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CUPRINS

Laura MATJOŠAITYTĖ – <i>Targets of Disinformation in Elections</i>	5
Irena HADŽIABDIĆ – <i>International Standards and Participation of National Minorities in Electoral Process in Bosnia and Herzegovina</i>	14
Marie-Christine ROSS, Simon MÉLANÇON – <i>La Représentation politique des femmes dans la Francophonie</i>	26
Katharina PABEL – <i>The Concept of Accessibility – Its Implications for Voters and Candidates</i>	35
Bogdan Nicolae ȚONEA – <i>The Accessibility, a Theoretical Concept between National Law and European Regulations</i>	46
Cristian-Alexandru LEAHU – <i>Making Elections Accessible in Romania: A Work in Progress</i>	55
Dora Esmeralda Martínez de BARAHONA – <i>Evolución de los Procesos Electorales en El Salvador de Cara a los Próximos Comicios Electorales 2024</i>	59
Daniel DUȚĂ – <i>Research Concerning the Possibility of Using Electoral Engineering Tools in the Perspective of Organising European Elections Based on Uniform Rules</i>	67
K. M. Nurul HUDA – <i>Electronic Voting Machines to Replace Manual Processes in Elections</i>	90
Emad al-SAYEH – <i>Independence of Electoral Management Bodies in the Light of Political Crisis (from the Perspective of the Arab Environment)</i>	102
João Manuel Rosa de ALMEIDA – <i>The Intervention of Mr João Manuel Rosa de Almeida, Member of the National Electoral Commission of Portugal, at the International Conference “The 2022 Legislation and the Reform of the Portuguese Electoral System”</i>	106
<i>Summaries and Authors’ Bios</i>	109
<i>Call for Papers</i>	116

Targets of Disinformation in Elections

Laura MATJOŠAITYTĖ

Abstract:

Disinformation is usually defined as false, inaccurate, or misleading information designed to cause intentional harm. Within an election context, this includes unreal information intended to affect participation in and the outcome of the elections.

Because disinformation and fake news are widespread in society, they inevitably affect electoral processes and free and fair elections.

These days, fake news is seen as a threat to political legitimacy, democratic institutions, and social cohesion by governments around the globe.

Keywords: *disinformation, fake news, electoral process, EMBs, political parties*

In recent years, the problem of disinformation in the election process has rapidly grown. Fake news is said to have influenced the 2016 United States of America presidential election and the United Kingdom European Union membership (Brexit) referendum. More recently, the spectre of fake news was said to have loomed over various other elections in the world, including the 2019 Australian federal election.

The main reason why such a problem exists is a lot of information and a lack of accurate information. Each day we get too much information, and we do not double-check. What is, of course, great news for malicious actors.

Fake news increases when an important event, such as an election, occurs. After all, the main goal of disinformation is to discourage voters from participating in the elections and to increase distrust towards the institutions and principles of democracy.

There we can single out several directions where disinformation could become a target: Candidates and political parties (I); Voters and the voting process itself (II); Election administration bodies and election procedures (III).

I. Disinformation targeting candidates and political parties

The volume of disinformation shows a big surge in news. This includes fake stories, misinformation, misrepresentation of facts, etc., during the election period.

Deliberate dissemination of false information for political purposes is nothing new. Negative communication, when political leaders, candidates, or political parties spread various negative information about their competitors, is almost a common phenomenon during a political campaign in many countries. All the participants in the election want to be better than each other and, accordingly, belittle or blacken the competitors. The candidates mostly mock their opponents or present true elements in an exaggerated or biased way to justify their program.

In recent years it is popular to make fake polls announcing one or another candidate's victory. Also there are popular incorrect quotes attributed to some political figures who, as a result, usually worry that the election will be rigged, with a TV poll announcing the main candidate's defeat.

Candidates frequently use troll armies to smear their competitors and create an image of themselves as persons with great public support. They later disseminate messages of relevant content to prospective voters on behalf of the candidates.

However, the flow of disinformation directed at political campaign participants is not regular. This type of information rarely appears at the beginning of a campaign. A significant increase in the flow of negative information is observed in the last days of the political campaign. This is perfectly illustrated by the study conducted by Debunk EU in Lithuania, where 1,306 articles about the 2020 parliamentary elections were looked at. During the investigation, it was found that the spike in negative communication was on the last day of the campaign. So, with Election Day coming up, it is more likely to see online disinformation that's aimed at influencing voters' vote, more active attempts to discredit the importance of democratic processes and discourage people from voting. Avoiding this is tough – anyone who actively consumes the news, and particularly social media, could encounter some misinformation.

Information about candidates and political parties containing elements of disinformation is often disseminated through social media or traditional media by political opponents.

But negative content messages can also be disseminated by voters. They can be engaged in spreading disinformation without even knowing it. Today, social networks and websites are full of various information. It changes and fills up so fast that people don't even have time to check whether what they saw on their social network account is real or not. Content that combines "facts, lies, and decontextualization with sensationalism has a 70 percent greater chance to go viral than something informative"¹. The question naturally arises, why do people do this? The answer is very simple. Humans try their best to obtain "facts" from their surroundings to survive, and this, in turn, motivates them to search for and spread "accurate" information. If people cannot obtain information through formal channels, they turn to informal networks such as friends and social communities. The resulting informal interpretation often becomes a rumour². These reasons drive people to spread unverified information³.

Traditional media also contributes to spreading disinformation about candidates and political parties. Although on the one hand the media could play a major role in combating fake news and sophisticated disinformation campaigns. On the other hand, only a part of the media checks whether the information reaching them corresponds to reality and only then publishes it to the public. The rest blindly follow unverified data and thus form the opinion of voters about one or another participant in the political campaign. Often, small regional media are limited to disseminating information about a specific candidate or party. However, the assessment of content compliance with reality is usually not carried out. Sometimes it is determined by the lack of human resources and the desire to spread certain information faster than the big information channels. In rare cases, this is also influenced by the attitude of the relevant public information media or the perceived favouritism of one political force.

We can observe that most of the media outlets that spread false information about parties or candidates are not limited to the candidates of one political party. Most often, media outlets that tend to spread unverified facts spread them about all political parties. It could be illustrated by the last elections to the Parliament of Lithuania in October 2020. One analysis established that media outlets tended to portray all political parties which participated in the elections as incapable of

¹ Lies, damn lies and social media: fake news stalks Brazil vote: <https://www.france24.com/en/live-news/20220901-lies-damn-lies-and-social-media-fake-news-stalks-brazil-vote>

² Berger, C.R., & Bradac, J.J. (1982). *Language and Social Knowledge: Uncertainty in Interpersonal Relations*. Edward Arnold.

³ Difonzo, N., Hantula, D.A., & Bordia, P. (1998). Microworlds for experimental research: Having your (control and collection) cake, and realism too. *Behavior Research Methods, Instruments, & Computers*, 30(2), 278–286. <https://doi.org/10.3758/bf03200656>

representing the voters' interests and/or as ineffective political structures, which correlates with the general distrust of Lithuanian society towards political parties. What confirms the statement that no single political force was singled out.

However, this does not mean that the problem does not exist. Competition between traditional means of informing the public, such as television, radio, and news portals, both with each other and social networks, often produces opposite results. Out of inertia, a fake message about candidates or political parties is announced to the public, which is attempted to be refuted much too late, or no one cares at all that false information has reached the public. For this reason, not only must every government invest in voter education, but the voter should also distinguish fake news from information that meets the criteria of truth. Otherwise, the voter may be misled. It may be difficult for him to make up his mind at the ballot box.

But it is equally important not to forget the means of public information, through whose administered channels false information spreads. There should be a fight with the causes – why fake messages spread, not the effects – fake news, which has spread in the society.

One of the best ways to protect ourselves against disinformation is to arm ourselves with factual information. When it comes to elections, knowing basic facts about the voting process, candidates, and political parties can be the best way to avoid falling for disinformation.

There could be many ways to fight fake news in elections. For example, the Australia Election Commission commenced an advertising campaign, Stop and Consider, in 2019 on social media platforms (Facebook, Twitter, and Instagram) to encourage voters to “carefully check the source of electoral communication they see or hear during the 2019 federal election campaign”. Stop and Consider was essentially a media literacy campaign that alerted voters to the possibility of “disinformation, or false information intended to influence their vote, and help them check the source of information so they can cast an informed vote”⁴.

This example confirms once again that following a global rise in disinformation, especially via digital platforms, election officials, civic groups, and the media must act against the threat of election disinformation. They cannot stand by as passive observers.

Election management bodies (EMBs) should ensure that all election management-related news on all major national and regional news channels during the polls would be monitored vigorously. If any untoward incident or violation of any law/rule is noticed, immediate action must be taken. Also, it's crucial to understand that political parties and candidates must ensure that their supporters do not indulge in fake news.

The EMB must involve the public and other institutions in monitoring disinformation. A special platform or tool can be created, with the help of which voters, as soon as they notice misinformation about the elections, the processes taking place during them, candidates, political parties, or, finally, the election administration body itself, could immediately share such information with the election commission. Then the EMB could immediately react and deny the untrue information. One of such tools is the disinformation register that has been launched by the Australian Electoral Commission in a bid to debunk lies about federal election processes. The register lists a range of “prominent pieces of disinformation” the Australian Electoral Commission has encountered, ranging from suggestions that the commission knows the date of the election before it has been called by the prime minister to claims that unvaccinated Australians will not be eligible to cast

⁴ Responding to fake news: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/FakeNews

a vote⁵. The register lists false claims about the election process identified by the Australian Electoral Commission, including the platform it was published on, the timing, and a factual correction.

