



# Prosecution of Election Offenses

Belgium • Canada • Denmark • England and  
Wales Estonia • France • Germany • Italy • Japan  
Netherlands • Norway • Poland • Portugal  
South Korea • Spain

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# Introduction

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This report describes how election-related offenses are investigated and prosecuted in selected European Union Member States, Canada, Japan, and South Korea. It reviews each jurisdiction's electoral system, analyses constitutional provisions establishing basic principles for elections, identifies the national institutions responsible for investigating and prosecuting crimes aimed at violating the free and fair election process, defines election-related crimes as they are specified by the criminal codes and other legal acts regulating the conduct of elections in the surveyed countries, and reviews the practice of enforcing election legislation in the countries for which information was available. Depending on the country, some surveys (e.g., Canada, France, Denmark, United Kingdom) include information on how national legislation addresses irregularities in political advertising, campaign financing, and communications during campaigns.

Each survey describes particular aspects of the electoral system and the specifics of each nation's approach to preventing illegal interference in campaigns and the voting process. Nontraditional solutions can be found in surveys for South Korea, with the country's National Election Commission being a part of the election law enforcement system in charge of monitoring and investigating illegal cyber activities, and for Portugal, where special procedures for addressing irregularities during the counting of votes have been established.

Recent judicial practices, statistics, and the most important cases involving the prosecution of electoral offenses are analyzed where information was available.

While the reviewed jurisdictions mostly criminalize the same types of electoral offenses and punish perpetrators with fines and/or incarceration, the severity of penalties varies among the jurisdictions and usually depends on the nature of the underlying violation and the official position of the perpetrator. Interesting national examples in defining election violations, such as making it illegal to bring weapons to polling places and to not return pencils to the election judges in Italy, prohibiting the early announcement of election results in Norway, or barring publication of false information about a candidate in South Korea, demonstrate each country's unique approach to election matters.

The report is supplemented by a table, which lists all election-related activities identified as illegal by the national laws of the jurisdictions surveyed and provides information about punishments prescribed for the commission of these acts.

# Belgium

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**SUMMARY** Belgium is a federal state with a bicameral Parliament. Members of the Senate are elected via indirect suffrage while members of the Chamber of Representatives are directly elected using a proportional representation system.

Federal-level elections are primarily governed by an Electoral Code, although campaign financing is governed by separate legislation. Prosecution of election-related criminal offenses mostly falls under the responsibility of prosecutors through the normal procedures of the Belgian criminal justice system, but some provisions are applied through special enforcement mechanisms. On election day, the presidents of the polling stations have police powers to safeguard peace and order on the premises. Rules on voter registration are primarily enforced by the municipal officers in charge of organizing the elections. Campaign finance laws are mainly enforced by a special parliamentary commission. Finally, the Belgian constitutional mandate that every citizen participate in elections is enforced through a special procedure involving prosecutors and police courts.

The Electoral Code prohibits various forms of voter registration fraud, violation of the confidentiality of voter rolls or the secrecy of the ballot, vote-buying and vote-selling, voting under someone else's identity, creating fake ballots or stealing official ones, tampering with ballots cast, and falsifying results of the ballot tally. Other provisions prohibit acts of violence or intimidation, and acts that otherwise disrupt the electoral process. Campaign finance laws establish limits on how much political parties may spend on their campaigns, limit who may contribute to political parties and how much, and require parties to disclose all contributions over a certain threshold amount. It is mandatory for every citizen to vote in elections for the Chamber of Representatives, under penalty of a fine.

## I. Introduction

Belgium is a federal state, composed of three regions (Wallonia, Flanders, and the Brussels-Capital Region) and three linguistic/cultural communities (the Dutch-speaking, French-speaking, and German-speaking communities), under a constitutional monarchy.<sup>1</sup> The main seat of power at the federal level resides in the Parliament, which is made up of a Senate and a Chamber of Representatives.<sup>2</sup> Members of the Senate are elected by Belgium's regional parliaments and linguistic community parliaments.<sup>3</sup> Members of the Chamber of Representatives, by contrast,

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<sup>1</sup> *Belgium*, CIA WORLD FACTBOOK, [https://www.cia.gov/library/publications/the-world-factbook/geos/print\\_be.html](https://www.cia.gov/library/publications/the-world-factbook/geos/print_be.html) (last visited Feb. 16, 2018), archived at <https://perma.cc/V7XN-CS4D>; LA CONSTITUTION BELGE [CONST.] [THE BELGIAN CONSTITUTION] arts. 1–3, [https://www.senate.be/doc/const\\_fr.html](https://www.senate.be/doc/const_fr.html), archived at <https://perma.cc/6P6R-HKGL>.

<sup>2</sup> *Belgium*, CIA WORLD FACTBOOK, *supra* note 1; CONST. art. 38.

<sup>3</sup> CONST. art. 67.

are directly elected by Belgian citizens, using a proportional representation system.<sup>4</sup> It is mandatory, under the Belgian Constitution, for citizens to vote in elections for the Chamber of Representatives.<sup>5</sup> Secrecy of the ballot is guaranteed by the Constitution.<sup>6</sup>

Federal-level elections (i.e., for the Senate and Chamber of Representatives) are primarily governed by the Belgian Electoral Code.<sup>7</sup> Campaign financing, however, is governed by a separate set of legislation. For federal-level campaigns, campaign financing is primarily governed by the Loi du 4 juillet 1989 (Law of 4 July 1989).<sup>8</sup> Two laws from May 19, 1994, govern the campaigns for regional elections and for the election of Belgian representatives at the European Parliament.<sup>9</sup>

## II. Enforcement of Belgian Election Law

For most criminal offenses related to elections, Belgian law does not specify any particular enforcement mechanism, and most election law offenses would therefore be enforced through the normal procedures of Belgian criminal justice. However, there are some exceptions where the applicable legislation provides for a specific enforcement mechanism.

The Electoral Code states that on voting day, “the president of the voting station is responsible for taking the necessary measures to ensure that the vicinity of the building where the election takes place is orderly and quiet,” and provides that he or she has police powers to maintain order there.<sup>10</sup>

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<sup>4</sup> *Id.* arts. 61, 62.

<sup>5</sup> *Id.* art. 62.

<sup>6</sup> *Id.*

<sup>7</sup> CODE ÉLECTORAL [C. ÉLECTORAL] [ELECTORAL CODE], [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1894041230&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1894041230&table_name=loi), archived at <https://perma.cc/Q7XJ-FVNW>.

<sup>8</sup> Loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales, ainsi qu’au financement engagées pour l’élection de la Chambre des représentants, ainsi qu’au financement et à la comptabilité ouverte des partis politiques [Law of 4 July 1989 Regarding the Limitation and Regulation of Campaign Spending, as Well as the Financing Incurred for Elections to the Chamber of Representatives, as Well as the Financing and Open Accounting of Political Parties], [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=1989070434](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1989070434), archived at <https://perma.cc/9U28-L28K>.

<sup>9</sup> Loi du 19 mai 1994 réglementant la campagne électorale, concernant la limitation et la déclaration des dépenses électorales engagées pour les élections du Parlement wallon, du Parlement flamand, du Parlement de la Région de Bruxelles-Capitale et du Parlement de la Communauté germanophone, et fixant le critère de contrôle des communications officielles des autorités publiques [Law of 19 May 1994 Regulating Election Campaigns, Regarding the Limits to and Declaration of Campaign Spending Incurred for Elections to the Walloon Parliament, the Flemish Parliament, and the Parliament of the Bruxelles-Capitale Region, and the Parliament of the Germanophone Community, and Establishing the Monitoring of Official Communications of Public Authorities] [Law of 19 May 1994 – Regional Elections], [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1994051952&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994051952&table_name=loi), archived at <https://perma.cc/5VQW-5TB7>; Loi du 19 mai 1994 relative à la limitation et au contrôle des dépenses électorales engagées pour l’élection du Parlement européen [Law of 19 May 1994 Regarding the Limits to and Monitoring of Campaign Spending for the Election of the European Parliament] [Law of 19 May 1994 – European Elections], <http://www.ejustice.just.fgov.be/eli/loi/1994/05/19/1994000273/justel>, archived at <https://perma.cc/Y8AL-QGJ3>.

<sup>10</sup> C. ÉLECTORAL art. 109.

Another area of election law where a special enforcement mechanism is specified is that of voter registration. Indeed, the enforcement of voter eligibility and registration rules appears to be primarily in the hands of burgomasters and aldermen, the municipal officers in charge of organizing the elections.<sup>11</sup> Their decisions may be appealed before a Court of Appeal.<sup>12</sup>

Yet another special case is the mandate for every citizen to vote in the elections for the Chamber of Representatives, which is enforced by local prosecutors and *juges de paix* (justices of the peace).<sup>13</sup> Citizens who failed to vote, and whose excuse was not admitted by a justice of the peace, are summoned to be heard by a *tribunal de police* (police court).<sup>14</sup>

Finally, campaign finance laws appear to be mainly enforced by the Commission de contrôle (Monitoring Commission), which was created by the Law of 4 July 1989 to monitor the financing of parties and is composed of four experts and seventeen members of the Belgian Chamber of Representatives.<sup>15</sup> The Monitoring Commission is assisted in its mission by the Cour des comptes (Court of Audit), which is tasked with advising the Monitoring Commission and verifying the accuracy of its reports.<sup>16</sup> The Monitoring Commission has the authority to impose sanctions for certain offenses, particularly with regard to spending on campaign advertising, or may refer cases to a prosecutor for possible criminal charges.<sup>17</sup>

### III. Criminal Offenses under Belgian Election Law

#### A. Offenses Regarding Voter Registration

The Electoral Code prohibits anyone from knowingly making false statements or presenting fake documentation in order to be registered to vote.<sup>18</sup> It is also illegal for anyone who is in charge of preparing the voter rolls to knowingly falsify documents or information in order to add or remove someone from the voter rolls.<sup>19</sup> Furthermore, the confidentiality of the voter rolls is protected by the Electoral Code, as it is illegal to provide copies of them to anyone who is not authorized to see them.<sup>20</sup>

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<sup>11</sup> *Id.* arts. 10, 18–26.

<sup>12</sup> *Id.* arts. 27–34.

<sup>13</sup> *Id.* arts. 207–209.

<sup>14</sup> *Id.* art. 209.

<sup>15</sup> Loi du 4 juillet 1989 [Law of 4 July 1989] art. 1.

<sup>16</sup> *Id.*; *Compétences [Jurisdiction]*, COUR DES COMPTES [COURT OF AUDITS], <https://www.ccrek.be/FR/Presentation/Competences.html> (last visited Feb. 16, 2018), archived at <https://perma.cc/R5HH-QQ5S>.

<sup>17</sup> Loi du 4 juillet 1989 [Law of 4 July 1989] art. 14/1.

<sup>18</sup> C. ÉLECTORAL art. 195.

<sup>19</sup> *Id.* arts. 196, 197.

<sup>20</sup> *Id.* art. 197bis.

## B. Offenses Related to the Conduct of Orderly and Honest Elections

Many of the criminal offenses listed in the Electoral Code have to do with the conduct of fair and peaceful elections. In that spirit, several provisions address acts of violence, disorderly conduct, or rallies that are meant to intimidate voters, prevent one or several citizen(s) from exercising their right to vote, or otherwise disrupt the electoral process.<sup>21</sup> Similarly, vote-buying and vote-selling is prohibited, and the act of betting on the results of an election is punished as a form of vote-buying/selling as well.<sup>22</sup>

The integrity of Belgian elections is further protected by provisions that prohibit the creation of fake ballots, stealing official ballots, voting under someone else's identity, tampering with the ballots cast, and falsifying the results of the ballot tally.<sup>23</sup> Additionally, it is illegal for any polling official or witness to violate the secrecy of a ballot.<sup>24</sup>

## C. Campaign Finance Offenses

Federal-level campaigns are governed by the Law of July 4, 1989, which governs both campaign financing in the narrow sense and the financing of political parties more generally.<sup>25</sup> Regional-level campaigns and European campaigns are governed by the laws of May 14, 1994.<sup>26</sup> These rules limit how much political parties may spend on their campaigns, limit who may contribute to political parties (only physical persons may make political donations) and how much, and require parties to disclose all contributions of €125 (about US\$156) or more that they receive.<sup>27</sup> In most cases, it appears that violation of political finance rules is punishable by fines, although jail time may also be imposed in a few cases.<sup>28</sup>

## D. Abstention

One of Belgium's particularities is that it is one of the relatively few countries in the world to enforce compulsory suffrage.<sup>29</sup> Indeed, the Belgian Constitution requires that every citizen vote in elections for the Chamber of Representatives.<sup>30</sup> Those who are unable to do so must inform

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<sup>21</sup> *Id.* arts. 183, 188–193, 203.

<sup>22</sup> *Id.* arts. 181, 182, 184.

<sup>23</sup> *Id.* arts. 198–201.

<sup>24</sup> *Id.* art. 199.

<sup>25</sup> Loi du 4 juillet 1989 [Law of 4 July 1989] arts. 2–14/4, 15–25ter.

<sup>26</sup> Law of 19 May 1994 – Regional Elections; Law of 19 May 1994 – European Elections.

<sup>27</sup> Law of 4 July 1989, arts. 14, 16bis, 16bis/1, 16ter; Law of 19 May 1994 – Regional Elections arts. 10, 11, 11/1; Law of 19 May 1994 – European Elections arts. 10, 11, 11/1.

<sup>28</sup> *Id.*

<sup>29</sup> *Field Listing: Suffrage*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2123.html#be> (last visited Feb. 20, 2018), archived at <https://perma.cc/4R75-PAUF>.

<sup>30</sup> CONST. art. 62.

their local *juge de paix* (Justice of the Peace) and provide necessary justification.<sup>31</sup> Absent a valid excuse, failure to vote is punished by a fine.<sup>32</sup>

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<sup>31</sup> C. ÉLECTORAL art. 207.

<sup>32</sup> *Id.* art. 210.

# Canada

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**SUMMARY** Canada holds elections federally, provincially, territorially, and at the municipal level. The Canada Elections Act regulates the conduct of federal general elections of members to the House of Commons. The Commissioner of Canada Elections is the independent officer whose mandate is to ensure that the Canada Elections Act is observed and enforced. According to section 51(1) of the Act, if the Commissioner believes on reasonable grounds that an offense under the Act has been committed, the Commissioner may refer the matter to the Director of Public Prosecutions, who decides whether to initiate a prosecution. Sections 480 to 499 of the Canada Elections Act list the various electoral offenses.

## I. Introduction

Canada is a constitutional monarchy with a parliamentary system of government. It holds elections federally, provincially, territorially, and at the municipal level. Canada's federal legislature consists of a bicameral Parliament, the Senate and the House of Commons.<sup>1</sup> Section 50 of the Constitution Act, 1867 stipulates that general elections for the House of Commons must be held at least once every five years, but does not specify any fixed dates.<sup>2</sup> In 2007 the Parliament of Canada amended the Canada Elections Act to introduce fixed dates for general elections. The 2007 amendment stipulates that each general election must be held on the third Monday of October every four years.<sup>3</sup> Each seat in the House of Commons represents one of the country's 338 constituencies.<sup>4</sup>

Canada's general elections are held on the basis of the "single-member plurality" system (also known as the "first-past-the-post" system).<sup>5</sup> According to Elections Canada,

[i]n every electoral district, the candidate with the highest number of votes wins a seat in the House of Commons and represents that electoral district as its member of

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<sup>1</sup> TARIQ AHMAD, LAW LIBRARY OF CONGRESS, NATIONAL PARLIAMENTS: CANADA (Jan. 2016), <https://www.loc.gov/law/help/national-parliaments/canada.php>, archived at <https://perma.cc/53CW-XBN4>.

<sup>2</sup> Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), § 50, <http://laws-lois.justice.gc.ca/eng/Const//page-4.html#docCont>, archived at <https://perma.cc/K6NM-UYE2>.

<sup>3</sup> Act to Amend the Canada Elections Act, S.C. 2007, c. 10, § 56.1(2), [http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2007\\_10/FullText.html](http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2007_10/FullText.html), archived at <https://perma.cc/4N74-SRHN>.

<sup>4</sup> *Guide to the Canadian House of Commons: The Canadian Parliament*, PARLIAMENT OF CANADA, <http://www.parl.gc.ca/about/parliament/guidetohoc/index-e.htm> (last updated Dec. 2011), archived at <https://perma.cc/LJU9-ZZXZ>.

<sup>5</sup> *Id.*

Parliament. An absolute majority (more than 50 percent of the votes in the electoral district) is not required for a candidate to be elected.<sup>6</sup>

The Canada Elections Act<sup>7</sup> regulates the conduct of federal general elections of members to the House of Commons. The Chief Electoral Officer is responsible “for the administration of general elections and by-elections” and also has the mandate to administer referendums “and other important aspects of our democratic electoral system.”<sup>8</sup> Canada’s provinces and territories have their own election laws that regulate their respective election systems on the provincial and municipal level.<sup>9</sup>

## II. Enforcement of Canada Elections Act

The Commissioner of Canada Elections is the independent officer whose mandate is to ensure that the Canada Elections Act is “complied with and enforced.”<sup>10</sup>

### A. Role of the Commissioner

One of the main roles of the Commissioner is to take corrective action when the Act is violated. The Commissioner is responsible for “ensuring that registered political parties, electoral district associations, leadership contestants, nomination contestants, candidates and all their agents, and referendum committees fulfill their obligations under the Act. These obligations include submitting financial returns and other documents by the deadlines specified in the Act.”<sup>11</sup>

If a person has a complaint or allegation of wrongdoing it should be referred to the Commissioner. Each complaint is “reviewed to determine whether there is a basis for the allegation. When satisfied that there is substance to the complaint, the Commissioner may conduct an investigation.”<sup>12</sup> The Commissioner may also initiate an investigation on his or her own accord.<sup>13</sup> According to the Commissioner of Canada Elections website,

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<sup>6</sup> *The Electoral System of Canada*, ELECTIONS CANADA, <http://www.elections.ca/content.aspx?dir=ces&document=part1&lang=e&section=res> (last updated Nov. 1, 2017), archived at <https://perma.cc/DG2M-32WH>.

<sup>7</sup> Canada Elections Act, S.C. 2000, c. 9, <http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html>, archived at <https://perma.cc/5J92-5QSH>.

<sup>8</sup> *The Role and Structure of Elections Canada*, ELECTIONS CANADA, <http://www.elections.ca/content.aspx?section=abo&dir=role&document=index&lang=e> (last updated Apr. 18, 2017), archived at <https://perma.cc/Q6TJ-XAT3>.

<sup>9</sup> *Canadian Electoral Systems*, HISTORICA CANADA, (July 2, 2006; updated July 2, 2017), <https://www.thecanadianencyclopedia.ca/en/article/electoral-systems/>, archived at <https://perma.cc/LDL2-N9R3>.

<sup>10</sup> *Enforcing the Canada Elections Act*, COMMISSIONER OF CANADA ELECTIONS, <https://www.cef-cce.gc.ca/content.asp?section=abo&dir=bck&document=index&lang=e> (last updated May 3, 2017), archived at <https://perma.cc/3UP6-FURM>.

<sup>11</sup> *Id.*

<sup>12</sup> *Complaints*, COMMISSIONER OF CANADA ELECTIONS, <https://www.cef-cce.gc.ca/content.asp?section=comp&document=index&lang=e> (last updated Apr. 28, 2017), archived at <https://perma.cc/SEJ4-XJYP>.

<sup>13</sup> Organization for Security and Co-operation in Europe (OSCE), Canada Parliamentary Elections 19 October 2015, OSCE/ODIHR Needs Assessment Mission Report 9 (May 19–22, 2015), <http://www.osce.org/odihr/elections/canada/161561?download=true>, archived at <https://perma.cc/L73F-Z3TL>.

[d]uring an election period, if there is evidence leading the Commissioner to believe that a serious breach of the Act may compromise the fairness of the electoral process, the Commissioner may, taking into consideration the public interest, apply to a court for an injunction ordering the person in question to comply with the law.<sup>14</sup>

The Commissioner also has the power to conclude a compliance agreement “with anyone the Commissioner believes on reasonable grounds has committed, is about to commit or is likely to commit an act or omission that could constitute an offence.”<sup>15</sup> This is a voluntary agreement between the Commissioner and the person, “in which the person agrees to terms and conditions necessary to ensure compliance with the Act. The Commissioner makes the compliance agreement public,”<sup>16</sup> and,

[a]fter giving a registered party a reasonable opportunity to clarify its fundamental purposes, the Commissioner may also ask a court to order the deregistration of that party if the Commissioner has reasonable grounds to suspect that the party does not have as one of its fundamental purposes to participate in public affairs by endorsing one or more of its members as candidates and supporting their election.<sup>17</sup>

## B. Prosecutions

According to section 51(1) of the Act, if the Commissioner believes on reasonable grounds that an offense under the Act has been committed, the Commissioner may refer the matter to the Director of Public Prosecutions, who decides whether to initiate a prosecution.<sup>18</sup> According to the Commissioner of Canada Elections website,

[t]he Director initiates and conducts prosecutions on behalf of the Crown with respect to any offences under the *Canada Elections Act* and the *Referendum Act*, as well as any appeal or other proceeding related to such a prosecution. If the Director of Public Prosecutions decides to initiate a prosecution, the Director asks the Commissioner to lay sworn information in writing before a justice, as defined in section 2 of the *Criminal Code*.<sup>19</sup>

According to section 512(1), no prosecution for an offense under the Act may be instituted by a person other than the Director of Public Prosecutions without the Director’s prior written consent.<sup>20</sup>

A group of offenses under the Act are known as strict liability offenses, which “may be commenced at any time within, but not later than, six years after the day on which the subject-

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<sup>14</sup> *Enforcing the Canada Elections Act*, *supra* note 10.

<sup>15</sup> *Compliance Agreements*, COMMISSIONER OF CANADA ELECTIONS, <https://www.ccf-cce.gc.ca/content.asp?section=agr&document=index&lang=e> (last updated Dec. 7, 2017), archived at <https://perma.cc/U32Y-4JEA>.

<sup>16</sup> *Id.*

<sup>17</sup> *Enforcing the Canada Elections Act*, *supra* note 10.

<sup>18</sup> Canada Elections Act § 511.

<sup>19</sup> *Enforcing the Canada Elections Act*, *supra* note 10.

<sup>20</sup> Canada Elections Act § 512(1).

matter of the proceedings arose.”<sup>21</sup> For the crimes that do not have the six-year limitation, the Act provides that a prosecution may be commenced at any time.<sup>22</sup>

### III. Criminal Offenses under the Canada Elections Act

Sections 480 to 499 provide the main offense provisions under the Canada Elections Act. The punishments vary according to whether the underlying offense is a strict liability offense, an intentional offense, a summary offense, or a hybrid offense.

Offenses under the Act fall within the following categories:

- General Offenses (e.g., obstruction of electoral process, impersonation, bribes, intimidation, etc.)<sup>23</sup>

*Offense type:* hybrid offense, intent required. On summary conviction: ≤ \$20,000, ≤ 1 year, or both. On indictment: ≤ \$50,000,<sup>24</sup> ≤ 5 years, or both.<sup>25</sup>

- Offenses Concerning Electoral Rights (e.g., inducing a person to vote who is not qualified or entitled to do so, or to vote more than once)<sup>26</sup>

*Offense type:* hybrid offense, intent required. On summary conviction: ≤ \$20,000, ≤ 1 year, or both. On indictment: ≤ \$50,000, ≤ 5 years, or both.<sup>27</sup>

- Offenses Concerning Election Officers (e.g., failure to return election documents and election materials; engaging in politically partisan conduct)<sup>28</sup>

§ 484(1): *Offense type:* summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 484(2): *Offense type:* summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

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<sup>21</sup> *Id.* § 514(1).

<sup>22</sup> *Enforcing the Canada Elections Act*, *supra* note 10.

<sup>23</sup> Canada Elections Act §§ 480(1)– 482.1.

<sup>24</sup> All dollar figures in this report and the chart are in Canadian dollars, and the currency exchange as of writing this report is Can\$1 = US\$.80.

<sup>25</sup> Canada Elections Act § 500(5).

<sup>26</sup> *Id.* § 483.

<sup>27</sup> *Id.* § 500(5).

<sup>28</sup> *Id.* §§ 484(1)–484(3).

§ 484(3): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>29</sup>

- Offenses Concerning the Register of Electors (e.g., unauthorized use of personal information recorded in Register of Electors)<sup>30</sup>

§ 485(1): *Offense type*: Intent required; summary offense. On summary conviction: ≤ \$10,000, ≤ 1 year imprisonment, or both.

§ 485(2): *Offense type*: Intent required: hybrid offense. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>31</sup>

- Offenses Concerning Candidates (e.g., making false statement regarding candidate; publication of false statement of withdrawal of candidate)<sup>32</sup>

§ 486(2): *Offense type*: Intent required; summary offense. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 486(3): *Offense type*: Intent required: hybrid offense. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>33</sup>

- Offenses Concerning Revision of List of Electors (e.g., applying improperly to be included on list of electors; unauthorized use of personal information contained in list of electors)<sup>34</sup>

§ 487(1)(a): *Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 487(1)(b): *Offense type*: summary offense; intent required . On summary conviction: ≤ \$10,000, ≤ 1 year imprisonment, or both.

§ 487(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>35</sup>

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<sup>29</sup> *Id.* § 500(1)–(2), (5).

<sup>30</sup> *Id.* § 485(1)–(2).

<sup>31</sup> *Id.* § 500(3), (5).

<sup>32</sup> *Id.* § 486(1)–(3).

<sup>33</sup> *Id.* § 500(2), (5).

<sup>34</sup> *Id.* § 487(1)–(2).

<sup>35</sup> *Id.* §§ 500(2), (3), (5).

- Offenses Concerning Preparation for the Vote (e.g., unauthorized printing of ballots; failure to return ballots or unused ballot paper; knowingly printing extra ballot papers)<sup>36</sup>

§ 488(1): *Offense type*: Intent required; summary offense. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 488(2): *Offense type*: Intent required: hybrid offense. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>37</sup>

- Offenses Concerning Voting (e.g., failure to allow time to vote; making deductions from employees' wages for time given to vote; wearing of emblems, etc., in polling station)<sup>38</sup>

§489(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 489(2): *Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 489(3): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>39</sup>

- Offense Concerning Advance Polling (e.g., failure to permit person to vote; improper handling of ballot box and ballots at advance poll)<sup>40</sup>

*Offense type*: hybrid offense, intent required. On summary conviction: ≤ \$20,000, ≤ 1 year, or both. On indictment: ≤ \$50,000, ≤ 5 years, or both.<sup>41</sup>

- Offenses Concerning Special Voting Rules (e.g., failure to take required measures regarding ballots and special ballots)<sup>42</sup>

§ 491(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

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<sup>36</sup> *Id.* § 488(1)–(2).

<sup>37</sup> *Id.* § 500(2), (5).

<sup>38</sup> *Id.* § 489(1)–(3).

<sup>39</sup> *Id.* § 500(1)–(2), (5).

<sup>40</sup> *Id.* § 490.

<sup>41</sup> *Id.* § 500(5).

<sup>42</sup> *Id.* § 491(1)–(3).

§ 491(2): *Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 491(3): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>43</sup>

- Offenses Concerning Counting Votes (e.g., failure to safeguard ballot box; failure to perform duties recounting of the vote; premature counting of votes cast at advance poll)<sup>44</sup>

§ 492(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 492(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>45</sup>

- Offense Concerning Validation of Results by the Returning Officer (e.g., failure to appear before returning officer)<sup>46</sup>

*Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.<sup>47</sup>

- Offenses Concerning Return of the Writ (e.g., failure to declare candidate elected; failure to perform duties recounting of the vote; failure to transmit election documents)<sup>48</sup>

*Offense type*: hybrid offense, intent required. On summary conviction: ≤ \$20,000, ≤ 1 year, or both. On indictment: ≤ \$50,000, ≤ 5 years, or both.<sup>49</sup>

- Offenses Concerning Communications (e.g., failure to indicate authority for election advertising; failure to provide report on election survey results; removal of election advertising; failure to make broadcasting time available; failure to charge lowest rate for broadcasting time or advertising space)<sup>50</sup>

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<sup>43</sup> *Id.* § 500(1)–(2), (5).

<sup>44</sup> *Id.* § 492(1)–(2).

<sup>45</sup> *Id.* § 500(1), (5).

<sup>46</sup> *Id.* § 493.

<sup>47</sup> *Id.* § 500(2).

<sup>48</sup> *Id.* § 494.

<sup>49</sup> *Id.* § 500(5).

<sup>50</sup> *Id.* § 495(1)–(5).

§ 495(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 495(2)–(3): *Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 495(4): *Offense type*: summary offense (≤ \$50,000 fine only); intent required.

§ 495(5): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>51</sup>

- Offenses Concerning Scripts and Recordings (e.g., obligation of a service provider to keep scripts and recordings in live voice calls)<sup>52</sup>

§§ 495.1(1) & 495.2(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 495.1(2) & 495.2(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>53</sup>

- Offenses Concerning Third Party Election Advertising (e.g., exceeding election advertising expense limits; failure to identify self in advertisement; use of anonymous contributions; exceeding or circumventing election advertising expense limits; failure to file election advertising report and to provide bills or receipts on request)<sup>54</sup>

§ 496(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 496(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>55</sup>

- Offenses Concerning Political Parties (e.g., failure to provide statement of assets and liabilities or related documents; failure to report changes to registered party information; failure to provide financial transactions return or election expenses return or related documents)<sup>56</sup>

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<sup>51</sup> *Id.* § 500(1)–(2), (5).

<sup>52</sup> *Id.* §§ 495.1(1)–495.2(2).

