



Procedure for dealing with complaints about 2021 *Althingi* election breached the Convention

In today's **Chamber judgment**¹ in the case of [Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland](#) (application nos. 24159/22 and 25751/22) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy) in conjunction with Article 3 of Protocol No. 1 to the European Convention.

The case concerned alleged irregularities in the recount of votes in the Northwest constituency in the 2021 *Althingi* election, subsequent changes in the allocation of levelling seats (*jöfnunarsæti*), and the examination of the post-election complaints by *Althingi*. Mr Gunnarsson and Mr Norðdahl were the unsuccessful candidates in that constituency.

The Court found in particular that while the procedure for the examination of the applicants' complaints by *Althingi* had been fair and objective and had guaranteed a sufficiently reasoned decision, it had lacked the necessary impartiality safeguards and had been characterised by virtually unrestrained discretion.

Principal facts

The applicants, Guðmundur Gunnarsson and Magnús Davíð Norðdahl, Icelandic nationals who were born in 1976 and 1982 and live in Kópavogur (Iceland) and Reykjavík.

Elections to *Althingi* (the Icelandic Parliament) take place every four years using an open-list proportional-representation system. A total of 63 members are elected in six constituencies (which vary greatly in size): 54 seats are filled directly from the party lists and a further nine "levelling seats" (*jöfnunarsæti*) are distributed between parties that have received at least 5% of the national vote. Those seats are allocated by the National Electoral Commission on the basis of results received from around the country.

In the event of complaints concerning the results of the election, the Preparatory Credentials Committee – appointed by the Acting Speaker – examines the issues, followed by the Credentials Committee – elected by the new *Althingi* – which scrutinises the lawfulness of the elections and the eligibility of members of parliament and formulates recommendations. That Committee's report and recommendations are then passed onto the whole *Althingi* to vote on.

The applicants, representing respectively the Liberal Reform Party and the Pirate Party, were unsuccessful candidates in the 25 September 2021 election to *Althingi* in the Northwest constituency (the country's smallest).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

When the results came in, there was only a thin margin of votes in the Northwest and South constituencies, which could have affected the allocation of levelling seats. A recount was ordered and it changed the standings in the Northwest constituency, leading to Mr Gunnarsson losing his levelling seat. In October 2021 both applicants lodged complaints against the results.

Mr Gunnarsson and Mr Norðdahl complained of (a) the absence of a legal basis for the recount; (b) the improper storage and handling of the ballots between the initial count and the recount; (c) the failure of the senior electoral commission to inform the parties' agents about the recount, thereby depriving them of the opportunity to observe it; and (d) inconsistent and unexplained changes in the number of votes cast for each party and in the number of blank and invalid ballots, after the recount.

The Preparatory Credentials Committee conducted an extensive inquiry, before which both applicants appeared. In its 90-page report, it identified a number of irregularities in the election held in the Northwest constituency, but concluded that only the unsecured and unsupervised storage of the ballots between the first count and the recount was the deficiency capable of influencing the outcome of the elections. However, it did not have a unified position on a resolution and did not formulate specific recommendations. The report was submitted to the Credentials Committee, which endorsed it, however, the members were divided on whether the irregularities had affected the election results and submitted three contrasting recommendations to *Althingi* (confirmation of the credentials of all 63 elected members being the majority proposal).

On 25 November 2021 *Althingi* held an extensive hearing on the matter and voted on each individual proposal in the report, rejected the proposals to hold a new constituency or national poll, and confirmed all 63 members in their seats.

Complaints, procedure and composition of the Court

Relying on Articles 3 of Protocol No. 1 (right to free elections) and 13 (right to an effective remedy), the applicants complain of irregularities in the counting procedures in the parliamentary elections and of not having had an effective remedy for that complaint.

The application was lodged with the European Court of Human Rights on 6 May 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Georgios A. **Serghides** (Cyprus),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

[Article 3 of Protocol No. 1](#)

The Court noted that there was no disagreement between the Government and the applicants that the recount in the Northwest constituency had been marked by certain irregularities. The alleged irregularities were found to exist by the relevant parliamentary committees. The Court saw no reason to disagree and found the applicants' claims serious and arguable.

It confirmed its position that the concept of free elections would be put at risk only if there were evidence of procedural breaches in the electoral process that would be capable of thwarting the free expression of the opinion of the people, and where such complaints had received no effective examination at domestic level.

The Court considered that by definition members of parliament could not be “politically neutral”, but stated that particular attention must be paid to the guarantees of impartiality laid down in domestic law. The Court also drew an analogy with its case-law under Article 6 (right to a fair trial), which stated that the appearances of impartiality were equally important to ensure public confidence. In this specific case, the Court noted that no rules had existed addressing potential conflicts of interest of *Althingi* members deciding on the applicants’ complaints in the committees and in full chamber. In fact certain members voting on the matter had been directly affected by the outcome of the vote and had been deciding their own fate.

While there had been no grounds to doubt the credibility of the parliamentary inquiry and objectivity of the proposals or the basis to speculate on political motivations of the vote, the absence of specific rules ensuring neutrality had left genuine concerns as regards the integrity of the vote from the standpoint of appearances.

Next, the Court considered that national law provided basic regulatory framework for the decision-making on post-election complaints. However, the discretion of the full chamber of *Althingi* regarding the practical consequences of any identified electoral defects was virtually unlimited. The applicable constitutional and legislative provisions gave limited direction and allowed for diverging interpretations. This absence of sufficiently precise and certain rules was in breach of Article 3 of Protocol No. 1 standards.

At the same time the Court found that the procedure for the examination of the applicants’ complaints by *Althingi* had been fair and objective and had guaranteed a sufficiently reasoned decision. The applicants had participated in the proceedings, made their arguments, and appeared before the committee. The proposals and recommendations had been clearly reasoned and the debate in the full chamber had allowed the rationale of the final decision to be understood.

However, the lack of necessary impartiality safeguards and virtually unrestrained discretion of *Althingi* had been in breach of the requirements of Article 3 of Protocol No. 1, leading to a violation of that Article.

Article 13 in conjunction with Article 3 of Protocol No. 1

The Court reiterated that the “effectiveness” of a “remedy” within the meaning of Article 13 did not mean a favourable outcome for the applicant, and that several institutional arrangements could satisfy the requirements of that provision.

It held that the procedure before the Preparatory Credentials Committee, the Credentials Committee and the full chamber of *Althingi* had lacked necessary guarantees of impartiality and was characterised by virtually unrestrained discretion. The applicants therefore did not have an effective domestic remedy, in violation of Article 13 of the Convention in conjunction with Article 3 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Iceland was to pay the applicants 13,000 euros (EUR) each in respect of non-pecuniary damage.

Separate opinion

Judge Ktistakis expressed a concurring opinion. The opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.