Such collected information should be analysed by a group of experts and recommendations should be made to the EMB. In some cases, the EMB could accordingly raise the issue of the transmission of the message to law enforcement authorities. It could also contact social media platforms with a request to remove the relevant content information. Finally, the EMB could reach out to the public through the media and counter disinformation. This would not only facilitate the work of the EMB but also ensure fairness in the election processes.

The EMB should also consider the scenario in which one day malicious actors would spread fake information about the candidates, and the election organiser would not be able to deny such information because the EMB would be completely compromised. In such cases it should be thought out in advance which institution ought to go public and publish real information.

Without the necessary skills, distinguishing real information about candidates and political parties from disinformation can be quite complicated. This is especially relevant for elderly people, because they tend to disseminate more disinformation than younger people. But the higher educated voters (graduate school level or above) appear to be less likely to accept false news clarifications than the lower educated voters (middle school level or high school level).

Therefore, the EMB should warn people about those trying to deliberately deceive, disinform, and mislead a targeted group of people in a country or of a certain nationality, especially through different media platforms. It is no less important in the lead-up to elections that concerted efforts to develop digital literacy skills should be rolled out. Not only will such skills have a lasting impact, but the more people who are equipped to combat disinformation, the harder it will be to spread it.

II. Disinformation aimed at voters and the voting process itself

False information about the free, fair, and secure election process can do significant damage to public trust.

To influence the election results, not only the voters can become targets of fake news, but also the voting process itself. Here for example, in France, during the last presidential election for the Republic, false claims have been spread online, largely from right-wing social media accounts, saying that the voting machines are being used to help ensure a Macron victory. It echoed the 2019 US election, when unfounded claims were made that the voting machines were used to help Joe Biden beat Donald Trump.

However, to prevent the spread of false information, the French Interior Ministry has informed that the Canadian company named in the claims has no connection to the French elections. The government has used its own computer systems to count votes. Despite the false information being denied, there appeared some groups which were distrustful of authoritative sources of information, including the government, experts, and the media.

The second great example of fake news targeted against the election process is Arizona, where the voters' unprecedented number of concerns about early voting by mail – a voting method commonly used by Arizonans for decades – was directly connected to lies spread by the Trump campaign. In this case, the EMB received many people's inquiries demanding to specify exactly when their ballot was counted because the President told them to.

⁵ AEC targets disinformation with myth-busting campaign: <https://www.themandarin.com.au/183427-aec-targets-disinformation-with-myth-busting-campaign>

Another example of how voters can be misled is the message, spread by the interview given on French television by presidential candidate Nicolas Dupont-Aignan, that if 30% of registered voters failed to cast their vote, the election will be invalidated. But the French constitution sets no minimum turnout and specifies that the President of the Republic is elected by an absolute majority of the votes cast.

Another factor that influenced the spread of false information was the Covid-19 pandemic. The lack of voters' knowledge about the election process, especially about voting by post, left room for disinformation. In many countries, malicious actors disseminated false information about voting by post. Mail ballots pose a slightly higher risk of fraud than voting in person, but there's no evidence to support claims of widespread election rigging.

The coronavirus pandemic created a unique environment for voter confusion as states sought to adapt their rules on registering and voting by mail, creating opportunities for online misinformation to spread widely across the country.

For example, in Lithuania, it was claimed that the final voting results were supposedly doubled because all citizens could have voted both by post (early voting) and live on the election day, thus resulting in both votes of the same voter being counted.

COVID-19 misinformation also played an important role in the 2021 Canadian federal election campaign. Protesters opposing pandemic health measures and vaccination policies, in many cases fuelled by disinformation, hounded several candidates⁶.

Another problem is that citizens of other nationalities often receive less information about elections. Information gaps can also affect newly naturalised citizens because they lack familiarity with election procedures, which creates a favourable environment for spreading disinformation about such individuals. This is perfectly illustrated by the case when, during the Canadian elections, Chinese officials and state media commented on the election with an apparent aim to convince Canadians of Chinese origin to vote against the Conservative Party. Misleading information and critical information of certain candidates circulated on Chinese-language social media platforms. Therefore, it is important to plan voter education in as many languages as possible. It is also necessary to provide accurate, detailed information about elections and election processes.

III. Disinformation directed at election administration bodies and election procedures

In recent years, there has been an increasing number of cases where disinformation has been directed against election officials. The officials are no longer just running elections. They've become full-time myth-busters, contending with information threats coming from the other side of the globe – and their own hands.

Local officials and election experts are dealing with candidates undermining the election systems that they still run for office in, and conspiracy theories that target even the clearest parts of the election infrastructure.

The struggles stemming from misinformation vary from state to state, from dealing with threats of violence against election workers at all levels to contending with so-called insider threats – election workers who themselves pose a security challenge to the system.

⁶ Mis- and disinformation during the 2021 Canadian federal election: https://www.mcgill.ca/maxbellschool/files/maxbellschool/meo_election_2021_report.pdf

The spread of false information about elections harms almost every element of election administration. Disinformation campaigns carried out by malicious actors are eroding trust in democracy and disrupting the operation of election offices. This is perfectly illustrated by the case of Florida, where deliberate disinformation in 2020 directly contributed to the decline of voter confidence. In Florida, voters were contacting election offices to “remove themselves from the voter rolls, stating that they have chosen not to vote due to mistrust in the elections process”.

In the case of negative information directed at election administration bodies, it is not uncommon to see attempts to discredit the management of the elections by portraying the election management body as an incompetent and corrupt institution. The main goal of such content is to make voters question the results of the elections and their legitimacy in general. As a rule, negative information shifts its focus and concentrates more on producing misleading content that refers to the vote counting procedures. In some cases, in publications published on news websites or social media platforms the elections are portrayed as a public relations campaign, a “façade” and/or “imitation” of democracy to underestimate the importance of the elections and create distrust towards the principles and values of the democratic government system⁷.

However, “low engagement and potential reach rates indicate that negative information tends to circulate among a limited number of audiences, forming rather closed social clusters with a limited ability to reach a wider spectrum of readers”⁸.

Disinformation campaigns carried out by malicious actors are not only eroding trust in our democracy but also interfering with the activities of the election officials themselves. Election offices are consumed with responding to numerous public records requests, debunking election myths, and increasing voter education efforts to strengthen voter confidence in the election process. Sometimes lies about election integrity lead to people being distracted to the point where they can’t get their real work done.

Of course, EMBs can attempt to counter lies about election practices, but they lack adequate resources and funding. Often there is a need for additional investments in voter and election officials’ education that are beyond the budgetary capacity of the EMBs. Therefore, the governments must do much more to support election administrators in their fight against election lies, including through reliable, robust grant funding to ensure that election officials have sufficient resources to counter damaging election lies.

Another problem that election management bodies face is that not only the election management bodies themselves but also the election officials themselves become the targets of disinformation. Various conspiracy theories are spread about them, accusations (in the absence of any evidence) of fraud, etc. It is not uncommon for election officials to receive various threats against them and their family members, as well as angry comments from politicians and campaign participants. The spread of misinformation about the election places extraordinary pressure on election administrators. It is not uncommon for election officials to leave this type of work because of daily abuse, harassment, or threats.

This could be perfectly illustrated by the 2022 elections in the United States of America, where threats and harassment have driven a striking number of election officials from their posts since

⁷ Negative communication creates an impression of no real political choice in Lithuanian elections: <https://www.debunkeu.org/negative-communication-creates-an-impression-of-no-real-political-choice-in-lithuanian-elections>

⁸ *Ibidem*.

2020⁹. A sweeping US House Oversight Committee report has warned that lies and misinformation around the 2020 American presidential election present an “ongoing threat to representative democracy” and pose a grave physical danger to election officials¹⁰. The sweeping belief that the election was stolen has meant that the most fervent Trump supporters were convinced that election workers – especially in the cities and towns where the Democrats won big – were illegally rigging the election results. It’s a patently false belief, but one that has nonetheless fuelled a scary trend of threats and harassment¹¹. Taking this into account the House committee made a statement that conspiracy theorists, “led by former President Donald Trump and his supporters”, have fuelled threats against elected officials. Moreover, several supporters in Florida publicised an election supervisor’s phone number and encouraged listeners to call and say “that they are watching him, that he is a piece of crap, and that these are their elections”¹².

According to the U.S. Department of Justice’s Election Threats Task Force, officials in states with close elections and postelection contests were more likely to receive threats. Of the total potentially criminal threats, 58% were in states like Arizona, Georgia, Colorado, Michigan, Pennsylvania, Nevada, and Wisconsin. So, it’s no wonder that a recent Brennan Center poll found that one in five local election officials says they are likely to resign before the 2024 presidential election¹³.

However, in practice, there are also cases where disinformation about the elections is spread by the election officials themselves. It’s concerning that the people elected to oversee elections are working from within to undermine them. And that phenomenon is increasing.