<sup>53</sup> *Id.* § 500(1), (5).

<sup>54</sup> *Id.* § 496(1)–(2).

<sup>55</sup> *Id.* § 500(1), (5).

<sup>56</sup> *Id.* § 497.1(1)–(3).

§ 497(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 497(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>57</sup>

- Offenses Concerning Electoral District Associations (e.g., failure to provide statement of assets and liabilities or related documents; failure to report changes to registered association information; failure to provide financial transactions return for fiscal period or related documents)<sup>58</sup>

§ 497.2(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 497.2(2): *Offense type*: summary offense; intent required. On summary conviction: ≤ \$5,000, ≤ 6 months, or both.

§ 497.2(3): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>59</sup>

- Offenses Concerning Nomination Contestants (e.g., failure to notify of nomination contest; failure to report changes in nomination contestant information)<sup>60</sup>

§ 497.3(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 497.3(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>61</sup>

- Offenses Concerning Candidates (e.g., failure to appoint a replacement official agent or auditor; failure to provide electoral campaign return or related documents; improper or unauthorized transfer of funds)<sup>62</sup>

§ 497.4(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

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<sup>57</sup> *Id.* § 500(1), (5).

<sup>58</sup> *Id.* § 497.2(1)–(3).

<sup>59</sup> *Id.* § 500(1)–(2), (5).

<sup>60</sup> *Id.* § 497.3 (1)–(2).

<sup>61</sup> *Id.* § 500(1), (5).

<sup>62</sup> *Id.* § 497.4(1)–(2).

§ 497.4(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>63</sup>

- Offenses Concerning Leadership Contestants (e.g., failure to inform of leadership contest or related changes; failure to register for a leadership contest)<sup>64</sup>

§ 497.5(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 497.5(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>65</sup>

- Offense Concerning Enforcement (e.g., refusal to obey order to leave polling place)<sup>66</sup>

*Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>67</sup>

- Offenses Concerning Part 21 (General) (e.g., removal of posted election documents; compelling or inducing false oath)<sup>68</sup>

§ 499(1): *Offense type*: summary offense; strict liability offense. On summary conviction: ≤ \$2,000, ≤ 3 months, or both.

§ 499(2): *Offense type*: hybrid offense; intent required. On summary conviction: ≤ \$20,000, ≤ 1 year imprisonment, or both. On indictment: ≤ \$50,000, ≤ 5 years imprisonment, or both.<sup>69</sup>

Under section 501 a judge can impose additional penalties “having regard to the nature of the offence and the circumstances surrounding its commission,”<sup>70</sup> which can include

- performing community service
- performing the obligation that gave rise to the offence

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<sup>63</sup> *Id.* § 500(1), (5).

<sup>64</sup> *Id.* § 497.5(1)–(2).

<sup>65</sup> *Id.* § 500(1), (5).

<sup>66</sup> *Id.* § 498.

<sup>67</sup> *Id.* § 500(5).

<sup>68</sup> *Id.* § 499(1)–(2).

<sup>69</sup> *Id.* § 500(1), (5).

<sup>70</sup> Canada Elections Act § 501.

- compensating for damages, or any other reasonable measure the Court considers appropriate
- the deregistration of a party and liquidation of its assets, and the liquidation of the assets of the party's registered associations.<sup>71</sup>

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<sup>71</sup> *Enforcing the Canada Elections Act*, *supra* note 10.

# Denmark

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**SUMMARY** Denmark is a constitutional monarchy and has national, municipal, and local elections. It criminalizes violations of election law. Sanctions range from fines to several years of imprisonment. The validity of election results are determined by the Danish Parliament. The Danish Radio and Television Board determine violations of political commercial regulations.

## I. Introduction

Denmark is a constitutional monarchy with a unicameral, representative, and multi-party parliament, known as the Folketinget.<sup>1</sup> It is also a member of the European Union,<sup>2</sup> thus Danes also vote in European Parliament elections.<sup>3</sup> Registered voters are provided with poll cards prior to elections, which they present at the polling station; voters need only present a government-issued identification document if there is a doubt over their identity.<sup>4</sup>

### A. Electoral System Danish Parliament (Folketinget)

National elections are held to elect members of the Danish parliament.<sup>5</sup> Parliamentary elections are free, universal, and direct.<sup>6</sup> Elections to parliament are party based, but voters may choose who among the list of candidates for a party they would like to vote for.<sup>7</sup> In addition Denmark may hold national referendums pursuant to rules contained in the Parliaments Act. The Prime Minister announces the date of elections for parliament, which must be held no later than four years following the previous national election.<sup>8</sup>

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<sup>1</sup> § 3 DANMARKS RIGES GRUNDLOV (GRUNDLOVEN) [CONSTITUTION] (LOV nr 169 of June 5, 1953), <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>, archived at <https://perma.cc/4K5P-YEX2>.

<sup>2</sup> Denmark, EUROPEAN UNION (Feb. 15, 2018), [https://europa.eu/european-union/about-eu/countries/member-countries/denmark\\_en](https://europa.eu/european-union/about-eu/countries/member-countries/denmark_en), archived at <https://perma.cc/T3H8-AQ3Z>.

<sup>3</sup> EUROPA-PARLAMENTSVALGLOVEN [EUROPEAN PARLIAMENT ELECTION ACT] (LBK nr 368 af 10/04/2014), <https://www.retsinformation.dk/Forms/R0710.aspx?id=162506>, archived at <https://perma.cc/E9X9-QY5Q>.

<sup>4</sup> §§ 20, 21 & 47 FOLKETINGSLØVEN [PARLIAMENT ELECTION ACT] (LBK nr 1426 af 08/12/2017), <https://www.retsinformation.dk/Forms/R0710.aspx?id=194769>, archived at <https://perma.cc/WBG7-V8EH>, unofficial English translation available at [http://www.thedanishparliament.dk/Publications/~/\\_/media/PDF/publikationer/English/The Parliamentary System of Denmark 2009.ashx](http://www.thedanishparliament.dk/Publications/~/_/media/PDF/publikationer/English/The%20Parliamentary%20System%20of%20Denmark%202009.ashx), archived at <https://perma.cc/YVG2-92SC>.

<sup>5</sup> §§ 1, 6, & 7 FOLKETINGSLØVEN.

<sup>6</sup> § 31 stk 1 GRUNDLOVEN; § 1 FOLKETINGSLØVEN.

<sup>7</sup> § 48 FOLKETINGSLØVEN.

<sup>8</sup> § 32 stk 3 GRUNDLOVEN.

## B. Election Law Offenses

Violations of election laws are criminalized in the Criminal Code (Straffeloven).<sup>9</sup> It criminalizes illegal voting (voting without having the right to vote or voting twice), enabling someone else to vote illegally, purchasing votes, selling votes (or receiving monetary benefit from voting in a certain way), and influencing the votes of others (including making someone refrain from voting).<sup>10</sup>

### 1. *Voting and Voter Registration Violations*

Denmark criminalizes both unauthorized voting by the individual, and enabling someone else to vote illegally.<sup>11</sup> Both of these crimes include the act of registering as a voter.<sup>12</sup>

### 2. *Undue Influence Crimes*

Denmark also criminalizes the purchasing of votes, selling votes, influencing the vote of others by duress, or using one's position as a poll station staffer to advise voters how to vote.<sup>13</sup> Denmark, unlike Norway, specifically requires that the influence must be through some form of coercion, financial benefit, or abuse of a position of power.<sup>14</sup> Lobbying a person or influencing without coercion is not illegal.<sup>15</sup>

### 3. *Unlawful Release of Election Results*

Denmark criminalizes releasing unverified election results.<sup>16</sup> It also criminalizes sharing of information on who has voted in a given election.<sup>17</sup>

### 4. *Campaign Financing and Advertisement Violations*

Circumventing election finance rules is criminalized and may be sanctioned with imprisonment for up to six years.<sup>18</sup> Election finance rules forbid parties from receiving anonymous donations

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<sup>9</sup> STRAFFELOVEN [CRIMINAL CODE] (LBK nr 977 af 09/08/2017), <https://www.retsinformation.dk/Forms/R0710.aspx?id=192080>, archived at <https://perma.cc/SZ4U-MV4J>. See further discussion, Part III.

<sup>10</sup> §§ 116 & 117 STRAFFELOVEN.

<sup>11</sup> *Id.* § 117.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ; § 106 FOLKETINGSLOVEN.

<sup>14</sup> § 117 STRAFFELOVEN. Compare Norwegian survey.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 129.

<sup>17</sup> § 106 FOLKETINGSLOVEN.

<sup>18</sup> §§ 6 & 6a PARTIREGNSKABSLOVEN [POLITICAL PARTIES FINANCE ACT] (LBK nr 974 af 11/08/2017), <https://www.retsinformation.dk/Forms/R0710.aspx?id=192427>, archived at <https://perma.cc/66S7-CD3Z>.

that exceed DKK 20,000 (approximately US\$3,300).<sup>19</sup> If such donations nevertheless are received they must either be returned or transferred to the state treasury within thirty days.<sup>20</sup> Political parties must provide annual financial reports and list all private donations that exceed DKK 20,000 (approximately US\$3,300), as well as all donations from international organizations, funds, and unions.<sup>21</sup>

Broadcasting political commercials on television or radio is prohibited.<sup>22</sup> There are also restrictions on when and how political advertisements may be displayed, essentially limiting political advertisements to the election period, starting on the fourth Saturday prior to a parliamentary election and lasting until eight days after said election.<sup>23</sup> Removal of campaign advertisements that are lawful is criminalized.<sup>24</sup>

### C. Legal Framework Protecting Electoral Rights

Denmark uses several different measures to protect the legitimacy of its elections. For instance, the official count of the ballots is open to the public.<sup>25</sup> Persons unhappy with the result or who fear that the election has not been conducted fairly may send a complaint to the parliament addressed to the Ministry for Economic Affairs and the Interior.<sup>26</sup> The complaint must be received by the Ministry for Economic Affairs and the Interior no later than the next weekday after election day.<sup>27</sup> Moreover, political parties must report the receipt of donations that exceed DKK 20,000 (approximately US\$3,300).<sup>28</sup>

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<sup>19</sup> § 2a PARTIREGNSKABSLOVEN .

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* § 3.

<sup>22</sup> § 76 stk 3 & stk 4 LOV OM RADIO- OG FJERNSYNSVIRKSOMHED [DANISH RADIO AND TELEVISION ACT] (LBK nr 255 af 20/03/2014), <https://www.retsinformation.dk/Forms/R0710.aspx?id=161625>, archived at <https://perma.cc/P2XG-7R5B>. For further information see Christina Sigvardt, *Political Advertising on TV in Denmark*, MEDIESEKRETARIATET, [https://english.slks.dk/fileadmin/user\\_upload/dokumenter/medier/reklamer/political\\_advertising\\_tv/poladvertising.pdf](https://english.slks.dk/fileadmin/user_upload/dokumenter/medier/reklamer/political_advertising_tv/poladvertising.pdf) (last visited Feb. 28, 2018), archived at <https://perma.cc/DM3G-P7BS>.

<sup>23</sup> Bekendtgørelse om valgagitation [Regulation on Election ] (BEK No. 645 af 12/10/1989), <https://www.retsinformation.dk/Forms/R0710.aspx?id=57730>, archived at <https://perma.cc/WU3S-8Y96>; § 66a BEKENDTGØRELSE AF LOV OM PRIVATE FÆLLESVEJE [ACT ON PRIVATE ] (LBK No. 1234 af 04/11/2015), <https://www.retsinformation.dk/Forms/R0710.aspx?id=174723>, archived at <https://perma.cc/4TX5-B4B7>.

<sup>24</sup> §291 stk. 2 STRAFFELOVEN.

<sup>25</sup> §§ 68 and 72 FOLKETINGSLOVEN.

<sup>26</sup> § 88 FOLKETINGSLOVEN.

<sup>27</sup> *Id.*

<sup>28</sup> § 2a PARTIREGNSKABSLOVEN [POLITICAL PARTIES FINANCE ACT] (LBK nr 974 af 11/08/2017), <https://www.retsinformation.dk/Forms/R0710.aspx?id=192427>, archived at <https://perma.cc/66S7-CD3Z>.

## II. Election Law Enforcement Roles

### A. Determinations of Validity of Elections

It is the Danish Parliament itself that determines whether an election result is valid.<sup>29</sup> Thus, no court hears election complaints with regard to the outcome or validity of an election, including the request for a recount.<sup>30</sup> Complaints related to the election results must be addressed to the Danish Parliament, but are physically sent to the Ministry of the Economic Affairs and the Interior.<sup>31</sup>

Immediately following an election the Danish Parliament sets up a temporary twenty-one member committee that is tasked with determining the validity of the election results.<sup>32</sup> Validity is determined by reviewing the materials provided by local election committees.<sup>33</sup>

### B. Determinations of Voter Fraud

Voter fraud, such as voting twice or coercing someone to vote a certain way, is determined by the ordinary courts.

### C. Determinations of TV & Radio Commercial Violations

The Danish Radio and Television Board determine any violations of laws regulating commercials in TV and radio.<sup>34</sup>

## III. Case Law

No Supreme Court case law on the prosecution of election offenses has been found.

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<sup>29</sup> § 33 GRUNDLOVEN; For further information on how the Parliament determines whether an election is valid see *Standing Orders of the Danish Parliament*, FOLKETINGET [DANISH PARLIAMENT] (Sept. 21, 2016), <http://www.thedanishparliament.dk/publications/standing-orders-of-the-folketing.aspx?page=all>, archived at <https://perma.cc/CRG8-JWHL>.

<sup>30</sup> *Id.*

<sup>31</sup> § 88 FOLKETINGSLOVEN.

<sup>32</sup> *Standing Orders of the Danish Parliament*, *supra* note 29.

<sup>33</sup> *Id.*

<sup>34</sup> § 44 LOV OM RADIO- OG FJERNSYNSVIRKSOMHED; *The Radio and Television Board*, KULTURMINISTERIET [MINISTRY OF CULTURE], <https://english.slks.dk/english/media/the-radio-and-television-board/> (last visited Feb. 28, 2018), archived at <https://perma.cc/6NQ8-UOKD>.

# England and Wales

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**SUMMARY** England and Wales has an extensive system of laws and offenses that specifically apply during elections and cover campaign financing, bribery, corruption, fraud, and voter intimidation. Convictions may result in fines, imprisonment, nullification of an election, and disqualification from participating in future elections. The laws are actively enforced, and the investigation and prosecution of such offenses are the responsibility of the police and Director of Public Prosecutions. The Electoral Commission supervises the administration of elections across England and Wales.

## I. Introduction

In England and Wales, the electoral system used is that of a simple majority for each constituency, more commonly known as the “first past the post system.” National elections are known as general parliamentary elections.<sup>1</sup> These elections occur every five years on the first Thursday in May,<sup>2</sup> and the political party that wins the most seats then goes on to form the government.

The legal framework protecting electoral rights are contained in the Representation of the People Acts of 1983<sup>3</sup> and 1985;<sup>4</sup> the regulations made under these Acts; the Political Parties, Elections and Referendums Act 2000;<sup>5</sup> the Electoral Administration Act 2006;<sup>6</sup> and the Electoral Registration and Administration Act 2013.<sup>7</sup>

Despite a vast array of criminal offenses that specifically apply to elections and the period before elections, a working group has expressed concern that new technology used for targeted social

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<sup>1</sup> The Interpretation Act 1978, c. 30 § 5, sch. 1, <http://www.legislation.gov.uk/ukpga/1978/30>, archived at <https://perma.cc/ZGX7-25HS>, defines “Parliamentary Election” as “the election of a Member to serve in Parliament for a constituency.”

<sup>2</sup> Fixed-Term Parliaments Act 2011, c. 14, <http://www.legislation.gov.uk/ukpga/2011/14/enacted>, archived at <https://perma.cc/KQ7S-GULJ>.

<sup>3</sup> Representation of the People Act 1983, c. 2, <http://www.legislation.gov.uk/ukpga/1983/2>, archived at <https://perma.cc/3YMU-XSNH>.

<sup>4</sup> Representation of the People Act 1985, c 50, <http://www.legislation.gov.uk/ukpga/1985/50>, archived at <https://perma.cc/VCF8-A6WD>.

<sup>5</sup> Political Parties, Elections and Referendums Act 2000, c. 41, <https://www.legislation.gov.uk/ukpga/2000/41>, archived at <https://perma.cc/5BVW-A7G6>.

<sup>6</sup> Electoral Administration Act 2006, c. 22, <http://www.legislation.gov.uk/ukpga/2006/22>, archived at <https://perma.cc/G43L-U2VA>.

<sup>7</sup> Electoral Registration and Administration Act 2013, c. 6, <http://www.legislation.gov.uk/ukpga/2013/6>, archived at <https://perma.cc/2FAL-JDLC>.

media and online campaigning threatens to disrupt elections and allow foreign influence, and that “current laws are unable to ensure a free and fair election or control the influence of money in politics.”<sup>8</sup>

## II. Mechanisms for Law Enforcement in the Field of Elections

The courts play a significant role in cases where election laws have been broken, and criminal enforcement is the primary means of enforcing electoral law.<sup>9</sup> After the Director of Public Prosecutions has been notified that an offense under the Representation of the People Act has occurred, he or she has a duty to make inquiries and commence prosecution proceedings if he or she believes the circumstances so require.<sup>10</sup> Any proceedings must be started within twelve months of the commission of the offense, although in exceptional circumstances an application may be made to a magistrate’s court within one year of the date of the commission of the offense to extend this time to twenty-four months.<sup>11</sup>

Guidance by the Crown Prosecution Service notes that

[t]he principal purpose of the relevant legislation (Representation of the People Acts 1983 and 1985, Elections and Referendums Act 2000, and the Electoral Administration Act 2006) is to maintain the integrity and probity of the electoral process. Proceedings for major infringements will normally be in the public interest.<sup>12</sup>

The Guidance further states that “where there is clear evidence that [an election offense] has affected the result or is likely to have done so, the public interest is more likely to require a prosecution—even if the infringement itself is relatively minor.”<sup>13</sup>

Another means of redressing electoral fraud in parliamentary and local elections is through an election petition, although these are increasingly rare.<sup>14</sup> An election petition allows a petitioner to question the validity of an election for a variety of reasons, including that the candidate elected was not qualified or duly elected, or that the election was tainted by corrupt or illegal practices.<sup>15</sup> If the elected candidate is “reported by an election court personally guilty or guilty

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<sup>8</sup> Carole Cadwalladr, ‘Dark Money’ is Threat to Integrity of UK Elections, Say Leading Academics, *GUARDIAN* (London) (Apr. 1, 2017), <https://www.theguardian.com/politics/2017/apr/01/dark-money-threat-to-uk-elections-integrity>, archived at <https://perma.cc/G3VW-D5KD>.

<sup>9</sup> Electoral Commission, *Research Paper: The Regulation of the Campaign and Electoral Offences* ¶ 1.7, [http://www.lawcom.gov.uk/app/uploads/2015/03/Electoral-Law\\_Regulation\\_Research.pdf](http://www.lawcom.gov.uk/app/uploads/2015/03/Electoral-Law_Regulation_Research.pdf) (last visited Feb. 20, 2017), archived at <https://perma.cc/UVM9-U4FT>.

<sup>10</sup> Representation of the People Act 1983, c. 2, § 181.

<sup>11</sup> *Id.* § 176.

<sup>12</sup> Crown Prosecution Service, *Election Offences – Legal Guidance*, <https://www.cps.gov.uk/legal-guidance/election-offences> (last visited Feb. 20, 2017), archived at <https://perma.cc/LBQ5-ZZPX>.

<sup>13</sup> *Id.*

<sup>14</sup> Representation of the People Act 1983, c. 2, §§ 120, 127.

<sup>15</sup> *Id.* §§ 120, 127, 164, 165.

by his agents of any corrupt or illegal practice, his election shall be void.”<sup>16</sup> These petitions are expensive and are essentially private legal actions.<sup>17</sup> Although public legal assistance is available in certain circumstances, there are few “fully fought out Petitions where serious electoral malpractice has been alleged.”<sup>18</sup> The ultimate result of these difficulties is that

the role of the police in monitoring elections and preventing electoral fraud, whatever may be the theoretical position, is, in practice, marginal. . . . In reality, all that is left as a safeguard is the right of a disgruntled losing candidate or an aggrieved voter to Petition. . . . As a means of controlling electoral fraud, they are both inappropriate and ineffective. . . . It is thus clear that the policing of electoral fraud by anyone is minimal. . . . What is equally clear is that any potential electoral fraudster can easily work out that the policing of electoral fraud is minimal.<sup>19</sup>

The Political Parties, Elections and Referendums Act 2000<sup>20</sup> established the Electoral Commission, an independent statutory body that is directly accountable and must report to Parliament. The Electoral Commission is responsible for ensuring that political parties and candidates comply with election laws.<sup>21</sup> The remit of the Electoral Commission is much broader than first proposed, which was to “supervise the restrictions on spending by and donations to political parties.”<sup>22</sup> Instead, its authority ranges from enforcing the Political Parties, Elections and Referendums Act 2000, the provisions of which include the administration of elections, to reviewing electoral law and practice and promoting elections among the public.<sup>23</sup> In addition, one of the Electoral Commission’s statutory duties is to publish reports on the administration of each general election.<sup>24</sup>

### III. Electoral Offenses

England and Wales has a vast array of electoral offenses, and these are contained in the Representation of the People Acts of 1983 and 1985; the regulations made under these Acts; the Political Parties, Elections and Referendums Act 2000; and the Electoral Administration Act 2006. Breaches of many of these laws are criminal offenses that are initially handled by the police and then referred to the Director of Public Prosecutions.<sup>25</sup> There are many offenses that

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<sup>16</sup> *Akhtar and Others v Jahan and Others, Iqbal and Others v Islam and Others*, [2005] All ER (D) ¶ 158, *referring to* Representation of the People Act 1983, c. 2, § 159.

<sup>17</sup> *Id.* ¶ 159.

<sup>18</sup> *Id.* ¶ 160.

<sup>19</sup> *Id.* ¶¶ 159–162.

<sup>20</sup> Political Parties, Elections and Referendums Act 2000, c. 41.

<sup>21</sup> *Id.* § 145.

<sup>22</sup> Political Parties, Elections and Referendums Act 2000, c. 41, *Explanatory Notes*, ¶ 23, <http://www.legislation.gov.uk/ukpga/2000/41/notes>, archived at <https://perma.cc/7KJT-3GKA>.

<sup>23</sup> The Electoral Commission is also responsible for certain ethical issues and monitoring campaign financing.

<sup>24</sup> Political Parties, Elections and Referendums Act 2000, c. 41, § 5.

<sup>25</sup> MARK ELLIOT & ROBERT THOMAS, PUBLIC LAW 172 (2d ed. 2014).

apply to both individuals acting on their own behalf and those representing, or purporting to represent, political parties and candidates, and cover areas such as campaign financing, voter registration, voter intimidation, fraudulent acts, corruption, and bribery. The general criminal laws of England and Wales may also apply to offenses that can be committed during the election process;<sup>26</sup> however, this report focuses on offenses that specifically apply to the electoral process.

Electoral offenses fall within one of three categories: (1) corrupt practices, which may be tried summarily or on indictment with a penalty of up to one year imprisonment (up to two years imprisonment for impersonation or postal voting offenses) and/or a fine; (2) illegal practices, which may be tried summarily with a penalty of up to an unlimited fine; (3) and miscellaneous offenses, which may only be tried summarily and can carry a maximum penalty of an unlimited fine.<sup>27</sup> If a winning candidate is convicted of such an offense, he or she faces not only criminal penalties, but must also vacate his/her newly elected post and a new election must be held.<sup>28</sup> Additionally, any person is disqualified from running for election for three years for instances of illegal practices and five years for instances of corrupt practices.<sup>29</sup> Being convicted of impersonation or postal voting offenses under the Representation of the People Act 1983 also disqualifies the offender from the ability to register to vote in any election for a specified period of time.<sup>30</sup>

#### IV. Enforcement of Electoral Offenses

Electoral laws are actively enforced across England and Wales. In June 2004, in the first judgment of its kind addressing postal voting fraud, a judge quashed the results of two local council elections held in Birmingham. A lengthy judgment was issued in which the judge noted that there were potentially fourteen types of fraud connected with postal voting and that these were utilized in the Birmingham council elections where there was systematic, large-scale rigging of postal votes to which the police had only marginally responded, despite being forewarned by some of the candidates that the election was going to be subject to fraudulent practices.<sup>31</sup>

Following are additional examples of electoral fraud cases that have been successfully prosecuted:

- An election campaigner was sentenced to fifteen months' imprisonment in 2018 after fraudulently obtaining signatures for an election nomination.<sup>32</sup>

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<sup>26</sup> Electoral Commission, *supra* note 9, ¶ 1.7.

<sup>27</sup> Representation of the People Act 1983, c. 2, §§ 168–169. *See also* Crown Prosecution Service, *supra* note 12..

<sup>28</sup> Electoral Commission, *supra* note 9, ¶¶ 1.17, 1.19.

<sup>29</sup> Political Parties, Elections and Referendums Act 2000, c. 41, § 173.

<sup>30</sup> Representation of the People Act 1983, c. 2, §§ 60, 61, 62A, and 62B.

<sup>31</sup> *Akhtar and Others v Jahan and Others, Iqbal and Others v Islam and Others*, [2005] All ER (D).

<sup>32</sup> *Derby Election Campaigner Jailed for Election Fraud*, BBC NEWS (Feb. 13, 2018), <http://www.bbc.com/news/uk-england-derbyshire-43050107>, archived at <https://perma.cc/2H48-7NNU>.

- A Labour councilor was jailed for three years and seven months in 2005 for postal vote-rigging in Blackburn. He was found guilty of arranging the collection of blank ballot papers from houses by campaigners who told people that they would “take care” of them.<sup>33</sup>
- A low-scale case in 2006 involved an individual requesting family members to act as witnesses to forms being signed verifying the identity of ten local voters. This case did not involve any issues of “stealing” votes; rather, it was a procedural impropriety and a fine of £3,000 (approximately US\$5,000) was issued.<sup>34</sup>

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<sup>33</sup> *Councillor Jailed for Postal Vote Fraud*, TELEGRAPH (London) (Apr. 9, 2005), <http://www.telegraph.co.uk/news/1487384/Councillor-jailed-for-postal-vote-fraud.html>, archived at <https://perma.cc/JF4E-TTDD>.

<sup>34</sup> *Major Fined After Election Fraud*, BBC NEWS (May 15, 2006), [http://news.bbc.co.uk/2/hi/uk\\_news/england/merseyside/4773569.stm](http://news.bbc.co.uk/2/hi/uk_news/england/merseyside/4773569.stm), archived at <https://perma.cc/GF5B-EBBP>.

# Estonia

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**SUMMARY** Election-related offenses are listed in Estonia’s Penal Code, Political Parties Act, and other laws governing referendums and various elections. Misdemeanors are generally punishable by a fine while criminal offenses may carry prison sentences. Extrajudicial proceedings concerning misdemeanors are conducted by the Police and Border Guard Board. The same law enforcement authority is responsible for investigating and conducting pretrial proceedings in criminal cases.

## I. Electoral System

Estonia is a parliamentary republic with legislative power vested in the Riigikogu, a unicameral parliament of 101 members. The President of Estonia is elected by the Riigikogu for a five-year term and nominates the Prime Minister for approval by the legislature. Elections for the Riigikogu are held every four years. Voters also participate in elections for municipal councils, local government councils, and the European Parliament, as well as in referendums.<sup>1</sup>

In 2005 Estonia became the first participating state of the Organization for Security and Cooperation in Europe (OSCE) to allow all eligible voters to vote via the internet.<sup>2</sup> Internet voting relies on activated electronic identity documents used by citizens to access government services. Reportedly, up to 25% of registered voters cast their ballots online;<sup>3</sup> however, the election system could be vulnerable to hacking, according to independent researchers—a claim that the Estonian National Electoral Committee disputes.<sup>4</sup>

Elections are administered by the National Electoral Committee, which consists of seven members appointed by the heads of the highest governmental bodies. Two members of the Commission are nominated by the Chief Justice of the Supreme Court; the Chancellor of Justice, the Auditor General, the Chief Public Prosecutor, and the Secretaries of the Parliament Chancellery and the State Chancellery appoint one person each.<sup>5</sup>

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<sup>1</sup> EESTI VABARIIGI PÕHISEADUS [CONSTITUTION OF THE REPUBLIC OF ESTONIA], June 28, 1992, chs. IV, V, <https://www.riigiteataja.ee/akt/127042011002> (in Estonian), archived at <https://perma.cc/48FP-NAZ6>, available in English at <https://www.riigiteataja.ee/en/eli/530102013003/consolide>, archived at <https://perma.cc/W9JH-QHJO>.

<sup>2</sup> OSCE, ESTONIA, PARLIAMENTARY ELECTIONS, 1 MARCH 2015, OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT, 19–21 JANUARY 2015, at 3 (Warsaw, Feb. 9, 2015), <http://www.osce.org/odihr/elections/estonia/139566?download=true>, archived at <https://perma.cc/FQ27-BKWC>.

<sup>3</sup> *A Security Analysis of Estonia’s E-Voting System*, ESTONIAVOTING.ORG (May 12, 2014), <https://estoniaevoting.org/>, archived at <https://perma.cc/GUS3-T8E3>.

<sup>4</sup> Charles Arthur, *Estonian e-Voting Shouldn’t be Used in European Elections, Say Security Experts*, THE GUARDIAN (May 13, 2014), <https://www.theguardian.com/technology/2014/may/12/estonian-e-voting-security-warning-european-elections-research>, archived at <https://perma.cc/GL3K-8R6T>.

