Election of the Senate and the Chamber of Representatives and the functioning of the Permanent Electoral Authority entered into force. It provided that, in cases where ethnic minority organisations submit candidatures in different constituencies, the Central Electoral Bureau would allocate the seat to the candidate who won the majority of votes cast at the national level.
Furthermore, in 2004, the Constitutional Court ruled that decisions of the Central Electoral Bureau constituted judicial administrative acts and thus could be challenged before the ordinary administrative courts. Also, the 2015 Law on the Election of the Senate and the Chamber of Representatives and the functioning of the Permanent Electoral Authority established that decisions taken by electoral bureaux are subject to judicial review

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Delimitation of grounds for annulling voting results

UKR / Kovach (39424/02)

Judgment final on 07/05/2008

Final Resolution CM/ResDH(2017)359

The case concerned an arbitrary and disproportionate interference due to the annulment of the results of the 2002 parliamentary election in three divisions on account of certain irregularities noted, *inter alia* by the observers of the applicant's opponent, which were not included in the exhaustive list of reasons for annulment in the 2001 Parliamentary Elections Act.
As regards legislative measures, the election law underwent multiple changes in recent years. In 2011, the Law on the Election of Members of Parliament provided a new exhaustive list of three grounds which may give rise to a decision to declare the voting in a particular precinct invalid. The provision of the former law which had given rise to an arbitrary interpretation was not included in the 2011 law. In 2013, Parliament adopted amendments of several provisions of the electoral legislation maintaining, however, the exhaustive list of three grounds contained in the 2011 law.

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