

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

INELIGIBILITIES ARISING FROM CRIMINAL LAW DECISIONS

QUERY

Does TI have any information regarding laws on convicted people running for a public position in their country?

PURPOSE

The chapter is considering whether to advocate for such a law and would be interested in examples from Western European countries as well as the United States.

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SUMMARY

Ineligibility to stand for office typically arises from the holding of certain posts or the exercise of certain activities. It may also arise from an individual civil law or criminal law decision. In some countries, having a criminal record prevents a person from being eligible. In others, specific disqualifications to stand for elections arise from corruption or failure to comply with electoral laws. Alternatively, in other countries, the law has set out only “positive” qualifications to be met by candidates. The voter is the one to judge whether to elect a candidate who has criminal record. In the case of Brazil, the law disqualifying convicted persons from running for office results from a citizen’s initiative bill, demonstrating how grassroots organisations may influence policy-making.

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1 INTRODUCTION

Countries have set requirements determining who is entitled to run for office. These requirements usually involve age, nationality and place of residence, among others. Countries have also set disqualifying conditions. Within this framework, ineligibilities are circumstances which prevent a person from standing for elections.

Ineligibilities may arise from the holding of certain posts or the exercise of certain activities. For example, in some countries, officers of the armed and security forces, magistrates of the Constitutional Court, or members of the Audit Court are not allowed to run for elections. Ineligibilities can also arise from an individual civil law or criminal law decision.

2 INELIGIBILITIES ARISING FROM CRIMINAL LAW DECISIONS

One of the most common conditions preventing a person from being eligible for office is having a criminal record. Countries often consider factors such as severity of the crime, the time that has elapsed since the crime was committed, as well as the nature of the punishment. Some countries have also established specific ineligibility conditions concerning corrupt practices (for example, in Canada, France and the United Kingdom).

The period of ineligibility may be prescribed by law or may be decided on a case by case basis, where the judge will take into consideration the specific circumstances and the gravity of the case (for example, in Germany). In Canada, for instance, the law states that a person may be disqualified from running for elections for a period of seven years following the date of conviction in case of corruption. In other cases, the ineligibility will last for the period of the sentence, which is the case in Ireland and Spain, for example.

Other countries have taken a different approach and have not established any causes for ineligibility. Hence, the requirements for standing at elections are based only on "positive" qualifications, such as age or citizenship (for example, in Sweden and the United States). In other countries, such as Finland, the lack of ineligibility criteria does not preclude Parliament from deciding whether an elected candidate convicted of a crime is still worthy of the trust and respect required, but unfortunately there is no information available on whether the parliament has ever made use of such prerogative.

3 COUNTRY EXAMPLES

Countries where persons convicted of a crime are disqualified from standing for elections

Australia

In Australia, any person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable by imprisonment for one year or longer under the law of the commonwealth or of a state is considered disqualified to stand for elections.

Please see the [Candidates Handbook](#).

Brazil

In Brazil, the law establishing who is entitled to run for office is the result of a citizens' initiative bill. In 2008, the Brazilian civil society organisation *Movimento de Combate à Corrupção Eleitoral* (Movement Combating Electoral Corruption) manually gathered 1.6 million signatures for the petition, which was referred to the legislative in 2009.

The law disqualifies those convicted of racism, homicide, rape, drug trafficking and misuse of public funds by a second-level court (even if an appeal is still pending), as well as those whose resignation were motivated to avoid impeachment, from holding political office for a period of eight years. Politicians engaged in vote-buying, abuse of power and electoral manipulation are also considered ineligible for a period of eight years.

Many politicians expressed serious doubts about the content and effectiveness of the bill, and the proposal was initially rejected by the Brazilian Parliament. This resulted in a wave of indignation in the press and among citizens. Avaaz¹ joined the initiative launching an online campaign asking for the approval of the bill, which gathered more than three million supporters. The bill was finally voted and adopted unanimously by both Houses, and signed by president Luiz Inácio Lula in 2010.

However, the application of the law in the 2010 elections, as well as its constitutionality, were challenged in the Supreme Court (STF). The court decided for the constitutionality of the law but that it could only be applied from the 2012 elections onwards.

¹ Avaaz is a global web movement to bring people-powered politics to decision-making everywhere: www.avaaz.org/en/about.php

When the Clean Record Law takes effect in the 2012 municipal elections and in the 2014 general elections, this will be a revolutionary change in how politics are conducted in the country. For instance, if the law would have applied in the 2010 general elections, more than 247 candidates would have been barred from running for office².

In addition, the law has encouraged states and municipalities to enact their own “clean record” laws with regards to appointments and “trust positions”³.

Canada

In Canada, the following persons are not eligible to run for elections (Part 6, Section 65, Canada Election Act):

- Any person who is convicted of having committed an offence that is an illegal practice (for example, exceeding election spending limits and publication of false statements, among others) is not entitled to be elected or sit in the House of Commons for five years after the date of the conviction (Section 502 [1], Canada Elections Act).
- Any person who is convicted of a corrupt act (for example, offering bribes or accepting gifts and advantages, among others) is not entitled to be elected for seven years after the date of conviction (Section 501 [2] Canada Elections Act).
- A person who is imprisoned in a correctional institution.

The Election Handbook for Candidates can be found [here](#).