<sup>5</sup> OSCE, ESTONIA, PARLIAMENTARY ELECTIONS, *supra* note 2, at 4.

## II. Legal Framework

The current Constitution of Estonia<sup>6</sup> came into force in 1992. According to its section 56, supreme political authority in Estonia is vested in the people, who exercise this authority through citizens eligible to vote in elections for the Riigikogu and in referendums.

Estonia has adopted a number of legislative acts that regulate referendums and all types of elections: the Riigikogu Election Act,<sup>7</sup> Local Government Council Election Act,<sup>8</sup> Municipal Council Election Act,<sup>9</sup> President of the Republic Election Act,<sup>10</sup> European Parliament Election Act,<sup>11</sup> and Referendum Act.<sup>12</sup> These acts provide penalties for certain election-related misdemeanors. Offenses against freedom of election are also contained in the Political Parties Act<sup>13</sup> and in the Penal Code.<sup>14</sup>

In Estonia a distinction is made between criminal offenses, normally punishable by imprisonment, and administrative violations (misdemeanors), usually punishable by a fine.<sup>15</sup> A

<sup>6</sup> EESTI VABARIIGI PÕHISEADUS, *supra* note 1.

<sup>7</sup> Riigikogu Valimise Seadus [Riigikogu Election Act], RIIGI TEATAJA [RT] [OFFICIAL GAZETTE] I 2002, No. 57, item 355, <https://www.riigiteataja.ee/akt/106052016002> (in Estonian), archived at <https://perma.cc/F5XF-PDFE>, English translation available at <https://www.riigiteataja.ee/en/eli/506052016002/consolide>, archived at <https://perma.cc/45CU-SZHP>.

<sup>8</sup> Kohaliku Omavalitsuse Volikogu Valimise Seadus [Local Government Council Election Act], RT I 2002, No. 36, item 220, <https://www.riigiteataja.ee/akt/121062016007> (in Estonian), archived at <https://perma.cc/MNW9-ZDHD>, English translation available at <https://www.riigiteataja.ee/en/eli/511072016012/consolide>, archived at <https://perma.cc/75Q8-R6CQ>.

<sup>9</sup> Kohaliku Omavalitsuse Volikogu Valimise Seadus [Municipal Council Election Act], RT I 2002, No. 36, item 220, <https://www.riigiteataja.ee/akt/121062016008> (in Estonian), archived at <https://perma.cc/W98X-BZE4>, English translation available at <https://www.riigiteataja.ee/en/eli/514112016001/consolide>, archived at <https://perma.cc/W6FY-A4LN>.

<sup>10</sup> Vabariigi Presidendi Valimise Seadus [President of the Republic Election Act], RT I 1996, No. 30, item 595, <https://www.riigiteataja.ee/akt/110072012032> (in Estonian), archived at <https://perma.cc/994A-GTBZ>, English translation available at <https://www.riigiteataja.ee/en/eli/512112013006/consolide>, archived at <https://perma.cc/Z4MX-34ZA>.

<sup>11</sup> Euroopa Parlamendi Valimise Seadus [European Parliament Election Act], RT I 2003, No. 4, item 22, <https://www.riigiteataja.ee/akt/110012014005> (in Estonian), archived at <https://perma.cc/JKH7-A6VQ>, English translation available at <https://www.riigiteataja.ee/en/eli/529012014001/consolide>, archived at <https://perma.cc/HKJ2-ZPZW>.

<sup>12</sup> Rahvahääletuse Seadus [Referendum Act], RT I 2002, No. 30, item 176, <https://www.riigiteataja.ee/akt/104072017091> (in Estonian), archived at <https://perma.cc/6K7A-VU2J>, English translation available at <https://www.riigiteataja.ee/en/eli/514112013007/consolide/current>, archived at <https://perma.cc/4U7G-UR7A>.

<sup>13</sup> Erakonnaseadus [Political Parties Act], RT I 1994, No. 40, item 654, <https://www.riigiteataja.ee/akt/127062012007> (in Estonian), archived at <https://perma.cc/2CHT-NHDG>, English translation available at <https://www.riigiteataja.ee/en/eli/502062014001/consolide>, archived at <https://perma.cc/4BK4-RRAD>.

<sup>14</sup> KARISTUSSEADUSTIK [PENAL CODE], RT I 2001, No. 61, item 364, <https://www.riigiteataja.ee/akt/123122014016>, archived at <https://perma.cc/N63B-HCHQ>, English translation available at <https://www.riigiteataja.ee/en/eli/522012015002/consolide>, archived at <https://perma.cc/6T7X-FTRV>.

<sup>15</sup> *Id.* § 3.

criminal offense is considered to be a first-degree offense if the punishment for it may exceed five years of imprisonment. Most criminal offenses, including election-related crimes, are considered second-degree offenses.<sup>16</sup>

Criminal offenses against freedom of election include

- interference with elections or referendums,<sup>17</sup>
- violations of freedom of election,<sup>18</sup> and
- falsification of elections.<sup>19</sup>

Misdemeanors are more numerous and include, among other,

- election fraud,<sup>20</sup>
- violations of the confidentiality of voting,<sup>21</sup>
- interference with election campaigning,<sup>22</sup>
- unlawful campaigning,<sup>23</sup>
- taking ballot papers out of polling places,<sup>24</sup> and
- failing to submit election campaign reports.<sup>25</sup>

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<sup>16</sup> *Id.* § 4.

<sup>17</sup> *Id.* § 161.

<sup>18</sup> *Id.* § 162.

<sup>19</sup> *Id.* § 163.

<sup>20</sup> *Id.* § 165.

<sup>21</sup> *Id.* § 166.

<sup>22</sup> *Id.* § 167.

<sup>23</sup> *Id.* § 168.

<sup>24</sup> Riigikogu Election Act § 73.3.

<sup>25</sup> Political Parties Act § 12.2.

### III. Sanctions

Pecuniary punishment for a criminal offense generally cannot be less than €300 (approximately, US\$373),<sup>26</sup> but the Penal Code does not set the maximum amount of fines. Monetary fines imposed on legal persons can be in the range of €4,000 to €16 million (approximately US\$4,970 to \$19.9 million).<sup>27</sup>

Misdemeanors committed by individuals are punishable by monetary fines of three to three hundred “fine units,” i.e., €12 to €1,200 (approximately US\$15 to \$1,500).<sup>28</sup> Detention for a term of up to thirty days may also be imposed on individual offenders.<sup>29</sup> Monetary fines applicable to legal persons may be in the range of €100 to €400,000 (approximately US\$125 to \$498,000).<sup>30</sup>

### IV. Enforcement

Extrajudicial proceedings concerning election-related misdemeanors are conducted by the Police and Border Guard Board.<sup>31</sup> The same authority is in charge of investigating election-related criminal offenses and conducting pretrial proceedings.<sup>32</sup>

The Prosecutor’s Office directs pretrial proceedings and prosecutes the case in court. Criminal cases are heard before courts of first instance (county courts), courts of second instance (circuit courts), and the Supreme Court depending on case jurisdiction. Complaints against the decisions of electoral committees are resolved according to a special procedure under the Constitutional Review Court Procedure Act.<sup>33</sup>

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<sup>26</sup> Penal Code § 44.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 47. Fine units, which are established by law, are periodically reviewed monetary amounts used for calculating fines. Presently, one fine unit equals approximately US\$5.

<sup>29</sup> *Id.* § 48.

<sup>30</sup> *Id.* § 47.

<sup>31</sup> VÄÄRTEOMENETLUSE SEADUSTIK [CODE OF MISDEMEANOR PROCEDURE], RT I 2002, No. 50, item 313, <https://www.riigiteataja.ee/akt/114022014005> (in Estonian), archived at <https://perma.cc/464T-3VPT>, English translation available at <https://www.riigiteataja.ee/en/eli/515052014001/consolide>, archived at <https://perma.cc/RNM2-FFZN>.

<sup>32</sup> KRIMINAALMENETLUSE SEADUSTIK [CODE OF CRIMINAL PROCEDURE], RT I 2003, No. 27, item 166, § 212, <https://www.riigiteataja.ee/akt/104102013004> (in Estonian), archived at <https://perma.cc/3FUS-L44W>, English translation available at <https://www.riigiteataja.ee/en/eli/530102013093/consolide>, archived at <https://perma.cc/FEU4-YEAU>.

<sup>33</sup> Põhiseaduslikkuse Järelevalve Kohtumenetluse Seadus [Constitutional Review Court Procedure Act], RT I 2002, No. 29, item 174, <https://www.riigiteataja.ee/akt/101112012011> (in Estonian), archived at <https://perma.cc/2VBN-4TZS>, English translation available at <https://www.riigiteataja.ee/en/eli/530102013032/consolide>, archived at <https://perma.cc/9NGV-PRCQ>.

# France

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**SUMMARY** France is a republic, with a Constitution that guarantees universal, equal, and secret suffrage. Elections are held at many levels of government: municipal, intermunicipal, departmental, regional, and national. National elections include presidential elections and elections for the two chambers of Parliament, the Senate and the National Assembly. All elections are by direct suffrage except for Senatorial elections, which are indirect. The main source of electoral law in France is the Electoral Code, which provides the framework for most elections in France except presidential elections and elections of French representatives to the European Parliament, which are governed by separate legislation. Additional legislation governs the financing of political parties and campaigns. Enforcement of election laws for national-level offices and referendums is the responsibility of the Constitutional Council, France's highest constitutional authority. Regional elections and elections to the European Parliament fall under the jurisdiction of the Council of State, France's highest court for administrative matters. Municipal, intermunicipal, and departmental elections fall under the jurisdiction of the administrative courts. Certain criminal provisions may be prosecuted within the regular criminal justice system as well. Furthermore, a number of government agencies participate in the enforcement of electoral laws, especially with regard to campaign and party financing, and political advertising.

A number of election-related criminal offenses are punishable by fines and/or incarceration. These include several offenses involving deceptive and fraudulent behavior, such as voter registration fraud, illegal voting, or falsifying the vote tally. Offenses involving violence or intimidation are severely punished, with potential jail sentences of up to twenty years in certain circumstances. Vote-buying and vote-selling are punishable by fines and up to two years in jail. Furthermore, France has several rules on political advertising and mass communication during election campaigns, violations of which are punishable by fines. Violations of campaign financing rules, which aim to increase transparency in the candidates' and political parties' financial dealings, may also be punished by fines and jail time. Finally, the Electoral Code contains two "catch-all" provisions, which are meant to generally cover any deliberate act that would affect the conduct or result of a free and fair election.

## I. Introduction

France is a republic, governed by the Constitution of October 4, 1958.<sup>1</sup> Article 3 of the Constitution states that "[n]ational sovereignty shall vest in the people, who shall exercise it

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<sup>1</sup> CONSTITUTION DU 4 OCTOBRE 1958 [CONST.] [CONSTITUTION OF 4 OCTOBER 1958], <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html>, archived at <https://perma.cc/EL43-AVS3>, English translation available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>, archived at <https://perma.cc/9QRL-YTSE>.

through their representatives and by means of referendum.” The same article goes on to state that, while suffrage may be direct or indirect, “it shall always be universal, equal, and secret.”<sup>2</sup>

Elections are held at the municipal level (to elect members of a town or city council, as well as to elect members of certain intermunicipal councils that some towns are part of), at the *département*<sup>3</sup> level (to elect members of the *conseils départementaux* [departmental councils], the governing body of each *département*), and at the regional level (to elect members of the *conseils régionaux* [regional councils], the governing body of each *région*).<sup>4</sup> Additionally, there are senatorial elections (to elect members of the *Sénat* [Senate], one of the two chambers of Parliament), legislative elections (to elect members of the *Assemblée nationale* [National Assembly], the other chamber of Parliament), presidential elections (to elect the President of France), and European elections (to elect the French representatives to the European Parliament).<sup>5</sup> Finally, French citizens are occasionally called to vote in referendums.<sup>6</sup>

Of the elections listed above, all are by direct universal suffrage except for senatorial elections, which are indirect.<sup>7</sup> In contrast to members of the National Assembly, which are supposed to represent the people of France, French senators are supposed to represent “the territorial communities of the Republic.”<sup>8</sup> As such, only the following electors are eligible to vote for senators: members of the National Assembly, members of the regional councils, members of the departmental councils, and delegates from municipal councils.<sup>9</sup>

## II. Sources of French Election Laws

The fundamental basis of French election law is found in the Constitution, and in particular in its article 3, which, as described above, enshrines the principles of “universal, equal, and secret” suffrage.<sup>10</sup> More detailed legislation, however, is found in several different sources. The main source of electoral law is the Code électoral (Electoral Code), which provides the framework for most elections in France: municipal, intermunicipal, departmental, regional, legislative, and

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<sup>2</sup> *Id.* art. 3.

<sup>3</sup> France is divided into 101 départements, which constitute one of the main territorial subdivisions of the country. France, CIA WORLD FACTBOOK, [https://www.cia.gov/library/publications/the-world-factbook/geos/print\\_fr.html](https://www.cia.gov/library/publications/the-world-factbook/geos/print_fr.html) (last visited Feb. 12, 2018), archived at <https://perma.cc/3VSV-8MCG>.

<sup>4</sup> *Les différentes élections* [The Different Elections], INTERIEUR.GOUV.FR [website of the French Ministry of the Interior], <https://www.interieur.gouv.fr/Elections/Les-elections-en-France/Les-differentes-elections> (last visited Feb. 12, 2018), archived at <https://perma.cc/6T7R-6CFT>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> CONST. art. 24.

<sup>9</sup> *Les différentes élections*, INTERIEUR.GOUV.FR, *supra* note 4.

<sup>10</sup> CONST. art. 3.

senatorial elections, as well as referendums.<sup>11</sup> Presidential elections, however, are principally governed by the Loi du 6 novembre 1962 relative à l'élection du président de la République (Law of 6 November 1962 Regarding the Election of the President of the Republic),<sup>12</sup> and the Loi organique du 25 avril 2016 de modernisation des règles applicables à l'élection présidentielle (Organic Law of 25 April 2016 to Modernize the Rules Applicable to the Presidential Elections).<sup>13</sup>

Elections of French representatives to the European Parliament are primarily governed by the Loi du 7 juillet 1977 relative à l'élection des représentants au Parlement européen (Law of 7 July 1977 Regarding the Election of Representatives to the European Parliament).<sup>14</sup>

Campaign financing is governed by provisions of the above-cited legislation, and by a series of legislation focusing on the financing of political parties: principally Loi du 11 mars 1988 relative à la transparence financière de la vie politique (Law of 11 March 1988 Regarding the Financial Transparency of Political Life),<sup>15</sup> and Loi du 11 octobre 2013 relative à la transparence de la vie publique (Law of 11 October 2013 Regarding the Transparency of Public Life).<sup>16</sup>

### III. Enforcement of French Election Laws

Enforcement of election laws for national-level offices is primarily the responsibility of the Conseil constitutionnel (Constitutional Council), the country's highest court for constitutional matters. The Constitutional Council is responsible for overseeing the presidential election, and

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<sup>11</sup> CODE ÉLECTORAL [C. ÉLECTORAL] [ELECTORAL CODE], [https://www.legifrance.gouv.fr/affichCode.do?jsessionid=CABEFCC20D8AB3B54C8681A54443C467.tplgfr40s\\_1?cidTexte=LEGITEXT000006070239&dateTexte=20180213](https://www.legifrance.gouv.fr/affichCode.do?jsessionid=CABEFCC20D8AB3B54C8681A54443C467.tplgfr40s_1?cidTexte=LEGITEXT000006070239&dateTexte=20180213), archived at <https://perma.cc/Y5XQ-JR7U>.

<sup>12</sup> Loi No. 62-1292 du 6 novembre 1962 relative à l'élection du Président de la République au suffrage universel [Law No. 62-1292 of 6 November 1962 Regarding the Election of the President of the Republic by Universal Suffrage], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000684037>, archived at <https://perma.cc/XB3K-969F>.

<sup>13</sup> Loi organique n° 2016-506 du 25 avril 2016 de modernisation des règles applicables à l'élection présidentielle [Organic Law No. 2016-506 of 25 April 2016 to Modernize the Rules Applicable to the Presidential Elections], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032451659&categorieLien=id>, archived at <https://perma.cc/8DVY-DPHH>.

<sup>14</sup> Loi n° 77-729 du 7 juillet 1977 relative à l'élection des représentants au Parlement européen [Law No. 77-729 of 7 July 1977 Regarding the Election of Representatives to the European Parliament], [https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=B228EF06D99BB2B847E47F18D65ACF4C.tplgfr40s\\_1?cidTexte=JORFTEXT000000338793&dateTexte=20180214](https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=B228EF06D99BB2B847E47F18D65ACF4C.tplgfr40s_1?cidTexte=JORFTEXT000000338793&dateTexte=20180214), archived at <https://perma.cc/3T7Q-DKYB>.

<sup>15</sup> Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique [Law No. 88-227 of 11 March 1988 Regarding the Financial Transparency of Political Life], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069061&dateTexte=20180213>, archived at <https://perma.cc/6EAT-4RFW>.

<sup>16</sup> Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique [Law No. 2013-907 of 11 October 2013 Regarding the Transparency of Public Life], [https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=9698868A16D8630501DF2CD30E52FF17.tplgfr40s\\_1?cidTexte=JORFTEXT000028056315&dateTexte=20131220](https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=9698868A16D8630501DF2CD30E52FF17.tplgfr40s_1?cidTexte=JORFTEXT000028056315&dateTexte=20131220), archived at <https://perma.cc/WLW8-JS2E>.

for adjudicating disputes related to legislative and senatorial elections.<sup>17</sup> This role is founded in the French Constitution itself, which specifies that the Constitutional Council “shall ensure the proper conduct of the election of the President of the Republic,” as well as “rule on the proper conduct of the election of Members of the National Assembly and Senators in disputed cases.”<sup>18</sup> The Constitutional Council is also tasked with ensuring the proper conduct of referendum proceedings.<sup>19</sup>

Municipal, intermunicipal, and departmental elections, however, fall under the jurisdiction of the administrative courts.<sup>20</sup> Regional elections, as well as European elections, fall under the jurisdiction of the Conseil d’Etat (Council of State, France’s highest jurisdiction for administrative matters) as a court of first and last instance.<sup>21</sup>

Certain election-law cases may end up before criminal courts as well. In particular, the Electoral Code requires that if an administrative court finds that certain facts constitute electoral fraud, the competent public prosecutor must be informed so that criminal charges may be brought.<sup>22</sup> Similarly, a violation of campaign finance laws may lead to charges before a criminal court.<sup>23</sup>

A number of agencies have a role in enforcing election laws in addition to the courts. In particular, the Commission nationale des comptes de campagne et des financements politiques (National Commission on Campaign Accounts and Political Financing) is tasked with auditing and approving campaign finances and the financing of political parties.<sup>24</sup> The Commission nationale de contrôle de la campagne électorale (National Commission for the Monitoring of the Electoral Campaign) ensures that the candidates to the presidential elections are treated equally by the government, and that laws and regulations regarding the candidates’ advertising efforts are respected.<sup>25</sup> The Conseil supérieur de l’audiovisuel (Superior Council on Audiovisual

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<sup>17</sup> *Quel est le règlement des élections?* [What Are the Rules for Elections?], VIE-PUBLIQUE.FR [French government website] (Sept. 19, 2016), <http://www.vie-publique.fr/decouverte-institutions/citoyen/participation/voter/election/quel-est-reglement-elections.html>, archived at <https://perma.cc/SR4K-NKZC>.

<sup>18</sup> CONST. arts. 58, 59.

<sup>19</sup> *Id.* art. 60.

<sup>20</sup> *Quel est le règlement des élections?*, VIE-PUBLIQUE.FR, *supra* note 17.

<sup>21</sup> CODE DE JUSTICE ADMINISTRATIVE [CODE OF ADMINISTRATIVE JUSTICE] art. L311-3, [https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B228EF06D99BB2B847E47F18D65ACF4C.tplgfr40s\\_1?idArticle=LEGIARTI000027743771&cidTexte=LEGITEXT000006070933&dateTexte=20180214](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B228EF06D99BB2B847E47F18D65ACF4C.tplgfr40s_1?idArticle=LEGIARTI000027743771&cidTexte=LEGITEXT000006070933&dateTexte=20180214), archived at <https://perma.cc/7SHU-FEDZ>.

<sup>22</sup> C. ÉLECTORAL art. L117-1.

<sup>23</sup> *Id.* art. L52-15.

<sup>24</sup> *Id.*

<sup>25</sup> Décret n°2001-213 du 8 mars 2001 portant application de la loi n° 62-1292 du 6 novembre 1962 relative à l’élection du Président de la République au suffrage universel [Decree No. 2001-213 of 8 March 2001 for the Application of Law No. 62-1292 of 6 November 1962 Regarding the Election of the President of the Republic by Universal Suffrage] art. 13, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000769091>, archived at <https://perma.cc/R4JF-29B7>; *Qu’est-ce que la commission?* [What is the Commission?], COMMISSION NATIONALE DE CONTRÔLE DE LA CAMPAGNE ÉLECTORALE EN VUE DE L’ELECTION PRÉSIDENTIELLE [NATIONAL

Media) also has a role in enforcing the rules on political campaigns' use of broadcasting media, in particular with regard to political advertising.<sup>26</sup>

#### IV. Criminal Offenses under French Election Law

Many electoral rules are of an administrative nature, where the strongest sanction may be the election's cancellation and the organization of new elections, but the Electoral Code also contains a number of explicitly penal provisions, the violation of which may lead to fines and/or jail time.<sup>27</sup> Although the Electoral Code does not generally govern presidential elections, the Constitutional Council applies these penal provisions to presidential elections.<sup>28</sup> Furthermore, a few penal provisions are found in the laws on campaign financing and on political advertising.<sup>29</sup> In addition to fines and/or jail sentences, being found guilty under these penal provisions can lead to the suspension of one's civic rights.<sup>30</sup>

It appears that, in France, the term "election fraud" is used to cover all criminal offenses related to an election, whether these offenses involve deception or not.<sup>31</sup> However, one may divide the criminal offenses under French voting law into six broad categories: offenses involving deception, offenses involving violence or intimidation, vote buying and vote selling, violations of political advertising rules, violations of campaign finance rules, and catch-all provisions.

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COMMISSION FOR THE MONITORING OF ELECTORAL CAMPAIGN FOR THE PRESIDENTIAL ELECTION], <http://www.cncep.fr/la-commission.html> (last visited Feb. 14, 2018), archived at <https://perma.cc/FX34-J2A8>.

<sup>26</sup> *Quel est le règlement des élections?*, VIE-PUBLIQUE.FR, *supra* note 17; Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication [Law No. 86-1067 of 30 September 1986 Regarding Freedom of Communication] art. 14, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930&dateTexte=20180214>, archived at <https://perma.cc/96PZ-7XM2>.

<sup>27</sup> C. ÉLECTORAL arts. L86 to L117-2, L558-38 to L558-43, and R94 to R96.

<sup>28</sup> *Dispositions pénales: Partie législative en vigueur* [Penal Provisions: Applicable Legislative Section], CONSEIL CONSTITUTIONNEL, <https://presidentielle2017.conseil-constitutionnel.fr/tout-savoir/en-resume/textes-de-reference/dispositions-code-electoral-rendues-applicables/dispositions-penales-partie-legislative-vigueur/> (last visited Feb. 13, 2018), archived at <https://perma.cc/4DS7-DY8W>; *Dispositions pénales: Partie réglementaire en vigueur* [Penal Provisions: Applicable Regulatory Section], CONSEIL CONSTITUTIONNEL (last visited Feb. 13, 2018), <https://presidentielle2017.conseil-constitutionnel.fr/tout-savoir/en-resume/textes-de-reference/dispositions-code-electoral-rendues-applicables/dispositions-penales-partie-reglementaire-vigueur/> (last visited Feb. 13, 2018), archived at <https://perma.cc/MZ8A-GR5R>.

<sup>29</sup> Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique arts. 11-5, 11-9; Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication art. 14.

<sup>30</sup> C. ÉLECTORAL art. L117.

<sup>31</sup> *Que se passe-t-il en cas de fraude électorale?* [What Happens in Case of Election Fraud?], VIE-PUBLIQUE.FR (Sept. 19, 2016), <http://www.vie-publique.fr/decouverte-institutions/citoyen/participation/voter/election/que-passe-t-il-cas-fraude-electorale.html>, archived at <https://perma.cc/U76Q-7DHX>.

## A. Offenses Involving Deception

A number of different offenses involve deceptive and fraudulent behavior, such as registering to vote under a false identity, hiding that one is ineligible to vote, registering to vote in more than one place, making a fake registration certificate, registering as a candidate under a false identity or while hiding one's ineligibility, voting when one is ineligible to vote, or voting more than once.<sup>32</sup> This would also include influencing someone's vote (including causing a voter to abstain) through fraudulent acts such as the deliberate dissemination of false or defamatory information.<sup>33</sup>

It is also an offense for the polling station officials to do anything that would falsify the vote count, such as adding or changing a ballot, or not counting a ballot that was validly cast.<sup>34</sup>

## B. Offenses Involving Violence or Intimidation

The Electoral Code has several provisions prohibiting voter intimidation and disrupting the orderly conduct of free and fair elections. Taking part in a group demonstration that would disrupt an election or violate the right of citizens to vote, for example, is punishable by two years in jail and a fine of €15,000 (about US\$18,580).<sup>35</sup> Physically interfering with the meeting of an electoral college is punishable by five years in jail and a fine of €22,500 (US\$27,860), with the jail term being raised to ten years if the perpetrators were armed, and to twenty years if the offense was committed as part of a larger (national or regional) conspiracy.<sup>36</sup> Intimidating a voter—whether it is by actually using violence, threatening to use violence, or causing the voter to fear for his/her employment, property, or family—is punishable by two years in jail and a fine of €15,000 (US\$18,580).<sup>37</sup> This sentence is doubled if the perpetrator was a civil servant.<sup>38</sup>

## C. Vote Buying and Vote Selling

Buying votes—whether it is through gifts, promises, favors, offers of employment, or other advantages—is punishable by two years in jail and a fine of €15,000 (US\$18,580), with these sanctions being doubled if the perpetrator was a civil servant.<sup>39</sup> Soliciting gifts, promises, favors, offers of employment, or other advantages in exchange for votes is punishable in the same way.<sup>40</sup>

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<sup>32</sup> C. ÉLECTORAL arts. L86, L87, L88, L88-1, L9.

<sup>33</sup> *Id.* art. L97.

<sup>34</sup> *Id.* arts. L94, L95.

<sup>35</sup> *Id.* art. L98.

<sup>36</sup> *Id.* arts. L99, L100, L101.

<sup>37</sup> *Id.* art. L107.

<sup>38</sup> *Id.* art. L109.

<sup>39</sup> *Id.* arts. L106, L109.

<sup>40</sup> *Id.*

## D. Violations of Political Advertising Rules

France has adopted strict regulations on political advertising and mass communication during election campaigns. For example, political campaign advertising in the press or on audiovisual media (radio, TV, etc.) is prohibited during the six months preceding an election.<sup>41</sup> Program-length political advertising appears to be prohibited at all times.<sup>42</sup> Election results (even partial results) may not be broadcast to the public before the closing of the last polling station in mainland France.<sup>43</sup> The violation of these rules is punishable by a fine.<sup>44</sup>

## E. Violations of Campaign Finance Rules

The financing of political parties and political campaigns became increasingly regulated from 1988 onwards.<sup>45</sup> Most of the legislation regarding the financing of political groups and parties is found in the 1988 Law Regarding the Financial Transparency of Political Life.<sup>46</sup> This statute has evolved considerably since 1988, as it has been amended several times in an effort to give France a more robust legal framework to regulate the financial activities of political parties.<sup>47</sup> The legislation regarding the financing of political campaigns, to be distinguished from the financing of political parties, has mostly been incorporated into the Electoral Code, principally in its articles L52-3-1 to L52-17 and R39-1-A to R39-10-1.<sup>48</sup>

French campaign finance rules aim to increase transparency in the candidates' and parties' financial dealings and accounts, but also place limits on the contributions they may receive and on the loans they may take out, and in many cases limit how much campaigns may spend.<sup>49</sup> A violation of these rules is punishable by one or three years of jail time and by fines of €15,000 (US\$18,580) and €45,000 (US\$55,730), depending on the specific offense.<sup>50</sup>

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<sup>41</sup> *Id.* art. L52-1.

<sup>42</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication art. 14, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930&dateTexte=20180214>, archived at <https://perma.cc/96PZ-7XM2>.

<sup>43</sup> C. ÉLECTORAL art. L52-2.

<sup>44</sup> *Id.* arts. L89, L90, L90-1.

<sup>45</sup> *Lois sur le financement des campagnes* [Laws on Campaign Financing], VIE-PUBLIQUE.FR (May 30, 2006), <http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/lois-financement-campagnes.html>, archived at <https://perma.cc/TW6V-V57P>.

<sup>46</sup> Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique, *supra* note 15.

<sup>47</sup> *Id.*; *Lois sur le financement des campagnes*, VIE-PUBLIQUE.FR, *supra* note 45.

<sup>48</sup> C. ÉLECTORAL arts. L52-3-1 to L52-17, R39-1-A to R39-10-1.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* art. L113-1.

## **F. Catch-All Provisions**

The Electoral Code contains two “catch-all” provisions meant to cover any deliberate act that would affect the conduct or result of a free and fair election. Under these two provisions, anyone who, by deliberately failing to follow laws and regulations, “or by any other fraudulent act, has violated or attempted to violate the secrecy of the ballot, has violated or attempted to violate the authenticity of an election, has prevented or attempted to prevent the conduct of an election, or who has changed or attempted to change the result,” may be sentenced to jail time and/or a fine.<sup>51</sup>

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<sup>51</sup> *Id.* arts. L113, L116.