One example that perfectly illustrates this is the statement of the Federal Election Commission of the USA chair. He called the last election “illegitimate”, and said that voter fraud was taking place. This, accordingly, did not go unnoticed by the media, which checked whether what was published corresponded to reality. One of the news websites wrote that “The Chief Electoral Officer of the Federal Election Commission made a Bombshell statement, saying that, from what he saw in Pennsylvania, and news that had come from elsewhere in the world, this election was unconstitutional”¹⁴.

Representatives of the media outlet, seeing that there was no evidence to confirm that there was systematic fraud in the election, contacted the offices of elected officials in each state. Finally, the false information was disproved by stating that no such problem existed.

Another problem that could be singled out is the increase in election disinformation coming from state lawmakers. Legislators and other elected officials are using their platforms to give a veneer of legitimacy to untrue claims about election systems, while also looking to introduce legislation that looks to act upon those conspiracies. Therefore, to leave as little space as possible for misinformation, it is also necessary to educate state politicians and legislators.

⁹ Information Gaps and Misinformation in the 2022 Elections: <https://www.brennancenter.org/our-work/research-reports/information-gaps-and-misinformation-2022-elections>

¹⁰ Election lies pose physical threat to US poll workers, House report warns: <https://www.theguardian.com/us-news/2022/aug/11/house-oversight-committee-election-misinformation>

¹¹ How Lies Have Turned Into Threats Against Election Workers: <https://www.democracydocket.com/news/how-lies-have-turned-into-threats-against-election-workers>

¹² Election lies pose physical threat to US poll workers, House report warns: <https://www.theguardian.com/us-news/2022/aug/11/house-oversight-committee-election-misinformation>

¹³ Benenson Strategy Group, “The Brennan Center for Justice: Local Election Officials Survey,” 7 April 2021, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>

¹⁴ Fact check: Federal Election Commission chair echoes false claims of fraud: <https://eu.usatoday.com/story/news/factcheck/2020/11/19/fact-check-fec-commissioner-has-no-role-election-integrity/6332242002>

IV. Conclusions

Disinformation in elections can be spread in many ways, forms, and means. Therefore, the EMB must look for ways and opportunities to combat it.

A message should be sent to all political cycle participants (voters, candidates, political parties, etc.), that the EMB will not tolerate the spread of misinformation or disinformation about the electoral system, no matter the source.

EMBs should ensure that all election management-related news on all major national and regional news channels during the polls would be monitored vigorously.

Electoral bodies must engage in fact-checking and debunk false claims about the electoral process, rules, and other related guidelines during the elections.

Ways should be found to collaborate with social platforms and decisions should be made to eliminate disinformation on their platforms.

There should be an investment in voter education, so that the voters can distinguish fake news from information that meets the criteria of truth. However, it is also important not to forget the means of public information, whose administered channels spread false information.

Ways should be found to ensure that political parties and candidates do not indulge in fake news. Monitoring disinformation should involve the public and other institutions.

Ways should also be sought to protect election officials from disinformation and threats against them. Also, it is important to raise the awareness of election officials so that they do not become distributors of false information.

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International Standards and Participation of National Minorities in Electoral Process in Bosnia and Herzegovina

Irena HADŽIABDIĆ, PhD

Abstract

In this paper the author problematizes the gradual development of international protection of members of national minorities, the shortcomings of systemic protection, and low standards in this area. It explains the importance of protecting the rights of national minorities in order to achieve their non-discrimination and their political representation. Through the example of national minorities' participation in previous elections in Bosnia and Herzegovina, their candidacy and insufficient representation in political life, the paper presents all the shortcomings of legal solutions that are certainly not a successful test of democracy. It raises the logical question to what extent these guaranteed seats are actually being misused. The author advocates the review of legal solutions, in terms of the real popularization of the participation of members of national minorities in political life.

Keywords: *national minorities, guaranteed seats, representation, candidacy, local elections, proportional participation*

International standards

The Second World War, through mass suffering, proved the need to protect minorities and create efficient instruments for its implementation. However, the progress along this path was not satisfactory. The UN Charter, as one of the most important documents in contemporary international law, does not contain any provisions on the protection of minorities. The UN Universal Declaration of Human Rights states in the Preamble¹ that all the rights set forth are “as a common standard of achievement for all peoples and all nations”. However, it does not contain a legal but only a moral obligation. It was only in 1966 that the UN General Assembly explicitly specified the protection of minorities for the first time by adopting the International Covenant on Civil and Political Rights, recommending non-discriminatory behaviour to the signatory states. Article 27 of that agreement requires: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”². This was followed by other documents that touched on the protection of minority rights.

Today there are a number of organizations that deal with the issues of national minorities: the UN, the Council of Europe, the EU, and OSCE. However, international and European standards are, as claimed by Florijan Biber, PhD, “few and can hardly be considered very high.”³

The issue of distinguishing between national and ethnic minorities has become even more complex. One of the definitions of the term national minorities mentioned in the handbook

¹ Official texts – *Selected international documents*, Book I, p. 379.

² *Ibidem*, p. 137.

³ Florijan Biber, *Okvirna konvencija SE za zaštitu nacionalnih manjina*, European forum, 2003. <http://www.becei.org/EF0403/biber.htm>

“National Minorities in Europe”⁴ reads: “A minority is designated as national if it shares its cultural identity (culture, language) with a larger community that forms a national minority elsewhere, which constitutes the majority of the population and forms its own state.” For example, according to this definition, the national minority would be Hungarians in Romania, people who identify themselves as Hungarians⁵, speak the Hungarian language, and have their own state with a majority population (Hungary). The authors of the above-mentioned publication⁶ also discuss the term “ethnic minorities”, which they say refers to: “persons from those ethnic communities who do not constitute the majority population in any country and do not form their own state anywhere”, for example the Bretons in France. The concept of national minorities in Europe today refers to ethnic groups living in a state that are connected to a nation that has its own state (home country).

Democratic processes after 1989 in the countries of Eastern Europe enabled national minorities to have their identity recognized and to demand their rights, and political events in the Balkans initiated the inclusion of respect for the rights of national minorities and prevention of discrimination as a significant precondition for joining the EU.

The issue of minority protection in Europe has gained increasing importance in recent years, in the context of European integration. The EU has been involved in the development of policies that promote human rights and the rights of minorities in candidate countries and potential candidates for the EU membership since 1990. The European Convention on Human Rights and Fundamental Freedoms does not contain special provisions on minority rights, but we are witnessing developments that were made subsequently.

One of the most important contemporary international documents that is significant to the protection of national minorities is the UN Declaration on the Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities (1992), adopted by Resolution no. 47/135.⁷ This Declaration expands the rights of minorities, and states are obliged to provide assistance in developing and protecting their rights. Article 4 of the Declaration emphasizes the obligation of states to take measures to ensure minorities use their rights and fundamental freedoms without discrimination; to express their characteristics, to have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue and to fully participate in the economic progress and development in their country.

Special advances were made within the OSCE, and minority rights were regulated in a more comprehensive manner in its Copenhagen document (1990). The significance of this document is that it establishes a direct link between human rights, protection of minorities and democracy. This is still today the basic EU document for determining standards for the protection of national minorities. Among other things, Article 32 specifies that “to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice.”

At the session in Copenhagen in 1993, the Council of Europe decided that the countries of Central and Eastern Europe must meet certain accession criteria classified into three categories (known as the Copenhagen Criteria) for EU accession: 1) political; 2) economic and 3) legal. Within

⁴ Christoph Pan, Beate S. Pfeil, *National Minorities in Europe*, Handbook, Braumüller, Ethnos 61, Wien, 2003, p. 18.

⁵ Minorities in Southeast Europe, Hungarians of Romania, Center for Documentation and Information on Minorities in Europe – Southeast Europe (CEDIME-SE), http://www.edrc.ro/resurse/rapoarte/Hungarians_of_Romania.pdf

⁶ Christoph Pan, Beate S. Pfeil, *op. cit.*, p. 1.

⁷ Declaration on the rights of persons belonging to ethnic, religious or linguistic minorities, <http://www.hnv.org.rs/docs/DEKLARACIJA%200%20PRAVIMA%20SOBA.pdf>

the political criteria, it is stated that the applicant states must achieve “stability of institutions that ensure democracy, rule of law, respect for human rights and protection of minorities.”⁸

The activity of the High Commissioner for National Minorities, who made several recommendations, is also significant. The recommendations from Lund on the effective participation of national minorities in public life from 1999 establish general principles, and there are also the following documents of the Council of Europe: European Charter on Regional or Minority Languages (1992), Framework Convention for the Protection of National Minorities (1995).

Krivokapić points out that the Framework Convention for the Protection of National Minorities, despite its imperfections, represents the most important achievement of contemporary international law in this matter.⁹

The Framework Convention for the Protection of National Minorities¹⁰ obliges states to adopt, where necessary, appropriate measures to promote (in all areas of economic, social, political and cultural life) full and genuine equality between persons belonging to a national minority and persons belonging to the majority. Namely, it is a binding and comprehensive document for the protection of national minorities, because after ratification countries are obliged to submit a report on its implementation to the Advisory Committee. This document prohibits discrimination and forced assimilation, and mandates the improvement of the conditions necessary to preserve the culture of national minorities and the elements of their identity: religion, language, tradition and cultural heritage. It requires freedom of peaceful assembly, freedom of association, freedom of expression and freedom of thought, conscience and religion for members of national minorities, and requires the contracting states to create conditions for their effective participation in public affairs.

