

Law on the Scrutiny of Elections

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Section III, classification number 111-2,
last amended by Article 2 of the Law of 12 July 2012 (Federal Law Gazette I, page 1501).

Section 1

(1) The validity of the Bundestag elections and the violation of rights in preparing or conducting the elections, provided that they are subject to electoral scrutiny in keeping with Article 41 of the Basic Law, shall be decided on by the Bundestag subject to the appeal pursuant to Article 41 paragraph (2) of the Basic Law.

(2) If an election is declared invalid, the resulting consequences must be determined. Where the rights of a person or group of persons have been violated in preparing or conducting the elections, the Bundestag shall determine the violation of rights where it does not declare the election invalid.

Section 2

(1) Scrutiny shall be effected on appeal only.

(2) The appeal may be filed by anyone eligible to vote, by any group of persons eligible to vote and, in their official capacities, by any Land Returning Officer, the Federal Returning Officer and the President of the Bundestag.

(3) The appeal must be filed in writing with the Bundestag and substantiated; if appeals are filed jointly, a proxy must be nominated.

(4) The appeal must be received by the Bundestag within a term of two months after the polling day. If, after the expiration of this term, the President of the Bundestag learns,

in his or her official capacity, of circumstances that might substantiate a polling fault, he or she may file an appeal within a month of these circumstances becoming known.

(5) The regulations shall apply as appropriate if membership is acquired later.

(6) If the appeal is withdrawn, the Bundestag may stop the proceedings.

Section 3

(1) The decision of the Bundestag shall be prepared by the Election Scrutiny Board.

(2) The Election Scrutiny Board shall consist of nine ordinary members, nine deputies and one each permanent advisory member of the parliamentary parties that are not represented in it by ordinary members. The Bundestag may elect an additional advisory member from the midst of an association of members of the Bundestag that, according to the terms of reference of the Bundestag, shall be recognized as a parliamentary group. The Election Scrutiny Board shall be elected by the Bundestag for the duration of the legislative term.

(3) The Election Scrutiny Board shall elect the chairman and his deputy from its midst by majority vote. In the event of a tie, the vote of the oldest member shall decide the matter.

Section 4

The Election Scrutiny Board shall constitute a quorum if at least half of its members are present. Decisions shall be passed by majority vote; in the event of a tie, a motion shall be deemed rejected.

Section 5

(1) The chairperson shall nominate a rapporteur for each appeal.

(2) The Board shall engage in a preliminary examination notably to determine whether the appeal was filed in due form and time. The preliminary examination shall be used to prepare the date for the hearing so that, whenever possible, the final decision can be made after only one session.

(3) Within the preliminary examination, the Board shall be entitled to gather information and, pursuant to subsection (4), hear any witnesses and experts whose presence at the hearing is not required or does not seem expedient. To check whether the rights of a person or a group of persons have been violated in preparing or conducting the elections as has been determined, the Election Scrutiny Board shall as a rule make investigations instead of merely gathering information only in cases where it cannot be ruled out that the violation may affect the distribution of seats in the Bundestag.

(4) All courts of justice and administrative authorities must render legal and official aid to the Board. If witnesses and experts are to be heard, the persons concerned as specified in Section 6 subsection (2) must be informed one week in advance; they shall be entitled to have questions asked and to remonstrate with the persons heard.

Section 6

(1) Before the final decision is made, a date for an oral hearing shall be appointed only if the preliminary examination shows that such a hearing is expected to further advance the proceedings.

(1a) (Repealed)

(2) The person filing the appeal and the Member of Parliament whose election is contested must be summoned to the hearing at least one week in advance. If several persons have filed an appeal jointly, the summoning of a proxy (Section 2 subsection (1)) or of one of the petitioners shall suffice.

(3) Notice of the date of the hearing must be given, at the same time, to:

- a) the President of the Bundestag,
- b) the Federal Minister of the Interior,
- c) the Federal Returning Officer,
- d) the competent Land Returning Officer,
- e) the parliamentary party to which the Member of Parliament whose election is contested belongs.

(4) The persons named in subsections (2) and (3) shall be involved in the proceedings. They shall each have the right to bring forward motions.

(5) All the persons involved shall have the right to inspect records in the office of the Bundestag.

Section 7

(1) At the beginning of the oral hearing, the rapporteur shall present the state of affairs and report on the outcome of the preliminary examination. Thereupon, the appellant (if there are several appellants, the proxy as specified in Section 2 subsection (3), the other persons involved and the Member of Parliament whose election is contested shall be given the floor on request.