# Germany

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**SUMMARY** Germany is a federal republic with sixteen states in which elections are held at the federal, state, and municipal level. Federal elections for parliament are held every four years, whereas elections for state parliaments are generally held every five years. Elections for the European Parliament are held every five years. Germany uses a personalized proportional voting system that combines a personal direct vote for a particular candidate in a district (first vote) with a party vote (second vote). European Parliament elections are conducted on the basis of proportional representation with list nominations. The legal framework surrounding elections and political parties consists of the German Basic Law (the country's constitution), the Criminal Code, the Federal Elections Act, the European Elections Act, the individual state constitutions and state elections laws, and the Political Parties Act. Germany criminalizes a variety of election-related offenses. Punishments vary depending on the severity of the act and range from a fine to a term of imprisonment of up to five years.

## I. Electoral System

Germany is a federal republic with sixteen states (*Länder*).<sup>1</sup> Elections are held at the federal, state, and municipal level,<sup>2</sup> as well as for the European Parliament.<sup>3</sup> Germany has a parliamentary system in which the main legislative role is assigned to the German parliament (*Bundestag*).<sup>4</sup> The Bundestag is the only federal constitutional organ that is directly elected by the people.<sup>5</sup> Elections are held every four years.<sup>6</sup> Germany uses a personalized proportional voting system that combines a personal, direct vote for a particular candidate in a district (first vote) with a party vote (second vote).<sup>7</sup> A party must receive at least 5% of the second votes or three direct mandates to be represented in the German parliament.<sup>8</sup>

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<sup>1</sup> GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, art. 20, para. 1, <http://www.gesetze-im-internet.de/gg/GG.pdf>, archived at <http://perma.cc/H555-7R85>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.pdf](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf), archived at <http://perma.cc/S7RD-XLZE> (English translation updated through Dec. 23, 2014).

<sup>2</sup> *Id.* arts. 20, para. 2; 28, para. 1, 38, para. 1.

<sup>3</sup> Europawahlgesetz [EuWG] [European Elections Act], Mar. 8, 1994, BGBl. I at 423, 555, as amended, § 1, <http://www.gesetze-im-internet.de/euwg/EuWG.pdf>, archived at <http://perma.cc/UZ6C-T4X4>, unofficial English translation available at [https://www.bundeswahlleiter.de/en/dam/jcr/54a117fc-d5ec-44a5-887a-b017144fe2d9/europawahlgesetz\\_engl.pdf](https://www.bundeswahlleiter.de/en/dam/jcr/54a117fc-d5ec-44a5-887a-b017144fe2d9/europawahlgesetz_engl.pdf), archived at <http://perma.cc/NMG8-FMZT>.

<sup>4</sup> BASIC LAW arts. 38–49, 77.

<sup>5</sup> *Id.* arts. 20, para. 2; 38, para. 1.

<sup>6</sup> *Id.* art. 39, para. 1.

<sup>7</sup> Bundeswahlgesetz [BWG] [Federal Elections Act], July 23, 1993, BGBl. I at 1288, 1594, as amended, § 4, <https://www.gesetze-im-internet.de/bwahlg/BWahlG.pdf>, archived at <http://perma.cc/7SFH-3UE2>, unofficial

The German states are represented in the German Bundesrat, a federal constitutional body through which they participate in the legislative process and in the administration of the country.<sup>9</sup> There are no direct elections for the Bundesrat. It has sixty-nine members consisting of representatives of the state governments.<sup>10</sup> Its composition therefore changes every time elections are held in a state. Elections for state parliament (*Landtag*) are generally held every five years, with the exception of the State of Bremen, where elections are held every four years.<sup>11</sup> The Basic Law only requires that all state elections be general, direct, free, equal, and secret, but all other things are left to the states.<sup>12</sup> Most states organize their elections similarly to the federal elections.<sup>13</sup> All of them use a personalized proportional voting system with a first vote and a second vote, but differences exist with regard to how seats are allocated.

Members of the European Parliament are elected every five years on the basis of proportional representation with list nominations.<sup>14</sup> Germany elects ninety-six members of the 751 members of the European Parliament.<sup>15</sup>

## II. Legal Framework

The main rules applicable to federal elections are found in the German Basic Law, which is the country's constitution, and in the Federal Elections Act.<sup>16</sup> State election rules are codified in the state constitutions and the state election laws.<sup>17</sup>

Regulations on German political parties can be found in various laws, most importantly in the German Basic Law and in the Act on Political Parties.<sup>18</sup> The Basic Law guarantees the role of the

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English translation available at [https://www.bundeswahlleiter.de/en/dam/jcr/4ff317c1-041f-4ba7-bbbf-1e5dc45097b3/bundeswahlgesetz\\_engl.pdf](https://www.bundeswahlleiter.de/en/dam/jcr/4ff317c1-041f-4ba7-bbbf-1e5dc45097b3/bundeswahlgesetz_engl.pdf), archived at <http://perma.cc/8APA-YV9B>.

<sup>8</sup> Federal Elections Act § 6, para. 3.

<sup>9</sup> BASIC LAW art. 50.

<sup>10</sup> *Id.* art. 51.

<sup>11</sup> Bremisches Wahlgesetz [BremWahlG] [Bremen Election Act], May 23, 1990, BREMISCHES GESETZBLATT [BREM.GBL.] [BREMEN STATE LAW GAZETTE] at 321, as amended, § 5, [https://www.transparenz.bremen.de/sixcms/detail.php?gsid=bremen2014\\_tp.c.87969.de&template=00\\_html\\_to\\_pdf\\_d](https://www.transparenz.bremen.de/sixcms/detail.php?gsid=bremen2014_tp.c.87969.de&template=00_html_to_pdf_d), archived at <http://perma.cc/WE7C-FKY4>.

<sup>12</sup> BASIC LAW art. 28, para. 1.

<sup>13</sup> An overview of state election laws can be found at *Wahlgesetze in Deutschland [Election Laws in Germany]*, <https://www.wahlrecht.de/gesetze.htm> (last updated Aug. 16, 2017), archived at <http://perma.cc/X3WU-4MSD>.

<sup>14</sup> European Elections Act §§ 1, 2.

<sup>15</sup> *Id.* § 1.

<sup>16</sup> BASIC LAW, *supra* note 1; Federal Elections Act, *supra* note 7.

<sup>17</sup> *See supra* note 13 for an overview of the state election laws.

<sup>18</sup> BASIC LAW art. 21; Parteiengesetz [PartG] [Political Parties Act], Jan. 31, 1994, BGBl. I at 149, as amended, <https://www.gesetze-im-internet.de/partg/PartG.pdf>, archived at <http://perma.cc/6UXQ-XYPD>, unofficial English translation available at [https://www.bundeswahlleiter.de/en/dam/jcr/bceaa8ef-5c4c-40f7-ae27-63c5f2e0aea6/parteiengesetz\\_engl.pdf](https://www.bundeswahlleiter.de/en/dam/jcr/bceaa8ef-5c4c-40f7-ae27-63c5f2e0aea6/parteiengesetz_engl.pdf) (updated through Sept. 24, 2009), archived at <http://perma.cc/3MAQ-BYDU>.

political parties in the political process. It states that “[p]olitical parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.”<sup>19</sup>

The Act on Political Parties contains detailed provisions on the constitutional status and functions of political parties, as well as on donations, campaign financing, and public funding of political parties, among others. Political parties are organized as registered or unregistered associations established under the rules of private law.<sup>20</sup>

Elections to the European Parliament are governed by national legislation in the individual European Union (EU) Member States and common rules codified in the 1976 EU Electoral Act, as well as by the provisions on EU citizenship in the EU Treaties and Council Directive 93/109/EC.<sup>21</sup> The applicable national law in Germany is the European Elections Act.<sup>22</sup>

Election offenses are mostly codified in the German Criminal Code,<sup>23</sup> but certain specific offenses can also be found in the Federal Elections Act, the European Elections Act, the various state elections acts, and the Act on Political Parties.

### III. Institutional Framework

The German states may legislate as long as the German Basic Law does not confer exclusive powers on the Federation.<sup>24</sup> In some areas, the Federation and the German states share competences and the states may legislate as long as and to the extent that the Federation has not

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<sup>19</sup> BASIC LAW art. 21, para. 1.

<sup>20</sup> Bürgerliches Gesetzbuch [BGB] [German Civil Code], Jan. 2, 2002, as amended, BGBL. I at 42, 2909; corrected at 2003 BGBL. I at 738, §§ 21–79, <http://www.gesetze-im-internet.de/bgb/BGB.pdf>, archived at <http://perma.cc/K4YS-DFG9>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.pdf](http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf) (English translation updated through Oct. 1, 2013), archived at <http://perma.cc/6XG8-5XHP>.

<sup>21</sup> Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage (1976 EU Electoral Act), 1976 O.J. (L 278) 5, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41976X1008\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41976X1008(01)&from=EN), archived at <http://perma.cc/8MQ6-TH7V>, consolidated version for documentary purposes available at Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01976X1008\(01\)-20020923&qid=1516393771995&from=en](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01976X1008(01)-20020923&qid=1516393771995&from=en), archived at <http://perma.cc/F4FP-EWDT>; Council Directive 93/109/EC of 6 December 1993 Laying Down Detailed Arrangements for the Exercise of the Right to Vote and Stand as a Candidate in Elections to the European Parliament for Citizens of the Union Residing in a Member State of Which They Are Not Nationals, 1993 O.J. (L 329) 34, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0109&from=EN>, archived at <http://perma.cc/4UUF-6TBS>.

<sup>22</sup> European Elections Act, *supra* note 3.

<sup>23</sup> STRAFGESETZBUCH [STGB] [GERMAN CRIMINAL CODE], Nov. 13, 1998, BGBL. I at 3322, as amended, §§ 107–108e, <https://www.gesetze-im-internet.de/stgb/StGB.pdf>, archived at <http://perma.cc/58LY-WZNF>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.pdf](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf) (updated through Oct. 10, 2013), archived at <http://perma.cc/5WDT-QBEU>.

<sup>24</sup> BASIC LAW art. 70.

exercised its legislative power.<sup>25</sup> These areas include criminal law and court organization and procedure.<sup>26</sup> The areas of culture, education, universities, local authority matters, and police, however, fall within the exclusive competence of the states. Each German state therefore has its own police force, which is set up in a different way. Some states have specialized units in their prosecution offices for the prosecution of certain crimes—for example, specialized anticorruption units.<sup>27</sup>

As Germany is a federal republic, the court system is also federally structured and the lower courts are subject to the organizational authority of the states. Court cases relating to election offenses start out at the state level in local court (Amtsgericht).<sup>28</sup> They can be appealed on questions of facts and law to the state regional courts (Landgericht).<sup>29</sup> A final appeal on questions of law only can be made to the state Higher Regional Court (Oberlandesgericht).<sup>30</sup> Major criminal cases that start out at the regional court can be appealed on questions of facts and law to the Higher Regional Court. The Federal Court of Justice (Bundesgerichtshof) represents the final court of appeals on questions of law only for civil and criminal jurisdiction for all cases originating in the regional courts.<sup>31</sup>

Germany has one supreme court exclusively for constitutional questions—the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG).<sup>32</sup> With regard to elections, it rules on complaints filed against decisions of the German parliament regarding the validity of a federal election or the violation of rights during federal elections or their preparation,<sup>33</sup> and on complaints of associations about being denied recognition as a political party in a federal

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<sup>25</sup> *Id.* art. 72.

<sup>26</sup> *Id.* art. 74.

<sup>27</sup> For example in Berlin. See *Zentralstelle Korruptionsbekämpfung* [Central Bureau for the Fight Against Corruption], STRAFVERFOLGUNGSBEHÖRDEN. GENERALSTAATSANWALTSCHAFT [LAW ENFORCEMENT AGENCIES. PUBLIC PROSECUTOR'S OFFICE], <https://www.berlin.de/generalstaatsanwaltschaft/ueber-uns/zustaendigkeit/zentralstellen/zentralstelle-korruptionsbekaempfung/> (last visited Feb. 14, 2018), archived at <http://perma.cc/G8R9-QYBW>.

<sup>28</sup> Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act], May 9, 1975, BGBL. I at 1077, as amended, § 24, para. 1, <http://www.gesetze-im-internet.de/gvg/GVG.pdf>, archived at <http://perma.cc/6QFV-ZEAX>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_gvg/englisch\\_gvg.pdf](http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.pdf), archived at <http://perma.cc/BX6U-6STA>.

<sup>29</sup> *Id.* § 74, para. 3.

<sup>30</sup> *Id.* § 121.

<sup>31</sup> *Id.* §§ 133, 135.

<sup>32</sup> BASIC LAW art. 93.

<sup>33</sup> *Id.* art. 41, para. 2; Bundesverfassungsgerichtsgesetz [BVerfGG] [Act on the Federal Constitutional Court], Aug. 11, 1993, BGBL. I at 1473, as amended, § 13, para. 3; § 48, <http://www.gesetze-im-internet.de/bverfagg/BVerfGG.pdf>, archived at <http://perma.cc/N9F4-KDEC>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_bverfagg/englisch\\_bverfagg.pdf](http://www.gesetze-im-internet.de/englisch_bverfagg/englisch_bverfagg.pdf), archived at <http://perma.cc/V659-YGH3>; Wahlprüfungsgesetz [WahlPrG] [Law on the Scrutiny of Elections], Mar. 12, 1951, BGBL. I at 166, as amended, <http://www.gesetze-im-internet.de/wahlprg/WahlPrG.pdf>, archived at <http://perma.cc/K5ZL-CW8M>, unofficial English translation available at [https://www.bundeswahlleiter.de/en/dam/jcr/d22395a1-65b2-46d1-8925-ef240afd8aac/wahlpruefungsgesetz\\_engl.pdf](https://www.bundeswahlleiter.de/en/dam/jcr/d22395a1-65b2-46d1-8925-ef240afd8aac/wahlpruefungsgesetz_engl.pdf), archived at <http://perma.cc/Y8AB-5NKA>.

election.<sup>34</sup> Furthermore, it decides whether political parties may be declared unconstitutional<sup>35</sup> or whether they can be denied public funds.<sup>36</sup>

## IV. Election Offenses

### A. Criminal Code

Most election offenses are codified in sections 107 to 108e of the German Criminal Code. The Criminal Code provisions apply to German parliamentary elections; elections of members of the European Parliament; other popular elections and ballot measures at the federal, state, and municipal level; popular elections and ballot measures in specific parts of a state or municipality; and direct elections in the social security system.<sup>37</sup> The signing of nomination papers or the signing of a popular referendum is equivalent to an election or ballot measure.<sup>38</sup>

German law criminalizes the disruption of the election process,<sup>39</sup> the falsification of election results,<sup>40</sup> the incorrect announcement of election results,<sup>41</sup> the falsification of election documents,<sup>42</sup> the violation of provisions that serve to protect the secrecy of the vote,<sup>43</sup> blackmailing voters,<sup>44</sup> deceiving voters,<sup>45</sup> bribing voters,<sup>46</sup> and bribing delegates.<sup>47</sup> Delegates include members of the federal and the state parliaments, members of municipal representative bodies, members of the Federal Convention,<sup>48</sup> members of the European Parliament, members of parliamentary assemblies of international organizations, and members of legislative bodies of foreign states.<sup>49</sup> All crimes require intent.

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<sup>34</sup> BASIC LAW art. 93, para. 1, no. 4c; Act on the Federal Constitutional Court § 13, no. 3a; §§ 96a–96d.

<sup>35</sup> BASIC LAW art. 21, paras. 2, 4 (please note that the English translation does not include the renumbering of the paragraphs); Act on the Federal Constitutional Court § 13, paras. 2; §§ 43–47.

<sup>36</sup> BASIC LAW art. 21, para. 3 (please note that the English translation does not include the renumbering of the paragraphs); Act on the Federal Constitutional Court § 13, paras. 2a; §§ 43–47; Political Parties Act § 18.

<sup>37</sup> CRIMINAL CODE § 108d.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* § 107.

<sup>40</sup> *Id.* § 107a, para. 1.

<sup>41</sup> *Id.* § 107a, para. 2.

<sup>42</sup> *Id.* § 107b.

<sup>43</sup> *Id.* § 107c.

<sup>44</sup> *Id.* § 108.

<sup>45</sup> *Id.* § 108a.

<sup>46</sup> *Id.* § 108b.

<sup>47</sup> *Id.* § 108e.

<sup>48</sup> BASIC LAW art. 54, para. 3. The Federal Convention elects the Federal President.

<sup>49</sup> CRIMINAL CODE § 108e, para. 3. Please note that the English translation does not include the amendment of the provision.

The prescribed punishments range from a fine to up to five years imprisonment, depending on the severity of the crime. In addition, for the disruption of the election process, the falsification of election results, and blackmailing and deceiving voters, the court may order the loss of the ability to hold public office, to vote, and to be elected in public elections in addition to a sentence of imprisonment of at least six months.<sup>50</sup>

## **B. Political Parties Act**

Political parties are generally allowed to accept donations without limitations,<sup>51</sup> with a few exceptions.<sup>52</sup> Party members who receive donations on behalf of the party are obligated to forward them to the party's Executive Committee member who is in charge of financial matters.<sup>53</sup> Donations must be declared in the annual statement of accounts, which the political party must submit to the President of the Bundestag.<sup>54</sup> Furthermore, donations from one source exceeding €10,000 (about US\$12,326) in a single calendar year must be listed separately with the name and address of the donor.<sup>55</sup> Donations exceeding €50,000 (about US\$61,630) must be reported immediately to the President of the Bundestag, who will publish the amount of the donation and the name and address of the donor in a parliamentary report.<sup>56</sup> The amount of public funding allocated to each party is determined by the President of the Bundestag based on the statement of accounts submitted by the parties.<sup>57</sup>

The Political Parties Act criminalizes violations that are aimed at concealing the receipt or use of funds for political parties. Section 31d provides that anyone who, with the intent to conceal the origin or the use of the party's funds or assets, or to circumvent the rules for public accountability,

1. causes inaccurate data on the party's income or assets to be included in a statement of accounts submitted to the President of the German Bundestag, or submits an inaccurate statement of accounts to the President of the German Bundestag; or
2. as a recipient, divides a donation into smaller amounts and enters them into the books or has them posted by others; or
3. in violation of section 25 para. 1, 3rd sentence [of the Political Parties Act], does not forward a donation [to an Executive Committee member who is responsible for the party's financial matters];

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<sup>50</sup> *Id.* § 108c.

<sup>51</sup> Political Parties Act § 25, para. 1.

<sup>52</sup> *Id.* § 25, para. 2.

<sup>53</sup> *Id.* § 25, para. 1.

<sup>54</sup> *Id.* §§ 23, 24.

<sup>55</sup> *Id.* § 25, para. 3, sentence 1.

<sup>56</sup> *Id.* § 25, para. 3, sentences 2, 3.

<sup>57</sup> *Id.* § 19a.

shall be liable to a term of imprisonment of up to three years or to a fine. The term of imprisonment is increased to up to five years if an auditor or an assistant to an auditor acted against payment of a fee or to enrich him/herself or a third person.<sup>58</sup>

Furthermore, the Political Parties Act punishes certain acts with regard to the receipt of donations and public funds as administrative offenses. If a party untruthfully reported contributions and donations in the statement of accounts so that the amount of public funds allotted to the political party was wrongly determined, the President of the Bundestag will revoke the decision to disburse public funds to the party in an administrative act and set the amount to be reimbursed by the party.<sup>59</sup>

If a party submitted an inaccurate statement of account, the political party will be liable to pay twice the amount of the wrongly stated sum or 10% of the value of the assets not included or listed inaccurately.<sup>60</sup>

If a party obtained or did not disclose donations that it received from sources from which parties are not allowed to accept donations, the party will be liable to pay three times the amount of the illegally obtained donation or twice the amount of the undisclosed donation.<sup>61</sup>

### **C. Federal Elections Act and European Elections Act**

Members of electoral committees and electoral boards serve in an honorary capacity. A person who is eligible to vote is obligated to accept such a post if it is offered to them.<sup>62</sup> German law therefore makes it an administrative offense to refuse to serve as an honorary member of an electoral committee or to evade the responsibilities of such an office without a sufficient reason.<sup>63</sup> Anyone who refuses an honorary post may be punished with an administrative fine not exceeding €500 (about US\$618).<sup>64</sup>

Furthermore, exit polls may not be published until all polling stations have closed.<sup>65</sup> The premature publishing of such exit polls on Election Day is an administrative offense for which a person may be fined up to €50,000 (about US\$61,746).<sup>66</sup>

All the German states, with the exception of North Rhine-Westphalia, have prohibitions similar to the ones codified in the Federal Elections Act and the European Elections Act for state

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<sup>58</sup> *Id.* § 31d, para. 2.

<sup>59</sup> *Id.* § 31a.

<sup>60</sup> *Id.* § 31b.

<sup>61</sup> *Id.* §§ 31c, 25, para. 2.

<sup>62</sup> Federal Elections Act § 11; European Elections Act § 4.

<sup>63</sup> Federal Elections Act § 49a, para. 1; European Elections Act § 4.

<sup>64</sup> Federal Elections Act § 49a, para. 2; European Elections Act § 4.

<sup>65</sup> Federal Elections Act § 32, para. 2; European Elections Act § 4.

<sup>66</sup> Federal Elections Act § 49a, paras. 1, 2; European Elections Act § 4.

parliament elections.<sup>67</sup> Fines vary in the different states. For refusal to serve as an honorary member of an electoral committee, fines range from an unspecified amount to €1,000 (about US\$1,235), whereas fines for the premature publishing of exit polls on election day range from €5,000 (about US\$6,175) in Mecklenburg-West Pomerania and Schleswig-Holstein to €100,000 (about US\$123,492) in Lower Saxony.<sup>68</sup>

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<sup>67</sup> An overview of the election acts of the German states can be found at <https://www.wahlrecht.de/gesetze.htm> (last visited Mar. 1, 2018), archived at <http://perma.cc/X3WU-4MSD>.

<sup>68</sup> *Id.*

# Italy

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**SUMMARY** Italy has extensive legislation penalizing conduct violative of constitutionally-established electoral rights at the national, regional, provincial, and municipal levels. Such legislation criminalizes behavior that takes place at different stages of the voting process and concerns registration of lists and candidates, campaign finance, use of broadcasting media for electoral propaganda, the voting act itself, balloting and inspection of the vote, proclamation of candidates and elected officials, and the preservation of electoral results, among other aspects. The most important national legislation is reviewed in this report.

## **I. Basic Constitutional Provisions on Elections Relevant to Electoral Crimes**

The Italian Constitution<sup>1</sup> contains the basic rules concerning elections in Italy, the violation of which in many cases is punishable as a crime under applicable law. Those basic rules establish

- the right to vote of any Italian citizen who has attained the age of majority regardless of gender,<sup>2</sup> including the right to vote in constitutional referenda;<sup>3</sup>
- the personal, equal, free, and secret character of the vote;<sup>4</sup>
- limited restrictions on the right to vote based on civil or criminal sentences, or moral reasons as established by law;<sup>5</sup>
- the right to freely establish political parties;<sup>6</sup> and
- the direct and universal election of members of the Chamber of Deputies.<sup>7</sup>

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<sup>1</sup> The Italian Constitution prohibits all forms of discrimination. COSTITUZIONE [COST.] [CONSTITUTION] arts. 3, ¶ 1 & 37, ¶ 1, English translation published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication, at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf), archived at <https://perma.cc/JXD5-J7XQ>.

<sup>2</sup> COST. art. 48, ¶ 1.

<sup>3</sup> *Id.* art. 75, ¶ 3.

<sup>4</sup> *Id.* art. 48, ¶ 2.

<sup>5</sup> *Id.* art. 48, ¶ 4.

<sup>6</sup> *Id.* art. 49, ¶ 1.

<sup>7</sup> *Id.* art. 56, ¶¶ 1 & 2.

## II. Basics of Italy's Electoral System

Italy is composed of the state, regions, provinces, metropolitan cities, and municipalities.<sup>8</sup> The national state has exclusive legislative powers to establish electoral laws; regulate state referenda and elections to the European Parliament;<sup>9</sup> and approve the electoral legislation governing the municipalities, provinces, and metropolitan cities.<sup>10</sup> Municipalities, provinces, metropolitan cities, and regions are autonomous entities that have their own statutes, powers, and functions in accordance with the Constitution.<sup>11</sup> Italy conducts periodic elections at all levels.<sup>12</sup> Recent legislation has amended key aspects of the Italian electoral system.<sup>13</sup>

## III. Electoral Crimes in Chamber of Deputies Elections

The Decree of the President of the Republic No. 361 of 1957<sup>14</sup> contains the basic legal framework for the punishment of crimes associated with the election of members of the national Chamber of Deputies, establishing fines and/or imprisonment for

- anyone who, while being mandated by law, does not perform in the manner and terms established by the law the necessary operations for the technical preparation of elections, the normal development of ballots, and the proclamation of candidates, or who unjustifiably delays such operations;<sup>15</sup>
- a public official, the person in charge of a public service, anyone who performs a service of public need, the minister of any religion, or anyone vested with a public power or civil or military function, who abuses his own powers in the exercise of his authority to compel voters to sign a declaration for the submission of candidates or to restrict the votes of voters

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<sup>8</sup> *Id.* art. 114 ¶ 1.

<sup>9</sup> *Id.* art. 117 ¶ 2(f).

<sup>10</sup> *Id.* art. 117 ¶ 2(p).

<sup>11</sup> *Id.* art. 114 ¶ 1.

<sup>12</sup> Law 24 aprile 1975, n. 130 Modifiche alla Disciplina della Propaganda Elettorale ed alle Norme per la Presentazione delle Candidature e delle Liste dei Candidati nonche' dei Contrassegni nelle Elezioni Politiche, Regionali, Provinciali e Comunali [Law No. 130 of April 24, 1975, Amendments on the Field of Electoral Propaganda and the Provisions on the Submissions of Candidacies and the Lists of Candidates, as well as in Political, Regional, Provincial, and Municipal Elections] (Law No. 130), G.U. No. 113 (Apr. 30, 1975), [http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-04-24:130!vig=&archived\\_at=https://perma.cc/F3M5-MUSE](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-04-24:130!vig=&archived_at=https://perma.cc/F3M5-MUSE).

<sup>13</sup> Dante Figueroa, *Italy: New Law on Election of Members of Congress*, GLOBAL LEGAL MONITOR (Jan. 2, 2018), <http://www.loc.gov/law/foreign-news/article/italy-new-law-on-election-of-members-of-congress/>.

<sup>14</sup> Decreto del Presidente della Repubblica 30 marzo 1957, n. 361 Approvazione del Testo Unico delle Leggi recanti Norme per la Elezione della Camera dei Deputati [Decree of the President of the Republic No. 361 of March 30, 1957, Approves the Consolidated Text of the Laws on the Elections of the Chamber of Deputies] (D.P.R. No. 361), G.U. No. 139 (June 3, 1957), [http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1957-03-30:361!vig=&archived\\_at=https://perma.cc/JW5Z-KP72](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1957-03-30:361!vig=&archived_at=https://perma.cc/JW5Z-KP72).

<sup>15</sup> *Id.* art. 94.

in favor or against specific lists of candidates, or to induce them into abstaining from voting;<sup>16</sup>

- anyone who through any means prevents or disturbs an electoral meeting, whether public or private;<sup>17</sup>
- anyone who through threats or acts of violence disturbs the normal development of electoral meetings, prevents the free exercise of the right to vote, or in any other manner alters the results of a vote;<sup>18</sup>
- anyone who completely or partially falsifies ballots or other election-related materials, or alters, substitutes, suppresses, or destroys them in whole or in part,<sup>19</sup> and those who knowingly use falsified, altered, or substituted acts, even without participating in the consummation of the act,<sup>20</sup> with increased penalties for electoral officials;<sup>21</sup>
- anyone who participates in any of the crimes established in Book II, Title VII, Chapters III and IV of the Criminal Code (falsification) concerning the authentication of subscriptions of lists of voters or candidates, or otherwise falsifies in whole or in part lists of voters or candidates;<sup>22</sup>
- the commission of certain specified electoral crimes through threats or violence to exert pressure or cause disturbances by the use of weapons or by groups of persons<sup>23</sup> (increased penalties are contemplated when the threat or violence is carried out by six or more persons gathered together through the use of weapons, even if the weapons are used only by one person, or by eleven or more persons even without weapons);<sup>24</sup>
- anyone who introduces himself unlawfully on the premises of an electoral office during an electoral event;<sup>25</sup>
- the disturbance of activities at electoral offices or disobeying calls to order by the authorities;<sup>26</sup>

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<sup>16</sup> *Id.* art. 98.

<sup>17</sup> *Id.* art. 99.

<sup>18</sup> *Id.* art. 100, ¶ 1.

<sup>19</sup> *Id.* art. 100, ¶ 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*,

<sup>22</sup> *Id.* art. 100, ¶ 3.

<sup>23</sup> *Id.* art. 101, ¶ 1.

<sup>24</sup> *Id.* art. 101, ¶ 2.

<sup>25</sup> *Id.* art. 102, ¶ 1.

<sup>26</sup> *Id.* art. 102, ¶ 2.

