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Presseinformation

Runoff Election of the Federal President must be repeated

The Constitutional Court has ruled that the runoff election of the Federal President must be repeated in its entirety in all of Austria.

The date is to be set by the Federal Government in consultation with the Main Committee of the National Council.

The fourteen judges of the Constitutional Court were intensively engaged in these proceedings during the past few weeks, working almost without interruption both internally and publicly. Within the framework of the proceedings, witnesses were examined in public hearings, which exclusively served the purpose of establishing if the claims made in the challenge of the election corresponded to the facts, since the electoral records presented a different picture.

The fundamental rulings of the Constitutional Court are as follows:

- **The possibility of postal voting is not unconstitutional and can therefore remain in effect.**
- **However, infringements of the law occurred in numerous districts in the implementation of the system of postal voting.**

Activities directly related to the counting of votes must be performed by the electoral authority as a collegiate body (i.e. by the chief electoral officer and the assistant electoral officer together). This is required in order to ensure transparency in the establishment of the electoral result.

The mere reference to the possibility of assistant electoral officers being present is not sufficient, nor is it permitted to delegate these tasks in advance to the chief electoral officer.

Auxiliaries who are not members of the electoral authority may support the latter in its tasks, provided they do so in the presence of the collegiate body. By no means must they be allowed to count votes without being supervised.

Opening the postal ballots is a task reserved for the district electoral authority as a collegiate body. This also includes the “slitting open” of postal ballots, since the definitive verification of the postal ballot is no longer possible if the envelope has already been opened by unauthorized persons.

In the absence of assistant electoral officers, auxiliaries are allowed to perform upstream activities, such as pre-sorting of the postal ballots into those to be included in the counting and those to be discarded as invalid for obvious reasons of nullity (e.g. missing signature).

• For the Constitutional Court it is absolutely clear that laws governing an election must be strictly applied. This is to exclude any abuse and manipulation.

• If infringements of the law are of an extent that they may have had an influence on the election result, it is of no relevance if manipulations have actually occurred or not.

In the districts of Innsbruck-Land, Südoststeiermark, Stadt Villach, Villach-Land, Schwaz, Wien-Umgebung, Hermagor, Wolfsberg, Freistadt, Bregenz, Kufstein, Graz-Umgebung, Leibnitz and Reutte the rules governing the implementation of the postal voting system were not complied with. The infringements concern a total of 77,926 postal votes.

The difference in the numbers of votes cast for Alexander Van der Bellen and Norbert Hofer amounts to 30,863 votes. As the number of votes concerned by the infringements by far exceeds 50% of that difference (15,432 votes), the infringements may have had an influence on the election result.

In the districts of Kitzbühel, Landeck, Hollabrunn, Liezen, Gänserndorf and Völkermarkt the system of postal voting was implemented in accordance with the rules.

• The infringements of the law in the implementation of the postal voting system necessitate a complete repetition of the runoff election of the Federal President.

The repetition is necessary for the following reasons:

Citizens who have applied for a postal vote can exercise their voting right in various ways: by post, but also personally at their own local polling station, at another polling station in their own district, or at a polling station in a district other than their own.

As a result, the votes counted in the individual districts are mixed.

For example: If someone has applied for a postal vote in Linz, but casts his/her vote personally in Salzburg, this vote counts as a valid vote cast in Salzburg. If the Constitutional Court were to rule that the election has to be repeated in Linz only, the voter can again apply for a postal vote, but may this time use it to cast his/her vote personally at his/her local polling station in Linz. In that case, the voter would have cast two valid votes: the first vote counted in Salzburg (because in this district the election is not repeated and the result remains valid) and the second valid vote counted at the repeat election in Linz.

However, one and the same voter cannot have two votes.

Therefore, a repeat election only for postal voters, or only in individual districts, has to be ruled out.

• **The principle of free elections is violated if government bodies (the Ministry of the Interior) transmit information received on the results of the count of votes to the Austrian Broadcasting Corporation (ORF), the Austrian Press Agency (APA), other media or research bodies before the closing of the election, regardless of the conditions required (information “not to be disclosed” before a certain point in time).**

The fact that this has been common practice for decades is of no relevance. To date, the Constitutional Court has had no possibility of pronouncing on this issue, as this is the first time that the issue has been raised in an electoral challenge.

In cases relating to elections, as in others, the Constitutional Court is bound by the rule that it is not allowed to act on its own initiative, but can only do so if presented with a specific occasion.

This infringement may lead to a situation in which the results of the count and reports thereon are “leaked” and rapidly disseminated, especially via social media. In the case in question, the Austrian Press Agency (APA) sent out a report, hours before the closing of the election, implying that Norbert Hofer was likely to win the election and that a “turnaround” of the result was no longer considered probable.

In view of the close result of the election, reports on the alleged outcome of the election, based on counting results transmitted by official bodies, may have had an influence on the election result.

For this reason as well, the runoff election of the Federal President must be repeated in its entirety in all of Austria.

The Ministry of the Interior has to ensure that such infringements do not occur in the repeat runoff election. Therefore, the practice of transmitting results of the count prior to the closing of the election is to be discontinued.