(2) Summoned witnesses and experts must be heard and put under an oath if the Board considers this necessary. The persons involved shall have the right to have witnesses and experts submitted questions. When the evidence has been recorded, the persons involved must be given an opportunity to make comments. The contestant shall have the last word.

(3) A record must be drawn up of the hearing which gives a summary of the statements made by the witnesses and experts.

Section 8

- (1) The oral hearing will take place publicly.
- (2) Although Section 4 shall apply to the oral hearing, all the members or their deputies should attend it.
- (3) In the oral hearing, the chairperson shall have the powers which result from the appropriate application of the provisions governing civil cases.

Section 9

For the entire proceedings, the provisions governing civil cases must be applied as appropriate to deadlines, summons, deliveries, the swearing of oaths and the rights and duties of witnesses and experts.

Section 10

- (1) The Election Scrutiny Board shall confer on the outcome of the hearing in secret.
- (2) Only those ordinary and advisory members of the Board or their deputies who have attended the hearing may participate in the final deliberation.
- (3) When the final decision is made, abstention shall be considered a rejection.

Section 11

The decision of the Board must be recorded in writing; it must propose a decision to the Bundestag. The Bundestag must decide on the validity of the contested election and on the consequences of declaring it invalid. If the rights of a person or a group of persons have been violated in preparing or conducting the elections, this shall be established in the decision. The decision must indicate the essential facts and reasons on which the

decision is based. Because of the details, reference to the file contents shall be permissible.

Section 12

The decision must be passed to the Bundestag as a motion of the Election Scrutiny Board and be distributed among all Members of Parliament not later than three days before the deliberation in the Bundestag. In the deliberation, the motion can be supplemented by verbal comments of the rapporteur.

Section 13

(1) The Bundestag shall decide on the motion of the Board by simple majority. If the Bundestag does not agree with the motion, it shall be considered remitted to the Board. The Bundestag may order the Board to verify certain factual or legal circumstances.

(2) After a renewed final decision, the Board must submit a new motion to the Bundestag. This motion can only be rejected by the acceptance of another motion that complies with the provisions set forth in Section 11.

(3) The decision of the Bundestag must be served on the persons involved (Section 6 subsections (2) and (3)) with a statement of rights of address.

Section 14

If there is doubt as to whether a Member of Parliament was eligible for election at the time of the election, the President of the Bundestag may file an objection against the validity of the election even after the expiration of the period set for objections (Section 2 subsection (4)). He or she must do so if a minority of a hundred Members of Parliament thus demands.

Section 15

The stipulations of this law must also be observed when proceedings are conducted to decide on whether a Member of the Bundestag has lost membership later (Article 41 paragraph (1), second sentence, of the Basic Law). The motion for a decision of the Bundestag may be forwarded at any time, except in those cases in which the Council of Elders or the President of the Bundestag has decided on the loss of membership (Section 47 subsections (1) and (3) of the Federal Elections Act).

Section 16

(1) If the Bundestag establishes the loss of membership in those cases in which it must be decided on in election scrutiny proceedings (Section 47 subsection (1) numbers 1 and 3 of the Federal Elections Act), the Member of Parliament shall retain his or her rights and obligations until the decision becomes effective.

(2) However, the Bundestag may decide by a two-thirds majority of its members that the Member of Parliament may not participate in the activities of the Bundestag until the decision becomes effective.

(3) If an appeal is lodged against the decision of the Bundestag pronounced pursuant to subsection (1), the Federal Constitutional Court may, on request of the complainant, disaffirm the decision pronounced pursuant to subsection (2) by interlocutory order or, if such a decision has not been made, issue a directive pursuant to subsection (2) on request of a minority of the Bundestag, comprising at least a tenth of its members.

Section 17

(1) The Member of Parliament whose election is under scrutiny shall be excluded from the deliberation and the decision-making in the election scrutiny proceedings.

(2) This shall not apply if the election of at least ten Members of Parliament is contested in proceedings.

Section 18

The provisions of the Law on the Federal Constitutional Court shall apply to the objection filed with the Federal Constitutional Court.

Section 19

(1) The costs of the proceedings in the Bundestag shall be borne by the Federal Government. Necessary expenses of the person opposing in a nonofficial capacity may be reimbursed if the objection is granted or if the objection is only rejected because the asserted fault had no influence on the outcome of the election.

(2) The reimbursement of expenses according to subsection (1), second sentence, must be decided on in the decision of the Bundestag.

Section 20

(Repealed)

Section 21

This law shall become effective on the day after promulgation.