- presenting oneself to vote or voting after having been legally deprived or suspended from exercising such right;<sup>27</sup>
- casting a vote for someone who is impeded from voting by himself, or voting on behalf of another for a list or a candidate other than those indicated by the represented voter;<sup>28</sup>
- assuming someone else's name to vote in more than one electoral event;<sup>29</sup>
- fraudulently proclaiming as elected a list or a candidate other than those effectively elected;<sup>30</sup>
- electoral officers who unlawfully prevent anyone from complying with their electoral rights, cause the nullity of an election, alter election results, or fail to proclaim the voting results;<sup>31</sup>
- electoral officers who prevent the registration of electoral lists, candidates, ballots, or any electoral materials, or refuse or delay their delivery to voting places;<sup>32</sup>
- electoral officers who refuse to appropriately register protests or complaints from voters;<sup>33</sup>
- representatives of the lists of candidates who prevent compliance with electoral events;<sup>34</sup>
- voting without having a right to vote, or voting twice;<sup>35</sup>
- preventing the free exercise of the right to vote of others by stocking up electoral ballots;<sup>36</sup>
- underwriting more than one candidacy in a uninominal college or more than one list of candidates;<sup>37</sup>
- electoral officers who unduly refuse to assume the position they were appointed for, do not present themselves to their investiture ceremony, or unjustifiably abandon the premises where electoral events are held;<sup>38</sup>

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<sup>27</sup> *Id.* art. 103, ¶ 1.

<sup>28</sup> *Id.* art. 103, ¶ 2.

<sup>29</sup> *Id.* art. 103, ¶ 3.

<sup>30</sup> *Id.* art. 103, ¶ 4.

<sup>31</sup> *Id.* art. 104, ¶ 2.

<sup>32</sup> *Id.* art. 104, ¶ 4.

<sup>33</sup> *Id.* art. 104, ¶ 5.

<sup>34</sup> *Id.* art. 104, ¶ 6.

<sup>35</sup> *Id.* art. 104, ¶ 7.

<sup>36</sup> *Id.* art. 104, ¶ 8.

<sup>37</sup> *Id.* art. 106, ¶ 1.

<sup>38</sup> *Id.* art. 108, ¶ 1.

- voters who carry weapons to a polling place;<sup>39</sup>
- voters who fail to redeliver a voting card or a pencil;<sup>40</sup> and
- the president of the polling office who fails to detach the appendix to the voting card,<sup>41</sup> or who prevents the entry of a voter into the voting booth.<sup>42</sup>

Additional legislation establishes further provisions on crimes related to electoral campaigns for the Chamber of Deputies and the Senate of the Republic. Namely, Law No. 515 of 1993 punishes anyone who violates a broad range of legal provisions related to the dissemination of electoral advertising through media and broadcasting services.<sup>43</sup> Punishable conduct includes the lack of a monetary deposit with the regional college of electoral guarantees mandated by the law,<sup>44</sup> and the violation of legally-established expenditure limits for candidates.<sup>45</sup> Penalties include the ineligibility of candidates and the cessation of the candidate's office.<sup>46</sup> Also punished are irregularities in the declarations of electoral expenses filed by candidates to political office;<sup>47</sup> the failure to identify the names of the persons who have made financial contributions;<sup>48</sup> and the failure to deposit the electoral expenses required by law for political parties or movements, lists, or groups of candidates.<sup>49</sup>

A conviction for electoral crimes carrying imprisonment always produces a suspension of the right to vote and a bar on holding public office.<sup>50</sup> A candidate for public office who is convicted is also deprived of his or her right to vote and is ineligible for public office for a term of five to ten years.<sup>51</sup> The judge may also order publication of the sentence.<sup>52</sup>

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<sup>39</sup> *Id.* art. 109, ¶ 1.

<sup>40</sup> *Id.* art. 110, ¶ 1.

<sup>41</sup> *Id.* art. 110, ¶ 2.

<sup>42</sup> *Id.* art. 111.

<sup>43</sup> Legge 10 dicembre 1993, n. 515 Disciplina delle Campagne Elettorali per l'Elezione alla Camera dei Deputati e al Senato della Repubblica [Law No. 515 of December 10, 1993, on Electoral Campaigns for the Election of the Chamber of Deputies and the Senate of the Republic] (Law No. 515), G.U. No. 292 (Dec. 14, 1993), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1993-12-10;515!vig=>, archived at <https://perma.cc/A3B9-P7PL>.

<sup>44</sup> *Id.* art. 15(5).

<sup>45</sup> *Id.* art. 15(6).

<sup>46</sup> *Id.* art. 15(7).

<sup>47</sup> *Id.* art. 15(10).

<sup>48</sup> *Id.* art. 15(11).

<sup>49</sup> *Id.* art. 15(14).

<sup>50</sup> D.P.R. No. 361 of 1957, art. 113, ¶ 1.

<sup>51</sup> *Id.* art. 113, ¶ 2.

<sup>52</sup> *Id.* art. 113, ¶ 3.

## IV. Election Offenses

### A. Crimes Related to Constitutional Referenda and the People's Legislative Initiatives

Law No. 352 of 1970<sup>53</sup> applies the criminal provisions of Decree of the President of the Republic No. 361 of 1957 related to elections for the Chamber of Deputies to electoral crimes concerning constitutional referenda on the people's legislative initiatives.<sup>54</sup> These penalties also apply to Italian citizens residing abroad who participate in Italian electoral processes abroad.<sup>55</sup>

### B Crimes Related to the Active Electorate and the Upkeep and Review of Electoral Lists

Decree of the President of the Republic No. 223 of 1967<sup>56</sup> punishes conduct that violates certain legal rules on the electorate and the maintenance of electoral lists, including

- failure to maintain and review electoral lists;<sup>57</sup>
- registration of a citizen who does not have a right to be registered to vote, cancellation of the registration of a person who is legally registered, or failing to cancel the registration of a person who does not have a right to be registered;<sup>58</sup>
- registering a roster of persons whose identity is false or altering the names of persons who are legally registered to vote;<sup>59</sup>
- altering voting cards, registries, or any other documents related to the voting process;<sup>60</sup> and

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<sup>53</sup> Legge 25 maggio 1970, n. 352 Norme sui Referendum Previsti dalla Costituzione e sulla Iniziativa Legislativa del Popolo [Law No. 352 of May 25, 1970, Provisions on the Referendum established in the Constitution and on the People's Legislative Initiative] (Law No. 352) art. 50, G.U. No. 147 (June 15, 1970), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1970-05-25:352!vig=>, archived at <https://perma.cc/P4ZS-UXPE>.

<sup>54</sup> Legge 27 dicembre 2001, n. 459 Norme per l'Esercizio del Diritto di Voto dei Cittadini Italiani Residenti all'Estero [Law No. 459 of December 27, 2001, Provisions on the Exercise of the Right to Vote of Italian Citizens Residing Abroad] (Law No. 459), art. 25, G.U. No. 4 (Jan. 5, 2002), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2001-12-27:459!vig=>, archived at <https://perma.cc/6DQD-5CEP>.

<sup>55</sup> *Id.*

<sup>56</sup> Decreto del Presidente della Repubblica 20 marzo 1967, n. 223 Approvazione del Testo Unico delle Leggi per la Disciplina dell'Elettorato Attivo e per la Tenuta e la Revisione delle Liste Elettorali [Decree of the President of the Republic No. 223 of March 20, 1967, Approves the Consolidated Text of the Laws on the Active Electorate and for the Upkeep and Review of Electoral Lists] (D.P.R. No. 223), G.U. No. 106 (Apr. 28, 1967), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1967-03-20:223!vig=>, archived at <https://perma.cc/F5ME-ZKQC>.

<sup>57</sup> *Id.* art. 54, ¶ 1.

<sup>58</sup> *Id.* art. 55, ¶ 1.

<sup>59</sup> *Id.* art. 56, ¶ 1.

<sup>60</sup> *Id.* art. 56, ¶ 2.

- unlawfully refusing to publish or provide notice or copies of electoral rosters, lists, and related electoral documents.<sup>61</sup>

### **C. Crimes Related to Electoral Propaganda**

Law No. 212 of 1956<sup>62</sup> punishes conduct related to electoral propaganda, including subtracting or destroying any electoral publicity materials that are already affixed to permitted public spaces or affixing electoral publicity materials to unauthorized places;<sup>63</sup> conducting electoral rallies, meetings, or any other publicity acts in public places, or affixing new electoral materials after the time periods allowed by law before a vote;<sup>64</sup> and violating the legal prohibition on conducting electoral publicity within 200 meters of the entrance to the electoral areas on voting day.<sup>65</sup>

### **D. Crimes Related to Provisions on Equality of Access to Media during Electoral and Referendum Campaigns and for Political Communications**

Law No. 28 of 2000<sup>66</sup> punishes behavior violative of the right to equality of access to media during electoral and referendum campaigns and political communications, in particular making spaces available, free of charge, for the transmission of self-serving political messages favoring tainted or legitimately excluded individuals in order to restore political balance.<sup>67</sup>

### **E. Crimes Concerning Municipal Elections**

In addition to the above offenses, national legislation regulates multiple crimes occurring during municipal elections.<sup>68</sup>

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<sup>61</sup> *Id.* art. 59, ¶ 1.

<sup>62</sup> Legge 4 aprile 1956, n. 212, Norme per la Disciplina della Propaganda Elettorale [Law No. 212 of April 4, 1956, on Electoral Propaganda] (Law No. 212), G.U. No. 87 (Apr. 11, 1956), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1956-04-04;212!vig=>, archived at <https://perma.cc/Z56W-967R>.

<sup>63</sup> *Id.* art. 8, ¶ 1 & 3.

<sup>64</sup> *Id.* art. 8, ¶ 4.

<sup>65</sup> *Id.* art. 8, ¶ 5.

<sup>66</sup> Legge 22 febbraio 2000, n. 28 Disposizioni per la Parità di Accesso ai Mezzi di Informazione durante le Campagne Elettorali e Referendarie e per la Comunicazione Politica [Law No. 28 of February 22, 2000, on Equality of Access to Media during Electoral and Referendum Campaigns and for Political Communications] (Law No. 515), G.U. No. 43 (Feb. 22, 2000), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2000-02-22;28!vig=>, archived at <https://perma.cc/3MNS-HNAS>.

<sup>67</sup> *Id.* art. 10(4)(a).

<sup>68</sup> Decreto del Presidente della Repubblica 16 maggio 1960, n. 570 Testo Unico delle Leggi per la Composizione e la Elezione degli Organi delle Amministrazioni Comunali [Decree of the President of the Republic No. 570 of May 16, 1960, Consolidated Text of the Laws on the Composition and Election of the Municipal Administrations] (D.P.R. No. 570), G.U. No. 152 (June 23, 1960), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1960-05-16;570!vig=>, archived at <https://perma.cc/EW78-UDJ9>.

# Japan

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**SUMMARY** Japan’s Public Offices Election Act establishes an election system for members of parliament and local government officials. The Act has criminal provisions that are enforced as in other standard criminal cases. When a person who won an election is convicted under one of the Act’s criminal provisions, his or her victory is nullified except in the case of specified minor crimes. Judgments for some cases must be rendered within one hundred days from the filing date.

## I. Introduction

The Diet, Japan’s parliament, is composed of two Houses—the House of Representatives and the House of Councillors.<sup>1</sup> Members of both houses are elected.<sup>2</sup> The Constitution provides for a parliamentary Cabinet system. The Prime Minister is chosen from among the members of the Diet by a resolution of the Diet.<sup>3</sup> Therefore, there is no general election for the Prime Minister.

The Constitution guarantees electoral rights, stating in article 15 as follows:

The people have the inalienable right to choose their public officials and to dismiss them. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.<sup>4</sup>

The Public Offices Election Act, in the spirit of the Constitution, establishes an election system for members of the House of Representatives, members of the House of Councillors, and local government officials. It also ensures that elections are conducted fairly and properly reflect the intentions of the voters, who have expressed their will freely, and as a consequence supports a democratic system.<sup>5</sup>

The House of Representatives has 465 members, consisting of 289 members who are elected from single-seat districts and 176 proportionally elected from multi-seat districts. The House of Councillors has 242 members, consisting of 146 elected from multi-seat prefectures and ninety-six proportionally elected from multi-seat constituencies.<sup>6</sup>

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<sup>1</sup> CONSTITUTION OF JAPAN art. 42 (1946), [http://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html), archived at <https://perma.cc/3Y8U-CL9S>.

<sup>2</sup> *Id.* art. 43.

<sup>3</sup> *Id.* art. 67.

<sup>4</sup> *Id.* art. 15, paras, 1, 3 & 4.

<sup>5</sup> 公職選挙法 [Public Offices Election Act], Act No. 100 of 1950, amended by Act No. 66 of 2017, art. 1.

<sup>6</sup> *Id.* art. 4.

The term of office for members of the House of Representatives is four years unless the House is dissolved within the term.<sup>7</sup> Therefore, elections for the House of Representatives are held every four years unless the House is dissolved earlier. When it is dissolved, a general election is held within forty days from the date of dissolution.<sup>8</sup> The term of office for the House of Councillors is six years, with half of the members elected every three years.<sup>9</sup> There have been two times in the past when elections for the Houses of Representatives and Councillors were held on the same day.<sup>10</sup>

## II. Enforcement Mechanism of Election Law

The Central Election Management Committee administer the proportionally represented elections for both houses, and the prefecture election management committees administer the district elections for both houses.<sup>11</sup>

Criminal provisions of the Public Offices Election Act<sup>12</sup> are enforced as in other standard criminal cases. When a person who won an election is convicted under one of the Act's criminal provisions, his or her victory is nullified,<sup>13</sup> except in the case of specified minor crimes, without further procedure.<sup>14</sup> When the head or financial manager of a campaign, or the family member or secretary of a candidate who was involved in a campaign, is convicted of bribery in exchange for votes, the victory of the candidate is nullified.<sup>15</sup> Judgment for these cases must be rendered within 100 days from the filing date.<sup>16</sup>

A voter, candidate who lost an election, and political party that lost a spot in a proportional representation election may dispute the legitimacy of the election by filing a lawsuit against the election management committee that has a jurisdiction over the election.<sup>17</sup> Such candidate or party may also file a lawsuit against the election management committee, disputing the victory of

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<sup>7</sup> CONSTITUTION art. 45.

<sup>8</sup> Public Offices Election Act art. 31, para. 1.

<sup>9</sup> CONSTITUTION art. 46.

<sup>10</sup> 衆参同日選挙 [*Same Day Elections of Houses of Representatives and Councillors*], KOTOBANK, <https://kotobank.jp/word/衆参同日選挙-159364> (last visited Mar. 6, 2018), archived at <https://perma.cc/8E7S-HZVG>.

<sup>11</sup> Public Offices Election Act art. 5.

<sup>12</sup> *Id.* ch. 16 (arts. 221 through 255-4).

<sup>13</sup> *Id.* art. 251.

<sup>14</sup> 選挙制度研究会 [ELECTION SYSTEM RESEARCH GROUP], わかりやすい公職選挙法 [EASILY UNDERSTANDABLE PUBLIC OFFICES ELECTION ACT] 317 (2014).

<sup>15</sup> Public Offices Election Act. art. 251-2.

<sup>16</sup> *Id.* art. 253-2.

<sup>17</sup> *Id.* art. 204.

another person in the election.<sup>18</sup> In these cases, a court of the first instance is the high court, instead of a district court.<sup>19</sup>

### III. Electoral Offenses

The Public Offices Election Act stipulates various election offenses. The following descriptions are simplified samples.

#### A. Bribery

Bribery in connection with elections is prohibited; gains from the following bribery-related crimes are subject to confiscation.<sup>20</sup>

##### 1. *Bribery of Voter or Campaign Volunteer*

The following acts of bribery are punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen (about US\$4,600):

- Providing money, articles, or other financial benefits with, providing services with, entertaining a voter or campaign volunteer, or making such offer to him/her for the purpose of giving advantage or disadvantage to a candidate;
- Doing the same in exchange for voting or not voting, or campaigning or not campaigning;
- Benefiting a temple or shrine, school, or association that has a direct connection to a candidate, voter, or campaign volunteer with water rights, tenancy, credits, or donations for the purpose of giving an advantage or disadvantage to the candidate, or influencing a voter or campaign volunteer.<sup>21</sup>

The same punishment applies where a person receives, demands, or accepts an offer of benefit for the purpose of giving advantage or disadvantage to a candidate or in exchange for voting or not voting.<sup>22</sup>

If the above acts of bribery are directed at many people or the perpetrator has repeatedly committed such acts, the punishment is increased to imprisonment for up to five years.<sup>23</sup>

If the above acts of bribery are committed by the following persons, the perpetrator is punishable with imprisonment for not more than four years or a fine of not more than 1 million yen (about US\$9,200):

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<sup>18</sup> *Id.* art. 208.

<sup>19</sup> *Id.* art. 217.

<sup>20</sup> *Id.* art. 224.

<sup>21</sup> *Id.* art. 221, para. 1.

<sup>22</sup> *Id.* art. 221, para. 1, item 4.

<sup>23</sup> *Id.* art. 222, para. 1.

- Election management committee officials or other public officials who are involved in election management;<sup>24</sup> or
- A candidate, campaign manager, or financial manager of a campaign.<sup>25</sup>

If these acts were directed toward many persons, the punishment is increased to up to six years.<sup>26</sup>

## 2. *Bribery of Candidates*

The following acts are punishable by imprisonment for not more than four years or a fine of not more than 1 million yen (about US\$9,200):

- Providing money, articles, other financial benefits or services, or entertainment to a candidate or possible candidate, or making these offers to a candidate to induce his/her withdrawal from an election;
- Benefiting a temple or shrine, school, or association that has a direct connection to a candidate or possible candidate with water rights, tenancy, credit, or donations in order to induce the candidate to withdraw from an election; or
- Providing the above benefits to a former candidate as a reward for his/her withdrawal.<sup>27</sup>

The same punishment applies to a candidate who receives, accepts, demands, or suggests such benefit.<sup>28</sup>

If these acts of bribery are committed by the following persons, the perpetrator is punishable by imprisonment for not more than four years or a fine of not more than 1 million yen (about US\$9,200):

- Election management committee officials or other public officials who are involved in election management;<sup>29</sup> or
- A candidate, campaign manager, or financial manager of a campaign.<sup>30</sup>

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<sup>24</sup> *Id.* art. 221, para. 2.

<sup>25</sup> *Id.* art. 221, para. 3.

<sup>26</sup> *Id.* art. 222, para. 2.

<sup>27</sup> *Id.* art. 223, para. 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* art. 223, para. 2.

<sup>30</sup> *Id.* art. 223, para. 3.

## B. Campaign Obstruction

### 1. Campaign Obstruction by Threat, Etc.

A person who does the following in relation to an election is punishable by imprisonment for not more than four years or a fine of not more than 1 million yen (about US\$9,200):

- Physically or mentally threatening or deceiving a voter, candidate, person who is going to be a candidate, campaign volunteer, or winner of an election;
- Obstructing a campaign by disturbing traffic surrounding the campaign, gathering, or speech, or destroying documents or posters; or
- Threatening a voter, candidate, person who is going to be a candidate, campaign volunteer, or winner of an election by ceasing water rights, tenancy, credit, or donations to a temple or shrine, school, or association that has a direct connection to the threatened individual(s).<sup>31</sup>

If a public official or an official of a central or local election management committee follows a candidate or a campaign volunteer or goes into a campaign office without a reason and, as a consequence, disturbs the campaign, he/she is punishable by imprisonment for not more than four years.<sup>32</sup> If a public official or an official of a central or local election management committee asks a voter which party he/she is going to vote for or has voted for, the person is punishable by imprisonment for not more than six months or a fine of not more than 300,000 yen (about US\$2,760).<sup>33</sup>

### 2. Campaign Obstruction by False Information

If a person publicizes the following types of false information in order to make a candidate or someone who will be a candidate win an election, the person is punishable by imprisonment for not more than two years or a fine of not more than 300,000 yen (about US\$2,760):

- social status
- job and/or education history
- membership of a political party or other organization
- endorsement by an organization<sup>34</sup>

If a person makes false information or misleading information public in order to prevent a candidate from winning, the person is punishable by imprisonment for not more than four years or a fine of not more than 1 million yen (about US\$9,200).<sup>35</sup> If a candidate makes false

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<sup>31</sup> *Id.* art. 225, para. 1.

<sup>32</sup> *Id.* art. 226, para. 1.

<sup>33</sup> *Id.* art. 226, para. 2.

<sup>34</sup> *Id.* art. 235, para. 1.

<sup>35</sup> *Id.* art. 235, para. 2.

information or misleading information public during allotted official campaign broadcasting or on the official campaign bulletin in order to prevent another candidate or a person who will be a candidate from winning, the candidate spreading the false or misleading information is punishable by imprisonment for not more than five years or a fine of not more than 1 million yen (about US\$9,200).<sup>36</sup>

A person who sends postal mail or telegrams, makes telephone calls, or transmits information via the internet under a false name or status with the purpose of making a candidate win or lose is punishable by imprisonment for not more than two years or a fine of not more than 300,000 yen (US\$2,760).<sup>37</sup>

A person who gives or offers to give money, goods, any other financial benefit, or entertainment to an editor or manager of a newspaper or magazine in order to induce the editor or manager to report news or publish an article concerning an election with the purpose of causing a candidate to win or not win an election<sup>38</sup> is punishable by imprisonment for not more than five years.<sup>39</sup> When this offense is committed by a candidate, campaign manager, or financial manager of a campaign, the term of imprisonment may extend to six years.<sup>40</sup>

### **C. Crimes Concerning Voting**

A person who registered on the voter registration rolls, or on the resident registration rolls to be placed on the voter registration rolls, by using false information is punishable by imprisonment for not more than six months or a fine of not more than 300,000 yen (about US\$2,760).<sup>41</sup>

A person who makes a false declaration of identity at a voting location is punishable by a fine of not more than 200,000 yen (about US\$1,840).<sup>42</sup> When such person has actually voted or tried to vote, the person is punishable by imprisonment for not more than two years or a fine of not more than 300,000 yen (about US\$2,760).<sup>43</sup>

An official of the central or local election committee who forges a vote or changes the number of votes is punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen (about US\$4,600).<sup>44</sup>

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<sup>36</sup> *Id.* art. 235-2.

<sup>37</sup> *Id.* art. 235-5.

<sup>38</sup> *Id.* art. 148-2, paras. 1 & 2.

<sup>39</sup> *Id.* art. 223-2, para. 1.

<sup>40</sup> *Id.* art. 223-2, para. 2.

<sup>41</sup> *Id.* art. 236, paras. 1 & 2.

<sup>42</sup> *Id.* art. 236, para. 3.

<sup>43</sup> *Id.* art. 237, para. 2.

<sup>44</sup> *Id.* art. 237, para. 4.

A person who tries to influence a voter's choice of candidates or party at the election site is punishable by imprisonment for not more than one year or a fine of not more than 300,000 yen (about US\$2,760).<sup>45</sup>

#### **D. Exceeding Campaign Spending Limits**

If the campaign financial manager of a candidate spends or authorizes spending money over the legal limit,<sup>46</sup> he/she is punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen (about US\$4,600).<sup>47</sup>

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<sup>45</sup> *Id.* art. 228, para. 1.

<sup>46</sup> *Id.* art. 196.

<sup>47</sup> *Id.* art. 247.

# Netherlands

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**SUMMARY** The Netherlands is a constitutional monarchy with a parliamentary system. It has a bicameral parliament with an Upper and a Lower House. Elections take place every four years at the national, provincial, and municipal level, and every five years for the European Parliament. Members of the Lower House are directly elected by the Dutch people, whereas the members of the Upper House are indirectly elected by the provincial councils. Members of provincial and municipal councils are directly elected by Dutch citizens residing in the respective province or municipality. All elections are conducted on the basis of proportional representation. Dutch political parties may receive public funds and private donations to fund their activities. Such financing must be disclosed in an annual financial report, which is made public. Election offenses are mostly codified in the Dutch Criminal Code and the Elections Act. Punishments range from a fine to a term of imprisonment of up to six years, depending on the severity of the act. Furthermore, courts may disqualify the offender from exercising certain election-related rights.

## I. Electoral System

The Netherlands is a constitutional monarchy with a parliamentary system.<sup>1</sup> It is divided into twelve provinces, which are further subdivided into 380 municipalities.<sup>2</sup> The provinces and municipalities are headed by provincial and municipal councils, respectively.<sup>3</sup> The Government is comprised of the King and the ministers.<sup>4</sup> The Dutch monarch serves as the head of state, but the ministers are in charge of making decisions.<sup>5</sup> The parliament (Staten Generaal) is bicameral, consisting of the Lower House (Tweede Kamer) with 150 members and the Upper House (Eerste Kamer) with seventy-five members.<sup>6</sup> Members of Parliament (MPs) who are chosen as ministers must resign their seat in parliament.<sup>7</sup>

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<sup>1</sup> GRONDWET VOOR HET KONINKRIJK DER NEDERLANDEN [GRONDWET] [CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS] [CONSTITUTION], Aug. 24, 1815, as in force on Nov. 17, 2017, <http://wetten.overheid.nl/BWBR0001840/2017-11-17>, archived at <http://perma.cc/ZZ7B-C332>, unofficial English translation available at <https://www.government.nl/binaries/government/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008/the-constitution-of-the-kingdom-of-the-netherlands-2008.pdf>, archived at <http://perma.cc/85LL-D5S2>.

<sup>2</sup> *Gemeentelijke indeling op 1 januari 2018* [Municipal Classification on January 1, 2018], CENTRAAL BUREAU VOOR DE STATISTIEK [CBS] [STATISTICS NETHERLANDS], <https://www.cbs.nl/nl-nl/onze-diensten/methoden/classificaties/overig/gemeentelijke-indelingen-per-jaar/indeling%20per%20jaar/gemeentelijke-indeling-op-1-januari-2018> (last visited Feb. 15, 2018), archived at <http://perma.cc/2CMH-L63E>.

<sup>3</sup> CONSTITUTION art. 125.

<sup>4</sup> *Id.* art. 42.

<sup>5</sup> *Id.* art. 42, para. 2.

<sup>6</sup> *Id.* art. 51.

<sup>7</sup> *Id.* art. 57, para. 2.

Elections take place at the national, provincial, and municipal level, and for the European Parliament. Members of both houses of parliament are elected on the basis of proportional representation, meaning the more people cast their votes for a specific party, the more of its members will be represented.<sup>8</sup> The members of the Lower House are directly elected by the Dutch people, whereas the members of the Upper House are elected by the provincial councils.<sup>9</sup> National elections are held at least every four years.<sup>10</sup> The Dutch Constitution provides that elections for the Upper House must take place no more than three months after the election of the members of the provincial councils.<sup>11</sup> The votes of the provincial councils are weighted according to the size of the province's population.

The members of provincial and municipal councils are directly elected by Dutch citizens residing in the respective province or municipality.<sup>12</sup> Their members are also elected on the basis of proportional representation.<sup>13</sup> Elections take place every four years.<sup>14</sup>

The Netherlands also directly elects twenty-six of the 751 representatives of the European Parliament.<sup>15</sup> The electoral system is based on proportional representation.<sup>16</sup> Elections to the European Parliament are held every five years.<sup>17</sup>

## II. Political Parties

The Netherlands has a multi-party system. Currently there are thirteen parties represented in the Lower House.<sup>18</sup> Political parties are organized under the same laws as other associations.<sup>19</sup> They

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<sup>8</sup> *Id.* art. 53.

<sup>9</sup> *Id.* arts. 54, 55.

<sup>10</sup> *Id.* art. 52.

<sup>11</sup> *Id.* art. 55.

<sup>12</sup> *Id.* art. 129, para. 1.

<sup>13</sup> *Id.* art. 129, para. 2.

<sup>14</sup> *Id.* art. 129, para. 4.

<sup>15</sup> European Council Decision of 28 June 2013 Establishing the Composition of the European Parliament, Decision 2013/312/EU, 2013 O.J. (L 181) 57, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0312&from=EN>, archived at <http://perma.cc/MB56-BCHN>.

<sup>16</sup> Kieswet [Elections Act], Sept. 28, 1989, STAATSBLED VAN HET KONINKRIJK DER NEDERLANDEN [STB.] [OFFICIAL GAZETTE OF THE KINGDOM OF THE NETHERLANDS] 1989, no. 423, as in force on Dec. 1, 2017, art. Y 2, <http://wetten.overheid.nl/BWBR0004627/2017-12-01#AfdelingII>, archived at <http://perma.cc/A2MR-HJNK>, unofficial English translation available at <http://www.legislationline.org/documents/id/17116> (text as in effect on Oct. 29, 2009), archived at <http://perma.cc/QP2T-GJ2E>.

<sup>17</sup> *Id.* art. Y 5.

<sup>18</sup> *Parliamentary Parties*, TWEDE KAMER DER STATEN GENERAAL [LOWER HOUSE OF PARLIAMENT], [https://www.houseofrepresentatives.nl/members\\_of\\_parliament/parliamentary\\_parties](https://www.houseofrepresentatives.nl/members_of_parliament/parliamentary_parties) (last visited Feb. 15, 2018), archived at <http://perma.cc/HRM2-26YM>.