It must be noted that the Framework Convention does not provide a precise definition of the term national minority. In this way, it increases the number of groups that can enjoy the rights from the Convention. However, its Preamble states that the contracting states “are resolved to protect within their respective territories the existence of national minorities; resolved to implement the principles stated in this Convention through national legislation and agreed policies.”¹¹

Application of the convention is a matter for the contracting states. The international legally binding provision that stipulates the state’s obligation to include members of national minorities in public life is Article 15 of the Framework Convention, which sets forth that the parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.¹² The Framework Convention does not deal with the right of effective participation in political life in any of the other articles.

This is exactly why the Recommendations on the effective participation of national minorities in public life from Lund (hereinafter: Lund Recommendations) are important. Although they are legally non-binding provisions, the political influence of the OSCE affects the application of standards in legal texts and practices of member countries. The Lund Recommendations

⁸ Copenhagen criteria, <http://www.dei.gov.ba/dokumenti/?id=4717>

⁹ Krivokapić, *op. cit.*, p. 167.

¹⁰ The Framework Convention for the Protection of National Minorities, www.bh-hcrh.org

¹¹ *Ibidem.*

¹² *Ibidem.*

contain a set of measures intended to ensure the effective participation of national minorities in public life.

The general principles in the first part of the Recommendation¹³ deal with several principles that are represented in all international documents that prescribe the rights of members of national minorities.

These are:

- the principle of democratic governance, which is a prerequisite for the realization of minority rights in the modern world order;
- the principle of voluntary participation of minorities in the political process and public life;
- the principle of non-discrimination, but also the principle of self-determination, i.e. voluntary membership in a minority community. The principle of non-discrimination derives from the assumption of equal dignity and inalienable rights stated by most international instruments for the protection of human rights. Article 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms explicitly extends the principle of non-discrimination to cover grounds related to “national or social origin, or belonging to a national minority”, but only in cases of violation of the rights and freedoms guaranteed by the Convention. Article 4 of the Framework Convention stipulates that the contracting parties undertake “to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.”¹⁴

However, the realization of the rights of national minorities must not come at the expense of the rights of other citizens. For example, the Framework Convention stipulates that “any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.”¹⁵ International standards regarding the effective participation of minorities in public life emphasize the fact that the guaranteed rights of minorities do not imply any right to engage in activities that are contrary to the goals and principles of international organizations, especially sovereign equality, territorial integrity and political independence of states.¹⁶

The general principles with which the Lund Recommendations begin are followed by recommendations on the participation of national minorities in decision-making, with a distinction between the measures that can be taken at the level of the central government, and at the regional and local levels, and a review of the models that can be applied during elections, as well as on different possible solutions, and the role of advisory bodies.

The provisions of the Recommendation on participation in decision-making, which refer to elections, i.e. Article II B, points 7-10, are particularly significant for participation in the electoral process:

“7) Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.

¹³ General principles, 1–5. Lund Recommendations, <http://www.osce.org/hr/hcnm/32242>

¹⁴ The Framework Convention for the Protection of National Minorities, www.bh-hcrh.org

¹⁵ *Ibidem*.

¹⁶ See Article 37, Document of the Copenhagen meeting of the Conference on the Human Dimension of the OSCE, Second Conference, 1990, <http://www.osce.org/odihr/elections/14304> and Preamble of the Framework Convention.

8) The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community.

9) The electoral system should facilitate minority representation and influence.

- Where minorities are concentrated territorially, single member districts may provide sufficient minority representation.

- Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.

- Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.

- Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.

10) The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.”¹⁷

Unlike other international organizations, and partly due to the nature of its legal system, the EU does not have a special body that would enforce the rights of minorities. Nevertheless, changes are coming to the fore in the work of the European Court of Justice and the European Commission, which still reflect a strong tendency towards a more comprehensive policy in this matter. The Treaty on the European Union, signed on February 7, 1992 in Maastricht, does not mention minorities at any point. Substantial progress was achieved with the Treaty of Amsterdam, according to which the member states commit themselves to respect human rights and the national identities of the member states.

Finally, at the meeting in Nice in 2000, the EU Charter of Fundamental Rights¹⁸ was accepted. For the first time in the history of the EU, a number of civil, political, economic and social rights of all citizens residing in the EU have been determined in a single text. In Article 20, the Charter prescribed the equality of all people before the law, and in Article 21 it prohibited discrimination on the basis of any affiliation, including belonging to national minorities, and in Article 22 it prescribed that the EU will respect cultural, religious and linguistic diversity.

In this way, the door to the legal framework of minority protection in the EU has been opened. However, a unified policy regarding the protection of minorities within the EU has not yet been accepted, bearing in mind that coalitions between countries are constantly changing due to their different policies.

EU requirements are determined by documents of a more general nature, such as the Copenhagen Recommendations from 1993, where national minorities are mentioned as a condition for admission to the EU.¹⁹ Since the Council of Europe still has better developed mechanisms for the protection of national minorities, it is likely that the EU will continue to use professional protection monitoring mechanisms in the future within the scope of the Framework Convention for the Protection of National Minorities.

¹⁷ Lund Recommendations, <http://www.osce.org/hr/hcnm/32242>

¹⁸ Charter of Fundamental Rights of the EU, OJ C 364/01, 18.02.2000.

¹⁹ Vladimir Ilić, Međunarodni standardi iz oblasti zaštite prava nacionalnih manjina, <http://www.susedski2007.cdcs.org.yu/Publikacije/1publikacije.pdf>

An important part of the protection of the rights of national minorities and a significant step towards the political equality of national minorities is the realization of their non-discrimination and their political representation. The composition of the parliament should reflect all the diversity of society, and in this regard, it is necessary to find an adequate formula to guarantee political equality.

After 1990, most post-communist countries also developed mechanisms in their electoral legislation to improve the representation of national minorities. It is a view of majority that the proportional system, much more than the majority system, encourages the representation of minorities, because it enables a better portrayal of social pluralism.²⁰ At the same time, various measures are applied within the electoral system: for example, some kind of quotas and special constituencies for national minorities, lowering the electoral threshold, reserving a certain number of seats for national minorities, providing more favourable conditions for their registration, etc.

Most post-communist countries have also adopted similar measures of positive discrimination. The way in which Romania regulated the representation of members of national minorities in its parliament is often mentioned as an example of good practice in Europe, and the general opinion is that the good representation of minorities in the Romanian parliament is the result of the active participation of minority representatives in legislative processes. Its electoral system uses two components to protect minority rights, and combines proportional representation and reserved seats. The rules and regulations that regulate the work of the parliament in Romania support the process of minority inclusion because minorities have the opportunity to form minority parliamentary groups and to be included as partners in ruling coalitions, thus directly influencing legislative processes and ensuring majority support for laws that strengthen the status of minority groups.

However, each country is a kind of individual environment, with a special historical tradition and experience. The measures taken in practice should be short-term mechanisms, which are used in transitional situations, until the awareness of the need for the protection and participation of national minorities in all spheres of public and social processes takes root. All the proposed measures can be efficient mechanisms, but the choice of the optimal solution that would be incorporated into the electoral legislation depends to a large extent on the specific context and other conditions such as the number of members of national minorities, their distribution and concentration in the territory, etc.

The OSCE/ODIHR Guidelines to assist national minority participation in the electoral process can be of great benefit to the countries that solve this problem. They state: "The electoral system must be viewed as one of a multiplicity of interlocking mechanisms that, taken together, will have the effect of accommodating national minorities and ensuring their effective participation in public life."²¹

It is nowadays usual for the position of national minorities to be regulated at the highest level, by constitutional provisions and specified by laws.

²⁰ Arend Lijphart, *Proportionality by NON-PR Methods: Ethnic Representation in Belgium, Cyprus, Lebanon, New Zealand, West Germany and Zimbabwe*, in: Bernard Grofman, Lijphart Arend (eds.), *Electoral Laws and Their Political Consequences*, New York, Agathon Press, pp. 113–123.

²¹ OSCE/ODIHR, Guidelines to assist national minority participation in the electoral process, p. 18, <http://www.osce.org/odihr/elections/13963>, 3.03.2013.

Candidacy and participation of members of national minorities in the electoral process in Bosnia and Herzegovina

The constitutional treatment of the rights of national minorities in Bosnia and Herzegovina is derived from the General Framework Agreement for Peace, especially its Annex 4, which represents the Constitution of Bosnia and Herzegovina²². Fifteen legal acts are in force in Bosnia and Herzegovina, which form an integral part of Annex 1 of the Constitution of Bosnia and Herzegovina, and relate to human rights and freedoms, while only some are dedicated to the protection of minority rights, primarily the Framework Convention for the Protection of National Minorities from 1994, the European Charter on Regional and Minority Languages from 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination from 1965.

The Constitution of Bosnia and Herzegovina provides the highest protection of internationally recognized rights and basic freedoms. Article 2.2 of the Constitution of Bosnia and Herzegovina stipulates that the rights and freedoms provided for in the European Convention on the Protection of Human Rights and Fundamental Freedoms and additional protocols shall be directly applied in Bosnia and Herzegovina. These international protection instruments take precedence over national laws.