The Canada Election Act can be found [here](#).

Denmark

Any person who is entitled to vote in parliamentary elections (18 years of age, legal capacity and permanent resident in the country) is eligible to the *Folketing* (Denmark Parliament), unless he or she has been convicted of an act which, in the view of the public, makes him or her unworthy to become a member of parliament (Sections 30 of the

² Please see (in Portuguese): <http://congressoemfoco.uol.com.br/noticias/com-tse-barrados-pela-ficha-limpa-chegam-a-247/>

³ Please see (in Portuguese): <http://congressoemfoco.uol.com.br/noticias/com-tse-barrados-pela-ficha-limpa-chegam-a-247/>

Constitution). The decision of whether a member of the Parliament has lost his eligibility is made by the Parliament (Section 33).

Please see the Denmark Constitution available [here](#).

France

In France, the following persons are considered debarred from entering the electoral roll and therefore ineligible:

- Any person who is deprived of the right to vote and to stand for election in criminal cases for the period set in the judgment, (for example, up to 10 years in the case of a serious crime).
- Any person convicted of offences against the public administration (for example, accepting bribes, illegal promotion of interests, embezzlement, misappropriation, among others) for a period of five years from the date of the final conviction.
- Any person who has failed to return a declaration of assets, or failed to deposit his or her campaign accounts as required by the Electoral Code for a period of one year from the Constitutional Council's decision determining the ineligibility.
- Likewise, any person who exceeds the limit for election expenses may be declared ineligible for a period of one year (Article 128, Electoral Code)

Please see the Electoral Code available (in French) [here](#).

Germany

In Germany, candidates can be disqualified from holding public or elected office, including taking part in elections, in case of a criminal offence according to the following provisions:

- Automatically (during a period of five years) for any serious criminal offence sanctioned by a judge with at least one year imprisonment (Section 45 Criminal Code -CC).
- Optionally for certain criminal offences such as breach of state secret, hindering elections, use of violence against voters, and certain bribery offences (bribery of voters under Section 108b CC, active and passive bribery of members of parliament under Section 108e CC, and passive bribery of public officials under

Section 332 CC). In this case, the judge will analyse the specific circumstances and decide whether the disqualification criteria applies and for how long.

Please see the German Criminal Code available [here](#).

Ireland

In Ireland, a person is precluded by the Constitution to stand for elections if, by the time of the elections, he or she is undergoing a sentence of imprisonment for any term exceeding six months.

Please see the Group of States against corruption report on Ireland available [here](#).

Luxembourg

According to Article 53 (Non-Qualification) of the Constitution of Luxembourg, the following persons may not be elected or eligible for the time of the sentence, or as determined by the Court:

- persons sentenced to criminal punishment
- persons sentenced for minor offences depriving them of the right to vote
- persons of full age under guardianship

Please see the Luxembourg Constitution available [here](#).

New Zealand

In New Zealand, in order to register as a candidate one must meet the following conditions: be enrolled as a voter, be a New Zealand citizen and not be disqualified from enrolling.

According to section 80 of the Electoral Code, the main grounds of disqualification for enrolment that could affect eligibility to be a candidate are:

- if a person is sentenced to imprisonment
- If a person has his or her name on the Corrupt Practices List made out for any district

Please see the New Zealand Electoral Code available [here](#).

Spain

All Spanish citizens under the age of 18 years are allowed to vote and to stand for elections, excluding those sentenced to imprisonment, who are then ineligible for the period of their sentence.

Please see the Group of States against corruption report on Spain available [here](#).

United Kingdom

In the UK, certain people are disqualified from becoming a member of parliament, including those:

- serving a prison sentence of more than one year
- found guilty of certain electoral offences (that is, corrupt or illegal practices) by the Electoral Court

The disqualification for membership of the House of Commons lasts for the time of pursuance of the sentence.

The Representation of the People Act is available [here](#).

The Standing at a UK Parliamentary General Election in Great Britain fact-sheet is available [here](#).

Countries where such disqualification is not in place

Finland

In Finland, since the amendment of the Penal Code in 1995, offences to the code no longer lead to ineligibility. As a result, the right to candidacy is granted to all eligible voters, with the only requirement being that he or she is at least 18 years old. Nevertheless, if an elected official has been sentenced to a term of imprisonment for certain types of offences, parliament can still vote whether the offence is still worthy of the trust and respect required.

Please see the Group of States against corruption report on Finland [here](#).

Sweden

In Sweden, a criminal conviction is not an impediment to stand for elections. According to the law, any person who is entitled to vote is eligible for a seat in the Swedish Parliament. This means that every Swedish citizen, above the age of 18 years old,

who is or has ever been domiciled within the realm, is entitled to vote and therefore entitled to run for office.

Please see the Group of States against corruption report on Sweden available [here](#).

United States

There are three qualifications for one to be eligible to become a representative in Congress set out in the United States Constitution, including the following: age (they must be at least 25 years old); US citizenship (at least 7 years); and inhabitancy (one must be an “inhabitant” of the state from which they chose to represent “when elected”). The constitution does not establish any disqualification criteria, including for serious crimes. Voters are the ones to decide whether they want to elect someone with criminal records or not.

Please see the Group of States against corruption report on the United States available [here](#).

Information on the Federal Election Commission can be found [here](#).

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