<sup>19</sup> BURGERLIJK WETBOEK [BW] [CIVIL CODE BOOK], Boek 2, Rechtspersonen [Book 2, Legal Persons], as in effect on Jan. 3, 2018, arts. 26–52, <http://wetten.overheid.nl/BWBR0003045/2018-01-03>, archived at

are eligible to receive public funds to subsidize their activities, if they obtained at least one seat in the national elections and have at least 1,000 members.<sup>20</sup> Subsidies may be used for political training and education, dissemination of information, and activities in connection with election campaigns, among others.<sup>21</sup> In addition, political parties may generally accept private donations without any limitations. However, donations of more than €1,000 (about US\$1,239) must be recorded.<sup>22</sup> Parties must submit a yearly financial report that includes, inter alia, all donations that exceed €4,500 within a single year to the Ministry of Interior and Kingdom Relations (MoIKR).<sup>23</sup> The MoIKR makes these reports public by publishing them in the *Government Gazette (Staatscourant)*.<sup>24</sup>

### III. Legal Framework

The Dutch Constitution guarantees the principles of equal suffrage and the secrecy of the vote, and codifies the electoral system and eligibility conditions for suffrage.<sup>25</sup> The Elections Act defines the electoral process further.<sup>26</sup>

There are not many specific regulations regarding political parties and their organization. As stated above, they are organized under the same laws as other associations. Political parties are not mentioned in the Constitution and the Elections Act only talks about “political groupings.” The only specific law is the Act on the Financing of Political Parties, which deals with subsidies, donations, and contributions.<sup>27</sup>

Election offenses are mostly codified in the Dutch Criminal Code and in the Elections Act.<sup>28</sup> The Act on the Financing of Political Parties includes administrative offenses related to party financing and discrimination. As most election offenses are criminal in nature, they are investigated by the police and the public prosecution service, and are handled in criminal court. The decision to institute criminal proceedings is reserved to the prosecution service. If the judge

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<http://perma.cc/VXU9-SDQB>, unofficial English translation available at <http://www.dutchcivilaw.com/civilcode/book022.htm> (please note that the English translation is not current), archived at <http://perma.cc/SHQ9-R67B>.

<sup>20</sup> Wet financiering politieke partijen [Act on the Financing of Political Parties], Mar. 7, 2013, STB. 2013, no. 93, art. 1(b), art. 7, <http://wetten.overheid.nl/BWBR0033004/2017-07-22>, archived at <http://perma.cc/Y6WJ-S4Q3>, unofficial English translation available at <http://www.partylaw.leidenuniv.nl/party-law/524bf979-5480-47dd-8a67-050484e5412d.pdf>, archived at <http://perma.cc/JQ2G-3AX9>.

<sup>21</sup> *Id.* art. 7, para. 2.

<sup>22</sup> *Id.* art. 21, para. 2(a).

<sup>23</sup> *Id.* art. 25, para. 1(b).

<sup>24</sup> *Id.* art. 25, paras. 4,5.

<sup>25</sup> See CONSTITUTION, *supra* note 1.

<sup>26</sup> See Elections Act, *supra* note 16.

<sup>27</sup> See Act on the Financing of Political Parties, *supra* note 20.

<sup>28</sup> WETBOEK VAN STRAFRECHT [CRIMINAL CODE], Mar. 13, 1881, as in effect on Jan. 1, 2018, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>, archived at <http://perma.cc/ZQ4T-C76J>, unofficial English translation available at <http://www.legislationline.org/documents/section/criminal-codes/country/12> (text as in effect on Oct. 1, 2012), archived at <http://perma.cc/WUG6-39DT>.

finds that the prosecution is justified, the case will go to trial. Criminal cases generally start in district court.<sup>29</sup> The district court decision may be appealed to the competent Court of Appeals.<sup>30</sup> The Dutch Supreme Court is the court of final appeal for questions of law only (appeals in cassation).<sup>31</sup>

## IV. Election Offenses

### A. Criminal Code

The Dutch Criminal Code provides for a number of election offenses.<sup>32</sup> It criminalizes impeding a person from exercising his or her right to vote by an act of violence or by threat of violence;<sup>33</sup> giving or taking bribes on the occasion of an election;<sup>34</sup> deception on the occasion of an election;<sup>35</sup> participating in an election under the assumed identity of another person;<sup>36</sup> and invalidating a vote or falsifying the outcome of a vote.<sup>37</sup>

Punishments range from a monetary fine to a term of imprisonment of one year and six months. In addition, for invalidating a vote or falsifying the outcome of a vote, the court may order that the offender is disqualified from electing the members of general representative bodies and from standing for election to these bodies.<sup>38</sup>

### B. Elections Act

The Elections Act codifies several indictable offenses and summary offenses.<sup>39</sup> It penalizes as indictable offenses

- forging or falsifying ballot papers, voting passes, voters' passes, certificates of authorization, or postal vote certificates with the intention of using them or having them used by others unlawfully;<sup>40</sup>

<sup>29</sup> Wet op de rechterlijke organisatie [Judicial Organization Act], Apr. 18, 1827, as in force on Jan. 1, 2018, art. 45, <http://wetten.overheid.nl/BWBR0001830/2018-01-01>, archived at <http://perma.cc/6DG4-DYU7>, unofficial English translation available at [https://www.rechtspraak.nl/SiteCollectionDocuments/Wet-op-de-Rechterlijke-Organisatie\\_EN.pdf](https://www.rechtspraak.nl/SiteCollectionDocuments/Wet-op-de-Rechterlijke-Organisatie_EN.pdf) (updated through Feb. 22, 2008), archived at <http://perma.cc/6SRY-5KTL>.

<sup>30</sup> *Id.* art. 60.

<sup>31</sup> *Id.* art. 78.

<sup>32</sup> CRIMINAL CODE arts. 125–129.

<sup>33</sup> *Id.* art. 125.

<sup>34</sup> *Id.* art. 126.

<sup>35</sup> *Id.* art. 127.

<sup>36</sup> *Id.* art. 128.

<sup>37</sup> *Id.* art. 129.

<sup>38</sup> *Id.* art. 130, para. 2 in connection with art. 28, para. 1, no. 3.

<sup>39</sup> Elections Act art. Z 11.

<sup>40</sup> *Id.* art. Z 1.

- using or causing others to use the aforementioned forged or falsified certificates;<sup>41</sup>
- possessing ballot papers, voting passes, voters' passes, certificates of authorization, or postal vote certificates with the intention of using them or causing others to use them unlawfully;<sup>42</sup> and
- bribing a voter or taking bribes as a voter.<sup>43</sup>

Voting as a proxy for a person known to be dead;<sup>44</sup> inducing persons to sign the form on their voting pass intended for voting by proxy and to relinquish the pass;<sup>45</sup> voting both in the Netherlands and in another EU Member State in an election to the European Parliament;<sup>46</sup> and noncompliance of an employer with the duty to ensure that employees are able to cast their votes<sup>47</sup> are categorized as summary offenses. Lastly, the Elections Act punishes as a summary offense the chairperson or other members of an electoral committee who are absent from a meeting.<sup>48</sup>

Punishments range from a fine to detention of up to one month, or imprisonment for up to six years. The difference between imprisonment and detention is that a determinate term of imprisonment may be anywhere between one day and eighteen years and is imposed for more serious crimes, whereas detention is imposed for less serious crimes and ranges from at least one day to a maximum of one year.<sup>49</sup> Detention is usually not served in a prison, but in a remand center (*huis van bewaring*).

Furthermore, offenders sentenced for an election offense under the Elections Act may be deprived of the right to hold offices or certain offices, to serve in the armed services, or to serve as a defense counsel or court-appointed administrator. If the term of imprisonment imposed exceeds one year, the offender may be deprived of the right to elect the members of general representative bodies and to stand for election to these bodies.<sup>50</sup>

### **C. Act on the Financing of Political Parties**

The Act on the Financing of Political Parties includes administrative offenses related to party financing and discrimination. Acts or omissions that are contrary to the provisions regarding

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<sup>41</sup> *Id.* art. Z 2.

<sup>42</sup> *Id.* art. Z 3.

<sup>43</sup> *Id.* art. Z 4.

<sup>44</sup> *Id.* art. Z 6.

<sup>45</sup> *Id.* art. Z 8.

<sup>46</sup> *Id.* art. Z 8a.

<sup>47</sup> *Id.* art. Z 9.

<sup>48</sup> *Id.* art. Z 10.

<sup>49</sup> CRIMINAL CODE art. 10, para. 2; art. 18, para. 1. Please note that the English translation does not include the amendment of the provisions.

<sup>50</sup> Elections Act art. Z 5.

financial disclosure of subsidies, donations, and contributions are considered administrative offenses for which a political party may be fined up to €25,000 (about US\$30,660).<sup>51</sup>

Furthermore, if a court sentences a political party to a fine for a discrimination offense,<sup>52</sup> the party's entitlement to subsidies will lapse for a certain number of years depending on the amount of the fine imposed in the criminal trial.<sup>53</sup>

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<sup>51</sup> Act on the Financing of Political Parties art. 37.

<sup>52</sup> CRIMINAL CODE arts. 137c–137g; art. 429quater.

<sup>53</sup> Act on the Financing of Political Parties art. 39, para. 1.

# Norway

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**SUMMARY** Norway is a parliamentary monarchy. Norwegian law requires universal, representative, direct elections for the national parliament and for municipal and county councils. Political parties must submit annual financial reports, which become public. Anonymous campaign donations are not allowed. Crimes related to voting include voter fraud, voter suppression, and ballot tampering. Legal entities may be fined for the early announcement of election results.

## I. Introduction

### A. Parliamentary Election System

Norway is a constitutional monarchy with a national unicameral, representative, and multiparty parliamentary body, the Storting.<sup>1</sup> The country is divided into nineteen different constituencies (counties).<sup>2</sup> Universal,<sup>3</sup> national, direct<sup>4</sup> elections are held to elect members of parliament every four years.<sup>5</sup> The Prime Minister is elected by the members of parliament. Elections to parliament are party based, although voters may also use a “write-in” option in local elections and change the order of priority of, or strike a candidate on their ballot in, national elections.<sup>6</sup> In addition to the national parliamentary elections, citizens and residents vote in municipal and county elections.<sup>7</sup> There are also elections to the Sami parliament, the representative body for people of Sami heritage (which is a separate entity with a consultative relationship to Norway’s government and parliament), and these elections are governed by the Sametingsloven (Sami Parliament Act).<sup>8</sup>

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<sup>1</sup> § 49 GRUNDLOVEN [CONSTITUTION] (LOV 1814-05-17), <https://lovdata.no/dokument/NL/lov/1814-05-17>, archived at <https://perma.cc/S5PK-DHRS>; *The Main Features of the Norwegian Electoral System*, REGJERINGEN (July 6, 2017), <https://www.regjeringen.no/en/topics/elections-and-democracy/den-norske-valgordningen/the-norwegian-electoral-system/id456636/>, archived at <https://perma.cc/W7KB-GSHB>.

<sup>2</sup> § 57 st 2. GRUNDLOVEN (§ 57 also regulates how the representative numbers from these districts are calculated).

<sup>3</sup> § 50 GRUNDLOVEN.

<sup>4</sup> § 58 CONSTITUTION.

<sup>5</sup> §54 GRUNDLOVEN; LOV OM VALG TIL STORTINGET, FYLKESTING OG KOMMUNESTYRER (VALGLOVEN) [ELECTION ACT] (also known as “REPRESENTATION OF THE PEOPLE ACT 2002”) (LOV 2002-06-28-57), <https://lovdata.no/dokument/NL/lov/2002-06-28-57>, archived at <https://perma.cc/TEQ2-44FN>.

<sup>6</sup> § 7-2 VALGLOVEN.

<sup>7</sup> § 2-2 VALGLOVEN.

<sup>8</sup> LOV OM SAMETINGET OG ANDRE SAMISKE RETTSFORHOLD (SAMELOVEN) [SAMI ACT] (LOV 1987-06-12-56), <https://lovdata.no/dokument/NL/lov/1987-06-12-56>, archived at <https://perma.cc/YER8-UJYE>.

The following persons cannot be elected: civil servants who are employed at government offices, Supreme Court justices, and civil servants who are employed in the diplomatic or consular services.<sup>9</sup> Elections are held every four years and members of parliament sit for four years.<sup>10</sup>

Voters may vote in person on the day of the election or prior to the election.<sup>11</sup> Only persons eligible to vote are eligible to run for office.<sup>12</sup> Persons elected to office are obliged to serve.<sup>13</sup>

## B. Legal Framework Protecting Voting Rights

Voting rights are protected through the Constitution,<sup>14</sup> Election Act,<sup>15</sup> and Penal Code.<sup>16</sup> In addition, individual provisions on political donations and the media's role in elections can be found in the Political Parties Act.<sup>17</sup>

## C. Enforcement of Election Laws

Several different authorities are responsible for enforcing violations of the election laws:

- The *National Electoral Committee* (Riksvalgstyret) is responsible for disputes relating to the voting rolls (who has the right to vote).<sup>18</sup> It is composed of members of the Norwegian Parliament.<sup>19</sup> This is the same Committee that issues the voter rolls.
- The *Election Authority* (Valgmyndighetene) is responsible for the list of electable politicians, including distributing the list and ensuring that no person is placed on more than one list or if so determining which list the person wants to be included on.<sup>20</sup>
- The *National Parliament* (Stortinget) (sitting prior to election) is responsible for disputes related to the results of parliamentary elections.<sup>21</sup> This has been interpreted to mean that the ordinary courts do not have jurisdiction over these disputes.<sup>22</sup>

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<sup>9</sup> § 62 SAMELOVEN.

<sup>10</sup> § 71 SAMELOVEN.

<sup>11</sup> § 60 CONSTITUTION.

<sup>12</sup> § 61 GRUNDLOVEN.

<sup>13</sup> § 63 GRUNDLOVEN.

<sup>14</sup> §§ 49–50 GRUNDLOVEN.

<sup>15</sup> VALGLOVEN, *supra* note 5.

<sup>16</sup> STRAFFELOVEN [CRIMINAL CODE] (LOV 2005-05-20-28), <https://lovdata.no/dokument/NL/lov/2005-05-20-28>, archived at <https://perma.cc/P93Q-B6CH>.

<sup>17</sup> LOV OM VISSE FORHOLD VEDRØRENDE DE POLITISKE PARTIENE (PARTILOVEN) [POLITICAL PARTIES ACT] (LOV-2005-06-17-102), <https://lovdata.no/dokument/NL/lov/2005-06-17-102>, archived at <https://perma.cc/ET7L-3NSC>.

<sup>18</sup> § 54 GRUNDLOVEN; § 13-1 VALGLOVEN.

<sup>19</sup> For a list of 2017 Riksvalgstyret members, see *Riksvalgstyret for stortingsvalget 2017 er oppnevnt*, REGJERINGEN (May 5, 2017), <https://www.regjeringen.no/no/aktuelt/riksvalgstyret-for-stortingsvalget-2017-er-oppnevnt/id2552067/>, archived at <https://perma.cc/F378-WN6D>.

<sup>20</sup> § 6-6 VALGLOVEN.

- The *Police* are responsible for investigation of voter fraud, voter intimidation, and other voting-related crimes.<sup>23</sup>

## II. Election Offenses

Criminal violations of the Election Act are found in the Criminal Code.<sup>24</sup> The Election Act also contains provisions on election-law breaches.<sup>25</sup>

### A. Illegal Voting, Undue Influence over Other's Votes, Disruption of Other's Right to Vote

Crimes related to actual voting include the purchase of votes, sale of votes, undue influence over votes, hindering someone from voting, and voting illegally (twice, in another person's name, or without having a legal right to vote).<sup>26</sup> Moreover, once a ballot is cast it is illegal for anyone to alter that ballot.

### B. Campaign Finance Rules

The rules on campaign finance are found in the Political Parties Act.<sup>27</sup> Political parties must account for how they spend their budgets; their financial reports are made public.<sup>28</sup> Political parties or individual politicians receiving more than NOK 35,000 (approximately US\$4,500) must disclose this to the Norwegian Tax Authority.<sup>29</sup> Anonymous donations to political parties are not allowed.<sup>30</sup> In an election year all donations of more than NOK 10,000 (approx. US\$1,300) must be reported.<sup>31</sup> Illegal funds that have been received must be returned to the donor within four weeks, and if that is not possible the funds must be transferred to the Norwegian State within the same time period.<sup>32</sup>

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<sup>21</sup> §§ 55 & 64 GRUNDLOVEN.

<sup>22</sup> Karl Harald Sølvg, *Hvem dømmer i valgtvister?* in *Festskrift til Nils Nygaard: Nybrott og odling*, FEST-2002 nn 625, FAGBOKFORLAGET, available to LovdataPro users at <https://lovdata.no/pro/#document/JUS/sovig-kh-2002-01?from=NL/lov/2002-06-28-57/>.

<sup>23</sup> There is no specific regulation on the investigation of these crimes, similar to all other crimes the police are responsible for investigating. See § 2 LOV OM POLITIET (POLITILOVEN) (LOV 1995-08-04-53), <https://lovdata.no/dokument/NL/lov/1995-08-04-53/>, archived at <https://perma.cc/M3PG-RNFS>.

<sup>24</sup> STRAFFELOVEN [CRIMINAL CODE] (LOV 2005-05-20-28), <https://lovdata.no/dokument/NL/lov/2005-05-20-28>, archived at <https://perma.cc/P93Q-B6CH>.

<sup>25</sup> § 15-11 VALGLOVEN.

<sup>26</sup> §§ 151–154 STRAFFELOVEN.

<sup>27</sup> LOV OM VISSE FORHOLD VEDRØRENDE DE POLITISKE PARTIENE (PARTILOVEN) [POLITICAL PARTIES ACT] (LOV-2005-06-17-102), <https://lovdata.no/dokument/NL/lov/2005-06-17-102>, archived at <https://perma.cc/ET7L-3NSC>.

<sup>28</sup> §§ 18, 20a PARTILOVEN.

<sup>29</sup> §§ 20,22 PARTILOVEN.

<sup>30</sup> § 17a PARTILOVEN.

<sup>31</sup> § 18 PARTILOVEN.

<sup>32</sup> § 17a PARTILOVEN.

Parties that violate these rules may in addition be sanctioned by the Party Act Board (Partilovnemnda).<sup>33</sup> The Party Act Board may also order a special audit by the Party Auditor (Partirevisjonsutvalget).<sup>34</sup> Sanctions include fines or the withdrawal of state political benefits.<sup>35</sup> A list of measures taken for 2017 can be found on the Partilovnemnda website.<sup>36</sup>

### C. Unlawful Early Disclosure of Voting Results and Voter Polls

Voter results or voter polls conducted on election-day may not be disclosed prior to 9:00 p.m. on election night.<sup>37</sup> Disclosures, whether intentional or unintentional, are punishable with fines of no more than twenty-eight times the national insurance base amount (*grunnbeløppet i folketrygden*) (currently NOK 93,634/year, approximately US\$12,000).<sup>38</sup> The size of the fine is determined by the Norwegian Media Authority (Mediatilsynet), which must consider the following factors:

- a) the severity of the breach,
- b) whether the corporation through policy, instruction, training, control, or other measures could have prevented the breach,
- c) whether the breach was made to further the interest of the company,
- d) whether the company has or could have had a benefit from the breach,
- e) whether it is a repeat offense, and
- f) the corporation's financial standing.<sup>39</sup>

## III. Case Law

No Supreme Court case law was located related to election fraud or election crimes in Norway.

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<sup>33</sup> § 24 PARTILOVEN; see also *Vedtak*, PARTILOVNAEMNDA, <https://www.partilovnemnda.no/no/Vedtak/> (last visited Feb. 26, 2018), archived at <https://perma.cc/AMC5-DUNH>.

<sup>34</sup> § 24(4) PARTILOVEN.

<sup>35</sup> §§ 28–30 PARTILOVEN.

<sup>36</sup> *Vedtak 2017*, PARTILOVNAEMNDA, <https://www.partilovnemnda.no/no/Vedtak/2017/?id=6415&epslanguage=no>, archived at <https://perma.cc/86SG-BKB9>.

<sup>37</sup> § 9-9 VALGLOVEN.

<sup>38</sup> §§ 15-11 VALGLOVEN; *Grunnbeløpet i folketrygden*, NAV (May 22, 2017), <https://www.nav.no/no/NAV+og+samfunn/Kontakt+NAV/Utbetalinger/Grunnbeløpet+i+folketrygden>, archived at <https://perma.cc/DDF3-HHBT>.

<sup>39</sup> § 15-11(2), VALGLOVEN (translation by author).

# Poland

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**SUMMARY** Electoral offenses are defined by the Penal Code, the Elections Code, and other statutes. They are misdemeanors and contraventions usually punishable by fines, restrictions of personal freedoms, detention, or short-term imprisonment. which is suspended in most cases. Electoral offenses are generally prosecuted by the police, while penalties are imposed by regional or district courts.

## I. Electoral System

Poland is a parliamentary republic with the President serving as a head of state and the Prime Minister leading the executive branch of the government. The Parliament consists of the Sejm, a 460-member lower legislative chamber, and the Senate, a 100-member upper chamber.<sup>1</sup> The President is directly elected by the people for a five-year term. Members of the Sejm and Senate are elected for four-year terms. Voters also participate in direct elections for members of the European Parliament and local government institutions, and in referendums.

The National Election Committee (NEC) is the national authority responsible for the overall administration of elections and referendums and for overseeing the implementation of electoral laws, maintenance of the voter register, resolving complaints about the operation of lower-level election commissions, voter education, and announcement of election results.<sup>2</sup> The NEC is a permanent structure composed of nine active or retired judges nominated by courts and appointed by the President of Poland.

## II. Legal Framework

Major election principles and the legal framework for elections are established by the Constitution, the Elections Code,<sup>3</sup> and the Political Parties Act.<sup>4</sup> The Elections Code is a comprehensive act governing all forms of elections at all levels of government.

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<sup>1</sup> KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], Apr. 2, 1997, arts. 96 & 97, <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm> (in Polish), archived at <https://perma.cc/5CPF-TRBH>, available in English at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, archived at <https://perma.cc/ZN3P-L6SU>.

<sup>2</sup> OSCE, REPUBLIC OF POLAND, PARLIAMENTARY ELECTIONS, 20 OCTOBER 2015, OSCE/ODIHR ELECTION ASSESSMENT MISSION REPORT 6 (Warsaw, Jan. 26, 2016), <http://www.osce.org/odihr/elections/poland/217961?download=true>, archived at <https://perma.cc/KEW2-5ATV>.

<sup>3</sup> Kodeks Wyborczy [Elections Code] Jan. 5, 2011, DZIENNIK USTAW [OFFICIAL GAZETTE] No. 21/2011, item 112, art. 157, <http://www.sejm.gov.pl/prawo/kodeks/kodeks.htm> (in Polish), archived at <https://perma.cc/5757-7PBG>, English translation available at <http://www.legislationline.org/documents/id/19673>, archived at <https://perma.cc/8VUS-53HS>.

According to article 62 of the Constitution, a Polish citizen who is at least eighteen years of age has the right to vote and participate in a referendum. Participation in elections is not available to persons recognized as legally incapacitated and those deprived of public or voting rights by a court.<sup>5</sup>

Electoral offenses are prescribed by the Penal Code,<sup>6</sup> the Elections Code, and the Political Parties Act. In Poland offenses are classified as felonies, misdemeanors, and contraventions. A felony is an intentional act punishable by imprisonment of no less than three years or another more severe penalty. A misdemeanor is an intentional or unintentional act subject to a fine in an amount equal to thirty times the average daily worker's wage or higher (presently, the average daily worker's wage is PLN 100, approximately US\$29), restriction of some personal freedoms, or imprisonment exceeding one month.<sup>7</sup> A contravention is a prohibited, socially harmful act punishable by detention, restriction of freedom, a fine of up to PLN 5,000 (approximately US\$1,470), or a reprimand.<sup>8</sup>

Different procedures apply to the prosecution of election offenses depending on their severity. Felonies and misdemeanors are within the jurisdiction of the Code of Criminal Procedure.<sup>9</sup> The Code of Proceedings in Contravention Cases<sup>10</sup> serves as a governing law in regard to contraventions.

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<sup>4</sup> Ustawa O Partiach Politycznych [Political Parties Act], June 24, 1997, DZIENNIK USTAW No. 98/1997, item 604, <http://www.sejm.gov.pl/prawo/partiepol/partiepol.htm> (in Polish), archived at <https://perma.cc/9SM4-5QQ9>, English translation available at <http://www.partylaw.leidenuniv.nl/party-law/4e4ab093-1c40-4702-94ff-08e084e5412d.pdf>, archived at <https://perma.cc/MX9U-PUFN>.

<sup>5</sup> CONSTITUTION art. 62.

<sup>6</sup> KODEKS KARNY [PENAL CODE], June 6, 1997, DZIENNIK USTAW No. 88/1997, item 553, <http://isap.sejm.gov.pl/Download?id=WDU19970880553&type=3>, archived at <https://perma.cc/4H6X-UR29> (in Polish), available in English at [https://www.imolin.org/doc/amlid/Poland\\_Penal\\_Code1.pdf](https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf), archived at <https://perma.cc/5ZQN-U7DX>.

<sup>7</sup> PENAL CODE arts. 7 & 8.

<sup>8</sup> KODEKS WYKROCZEŃ [CODE OF CONTRAVENTIONS], May 20, 1971, DZIENNIK USTAW No. 12/1971, item 14, art. 1, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19710120114/O/D19710114.pdf> (in Polish), archived at <https://perma.cc/22KT-VVVY>.

<sup>9</sup> KODEKS POSTĘPOWANIA KARNEGO [CODE OF CRIMINAL PROCEDURE], June 6, 1997, DZIENNIK USTAW No. 89/1997, item 555, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19970890555/O/D19970555.pdf> (in Polish), archived at <https://perma.cc/FT2Y-UFRF>, English translation available at <http://www.legislationline.org/documents/id/17669>, archived at <https://perma.cc/D33S-4RQV>.

<sup>10</sup> KODEKS POSTĘPOWANIA W SPRAWACH O WYKROCZENIA [CODE OF PROCEEDINGS IN CONTRAVENTION CASES], Aug. 24, 2001, DZIENNIK USTAW No. 106/2001, item 1148, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20011061148/T/D20011148L.pdf> (in Polish), archived at <https://perma.cc/CZ3R-7LCL>.

### III. Sanctions

The Penal Code identifies the following electoral offenses as being subject to criminal penalties:

- Election fraud
- Interference with voting
- Violation of the freedom of elections
- Corruption in elections
- Breach of secrecy of voting

A natural person may be subject to imprisonment and fines for electoral offenses provided by the Penal Code and other laws. The maximum term of imprisonment provided for electoral offenses is five years. A fine in the amount of PLN 100 to 720,000 (approximately US\$29 to \$211,640) may be imposed by the court if the individual committed the crime to gain a material benefit<sup>11</sup> or where the sentence of imprisonment is suspended.<sup>12</sup> In the case of election-related bribery, the court may impose a fine as an alternative to imprisonment if the bribery is of “lesser gravity.”<sup>13</sup>

Contraventions are generally punishable by a fine in the range of PLN 20 to 5,000 (approximately US\$6 to \$1,470).<sup>14</sup> However, in some instances the Elections Code and the Political Parties Act provide for higher fines.

Under the Liability of Collective Entities Act, a legal person may be sentenced to a fine of between PLN 1,000 and 5 million (approx. US\$300 to \$1.5 million) for the crime of corrupting the elections.<sup>15</sup>

### IV. Enforcement

According to article 17 of the Code of Proceedings in Contravention Cases, the Police are charged with prosecution of contraventions. Regional (district) courts are competent to hear cases involving contraventions and to impose penalties.<sup>16</sup>

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<sup>11</sup> PENAL CODE art. 33.

<sup>12</sup> *Id.* art. 71.

<sup>13</sup> *Id.* art. 250a.

<sup>14</sup> CODE OF CONTRAVENTIONS art. 24.

<sup>15</sup> Ustawa O Odpowiedzialności Podmiotów Zbiorowych Za Czyny Zabronione Pod Groźbą Kary Kodeks Karny [Act on the Liability of Collective Entities for Acts Prohibited under the Penal Code], Oct. 28, 2002, *DZIENNIK USTAW* No. 197/2002, item 1661, available at <http://isip.sejm.gov.pl/Download?id=WDU20021971661&type=3>, archived at <https://perma.cc/6V3C-M37T> (in Polish).

<sup>16</sup> CODE OF PROCEEDINGS IN CONTRAVENTION CASES art. 9.

In the case of crimes and misdemeanors, investigation is conducted by the Police, unless the prosecution is assumed by the state prosecutor.<sup>17</sup> The competent court is the regional (district) court.<sup>18</sup>

Information on criminal proceedings initiated in connection with electoral offenses established by the Penal Code is reported by the National Police annually. In recent years, the number of prosecutions initiated by the Police for various crimes were as follows:

Year	Art. 248 (election fraud)	Art. 249 (interference with voting)	Art. 250 (freedom of election violation)	Art. 250a (corruption in elections)	Art. 251 (breach of voting secrecy)
2016	21	3	0	5	0
2015	115	10	6	39	3
2014	95	11	7	62	1
2013	13	0	2	5	1
2012	33	1	1	9	0
2011	71	9	3	34	3
2010	69	14	6	57	1

*Source: Statistics on Offenses Against Elections and Referendums, POLISH NATIONAL POLICE, <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-12> (in Polish), archived at <https://perma.cc/UC7Q-53KN>.*

The number of actual convictions is much smaller than the number of cases initiated by the Police. Out of 173 charges brought against companies and individuals for criminal election violations in 2015 (latest data available), only sixty-six ended up with court sentences, and most of those provided for suspended sentences of imprisonment for the offenders.<sup>19</sup>

<sup>17</sup> CODE OF CRIMINAL PROCEDURE art. 311.

<sup>18</sup> *Id.* art. 24.

<sup>19</sup> Statistical Information Guide for the Judiciary, Statistics on Final Convictions by Type of Crime and Sentence (2008–2016) (in Polish), available for download at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>, archived at <https://perma.cc/79KP-5UBJ>.

# Portugal

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**SUMMARY** Portugal makes use of a direct, secret, and periodic voting system to elect its representatives, including the President of the Republic. Electoral rights are guaranteed by the Constitution, electoral laws, and the Penal Code. Violations are prosecuted by the Public Ministry's Office at the Constitutional Court. Punishments for electoral offenses, such as a violation of the duty of neutrality and impartiality of government officers, a violation of freedom of assembly, and ballot-box fraud, include imprisonment and fines.