It is in the very Preamble of the Constitution of BiH already emphasized that “Bosniacs, Croats and Serbs as constitutive people (along with Others) and citizens of BiH hereby establish the Constitution of BiH.” Emphasizing the “Others” in parentheses introduces us to the problem of defining their status. According to the Constitution of BiH, only members of the constituent nations (Serbs, Croats and Bosniacs) can run for the Presidency of BiH and the House of Peoples of BiH, and members of non-constituent peoples (national minorities and those who do not declare themselves ethnically) are not allowed to do so. However, the Election Law of Bosnia and Herzegovina foresees the participation of members of national minorities in elections for the municipal level.

Bosnia and Herzegovina has come a long way in creating conditions for the participation of members of national minorities in local government. The Law on the Protection of the Rights of National Minorities²³ promotes the right of members of national minorities to representation in government bodies and other public services in proportion to the percentage of their participation in the population according to the 1991 census²⁴. At the same time, when implementing the Law the term “proportionately” should be interpreted as a minimum participation, and the number of members of national minorities in the government can be higher because BiH in its policy towards national minorities has in principle accepted the system of “positive discrimination” in the protection of minority rights. BiH is a signatory state, and therefore under the obligation to apply the Framework Convention for the Protection of National Minorities. This Convention foresees the benefits of the so-called positive discrimination for members of national minorities, and each state is obliged to choose measures that will be guaranteed by its legislation to members of national minorities.

In addition to the three constitutive nations, members of numerous national minorities live in BiH. The Law on the Protection of the Rights of Members of National Minorities promoted the

²² Constitution of BiH, Annex 4 of the General Agreement for Peace in BiH, <http://www.ohr.int/dayton-peace-agreement/?lang=en>

²³ Law on protection of national minorities, Official Gazette of BiH, no 12/03, no 76/05 and no 93/08.

²⁴ National Bureau of Statistics RBiH, Statistical Bulletin, no 234, December 1993.

right of members of national minorities to representation in government bodies and other public services at all levels of government, in proportion to the percentage of their participation in the population according to the last census in BiH. Article 3 of the Law defines the term and lists minority communities whose rights are protected in accordance with the Framework Convention for the Protection of National Minorities, which BiH ratified in April 2003. In accordance with this law, the national minority is a part of the population – citizens of BiH who do not belong to any of the three-constituent people, and are made up of people of the same or similar ethnic origin, the same or similar traditions, customs, beliefs, language, culture and spirituality and close or related history and other characteristics.

BiH protects the position and equality of members of national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks, Ukrainians and others who meet the conditions from paragraph 1 of this article.

Amendments to the BiH Election Law from 2004 made it possible for the first time to elect representatives of national minorities to municipal councils in such a way that they were guaranteed at least one seat in those municipalities in which they account for up to 3% of the total population of the municipality, and at least two seats if participation percentage exceeds 3%.²⁵ Such legal solutions created unrealistic solutions in some small municipalities that, in line with the 1991 census, had only a few members of national minorities, according to which these members had the right to one council seat, regardless of whether persons who declared themselves as members of national minorities in the 1991 census were still living in these municipalities after the war there. In addition, these legal solutions were officially published late in order to be applied at the municipal elections in 2004, which significantly delayed positive changes in practice.

At the same time, many municipalities addressed the BiH Parliamentary Assembly with a question regarding the clarification of the categories “Yugoslavs” and “Muslims”. Instead of the term national minorities and their enumeration, the Constitution of BiH uses the term “Others”, thus leaving it to the legislation to determine, in accordance with objective criteria, which national minorities are living in BiH, the method of their identification, and the measures they will take, as their own obligation in protecting and affirming their rights. The term “Others” as a new constitutional term was distinguished from individual categories of the population based on the 1991 census. According to the opinion of the advisory committee of the Council of Europe on the basics of the Convention for the Protection of National Minorities, adopted on May 27, 2004, the authorities in Bosnia and Herzegovina should “review” the current representation of “Others”. It is completely correct to enable those who do not want to belong to any of the three groups of elective peoples, who do not belong to any national minority, to sit in the electoral bodies, but it is important that this does not happen at the expense of national minorities. By this view the authorities should accept the necessary changes in the election laws to ensure that persons belonging to national minorities are elected in the category of “Others”.²⁶

The Constitutional Law Commission of the House of Representatives of the PA BiH considered the inquiries and accepted the opinion of the Council of Ministers, which had on November 29, 2007, at the proposal of the Ministry of Human Rights and Refugees, determined the authentic

²⁵ Law amending the BiH Election Law, Official Gazette of BiH, no 20/4 of May 17, 2004.

²⁶ Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinion on BiH adopted on May 27, 2004, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008becb>

interpretation of the provisions of the Law on the Protection of Members of National Minorities, indicating that “Yugoslavs” and “Muslims” do not belong to the group of minority communities in the sense of the law on the protection of the rights of members of national minorities.²⁷

Therefore, the Law amending the Election Law of BiH from 2008²⁸ introduced new solutions in the new Chapter 13 A, but only two weeks before the 2008 Local Elections were announced.

The amendments were introduced in terms of the right to participation of members of national minorities in local government, only in municipalities where their participation exceeds 3%. The fact that their election is not guaranteed in the municipalities in which less than 3% of them live is a form of discrimination, all the more so since only a few municipalities, according to the 1991 census, had more than 3% of representatives of national minorities (Trebinje 3.31% and Prnjavor 4.64%)²⁹. The adoption of new legal solutions required the creation of legal conditions through changes or amendments to the Municipal Statutes in a very short period of time. According to the provisions of the Statute, it was mandatory to determine the number of councilors, representatives of national minorities who will be elected in local elections, using data from the 1991 census, within a period of only two weeks. Although only two municipalities had this obligation according to that census, a total of 35 provided places for national minorities. It is important to note that there were no registered candidates for national minorities for two municipalities³⁰ even though, according to the statutes of these municipalities, one council seat was provided for them.

The number of municipalities that have provided places for members of national minorities in their Statutes has been decreasing over the years. A total of 32 municipalities did so in 2008, and 26 in 2012 and 2016, while that number was reduced to 21 in 2020, which had a negative effect on the actual representation of members of national minorities at the local level in Bosnia and Herzegovina.

Chapter 13A of the BiH Electoral Law prescribes the principles and criteria for the participation of members of national minorities, which guarantee mandates in municipal and city councils.

Only the candidate whose name is on the special list of candidates belonging to national minorities can be elected as a representative of a national minority.

The right to apply to participate in the elections in order to fill the guaranteed mandates for the members of national minorities is to have:

a) registered associations or other registered organised form of activity of the national minorities; and

b) groups consisting of at least 40 citizens who have the right to vote at minimum, who submit the names of candidates along with the application to participate in the elections.³¹

It is possible to nominate as many candidates as there are members of national minorities who are elected in that constituency. Bosnia and Herzegovina has opted for several measures of “positive discrimination” in its legal solutions. If the mandate is not assigned to a member of the national minority, it remains vacant. In this way, BiH tried to reserve exclusive places for members of national minorities. On the basis of discrimination of a certain group in the past, privileges and rights are provided to that group today, which equalizes opportunities and creates true equality.

²⁷ Ministry of Human Rights and Refugees: Proposal of opinion for authentic interpretation of provisions number: 08-02-3585-1340/07 of 8.10.2007.

²⁸ Law amending the BiH Election Law, Official Gazette of BiH, no. 33/08 of 22.04.2008.

²⁹ BiH CEC data derived from the 1991 census.

³⁰ Odžak/ Vukosavlje and Breza.

³¹ BiH Election Law, Article 13.14, paragraph 4.

On the example of the solution in Bosnia and Herzegovina the general election threshold of 3% was not applied when allocating mandates from the list of members of national minorities for the municipal or city council. This threshold means that a political party, coalition, list of independent candidates and an independent candidate cannot participate in the allocation of mandates if it does not win more than 3% of the total number of valid votes in the constituency³², and it applies to all political subjects. The said advantage represents a special measure of positive discrimination, which implies giving advantage to this group with the aim of eliminating real inequality. Another measure of positive discrimination introduced for the 2008 Municipal Elections for candidates belonging to national minorities is the abolition of the election certification fee. In addition, mandates are first assigned to members of national minorities, followed by regular mandates.³³

However, the legal solution that political parties have the right to offer their candidates for both the list of national minorities and the regular list, and thus possibly win seats in the municipal government, leaves a dilemma as to whether such representatives will continue to protect the rights of national minorities or the interests of their parties.

In the municipal elections held on October 5, 2008, a total of 72 out of 106 certified candidates belonging to national minorities were nominated by political parties and 12 by citizen associations, while 22 candidates ran as independent candidates. The results showed that in the end, out of a total of 35 elected candidates, 25 were representatives of political parties, 8 were independent candidates, and only 2 were representatives of citizens' associations.

Out of a total of 28 elected representatives of national minorities for municipalities in which guaranteed seats were determined by the municipal statute at the 2012 Municipal Elections, 16 seats were won by political subjects, 2 seats were won by representatives of a group of 40 citizens, and 10 elected representatives were representatives of associations.