## I. Introduction

Pursuant to article 113(1) of Portugal's Constitution, officers of the bodies that exercise national, regional, and local powers are, as a general rule, appointed by direct, secret, and periodic suffrage.<sup>1</sup> Electoral registration is semi-official (*oficioso*), compulsory, and permanent; there is a single registration system for all elections, which are held by direct, universal suffrage.<sup>2</sup> The protection of electoral rights is mainly found in the Constitution, the Electoral Law of the President of the Republic, the Electoral Law of the Assembly of the Republic, and the Penal Code.

## II. Enforcement of Electoral Laws

Irregularities occurring during voting and during the partial and general counting of votes may be investigated by means of a "contentious appeal" (*recurso contencioso*), provided a complaint is made when the act occurs.<sup>3</sup> A petition specifying the factual and legal grounds for the appeal must be accompanied by all evidence, including a photocopy of the minutes of the meeting in which the irregularity occurred.<sup>4</sup>

The Constitution states that courts have jurisdiction to rule on the correctness and validity of electoral acts.<sup>5</sup> The Electoral Law of the Assembly of the Republic provides that such appeals

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<sup>1</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA, VII Revisão Constitucional (2005), art. 113(1), <http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>, archived at <https://perma.cc/A85X-YULZ>. According to article 110(1) of the Constitution, the President of the Republic, the Assembly of the Republic, the Government, and the Courts constitute the bodies that exercise sovereign power.

<sup>2</sup> *Id.* art. 113(2).

<sup>3</sup> LEI ELEITORAL PARA A ASSEMBLEIA DA REPÚBLICA [ELECTORAL LAW OF THE ASSEMBLY OF THE REPUBLIC], Lei No. 14/79, de 16 de Maio (2015), art. 117(1), [http://www.parlamento.pt/legislacao/documents/legislacao\\_annotada/leieleitoral\\_annotada.pdf](http://www.parlamento.pt/legislacao/documents/legislacao_annotada/leieleitoral_annotada.pdf), archived at <https://perma.cc/5YR8-DXJP>; LEI ELEITORAL DO PRESIDENTE DA REPÚBLICA [ELECTORAL LAW OF THE PRESIDENT OF THE REPUBLIC], Decreto-Lei No. 319-A/76, de 3 de Maio, art. 114(1), [http://www.cne.pt/sites/default/files/dl/legis\\_lepr\\_2015vf.pdf](http://www.cne.pt/sites/default/files/dl/legis_lepr_2015vf.pdf), archived at <https://perma.cc/R4YB-T4NY>.

<sup>4</sup> LEI ELEITORAL PARA A ASSEMBLEIA DA REPÚBLICA art. 117(3); LEI ELEITORAL DO PRESIDENTE DA REPÚBLICA art. 114(3).

<sup>5</sup> CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA art. 113(7).

must be filed before the Constitutional Court within twenty-four hours from the date of the public notice (*edital*) referred to in article 112 of the Electoral Law, which deals with the proclamation and publication of election results.<sup>6</sup> The Electoral Law of the President of the Republic similarly states that appeals must be filed the day after publication of the results of the district and general voting results.<sup>7</sup>

### III. Electoral Offenses

#### A. Electoral Law of the President of the Republic

##### 1. Capacity to Vote

Pursuant to the Electoral Law of the President of the Republic, a person lacking the capacity to vote who willfully accepts his/her candidacy for President of the Republic may be imprisoned for two to eight years.<sup>8</sup> Article 4(1) deems a Portuguese national by origin who is older than thirty-five years of age as having electoral capacity.<sup>9</sup>

##### 2. Fraud Involving Multiple Applications

Any person who fraudulently violates the provisions of article 13(2), which says that a registered voter can only file one application (*candidatura*) to run for President of the Republic, may be imprisoned for two to eight years.<sup>10</sup> In the case of mere negligence, the term of imprisonment is up to one year.<sup>11</sup>

##### 3. Violations of Neutrality and Impartiality

Article 47 provides that government officers; legal entities governed by public law; legal entities of administrative public utility; and concessionaires of public service, public property, or public works in the performance of their duties, must maintain strict neutrality vis-à-vis the various candidates and political parties. In this capacity, they may not intervene, directly or indirectly, in the electoral campaign, or perform acts that in any way favor or prejudice a competitor to the elections to the detriment or advantage of others.<sup>12</sup> Citizens covered by article 47 who violate the duties of neutrality and impartiality prescribed therein may be imprisoned for up to two years.<sup>13</sup>

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<sup>6</sup> LEI ELEITORAL PARA A ASSEMBLEIA DA REPÚBLICA art. 118(1).

<sup>7</sup> LEI ELEITORAL DO PRESIDENTE DA REPÚBLICA art. 115(1).

<sup>8</sup> *Id.* art. 118.

<sup>9</sup> *Id.* art. 4(1).

<sup>10</sup> *Id.* art. 119(1).

<sup>11</sup> *Id.* art. 119(2).

<sup>12</sup> *Id.* art. 47.

<sup>13</sup> *Id.* art. 120.

#### 4. *Use of Candidate's Name or Symbol*

Anyone who uses the name of a candidate or symbol of any candidacy during the electoral campaign with the intention of harming or injuring the candidate or campaign may be imprisoned for up to one year and a fine.<sup>14</sup>

#### 5. *Noncompliance with Broadcasting Rules*

Failure to comply with the duties imposed by article 52, which deals with broadcasting rights (*direito de antena*) and 53, which deals with distribution of reserved broadcasting times, is a violation of the Electoral Law of the President of the Republic, with each offense being punishable by a fine.<sup>15</sup> The National Election Commission is responsible for imposing such fines.<sup>16</sup>

The exercise of broadcasting rights of a candidacy is suspended upon the “[u]se of expressions or images that may constitute a crime of defamation or injury, an offense against democratic institutions, a call for disorder or insurrection, or incitement to hatred, violence or war,” or the “[u]se of commercial advertising.”<sup>17</sup> The suspension must be graduated from one day to the number of days that the campaign will last, depending on the severity of the offense and its frequency, and covers the exercise of the right to broadcast on all radio and television stations, even if the facts show that the offending conduct occurred only on one station.<sup>18</sup> The suspension is independent of civil or criminal liability.<sup>19</sup>

Suspension of the exercise of broadcasting rights is requested by the Public Ministry, on its initiative or at the request of the National Commission of Elections or any other intervening candidacy, to the Constitutional Court.<sup>20</sup>

#### 6. *Violations of Freedom of Assembly*

Whoever prevents the holding or continuation of an electoral meeting, rally, or parade may be punished with imprisonment for six months to one year and a fine.<sup>21</sup> Anyone who promotes meetings, rallies, or parades in contravention of article 49, which provides for time, place, or manner regulation of political assembly, may be imprisoned for up to six months.<sup>22</sup>

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<sup>14</sup> *Id.* art. 121.

<sup>15</sup> *Id.* art. 123(1).

<sup>16</sup> *Id.* art. 123(2).

<sup>17</sup> *Id.* art. 123-A(1).

<sup>18</sup> *Id.* art. 123-A(2).

<sup>19</sup> *Id.* art. 123-A(3).

<sup>20</sup> *Id.* art. 123-B(1).

<sup>21</sup> *Id.* art. 124.

<sup>22</sup> *Id.* art. 125.

### 7. *Damage to Electoral Advertising*

Any person who, steals, destroys, disfigures or conceals electoral advertising may be punished with imprisonment for up to six months and a fine.<sup>23</sup> Such acts are not punishable if the advertising has been affixed to the actor's own house or establishment without his knowledge or contains material that is outdated.<sup>24</sup>

Postal workers who misdeliver, retain, or fail to deliver circulars, posters, or electoral advertising may be imprisoned up to two years and a fine.<sup>25</sup>

### 8. *Advertising at Unauthorized Times*

Any person who issues electoral advertisements by any means on the day of the election or on the eve of election day may be punished with imprisonment for up to six months and a fine.<sup>26</sup> Those who on the day of the election advertise in polling stations or in their immediate vicinity (within up to 500 meters of the station) may be imprisoned for up to six months and a fine.<sup>27</sup>

### 9. *Corruption*

In the area of electoral corruption, article 143 of the Electoral Law of the President of the Republic establishes that any person who, because of the election, offers, promises, or grants public or private employment or any other thing or advantage to one or more voters or, by agreement with them, to a third person, even if the thing used, promised, or obtained is concealed by way of pecuniary compensation given to the voter for expenses, may be imprisoned for up to two years and a fine.<sup>28</sup> The same punishment is applicable to a voter who accepts any such benefits.<sup>29</sup>

### 10. *Ballot-Box Fraud*

Anyone who fraudulently introduces ballot papers into a ballot box before or after the start of the vote; seizes the ballot box with the ballot papers collected in the ballot box, but not yet cleared; or seizes one or more ballot papers at any time, from the opening of the electoral assembly to the general tabulation of the election may be punished with imprisonment for two to eight years.<sup>30</sup>

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<sup>23</sup> *Id.* art. 127(1).

<sup>24</sup> *Id.* art. 127(2).

<sup>25</sup> *Id.* art. 128.

<sup>26</sup> *Id.* art. 129(1).

<sup>27</sup> *Id.* art. 129(2).

<sup>28</sup> *Id.* art. 143(1).

<sup>29</sup> *Id.* art. 143(2).

<sup>30</sup> *Id.* art. 145.

### 11. *Fraud by Poll Workers*

A member of a polling station table (poll worker) who falsely records or consents to the recording of votes by voters who did not in fact vote or were not recorded as having voted, changes the candidate voted for in the reading of the ballot papers, reduces or adds votes to a candidacy during the counting of votes, or in any way falsifies the truth of the election, may be punished with imprisonment for two to eight years.<sup>31</sup> The same punishment is applicable to members of the district and general tabulation assemblies who engage in any such acts.<sup>32</sup>

### 12. *Interference with Electoral Documents*

Anyone who by any means falsifies, replaces, suppresses, destroys, or composes electoral lists (*cadernos eleitorais*), ballot papers, minutes of polling or tabulation, or any of the documents relating to the election, may be punished with imprisonment for two to eight years.<sup>33</sup>

## **B. Electoral Law of the Assembly of the Republic**

Title VI of the Electoral Law of the Assembly of the Republic (arts. 121–168) repeats the conduct considered electoral violations (*ilícito eleitoral*) and punishments prescribed by the Electoral Law of the President of the Republic.<sup>34</sup>

## **C. Penal Code**

The Portuguese Penal Code lists the following electoral crimes and corresponding punishments in articles 336 through 346:

- Falsification of voter registration – one to three years in prison or a fine<sup>35</sup>
- Obstruction of voter registration – up to one year in prison or a fine<sup>36</sup>
- Disruption of an electoral assembly – up to three years in prison or a fine<sup>37</sup>
- Election fraud – up to two years in prison or a fine<sup>38</sup>
- Coercion of voters – up to five years in prison if a more severe punishment is not applicable under another legal provision<sup>39</sup>

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<sup>31</sup> *Id.* art. 146(1).

<sup>32</sup> *Id.* art. 146(2).

<sup>33</sup> *Id.* art. 153.

<sup>34</sup> LEI ELEITORAL PARA A ASSEMBLEIA DA REPÚBLICA tit. VI.

<sup>35</sup> CÓDIGO PENAL, Decreto-Lei No. 48/95, de 15 de Março, art. 336, *as amended* by Lei No. 94/2017, de 23 de Agosto, [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=109&tabela=leis&ficha=1&pagina=1&so\\_miolo](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&ficha=1&pagina=1&so_miolo), archived at <https://perma.cc/P6AG-UXY2>.

<sup>36</sup> *Id.* art. 337.

<sup>37</sup> *Id.* art. 338.

<sup>38</sup> *Id.* art. 339.

- Electoral fraud and voter corruption – up to one year in prison or a fine<sup>40</sup>
- Violation of ballot secrecy – up to one year in prison or a fine<sup>41</sup>

According to article 343 of the Penal Code, these punishments must be increased by one-third if the agent is a member of a census commission; member of a section or polling station; or delegate of a political party to the commission, section, or assembly.<sup>42</sup>

Anyone who is convicted for any of these crimes may be prohibited for a period of two to ten years from voting for President of the Republic, a member of a legislative assembly, or a local authority, or to be elected as such or serve on a jury.<sup>43</sup>

#### **D. Law No. 19 of June 20, 2003**

Law No. 19 of June 20, 2003, regulates the financial resources of political parties and electoral campaigns. Pursuant to article 28 of the Law, leaders of political parties, natural persons, and administrators of companies who personally participate in making unauthorized donations and obtaining prohibited financing may be punished with imprisonment for one to three years.<sup>44</sup> Financial agents, candidates for presidential elections, or “first proponents” of groups of citizens who fail to observe the limits set out in article 20, which establishes the limits for electoral campaigns expenses, or who obtain forbidden funds or do so by means not foreseen in Law No. 19, may be punished with a prison sentence of one to three years.<sup>45</sup> The same punishment is applicable to leaders of political parties, natural persons, and administrators of companies who personally participate in these offenses.<sup>46</sup>

Failure to comply with obligations imposed on the financing of political parties,<sup>47</sup> violations related to the receipt of funds or realization of illicit expenditures,<sup>48</sup> the nondisclosure of how funds were spent,<sup>49</sup> and failure to provide an expense report<sup>50</sup> are violations punishable with fines.

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<sup>39</sup> *Id.* art. 340.

<sup>40</sup> *Id.* art. 341.

<sup>41</sup> *Id.* art. 342.

<sup>42</sup> *Id.* art. 343.

<sup>43</sup> *Id.* art. 346.

<sup>44</sup> Lei No. 19/2003, de 20 de Junho, art. 28(2), *as amended by* Lei No. 4/2017, de 16 de Janeiro, [http://www.pgd.lisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=747&tabela=leis&ficha=1&pagina=1&so\\_miolo](http://www.pgd.lisboa.pt/leis/lei_mostra_articulado.php?nid=747&tabela=leis&ficha=1&pagina=1&so_miolo), archived at <https://perma.cc/ZYY4-5XKY>.

<sup>45</sup> *Id.* art. 28(3).

<sup>46</sup> *Id.* art. 28(4).

<sup>47</sup> *Id.* art. 29.

<sup>48</sup> *Id.* art. 30.

<sup>49</sup> *Id.* art. 31.

<sup>50</sup> *Id.* art. 32.

#### IV. Fraud Investigation

In October 2017, the Portuguese press reported that hundreds of people were filmed arriving at an airport in the country for the purpose of voting in local elections.<sup>51</sup> The reports alleged that the trip was being coordinated by an official who had recently been reelected and these persons were being paid to vote. The National Commission on Elections (Comissão Nacional de Eleições)<sup>52</sup> was assessing the situation and discussing whether to send the case to the Public Ministry's Office for prosecution.<sup>53</sup>

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<sup>51</sup> *Fraude: Centenas de Emigrantes Vieram a Portugal Votar?*, OBSERVADOR (Oct. 6, 2017), <http://observador.pt/2017/10/06/fraude-centenas-de-emigrantes-vieram-a-portugal-votar/>, archived at <https://perma.cc/Y8LS-PJSA>.

<sup>52</sup> “The National Commission on Elections is an independent agency that works together with the Assembly of the Republic. It is a superior body of the electoral administration with jurisdiction to discipline and supervise all acts of registration and electoral operations for elected bodies of sovereignty, autonomous regions and local authorities, for the European Parliament, and referenda.” *Estatuto e Composição*, COMISSÃO NACIONAL DE ELEIÇÕES, <http://www.cne.pt/content/estatuto-e-composicao> (last visited Feb. 13, 2018) (translation by author), archived at <https://perma.cc/F4UM-P2EX>.

<sup>53</sup> *Fraude; Centenas de Emigrantes Vieram a Portugal Votar?*, *supra* note 51.

# South Korea

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**SUMMARY** South Korea’s Public Official Election Act establishes an election system for members of the National Assembly and local government officials. The Act has various criminal provisions. The election commissions take parts in election law enforcement. The commissions have groups to monitor vote rigging and illegal cyber activities, and investigate cases.

## I. Introduction

The Constitution of South Korea guarantees the right to vote, stating “[a]ll citizens shall have the right to vote under the conditions as prescribed by Act.”<sup>1</sup> The Constitution specifies two national-level elections. One is the election to South Korea’s unicameral legislative body, the National Assembly,<sup>2</sup> which is “composed of members elected by universal, equal, direct and secret ballot by the citizens.”<sup>3</sup> The other is the election of the President, who must also be elected “by universal, equal, direct and secret ballot by the people.”<sup>4</sup> Even “when there is only one presidential candidate, he shall not be elected President unless he receives at least one-third of the total eligible votes.”<sup>5</sup>

The Constitution states that matters pertaining to National Assembly elections<sup>6</sup> and presidential elections are to be determined by a legislative act.<sup>7</sup> The act that prescribes conditions of presidential elections, elections of National Assembly members, and local public office elections is the Public Official Election Act.<sup>8</sup> The Constitution sets the term of National Assembly members at four years.<sup>9</sup> Therefore, a general election of National Assembly members is held

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<sup>1</sup> CONSTITUTION OF THE REPUBLIC OF KOREA, Oct. 29, 1987, art. 24, English translation available on the Statutes of the Republic of Korea website, at [http://elaw.klri.re.kr/eng\\_service/lawViewContent.do?hseq=1#](http://elaw.klri.re.kr/eng_service/lawViewContent.do?hseq=1#), archived at <https://perma.cc/MXX2-KS79>.

<sup>2</sup> See *id.* art. 41. See also *Organization Chart*, NATIONAL ASSEMBLY, [http://korea.assembly.go.kr/int/org\\_01.jsp](http://korea.assembly.go.kr/int/org_01.jsp) (last visited Mar. 8, 2018), archived at <https://perma.cc/STC7-QAC2>.

<sup>3</sup> CONSTITUTION art. 41, para. 1.

<sup>4</sup> *Id.* art. 67, para. 1.

<sup>5</sup> *Id.* art. 67, para. 3.

<sup>6</sup> *Id.* art. 41, para. 3.

<sup>7</sup> *Id.* art. 67, para. 5.

<sup>8</sup> Public Official Election Act, Act No. 7681, Aug. 4, 2005, amended by Act No. 14839, July 26, 2017, unofficial English translation available at [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=45629&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=45629&lang=ENG), archived at <https://perma.cc/KDD9-P9MX>.

<sup>9</sup> CONSTITUTION art. 42.

every four years. The term of office of the President is five years.<sup>10</sup> Therefore, unless a president resigns, dies, or is impeached,<sup>11</sup> the presidential election is held every five years. Former President Park was impeached and ousted in March 2017.<sup>12</sup> Subsequently, the presidential election was held on May 9, 2017.<sup>13</sup>

The Constitution states that the minimum number of members of the National Assembly is two hundred.<sup>14</sup> The Public Official Election Act sets the number as three hundred.<sup>15</sup> The number includes local constituency members elected from single-seat districts and proportional representatives.<sup>16</sup> Currently, 253 members are from single-seat districts and forty-seven members are from proportional representation elections.<sup>17</sup>

## II. Enforcement Mechanism of Election Law

South Korea has established national and local election commissions to manage election affairs. The National Election Commission supervises all election affairs,<sup>18</sup> including the investigation of violations of the Public Official Election Act.<sup>19</sup>

Election commissions must set up supervisory groups to monitor vote rigging.<sup>20</sup> Each supervisory group on vote rigging consists of ten persons who are not members of a political party and take a neutral and impartial stance. These persons receive allowances.<sup>21</sup> From sixty days before to ten days after an election the National Election Commission and regional election commissions add ten additional persons, and municipal election commissions may add up to twenty additional persons to the supervisory groups.<sup>22</sup> Further, in order to monitor vote rigging utilizing the internet, the National Election Commission established a cyber supervisory group on vote rigging consisting of five to ten persons who are neutral and impartial persons and not

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<sup>10</sup> CONSTITUTION art. 70.

<sup>11</sup> *Id.* art. 68, para. 2.

<sup>12</sup> [Summary] *Case on the Impeachment of the President (Park Geun-hye), Mar 10, 2017 / Case No. 2016Hun-Na1*, KCCR, CONSTITUTIONAL COURT OF KOREA, <http://english.ccourt.go.kr/cckhome/eng/decisions/majordecisions/majorDetail.do?searchClassCode=ENEXECLSS&searchClassSeq=560>, archived at <https://perma.cc/D3TZ-SULJ>.

<sup>13</sup> (LEAD) *Liberal Moon Jae-in Wins S. Korean Presidential Election*, YONHAP NEWS (May 10, 2017), <http://english.yonhapnews.co.kr/news/2017/05/09/0200000000AEN20170509008051315.html>, archived at <https://perma.cc/DR6D-S4YV>.

<sup>14</sup> CONSTITUTION art. 41, para. 2.

<sup>15</sup> Public Official Election Act art. 21, para. 1.

<sup>16</sup> *Id.* paras. 1 & 2.

<sup>17</sup> *Id.* art. 25, para. 3 & attached table 1.

<sup>18</sup> *Id.* art. 12, para. 1.

<sup>19</sup> *Id.* art. 272-2.

<sup>20</sup> *Id.* art. 10-2, para. 1.

<sup>21</sup> *Id.* art. 10-2, para. 7.

<sup>22</sup> *Id.* art. 10-2, para. 2.

members of any political party.<sup>23</sup> Up to ten persons are added from sixty days prior to ten days after election day.<sup>24</sup> Regional election commissions must establish a cyber supervisory group on vote rigging consisting of thirty persons between 120 days prior to the election and election day.<sup>25</sup> The supervisory or cyber supervisory group on vote rigging may collect evidential data on acts of violations of the Public Official Election Act under the direction of the competent election commission.<sup>26</sup>

The general public is encouraged to monitor the fairness of elections. A person who offers information to aid examinations or investigations, such as a report, petition, accusation and charge, etc., concerning election crimes is protected<sup>27</sup> and may be rewarded.<sup>28</sup>

When a member or staff person of an election commission discovers or is informed of a violation of an election law in the course of performing his or her duties, he/she must halt the violation and issue a warning or corrective order.<sup>29</sup> A member or staff person of an election commission has the authority to

- enter the place, and inquire of or investigate relevant persons, or ask them to submit relevant documents or other materials necessary for investigations where a person is suspected of committing an election crime; a credible petition for an election crime committed by a candidate, campaign worker, etc. was filed; or an election crime report was made on the spot;<sup>30</sup>
- take away the evidence necessary for investigations on the spot if there are some concerns about destruction of the evidence and send the evidence to the competent investigative agency, where the member or staff person files a complaint about or requests an investigation into the related election crimes (and if he/she does not do so, the evidence must be returned to the person who owns, possesses, or manages it without delay);<sup>31</sup>
- request that interested parties connected with the investigation of election crimes (except for candidates) accompany them to, or appear before, the election commission;<sup>32</sup>
- take on-the-spot measures required for the suspension or prevention of any acts that are likely to significantly damage the freedom and fairness of an election when those acts are

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<sup>23</sup> *Id.* art. 10-3, paras. 1 & 3.

<sup>24</sup> *Id.* art. 10-3, para. 1.

<sup>25</sup> *Id.* art. 10-3, para. 2.

<sup>26</sup> *Id.* art. 10-2, para. 6 & art. 10-3, para. 4.

<sup>27</sup> *Id.* art. 262-2.

<sup>28</sup> *Id.* art. 262-3.

<sup>29</sup> Election Commission Act, Act No. 3938, Nov. 7, 1987, *amended by* Act No. 13756, Jan. 15, 2016, art. 14-2, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=37417&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=37417&lang=ENG), archived at <https://perma.cc/3K88-63P6>.

<sup>30</sup> Public Official Election Act art. 272-2, para. 1.

<sup>31</sup> *Id.* art. 272-2, para. 2.

<sup>32</sup> *Id.* art. 272-2, para. 4.

committed in the presence of the member or staff person, or it is apparent that they will be committed.<sup>33</sup>

When a person is interviewed or investigated by a member of an election commission, the person has the right to refuse to make a statement and the right to an attorney, and must be informed of these rights.<sup>34</sup>

If a considerable reason exists to suspect that someone is violating or has violated the Public Official Election Act by utilizing information communications networks, a staff person of an election commission may demand that the provider of communications services allow an inspection of the data to identify the users (including codes to discern the users), recorded data on the internet log, and data enabling verification of the location of information communications apparatuses that have contacted the information communications networks, or the submission of such information upon approval of the chief presiding judge of the competent high court.<sup>35</sup> Such judge's approval is not required for an election commission staffer to inspect or request the name, resident registration number, or address of a person if the person has posted a writing or video clip on a bulletin board or chat room of an internet homepage or sent an email or text message.<sup>36</sup>

A member or staff person of an election commission may ask a competent public prosecutor's office to launch an investigation or file a criminal charge if the violation of the Public Official Election Act is deemed significantly detrimental to the impartiality of an election or if a commission's order of suspension, warning, or correction is not complied with.<sup>37</sup> A candidate or political party, as well as a victim of an election crime, may file a criminal complaint.<sup>38</sup> In case the prosecutor's office dismisses the complaint, the candidate, political party, or election commission may request that the competent high court rule on the matter.<sup>39</sup>

The election victory of a candidate will be invalidated if election law was violated in the following cases:

- When any election campaign manager or accountant in charge of the election campaign office is sentenced to imprisonment or a fine exceeding 3 million won (about US\$2,760) on account of an excessive disbursement of 1/200th or more of the election expense limit or the violation of the election expense provision of the political fund regulations (but this does not

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<sup>33</sup> *Id.* art. 272-2, para. 5.

<sup>34</sup> *Id.* art. 272-2, para. 7.

<sup>35</sup> *Id.* art. 272-3, para. 1.

<sup>36</sup> *Id.* art. 272-3, para. 3.

<sup>37</sup> Election Commission Act art. 14-2.

<sup>38</sup> Criminal Procedure Act, Act No. 341, Sept. 23, 1954, amended by Act No. 14179, May 29, 2016, art. 223, [http://elaw.klri.re.kr/kor\\_service/lawView.do?lang=ENG&hseq=38892&joseq=JO0260000](http://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=38892&joseq=JO0260000), archived at <https://perma.cc/SR5S-DDGW>.

<sup>39</sup> Public Official Election Act art. 273.

apply where the disbursement is made with the intention of invalidating the election of the candidate by inducement or provocation of another)<sup>40</sup>

- If an elected person is sentenced to imprisonment or a fine exceeding 1 million won (about US\$920) on account of a violation of the Public Official Election Act or violation of the election expense provision of the political fund regulations<sup>41</sup>
- If an election campaign manager, accountant in charge of an election campaign office or the candidate, or lineal ascendant or descendant and spouse of the candidate has committed a crime related to a contribution, or a crime of illegally giving or receiving political funds, and is sentenced to imprisonment or a fine exceeding 3 million won, limited to the election of the candidate of the constituency (but this does not apply where the disbursement is made with the intention of invalidating the election of the candidate by inducement or provocation of another)<sup>42</sup>

### III. Electoral Offenses

The Public Official Election Act stipulates various election offenses. The following offenses are examples and their descriptions are simplified.

#### A. Corrupt Practices and Inducement by Interest

Any person who offers, manifests an intention to offer, or promises to offer money, goods, other property interests, or a job to the following person, organization, activities, etc. to influence an election is punishable by imprisonment for not more than five years or a fine not exceeding 30 million won (about US\$27,600):

- To any elector, a person involved in another candidate or party's campaign, or a voting or ballot-counting observer, with the intent to cause him/her to cast or not cast his/her vote, or to cause a person to be elected or not elected
- To a school, other public institution, social group, religious group, labor organization, youth organization, or other institutions, organizations, or facilities with the intention of utilizing them for an election campaign
- To a picnic, alumni meeting, social gathering, or other meeting or event of electors, neighborhood association, or fraternity group, etc. with the intention of utilizing them for an election campaign
- To campaign volunteers in contravention of campaign regulations
- To a person who publishes a text message, voice message, image, or video clip through a bulletin board or internet chat room with the intent to influence an election or to transmit an email or text message in contravention of campaign regulations

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<sup>40</sup> *Id.* art. 263.

<sup>41</sup> *Id.* art. 264.

<sup>42</sup> *Id.* art. 265.

- To a person in return for soliciting other persons to participate in voting by presenting the name of a political party or candidate in contravention of campaign regulations<sup>43</sup>

If these acts are committed for economic benefit the statutory punishment increases.<sup>44</sup> Any person who receives, or agrees to receive, any benefit or job in any of the above ways is also punishable in the same manner.<sup>45</sup>

Where a political party, a candidate, would-be candidate or his/her family member, a person involved in an election campaign, or a company having a relationship with a candidate or his/her family member<sup>46</sup> commits any of the above-listed violations, he/she is punishable by imprisonment for not more than seven years or by a fine not exceeding 50 million won (about US\$46,000).<sup>47</sup>

Any person who instructs, solicits, demands, or mediates any one of the above-listed acts is punishable by imprisonment for not more than seven years or a fine not exceeding 50 million won.<sup>48</sup>

Where a member or employee of an election commission, a public official involved in election affairs, or a police officer commits or aids and abets a person to commit an act listed above, he/she is punishable by imprisonment for not more than seven years.<sup>49</sup>

A person who offers a property interest or job to a candidate or would-be candidate with the intention of making the person unable to be a candidate or making a candidate resign is punishable by imprisonment for not more than seven years or by a fine of 5 million won (about US\$4,600) to 50 million won. The candidate or the person who accepted the offer is punishable in the same way.<sup>50</sup> A person who makes such an offer to an elected candidate with the intention of making him/her resign is punishable by imprisonment for one to ten years. The elected candidate who accepts such offer is punishable in the same way.<sup>51</sup> Where the intention of the person who makes the offer is to invalidate the election of an elected candidate by making him/her commit this crime, the person is punishable by imprisonment for not more than five years or by a fine of 30 million won.<sup>52</sup>

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<sup>43</sup> *Id.* art. 260, para. 1.

<sup>44</sup> *Id.* art. 231, para. 1.

<sup>45</sup> *Id.* art. 230, para. 1.

<sup>46</sup> Defined in *id.* art. 114, para. 2.

<sup>47</sup> *Id.* art. 230, para. 2.

<sup>48</sup> *Id.* art. 230, para. 3.

<sup>49</sup> *Id.* art. 230, para. 5.

<sup>50</sup> *Id.* art. 232, para. 1.

<sup>51</sup> *Id.* art. 233, para. 1.

<sup>52</sup> *Id.* art. 234.

Any person who carries money in a manner that is ready to be distributed to many electors during the election campaign period, such as packed gifts and money in envelopes, with the intention of causing him or herself to be elected, or causing another person to be elected or not elected, is punishable by imprisonment for not more than five years or by a fine of 30 million won.<sup>53</sup>

A person who offers, manifests his/her intent to offer, or promises to offer money, goods, any other property interest, or any position to another person, or receives or accepts an offer of money, goods, any other property interest, or any position from another person, in connection with the recommendation of a specific person as a candidate by a political party is punishable by imprisonment for not more than five years or a fine of 5 million to 30 million won. During the period from 150 days before and sixty days after election day, such offer of money, goods, or property interest (other than support payments or the payment of party membership fees under the Political Funds Act<sup>54</sup>) is deemed to be offered in connection with the recommendation of a specific person as a candidate by a political party.<sup>55</sup> A person who directs, requests, or mediates such an act is punishable in the same way.<sup>56</sup>

Bribery during intraparty competition for the selection of candidates is also prohibited and punishable.<sup>57</sup>

In general, donations from a candidate to a voter are prohibited. Any of the following persons are punishable by imprisonment for not more than five years or by a fine not exceeding 10 million won (about US\$9,200):

- A person, including a candidate, would-be candidate, his/her family member, or a political party that makes a donation to voters and organizations that are located within the relevant electoral boundary, or to those outside the boundary that have connections with the relevant electorate for a political party, candidate, or would-be candidate in connection with an election
- A person, political party, candidate, would-be candidate, election campaign worker, or organization having relations with a candidate, would-be candidate, or his/her family that offers, manifests an intention to offer, or promises to offer money, entertainment, or other interests to an organization sponsoring an election-related interview or debate, or the moderator of the debate<sup>58</sup>

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<sup>53</sup> *Id.* art. 230, para. 4.

<sup>54</sup> Political Fund Act, Act No. 7682, Aug. 4, 2005, *amended by* Act No. 14838, June 30, 2017, unofficial English translation available at [http://elaw.klri.re.kr/eng\\_service/lawViewContent.do?hseq=44107#](http://elaw.klri.re.kr/eng_service/lawViewContent.do?hseq=44107#), archived at <https://perma.cc/8UC4-5665>.

<sup>55</sup> *Id.* art. 230, para. 6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* art. 230, paras. 7 & 8.

<sup>58</sup> *Id.* art. 257, para. 1.

## B. Interference with a Campaign

The following persons acting with respect to an election are punishable by imprisonment for not more than ten years or by a fine of 5 million to 30 million won:

- A person who assaults, threatens, lures, or unlawfully arrests or detains an elector, candidate, would-be candidate, person involved in campaign management, or elected person, or seizes things to be used for the election campaign
- A person who interferes with a rally, election campaign speech, or traffic, or with the freedom of the election by a deceptive scheme or in a deceitful or unlawful way
- A person who compels another person who is under his/her protection, direction, or supervision due to business, employment, or other relationship, to support, recommend, or oppose a certain political party or candidate<sup>59</sup>

Any person who throws any dangerous objects at the venue for a speech, interview, or debate, or a person who assaults a candidate or speechmaker is punishable in accordance with the following classifications:

- Mastermind: imprisonment for not less than five years
- Person who commands another person or leads other persons: imprisonment for not less than three years
- Followers: imprisonment for not more than seven years<sup>60</sup>

The following persons acting in connection with an intraparty competition are punishable by imprisonment for not more than five years or by a fine not exceeding 10 million won:

- A person who assaults, blackmails, seduces, arrests, or detains any competition candidate or would-be competition candidate, or any person who is elected as a candidate
- A person who obstructs the competition campaign or traffic and impedes the freedom of an intraparty competition by means of deception, trickery, or other unfair acts
- A person who coerces persons under his/her protection, command, and supervision on the grounds of business, employment, and other relationships to support, recommend, or oppose any specific competition candidate<sup>61</sup>

Any person who throws dangerous objects at any facility and any place in which many persons are waging their campaigns in connection with the intraparty competition or assaults any competition candidate is punishable in accordance with the following classifications:

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<sup>59</sup> *Id.* art. 237, para. 1.

<sup>60</sup> *Id.* art. 237, para. 3.

<sup>61</sup> *Id.* art. 237, para. 5.

- Mastermind: imprisonment for not less than three years
- Person who commands other persons or leads other persons: imprisonment for not more than seven years
- Followers: imprisonment for not more than two years<sup>62</sup>

Any person who interferes with the preparation, posting, pasting, or installation of any poster, placard, or other means of propaganda, or damages or removes such items, without justifiable grounds, is punishable by imprisonment for not more than two years or by a fine not exceeding 4 million won.<sup>63</sup> If such an act is committed by a member or employee of an election commission, or by a public official or police officer engaged in election affairs, the person is punishable by imprisonment for not more than three years or by a fine of not exceeding 6 million won.<sup>64</sup>

### **C. Abuse of Power by Official or Police Officer**

A member or employee of the election commission, public official engaged in election affairs, police officer, or person involved in the preparation of the electoral register who commits or makes another person commit any one of the following acts, abusing his/her authority in connection with the election, is punishable by imprisonment for not more than seven years:

- Interfering with or abandoning his/her duties regarding examination of the electoral register
- Following a candidate without justifiable grounds, or entering a candidate's house, election campaign office, or election campaign liaison office without consent, or failing to comply with a demand to leave<sup>65</sup>

### **D. Interference with Voting**

Any person who infringes on the secrecy of voting, or demands that any elector indicate the political party or candidate the elector wishes to vote for or has voted for before the voting is closed on election day, asks any question within fifty meters from the polling place in order to anticipate the election results, or publishes the details and results thereof before voting is closed is punishable by imprisonment for not more than three years or a fine not exceeding 6 million won.<sup>66</sup> If such an act is committed by a member or employee of an election commission, public official engaged in election affairs, public prosecutor, police officer, or military serviceman, the person is punishable by imprisonment for not more than five years.<sup>67</sup>

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<sup>62</sup> *Id.* art. 237, para. 6.

<sup>63</sup> *Id.* art. 240, para. 1.

<sup>64</sup> *Id.* art. 240, para. 2.

<sup>65</sup> *Id.* art. 239.

<sup>66</sup> *Id.* art. 241, para. 1.

<sup>67</sup> *Id.* art. 241, para. 2.

Any person who requires another person to deposit his/her identification card required for voting with a third party or takes over such identification card, who intervenes in the voting or ballot counting at a polling station or ballot-counting place without a justifiable ground, or commits any act that may influence voting or ballot counting, such as encouraging an elector to cast his/her vote for a specific political party or candidate, or disclosing the vote at the polling station, is punishable by imprisonment for not more than three years.<sup>68</sup> If such an act is committed by a public prosecutor, police officer, or military serviceman, the person is punishable by imprisonment for one to ten years.<sup>69</sup>

Any person who opens a ballot box, or removes, destroys, damages, conceals, or seizes a ballot box or ballot papers contained therein in contravention of the election regulations is punishable by imprisonment for one to ten years.<sup>70</sup> If committed by a public prosecutor, police officer, or military serviceman, the person is punishable by imprisonment for two to ten years.<sup>71</sup>

Any person who assaults, threatens, lures, or unlawfully arrests or detains a member or employee of an election commission, a member of a supervisory group on vote rigging, a member of a cyber supervisory group on vote rigging, a voting clerk, a ballot-counting clerk, an observer, or any other person engaged in election affairs, or disturbs the polling station, ballot-counting place, or election commission, by using violence or threats, or conceals, destroys, damages, or seizes the facilities, installations, equipment, or documents is punishable by imprisonment for one to ten years or a fine of 5 million to 30 million won.<sup>72</sup>

Any person who enters a polling station, ballot-counting place, or election commission office carrying arms, weapons, explosives, or other items capable of killing or wounding a human being is punishable by imprisonment for not more than seven years.<sup>73</sup>

Any person who aids and abets another person to be listed on the electoral register or requests to vote at his/her residence in a deceitful manner (e.g., claims to be too ill to go to the polls), or who files a false report on the resident registration with the intention of casting the vote at the specific election district between 180 days before the base date of the electoral list and the day on which preparation of the electoral register is completed, is punishable by imprisonment for not more than three years or a fine not exceeding 5 million won.<sup>74</sup> Where a member or employee of an election commission, public official who is engaged in election affairs, or person engaged in the preparation of an electoral register fails to list an elector in the electoral register on purpose, or enters or makes another person enter a false fact, he/she is punishable by imprisonment for not more than five years or a fine not exceeding 10 million won.<sup>75</sup>

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<sup>68</sup> *Id.* art. 242, para. 1.

<sup>69</sup> *Id.* art. 242, para. 3.

<sup>70</sup> *Id.* art. 243, para. 1.

<sup>71</sup> *Id.* art. 243, para. 2.

<sup>72</sup> *Id.* art. 244, para. 1.

<sup>73</sup> *Id.* art. 245, para. 1.

<sup>74</sup> *Id.* art. 247, para. 1.

<sup>75</sup> *Id.* art. 247, para. 2.

Any person who assumes a false name, uses an altered or forged identification card, casts or makes another person cast a vote, or attempts to cast a vote in a deceptive way is punishable by imprisonment for not more than five years or a fine not exceeding 10 million won.<sup>76</sup> When a member or employee of an election commission or public official engaged in election affairs commits or makes another person commit such an act, he/she is punishable by imprisonment for not more than seven years.

Any person who forges, increases, or decreases the number of votes is punishable by imprisonment for one to seven years.<sup>77</sup> If committed by a member or employee of an election commission, public official, or other person who is engaged in election affairs, the term of imprisonment is three to ten years.<sup>78</sup>

### **E. Publication of False Information**

Any person who publishes or makes another person publish specified false *advantageous* information regarding a candidate by means of a speech, broadcast, newspaper, wire service, magazine, poster, propaganda document or others for the purpose of causing the candidate to be elected is punishable by imprisonment for not more than five years or a fine not exceeding 30 million won.<sup>79</sup> Such false information may include purported information about the candidate's place of birth, family relations, social status, occupation, career, property, behavior, or organization to which he/she belongs; information about his/her spouse, lineal ascendants or descendants, or siblings; or information about whether the candidate receives support from a specific person or specific organization. On the other hand, a person who publishes, or makes another person publish, any false *unfavorable* information on a candidate, his/her spouse, lineal ascendants or descendants, or siblings through a speech, broadcast, newspaper, communication, magazine, poster, propaganda document, or other means with the intention of preventing the candidate from being elected is punishable by imprisonment for not more than seven years or by a fine of 5 million to 30 million won.<sup>80</sup>

Any person who slanders a candidate or would-be candidate, his/her spouse, lineal ascendants or descendants, or siblings by pointing out any fact openly through a speech, broadcast, newspaper, communication, magazine, poster, propaganda document, or other means, with the intention of causing the candidate not to be elected or getting another candidate elected is punishable by imprisonment for not more than three years or a fine not exceeding 5 million won, provided that where it is a true fact and concerns the public interest, he/she is not punishable.<sup>81</sup>

Any person who operates or manages a broadcasting company, newspaper, news agency, magazine, or any other periodical, or a person who edits, collects, writes, and reports news or

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<sup>76</sup> *Id.* art. 248, para. 1.

<sup>77</sup> *Id.* art. 249, para. 1.

<sup>78</sup> *Id.* art. 249, para. 2.

<sup>79</sup> *Id.* art. 250, para. 1.

<sup>80</sup> *Id.* art. 250, para. 2.

<sup>81</sup> *Id.* art. 251.

articles, who commits any of the following acts is punishable by imprisonment for not more than seven years or a fine of 5 million to 30 million won:

- Purposely reporting an untrue fact with regard to an election, reporting a falsified fact, or making a comment based on a falsified fact in order to aid and abet a particular candidate to win or lose an election
- Reporting the predicted outcome of an election without presenting objective data, such as outcomes of a public opinion poll<sup>82</sup>

Any person who distorts the results of a public opinion poll with regard to an election to publish or report falsified outcomes is punishable by imprisonment for not more than five years or a fine of 3 million to 20 million won (about US\$18,400).<sup>83</sup>

Any person who communicates by mail, telegram, telephone, or other means of telecommunication using a name, denomination, or status contrary to the truth with the intention of getting elected or getting another person to be or not be elected is punishable by imprisonment for not more than three years or a fine not exceeding 6 million won.<sup>84</sup>

#### **F. Unlawful Election Campaign**

Any person who violates regulations on the use of the internet, press, or broadcasting for a campaign is punishable by imprisonment for not more than three years or a fine not exceeding 6 million won.<sup>85</sup>

Any person who violates campaign-period regulations is punishable by imprisonment for not more than three years or a fine not exceeding 6 million won.<sup>86</sup> Except as otherwise prescribed by law, any person who conducts an election campaign prior to an election campaign period begins is punishable by imprisonment for not more than two years or a fine not exceeding 4 million won.<sup>87</sup>

Any person who violates stipulated campaign regulation provisions is punishable by imprisonment for not more than three years or a fine not exceeding 6 million won. The following are examples of violations when undertaken in contravention of the regulations:

- Participation by a person who is barred from a campaign, such as noncitizen, minor, disfranchised person, and public officials
- Establishing an election campaign office

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<sup>82</sup> *Id.* art. 252, para. 1.

<sup>83</sup> *Id.* art. 252, para. 2.

<sup>84</sup> *Id.* art. 253.

<sup>85</sup> *Id.* art. 252, para. 3.

<sup>86</sup> *Id.* art. 254, para. 1.

<sup>87</sup> *Id.* art. 254, para. 2.

- Appointing an election campaign manager, election campaign worker, or assistant
- Conducting an election campaign speech or debate in a public building, station, etc.
- Carrying out an election campaign for another political party or candidate
- Distributing, performing, playing, showing, or posting, or causing another person to do so, any literary work, entertainment, drama, movie, or photograph
- Committing an act of marching along the streets in a group, saluting, or shouting repeatedly<sup>88</sup>

A public official who commits the following is punishable by imprisonment for not more than five years:

- Conducting an intraparty campaign using his/her status
- Engaging in an election campaign by taking advantage of his/her status, and a public official who carries out an election campaign targeted at his/her staff members will be deemed to have taken such advantage<sup>89</sup>

Where any public official or person who must remain politically neutral in accordance with law exercises undue influence over an election in connection with his/her duties, takes advantage of his/her status, or commits an act that otherwise affects an election is punishable by imprisonment for not more than five years or a fine of not more than 20 million won.<sup>90</sup>

### **G. Crimes Related to the Electoral Register**

Any of the following persons is punishable by imprisonment for not more than two years or a fine not exceeding 4 million won:

- A person who interferes with or commits an act influencing the preparation of the electoral register
- A person who inspects, uses, or leaks an electoral register in contravention of the law
- A person who hands over or lends a copy of an electoral register to another person in exchange for a property interest or any other profit<sup>91</sup>

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<sup>88</sup> *Id.* art. 255, para. 1.

<sup>89</sup> *Id.* art. 255, para. 3.

<sup>90</sup> *Id.* art. 255, para. 5.

<sup>91</sup> *Id.* art. 256, para. 3, subpara. 2.

## H. Violation of Limit on Campaign Costs

Where a political party, candidate, election campaign manager, chief of the election campaign liaison office, accountant in charge, or assistant in financial affairs disburses election expenses in excess of 1/200th of the restricted amount of election expenses, that party or person is punishable by imprisonment for not more than five years or a fine not exceeding 20 million won.<sup>92</sup>

## I. Crime Related to Media

Any person who offers, manifests his/her will to offer, or promises to offer money and goods, banquets, or other interests for the election campaign to a person who operates or manages a broadcast, newspaper, communication, magazine, or other publications, or a person who edits, gathers materials, writes, or reports is punishable by imprisonment for not more than five years or a fine not exceeding 10 million won. Where the latter person receives, solicits, demands, or promises such interests, the person may be punished in the same way.<sup>93</sup> Where the offer is made by a political party, candidate, family member of a candidate, or person involved in campaign, the person is punishable by imprisonment for not more than seven years or a fine not exceeding 20 million won.<sup>94</sup>

Where a CATV broadcasting business operator, CATV relay broadcasting business operator and internet press agency, or television or radio broadcasting facility treat candidates who have made broadcast speeches with partiality, it or he/she is punishable by imprisonment for not more than two years or a fine not exceeding 4 million won.<sup>95</sup>

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<sup>92</sup> *Id.* art. 258.

<sup>93</sup> *Id.* art. 235, para. 1.

<sup>94</sup> *Id.* art. 235, para. 2.

<sup>95</sup> *Id.* art. 252, para. 4.

# Spain

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**SUMMARY** Law 5/1985 on the General Electoral Legal Regime sets forth rules applicable to general elections in Spain. The electoral system is based on proportional representation, except for members of the Senate, who are elected through a majority system. The law provides for criminal penalties for the election crimes perpetrated by election authorities and individual voters. Sanctions range from imprisonment and fines to disqualification to hold public office. Violations of the electoral law that do not constitute a crime are sanctioned with a fine. The Penal Code also penalizes the crime of illegal financing of political parties with fines and imprisonment for aggravated forms of the crime.

## I. Introduction

Law 5/1985 on the General Electoral Legal Regime (Ley Orgánica del Régimen Electoral General) (LOREG)<sup>1</sup> provides for Spain's electoral system, which is based in proportional representation, except for members of the Senate, who are elected through a majority system.<sup>2</sup>

A party must obtain at least 3% of the vote in order to meet the requirements for parliamentary representation.<sup>3</sup> Each province is allotted at least two seats in the Congress of Deputies, plus one additional seat for every 144,500 inhabitants or fraction over 70,000 inhabitants.<sup>4</sup> Each province is allotted four seats in the Senate, regardless of population.<sup>5</sup>

The LOREG guarantees universal, free, secret, and direct suffrage.<sup>6</sup> It permits postal balloting for those away from their areas of registration.<sup>7</sup> Voting is done by party list.<sup>8</sup> Members of

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<sup>1</sup> Ley 5/1985, Ley Orgánica del Régimen Electoral General (LOREG), BOLETÍN OFICIAL DEL ESTADO [B.O.E.], June 20, 1985, <https://www.boe.es/buscar/pdf/1985/BOE-A-1985-11672-consolidado.pdf> (consolidated version updated as of Jan. 17, 2018), archived at <https://perma.cc/WZ9Z-8EB8>.

<sup>2</sup> *Id.* arts. 161–162.

<sup>3</sup> ENRIQUE ARNALDO ALCUBILLA & MANUEL DELGADO-IRIBARREN GARCIAS CAMPERO, DICCIONARIO ELECTORAL 456 (2009); LOREG art. 161.

<sup>4</sup> LOREG art. 162.2; CONSTITUCIÓN ESPAÑOLA DE 1978 [SPANISH CONSTITUTION] art. 68, available in English translation at <https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>, archived at <https://perma.cc/8FQY-JKTL>.

<sup>5</sup> LOREG art. 165.

<sup>6</sup> CONSTITUCIÓN arts. 68.1, 69.2.

<sup>7</sup> LOREG arts. 72–75.

<sup>8</sup> *Id.* art. 46.

Parliament are elected by the Spanish people in full exercise of their political rights.<sup>9</sup> They are elected for a four-year period.<sup>10</sup> Voting is not mandatory.<sup>11</sup>

There are four types of elections:<sup>12</sup>

- General elections to elect members of Parliament (Congress of Deputies and Senate)<sup>13</sup>
- Elections to elect members of the parliaments of the autonomous communities<sup>14</sup>
- Local or municipal elections<sup>15</sup>
- European elections to elect members to the European Union Parliament<sup>16</sup>

## II. Electoral Crimes

Electoral crimes are those perpetrated during an election process.<sup>17</sup> For the purpose of the application and interpretation of the criminal provisions in the LOREG, public officials are those who perform a public function related to elections, particularly presidents and members of election boards and comptrollers of elections.<sup>18</sup>

The criminal penalties for electoral crimes are described below.

### A. Wrongful Intentional Behavior

LOREG punishes with imprisonment of six months to two years and a fine of €360 to €288,000 (around US\$440 to \$353,000) public officers who intentionally violate the rules applicable to the handling of the electoral census to the public and the setting up of election boards and polling stations.<sup>19</sup> They are subject to the same penalty when they do not issue the electoral documents in due form and time as required by the law or challenge the identity or rights of an individual without basis; suspend an electoral event with no reason; hinder or delay the processing of

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<sup>9</sup> CONSTITUCIÓN art. 68.1.

<sup>10</sup> *Id.* arts. 68.4, 69.

<sup>11</sup> LOREG art. 5.

<sup>12</sup> *Últimas elecciones celebradas*, JUNTA ELECTORAL CENTRAL, <http://www.juntaelectoralcentral.es/cs/jec/elecciones> (last visited Feb. 22, 2018), archived at <https://perma.cc/X2V5-R46W>.

<sup>13</sup> ALCUBILLA & IRIBARREN GARCÍAS CAMPERO, *supra* note 3, at 219; CONSTITUCIÓN arts. 68, 69.

<sup>14</sup> ALCUBILLA & IRIBARREN GARCÍAS CAMPERO, *supra* note 3, at 214.

<sup>15</sup> *Id.* at 223.

<sup>16</sup> *Id.* at 208.

<sup>17</sup> *Id.* at 149.

<sup>18</sup> LOREG art. 135.1.

<sup>19</sup> *Id.* arts. 139.1–139.2.

complaints filed by people entitled to do so or fail to properly record those complaints; significantly harm one candidate; or fail to comply with the requirements for ballots by mail.<sup>20</sup>

## **B. Official Abuse**

LOREG punishes with imprisonment of three to seven years and a fine of €1080 to €288,000 (around US\$1,324 to \$353,000) a public official who, abusing his or her authority or office, intentionally carries out any of the following actions:

- Altering the place and time of any electoral event that may mislead the voters
- Omitting or wrongfully recording voters' names in order to misrepresent their authenticity
- Altering a ballot submitted by a voter in any way
- Wrongful recounting of ballots
- Untruthful statements regarding election events required by law
- Knowingly allowing a voter to cast a ballot two or more times
- Knowingly allowing voting by someone who does not have the legal right to vote
- Using ballots or election envelopes in violation of the law
- Violating rules on certifications of election subsidies for political parties
- Any other falsehood related to election duties and responsibilities<sup>21</sup>

If these actions were carried out with gross negligence the applicable sanction would only be a fine of €720 to €288,000 (around US\$883 to \$353,000).<sup>22</sup> Individuals participating in any of the above offenses are subject to imprisonment for six months to three years.<sup>23</sup>

A president or a member of a polling station who abandons his/her post or does not show up for duty without any justified reason or previous notice as required by law is subject to imprisonment for three months to one year and a fine of €60 to €288,000 (around US\$440 to US\$353,000).<sup>24</sup>

## **C. Violations Related to Voting**

Anyone who violates the requirements of voting by mail is subject to imprisonment for three months to one year and a fine of €60 to €288,000.<sup>25</sup>

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<sup>20</sup> *Id.* arts. 139.3–139.8.

<sup>21</sup> *Id.* art. 140.1.

<sup>22</sup> *Id.* art. 140.2.

<sup>23</sup> *Id.* art. 141.2.

<sup>24</sup> *Id.* art. 143.

<sup>25</sup> *Id.* art. 141.1.

Individuals who vote more than once or those who vote when ineligible to do so are subject to imprisonment for six months to two years, a fine of €360 to €288,000, and disqualification to hold public office from one to three years.<sup>26</sup>

Anyone who directly or indirectly solicits a vote or an abstention from voting, through compensation or a promise thereof, is subject to imprisonment for six months to three years and a fine of €720 to €288,000.<sup>27</sup> The same punishment applies to those pressure voters through violence or intimidation not to vote, to vote against their will, or to reveal a secret vote, and those who unjustifiably hinder voters, candidates, their representatives, or observers from entry into or exit from an election place.<sup>28</sup>

Those who seriously disturb any election event or enter an election location with a weapon are subject to imprisonment for three to twelve months and a fine of €360 to €288,000.<sup>29</sup>

Defamation in an election campaign is sanctioned with imprisonment for two years and a fine of €144,000 (around US\$176,000).<sup>30</sup>

#### **D. Violations Related to Campaign Advertising**

Those who carry out campaign advertising once the campaign period has concluded are subject to imprisonment for three months to one year and a fine of €360 to €288,000. The same sanction applies to those who violate the rules applicable to reserved spaces and signs as well as public meetings and gatherings of a political campaign.<sup>31</sup>

Members of the armed forces and state security, police of the autonomous communities, local police, judges, prosecutors, and members of election boards who disseminate political advertising or carry out election campaign activities are subject to imprisonment for six months to two years and a fine of €360 to €144,000.<sup>32</sup>

#### **E. Violations Related to Election Polls**

Anyone who violates the norms applicable to the gathering and dissemination of election polls are subject to imprisonment for three months to one year, a fine of €720 to €288,000, and a special disqualification to exercise a profession, industry, or trade for one to three years.<sup>33</sup>

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<sup>26</sup> *Id.* art. 142.

<sup>27</sup> *Id.* art. 146.1.a.

<sup>28</sup> *Id.* arts. 146.1.b & c.

<sup>29</sup> *Id.* art. 147.

<sup>30</sup> *Id.* art. 148.

<sup>31</sup> *Id.* art. 144.1.

<sup>32</sup> *Id.* art. 144.2.

<sup>33</sup> *Id.* art. 145.

## F. Violations Related to Campaign Finance

Managers of political parties or candidates who falsify campaign accounts are subject to imprisonment for one to four years and a fine of €144,000 to €288,000.<sup>34</sup>

Managers or representatives of political campaigns who divert campaign funds for a use other than the one authorized by the electoral law are subject to imprisonment for one to four years and a fine of €360 to €144,000 if the diverted funds are €50,000 (around US\$62,000) or less, and imprisonment for two to six years and a fine of €144,000 to €288,000 for higher amounts.<sup>35</sup>

## III. Prosecution of Electoral Crimes

The prosecution of electoral crimes is governed by the Code of Criminal Procedure.<sup>36</sup> Such crimes are treated as extremely urgent and with a priority status.<sup>37</sup> Any citizen has legal standing to file a criminal complaint arising from electoral crimes without bond requirements.<sup>38</sup>

The criminal sentence issued by the competent court must be published in the official gazette of the province where the crime occurred and recorded in the central board of elections.<sup>39</sup>

## IV. Violations of Election Law

Any violation of the electoral law that does not constitute a crime will be subject to a sanction determined by the competent electoral board, with a fine of €300 to €3,000 (around US\$367 to \$3670) if it involves public officials or €100 to €1,000 (around US\$122 to \$1,200) if it involves private citizens.<sup>40</sup>

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<sup>34</sup> *Id.* art. 149.1.

<sup>35</sup> *Id.* art. 150.1.

<sup>36</sup> *Id.* art. 151.1.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* art. 151.2.

<sup>39</sup> *Id.* art. 152.

<sup>40</sup> *Id.* art. 153.1.

## V. Illegal Financing of Political Parties

The Penal Code<sup>41</sup> provides for the crime of illegal financing of political parties, which is punishable with a fine equal to three to five times the amount involved in the illegal contribution to anyone who receives donations or contributions for a political party, federation, coalition, or group of voters in violation of the rules on financing of political parties.<sup>42</sup> Under these rules, political parties may not receive anonymous or revocable contributions, contributions of more than €50,000 per year from individuals except for donations of real estate, or contributions from companies or entities with no legal structure.<sup>43</sup>

The aggravated form of the crime applies when the illegal contribution is higher than €500,000 (around US\$613,000) in the case of anonymous contributions, revocable contributions, or contributions given by a company with no legal structure, or if the contribution amount is higher than €550,000 (around US\$674,000) in the case of individuals.<sup>44</sup> In this case, in addition to the fine, the sanction is increased to imprisonment for six months to four years.<sup>45</sup> The same sanction applies when the illegal contributions come from foreign governments, agencies or foreign public companies or entities, or companies that are directly or indirectly related to them if the contribution is higher than €100,000 (around US\$122,000).<sup>46</sup>

The same penalties also apply to the individual or company making the illegal contribution.<sup>47</sup>

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<sup>41</sup> Ley Orgánica 10/1995, CÓDIGO PENAL [PENAL CODE], updated Apr. 28, 2015, art. 304 bis, B.O.E., Nov. 24, 1995, <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&tn=1&p=20150428#a304>, archived at <https://perma.cc/6GML-3N4V>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* art. 304 bis.1; C. QUINTERO OLIVARES: COMPENDIO DE LA PARTE ESPECIAL DEL DERECHO PENAL 280 (2016).

<sup>44</sup> CÓDIGO PENAL art. 304 bis.2.a.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* art. 304 bis.2.b.

<sup>47</sup> *Id.* art. 304 bis.4. & 5.