A total of 26 representatives of national minorities out of 143 candidates were elected at the 2016 elections, whereof 13 were put forward by political parties, and 13 by a group of at least 40 citizens, and not a single representative of a citizen's association, although 6 of them were certified to participate in the elections.

Out of 71 certified candidates (although 196 applied) at the last 2020 Local Elections, only 2 candidates represented national minority associations. Ultimately a total of 23 representatives of national minorities were elected, 8 from political parties, 1 representative of a coalition, 4 from a group of 40 citizens and 10 independent candidates.³⁴

There are still no guaranteed positions for representatives of national minorities for the higher levels of government in BiH. In the current practice, although political subjects can also put forward "Others", all elected representatives in the House of Representatives of the PA BiH were from among the constituent peoples, with the occasional exception of one or two representatives of the "Others".³⁵

However, in order to implement the judgment of the European Court in the case of *Sejdić and Finci v. BiH*, the Sarajevo Canton was the only one to adopt the Amendment XLVI to the Constitution of the Canton³⁶, adding a new paragraph after paragraph 1 of Article 17 that reads:

³² Idem, Article 13.5 in connection with Article 9.5.

³³ Idem, Article 13.14 paragraph 14.

³⁴ BiH CEC data.

³⁵ No representative of "Others" was elected to the House of Representatives of BiH PA at the 2014 General Elections.

³⁶ Amendment XLVI to the Constitution of Sarajevo Canton, Official Gazette of Canton, no 6/13.

“Members of national minorities in the Canton are guaranteed one seat in the Assembly, which is filled in accordance with electoral regulations.”

A new paragraph 6 is also added, which reads: “The Caucus of Others is formed under the condition that there is at least one representative who declares him/herself as ‘Others’, that is, as a member of a national minority.”

Thus, only in one canton were the conditions set for representatives who declare themselves as members of national minorities to have their caucus in addition to the constituent peoples, however, the application of this article did not take root due to the lack of more detailed regulations on the manner of their election at levels higher than municipal elections.

Conclusion

Although the achievement of national minorities participating in the decision-making process at the local level since 2008 was a great step forward, their more active role in deciding on all issues that are in the interest of national minorities is still not enabled in BiH.

Fourteen years of application of legal solutions enabling the participation of members of national minorities in BiH also showed that the number of elected representatives decreased from year to year, so that from the originally elected 35 representatives of national minorities at the 2008 elections that number was reduced to 23 at the last local elections in 2020. The results of all previous local elections in which members of national minorities were elected show a greater number of elected candidates of political parties than of registered associations or groups of citizens, which are organized forms of activity of national minorities. The logical question is to what extent these guaranteed seats are actually being abused by political subjects who already have the guaranteed possibility of forcing their candidates through regular lists, and whether it is in their interest to truly advocate for the resolution of issues that plague members of national minorities.

Even today, relevant international institutions express particular concern that the constitutional and legal system of BiH provides privileges and rights to the constituent peoples, which at the same time are not provided to those who do not identify themselves as members of one of the constituent peoples.³⁷ An additional problem lies in the fact that national minorities, if they are included in the constitutional category of “Others”, have more rights (on the basis of the Law on the Protection of National Minorities) compared to truly marginalized “others” who do not belong to national minorities or “Others”.

If all these problems are added to the popular abuse of the national affiliation and the limited possibility of checking the candidate’s national affiliation, which is linked exclusively to the 4-year election cycle, it is necessary to review these legal solutions, and especially their effects on the actual popularization of the participation of members of national minorities in political life.

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³⁷ More on judgments of the European Court of Human Rights: Sejdić and Finci v. BiH, and Samir Šlaku v. BiH.

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La Représentation politique des femmes dans la Francophonie

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Résumé :

La présente étude analyse la représentation politique des femmes dans les pays membres du Réseau des compétences électorales francophones (RECEF), un réseau de l'Organisation internationale de la Francophonie. L'étude analyse les facteurs liés à la représentation politique des femmes dans les États du RECEF, notamment les modes de scrutins et les mesures incitatives, tels que les différents types de quotas, en plus de certains aspects du cadre légal et certaines barrières socioculturelles et économiques. L'étude présente trois études de cas : le Sénégal, la France et le Québec afin d'illustrer l'impact des mesures incitatives sur la représentation politique des femmes dans des contextes historiques et politiques différents.

Mots-clés : Réseau des compétences électorales francophones (RECEF), représentation politique des femmes, Francophonie, élections, égalité femme-homme

Préambule

Bien que la moitié de la population mondiale soit constituée de femmes, ces dernières sont largement moins représentées que les hommes dans les assemblées législatives et dans les gouvernements. Cette inégalité constitue une constante mondiale, quoiqu'elle varie d'une région du monde à une autre et d'un pays à l'autre.

Au-delà de la représentation politique des femmes, un processus électoral égalitaire inclut également l'accès au vote des femmes, l'embauche de personnel électoral féminin, les modalités du cadre légal favorisant des élections sécuritaires pour toutes et tous ainsi qu'une série d'autres facteurs. Lorsque la perspective de genre est appliquée de manière transversale dans la planification d'un processus électoral, les actions de l'organisme de gestion des élections (OGE) deviennent des vecteurs d'une démocratie plus égalitaire.

Dans l'objectif de contribuer à l'étude de ces questions, le Réseau des compétences électorales francophones (RECEF)¹ a publié en 2021 *L'égalité entre les femmes et les hommes au sein des OGE et dans les processus électoraux : défis et pistes d'action pour les organismes de gestion des élections*. Rédigée avec la collaboration de l'Institut international pour la démocratie et l'assistance électoral (International IDEA), cette publication brosse un portrait de la représentation politique des femmes dans la Francophonie, incluant des études de cas spécifiques aux pays du RECEF ; de l'égalité dans les processus électoraux ; ainsi que de l'égalité au sein des OGE de la Francophonie. Cette étude a permis de mesurer le chemin parcouru et celui qui reste à traverser dans ce domaine. Elle contribue aux réflexions sur le rôle des OGE de la Francophonie en matière d'égalité femme-homme, un domaine de recherche encore peu exploré. Le tout est alimenté à la fois par une consultation réalisée auprès des membres, par une analyse de données disponibles sur les États membres du RECEF et par une revue des textes et des rapports disponibles sur ces enjeux.

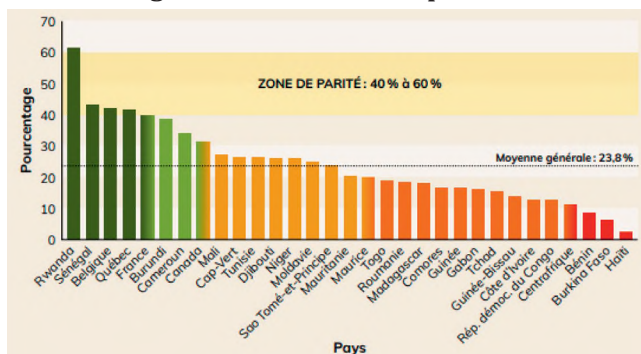
¹ Le RECEF est un des 16 réseaux institutionnels de la Francophonie. Créé en 2011, il regroupe 33 OGE et a pour objectif notamment de favoriser la professionnalisation par l'échange d'expériences et de bonnes pratiques en matière électorale. Pour plus d'information consultez le site web du RECEF : <https://recef.org>

L'article qui suit est une publication originale inspirée du Chapitre 1 de cette étude, portant sur la représentation politique des femmes dans les pays membres du RECEF. Il est possible de lire l'intégralité de l'étude en visitant le site web du RECEF: recef.org.

La représentation politique des femmes dans la Francophonie

Le RECEF compte 31 États membres², y compris la province du Québec, un État au sein de la fédération canadienne. Selon les données des élections tenues de 2016 à 2021, la moyenne de représentation des femmes dans les parlements des États du RECEF se situe tout juste en deçà de la moyenne mondiale, avec un taux de 23,8 %. Derrière les moyennes continentales et cette moyenne pour le RECEF se cachent de grands écarts de représentation des femmes dans les parlements. Chaque État est différent du fait de ses référentiels culturels, sociologiques et juridiques, et explique les écarts entre les différents États membres du RECEF en termes de représentation politique. C'est à ce titre que la représentation politique des femmes se situe entre des écarts de 61,3 % (Rwanda) à 2,5 % (Haïti). Mis à part le cas particulier du Rwanda, trois États ont des parlements paritaires : le Sénégal, la Belgique et le Québec. La France, le Burundi et le Cameroun sont près de la zone paritaire avec des taux au-dessus de 30 %. Ainsi, seulement 7 États sur 31 se trouvent dans la zone paritaire ou près de l'être. À l'autre extrémité du spectre, 7 États se trouvent sous la barre des 15 % de femmes représentées dans leur parlement. Le graphique suivant présente les données par pays membres du RECEF³.

Graphique 1 : Pourcentage de femmes dans les parlements des États du RECEF



Les facteurs liés à la représentation politique des femmes dans les États du RECEF

Les tendances statistiques exposées ci-dessus mettent en relief le fait que la simple reconnaissance des droits civiques et politiques des femmes tels que le droit de voter et de se porter candidate n'a pas permis une représentativité égale entre les femmes et les hommes dans les assemblées législatives. La complexité de la société d'un État ne peut donc pas être reflétée avec la simple statistique du taux de représentation des femmes dans les parlements. La plupart du temps, les résultats statistiques ne viennent pas nécessairement « d'une discrimination volontaire du milieu politique envers les femmes, mais plutôt d'une discrimination systémique engendrée par une multitude de facteurs »⁴.

² En 2022, le Royaume du Maroc a joint les rangs du RECEF. Il ne fait donc pas parti de l'analyse dans cette étude.

³ Il est possible de consulter des données complètes dans l'étude intégrale, en annexe 3.

⁴ Élections Québec, *Femme et politique : facteurs d'influence, mesures incitatives et exposé de la situation québécoise*, Collection Études électorales, 2014, p. 3.

La littérature sur la représentation des femmes en politique abonde pour tenter d'expliquer la situation : plusieurs facteurs ont des effets sur la représentation politique des femmes et ils interagissent les uns avec les autres. Dans chaque contexte, ils donnent des indices sur l'état de la situation. En effet :

« la présence de l'ensemble de ces facteurs doit bien sûr être relativisée : chacun d'entre eux n'a pas un impact similaire, outre qu'ils peuvent varier selon le pays en cause [...], tous ces facteurs n'ont pas un impact unique sur la représentation des femmes, et [qu'] ils peuvent avoir une influence mutuelle, tout en agissant directement sur la participation politique féminine⁵ ».

Le tableau⁶ suivant présente les différents facteurs qui influent la représentation politique.

Tableau 2 : Les facteurs qui influent sur la représentation politique des femmes

FACTEURS SOCIOCULTURELS	FACTEURS LÉGAUX ET INSTITUTIONNELS
<ul style="list-style-type: none"> • Idéologie égalitaire • Socialisation politique des femmes 	<ul style="list-style-type: none"> • Modes de scrutin • Types de régimes politiques • Pratiques parlementaires adaptées aux femmes
FACTEURS SOCIOÉCONOMIQUES	FACTEURS PARTISANS
<ul style="list-style-type: none"> • Niveau de scolarité des femmes • Développement économique et humain des sociétés • Taux de présence des femmes sur le marché de l'emploi • Urbanisation • Revenu moyen • Famille 	<ul style="list-style-type: none"> • Potentiel d'électivité des circonscriptions électorales où les femmes sont candidates • Domaine des enjeux politiques dominants • Position idéologique des partis • Système de recrutement des partis politiques • Effet de contagion à l'intérieur d'un système partisan • Taux de renouvellement des élus

Les modes de scrutin et la représentation politique des femmes

Les modes de scrutin font partie des facteurs légaux et institutionnels pouvant avoir des effets sur la représentation politique des femmes. Comme pour l'ensemble des facteurs présentés dans le tableau précédent, il n'y a pas de corrélation concluante et claire de l'effet du mode de scrutin sur la représentativité lorsqu'il est analysé de manière isolée. Il faut plutôt considérer une série de dynamiques et de facteurs propres à chaque État, y compris la manière dont se concrétise ce mode de scrutin et si on y introduit des mesures incitatives (listes ouvertes ou fermées, alternance entre les femmes et les hommes sur la liste, principe de colistier, etc.). Il est cependant possible d'avancer qu'un mode de scrutin proportionnel est plus propice à l'intégration de mesures incitatives qui, en conséquence, peuvent avoir des effets plus marqués sur les résultats de la représentation politique des femmes. Les modes de scrutin aux élections parlementaires chez les membres du RECEF varient entre un système proportionnel dans 14 États, un système majoritaire dans 9 États et un système mixte dans 8 États.

Les mesures incitatives aux candidatures féminines

Le cadre légal ou les autres mesures législatives peuvent avoir des effets positifs sur la représentation politique des femmes, comme les quotas légaux et les quotas volontaires.

Les quotas et les sièges réservés

En plus de pouvoir présenter plus d'une personne candidate par circonscription, les modes de scrutin proportionnels et mixtes permettent plus facilement d'introduire des mesures incitatives, comme les quotas de représentation. Parmi les systèmes majoritaires, seulement deux États

⁵ *Ibidem*, p. 67.

⁶ *Ibidem*, p. 68.

(France et Haïti) mettent en place des mesures incitatives, alors que 15 des 22 États ayant des systèmes proportionnels ou mixtes le font.

Tableau 3 : Représentation politique des femmes en fonction des modes de scrutin et des mesures incitatives

	TOUS LES CAS		AVEC MESURES		SANS MESURES	
	%	Nbre	%	Nbre	%	Nbre
Tous les systèmes	23,8	31	28,0	17	18,7	14
Majoritaire	21,1	9	21,0	2	21,2	7
Mixte	24,7	8	27,9	6	15,4	2
Proportionnel	25,0	14	29,7	9	16,5	6

En effet, les 17 États du RECEF ayant des mesures incitatives ont en moyenne 28 % de femmes dans leur parlement, alors que les 14 États n'ayant aucune mesure incitative n'ont un taux que de 18,7 %. Malgré cette différence importante, le Québec et le Canada viennent une fois de plus faire gonfler la moyenne de la représentation des femmes dans les pays où les lois électorales ne prévoient ni quotas ni sièges réservés. En excluant ces deux États, la moyenne chute à 15,8 %, soit près de la moitié de la moyenne des pays ayant de telles mesures incitatives. En contrepartie, certains États disposant de mesures incitatives ont une très faible représentation des femmes, comme Haïti et le Burkina Faso. Dans ce dernier, le scrutin est proportionnel et les listes doivent avoir 30 % de candidatures féminines, sinon les partis politiques s'exposent à une pénalité financière. Avec 6,3 % de femmes au parlement, nous constatons que cette mesure n'est pas suffisamment coercitive pour modifier les stratégies des partis politiques. À Haïti, le quota de 30 % de femmes n'est accompagné d'aucun suivi ni d'aucune sanction. Par conséquent, les partis politiques ne le respectent pas. En l'absence de conséquences pour le non-respect du quota, la mesure incitative perd son sens dans ce pays. En effet, les quotas légaux sont souvent associés à des pénalités financières en cas de non-respect.

Dans certains cas, les mesures incitatives prennent la forme de récompenses financières pour les partis politiques ayant atteint les objectifs prévus. Par exemple, depuis 2010, le Cap-Vert accorde un financement public uniquement aux partis qui ont fait élire au minimum 25 % de femmes. En 2019, le gouvernement capverdien a par ailleurs adopté une loi sur la parité instaurant « une représentation minimale de 40 % de chaque sexe sur les listes de candidats aux organes collégiaux du pouvoir politique, à savoir l'Assemblée nationale, le Conseil municipal et l'Assemblée municipale⁷ ». En cas de non-respect, la liste de candidats non paritaire se voit rejetée.

Les quotas volontaires

Les quotas volontaires consistent en des objectifs adoptés par les partis politiques par la modification de leurs règlements internes, par vote de leurs membres ou par ordre de leur chef. Contrairement aux quotas légaux, les quotas volontaires sont non contraignants et ne prévoient donc aucune sanction. Leur mise en œuvre dépend de la volonté et de la culture propres à chaque parti politique. Un parti peut donc décider d'exiger un quota dans les candidatures qu'il présente pour une élection ou encore peut décider de réserver un certain pourcentage de sièges qu'il remporte à un groupe visé (femmes, minorités, etc.).

⁷ Cap-Vert: l'approbation de la loi sur la parité a été bien accueillie dans le pays: http://french.xinhuanet.com/afrique/2019-11/06/c_138531424.htm

L'efficacité des quotas volontaires sur la représentation des groupes visés dépend de l'environnement social, du succès électoral des partis qui s'imposent des cibles, ou encore du nombre de partis qui adhèrent volontairement à un système de quotas. Parfois, on assiste à un effet d'entraînement lorsque des partis adverses adoptent des quotas volontaires. Les adversaires, qui souhaitent demeurer sur l'échiquier politique, vont emboîter le pas. De la même manière, pour augmenter leur popularité chez certaines franges de l'électorat, les partis politiques se doteront d'objectifs internes pour atteindre une meilleure représentativité dans leurs candidatures⁸. Les quotas volontaires peuvent être aussi jumelés à des mesures incitatives financières. Plutôt que de pénaliser les partis, ces derniers peuvent être encouragés financièrement lorsqu'ils présentent un certain nombre de candidatures féminines. Par exemple, depuis 2006, en Roumanie, la loi régissant le financement des partis politiques prévoit une majoration du financement étatique des partis en fonction de la proportion des femmes qu'ils font élire⁹.

L'étape importante du recrutement des candidates

La littérature sur la représentation politique des femmes note qu'un frein important se déroule à l'étape cruciale du recrutement de candidates. Le sexisme et les préjugés teinteraient le processus de recrutement et de sélection par les partis politiques¹⁰. La structure même de ces derniers aurait des effets sur les processus de recrutement, sans que ce soit nécessairement volontaire de leur part. Sur ce dernier point, le taux de représentation des femmes dans les postes de direction des partis politiques et dans leurs instances a des effets sur la manière dont leurs activités seraient menées, dont leurs systèmes de recrutement. Selon une étude de l'International IDEA dans 54 pays africains, la proportion de femmes dans les postes de direction des partis politiques serait de 12 %¹¹.

Le cadre légal comme frein à la participation politique des femmes

Parfois, le cadre légal peut devenir un frein à la participation politique des femmes. Certaines inégalités systémiques entre les femmes et les hommes dans un État ressortent parfois à l'analyse selon une perspective de genre des différentes politiques publiques ou lois. Conçues sans nécessairement avoir l'intention délibérée de créer ces inégalités, elles sont pourtant bien présentes. En ce sens, les textes d'une loi électorale peuvent creuser un fossé entre les candidats et créer des inégalités entre femmes et hommes, mais aussi entre les membres composant une classe sociale ou économique, une race ou une ethnie, etc.

Dans le cas des États membres du RECEF, il a été noté que certaines dispositions des lois électorales freinent la participation politique des femmes, dont l'exigence d'une caution financière pour se porter candidat, le parrainage des candidatures ou d'autres mesures administratives¹².

Pour contrer et prévenir ces effets, une révision des lois électorales dans une perspective de genre permettrait d'intégrer les principes d'égalité à toutes les étapes du processus électoral, à la fois au bénéfice de la diversité des candidatures, mais pour toutes les parties prenantes¹³. Les OGE (et autres acteurs concernés) peuvent ainsi repérer des sections pouvant avoir des effets sur la

⁸ Élections Québec, *Femme et politique...*, op. cit., p. 118.

⁹ *Ibidem*, p. 60.

¹⁰ *Ibidem*, p. 78.

¹¹ IDEA, International IDEA, *Women's political participation: Africa Barometre*, 2021, p. 7.

¹² Dans la consultation auprès des membres du RECEF, une question à choix de réponse abordait l'enjeu du cadre légal. Sur les 12 répondants, 7 ont répondu qu'aucune prescription de la loi n'avait pour effet de freiner la participation politique des femmes. Au contraire, parmi les freins évoqués, 6 ont mentionné la caution financière, 3, le parrainage des candidatures, et 1, des mesures administratives.

¹³ International IDEA, *Women's political participation: Africa Barometer*, op. cit., p. 110.

participation politique et électorale des femmes (ex. : critères d'éligibilité, cadre de financement des partis politiques, aspects de sécurité électorale, etc.) et évaluer l'adéquation de la loi avec les engagements de l'État en matière d'égalité et les instruments internationaux qu'il a ratifiés¹⁴. Bien qu'ultimement le législateur demeure responsable de concevoir et de voter la loi, l'OGE peut faire des recommandations pour des processus plus équitables.

Les barrières sociologiques à la participation des femmes comme candidates à une élection

Malgré l'existence de dispositions légales ou de mesures de discrimination positive administratives, des barrières sociologiques demeurent un frein majeur à la participation politique des femmes. Cela est vrai pour l'ensemble des membres du RECEF, à des degrés variés, et se manifeste différemment d'un pays à l'autre. La consultation menée auprès des membres du RECEF a permis de relever certaines de ces barrières. Dans certains cas, l'acceptation que les femmes accèdent à des postes de responsabilité de haut niveau n'est pas acquise.

Les facteurs comme «la socialisation, les rôles sexospécifiques, les perceptions concernant les cheminements de carrière appropriés pour les femmes, ainsi que les stéréotypes ou les préjugés inconscients à l'égard des postes de responsabilité» sont présents. Dans d'autres contextes, les barrières culturelles dans l'ensemble du pays ou certaines de ses régions ainsi que le poids de la tradition, des pratiques et des coutumes entrent en jeu, la «société patriarcale» n'étant pas «prête» à accepter la participation des femmes. Les responsabilités familiales des femmes et leur situation sur le marché de l'emploi (conditions de travail et rémunération) sont défavorables à une intégration dans le monde public et politique. Des contraintes financières personnelles ajoutées à celles exigées pour se porter candidates demeurent un frein supplémentaire¹⁵. Parmi d'autres facteurs mentionnés par les membres du RECEF, les suivants sont importants à noter, dont le manque de confiance des femmes dans leurs aptitudes ; les efforts insuffisants pour recruter des candidates ; les campagnes électorales difficiles à financer ; la violence et le harcèlement fondés sur le sexe ; etc.

Les études de cas¹⁶

Le Sénégal

Les femmes sont culturellement mobilisées dans la sphère politique sénégalaise, mais historiquement et culturellement, elles n'étaient pas nombreuses dans des postes de pouvoir ou de représentation. Malgré une augmentation constante de leur représentation à l'Assemblée nationale, passant de 0 % en 1957 à 22 % en 2007, le pays a voté la Loi instituant la parité absolue homme-femme, le 28 mai 2010, afin d'accélérer le cours de l'histoire.

Le Sénégal a un mode de scrutin mixte, dont 90 sièges sont pourvus au scrutin majoritaire, dans des circonscriptions ayant de 1 à 5 sièges, selon leur population. Il y a donc des listes de candidats pour les circonscriptions plurinominales. De plus, il y a une liste nationale de 60 sièges

¹⁴ Dans son étude publiée en 2021, International IDEA propose cette stratégie. On y présente le cas d'un groupe de la société civile du Zimbabwe ayant développé et présenté une loi modèle sensible au genre auprès des instances. Ce groupe a multiplié les démarches pour faire valoir que la loi devait être en adéquation avec les engagements nationaux et internationaux du pays pour assurer un système électoral équitable (*ibidem*, p. 136).

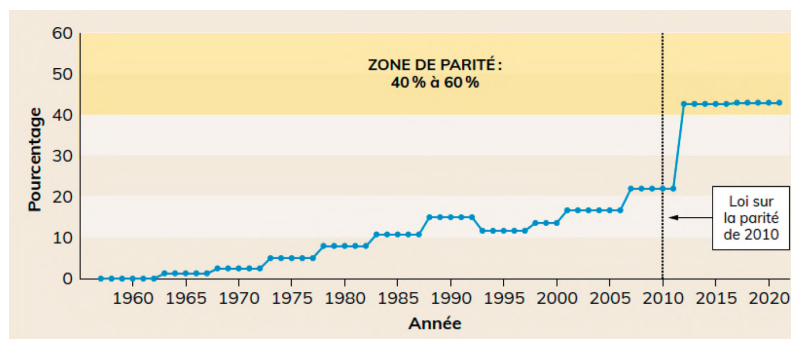
¹⁵ Les éléments présentés sont tirés de la consultation des membres du RECEF.

¹⁶ La version intégrale de l'étude contient 6 études de cas, soit le Rwanda, le Sénégal, la France, la Tunisie, le Canada et le Québec.

élus au scrutin proportionnel. Depuis 2016, il y a 15 sièges réservés pour la diaspora, pour un total de 165 sièges.

La loi sur la parité prévoit une alternance entre les femmes et les hommes sur les différentes listes électorales. Les résultats de cette loi sur la représentation des femmes sont sans équivoque. Dès les élections législatives de 2012, suivant l'adoption de la loi, le pourcentage de femmes au parlement est passé de 22 % à 42,7 %, apportant ainsi la représentation dans la zone paritaire située entre 40 % et 60 %. Le Sénégal fait partie des quelque 20 pays dans le monde ayant une députation dans la zone paritaire, et n'a rien à envier aux pays scandinaves souvent cités pour la place qu'occupent les femmes dans leurs parlements. Encore une fois, les mesures incitatives ont permis à la représentation des femmes de faire un bond historique dans ce pays.

Graphique 2 : Évolution du pourcentage de la représentation des femmes au Sénégal, 1957-2021

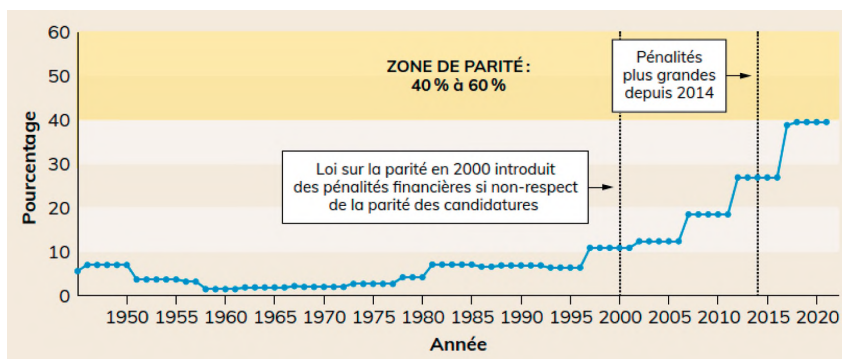


La France

La France est un pays où les femmes sont très actives dans la vie publique et sur le marché du travail, mais qui ne parvenait pas à dépasser 10 % de représentation féminine au tournant du millénaire. Le mode de scrutin majoritaire uninominal à deux tours ne favorise pas un grand nombre de candidatures féminines aux élections. Le 6 juin 2000, la Loi tendant à favoriser l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives a été adoptée. Cette loi contraint les partis politiques à présenter un nombre égal d'hommes et de femmes pour les élections régionales, municipales, sénatoriales et européennes. Pour les élections législatives, la loi est plus souple et ne prévoit qu'une pénalité financière du financement public aux partis politiques ne présentant pas 48 % de candidates. Plus l'écart est grand avec la cible fixée par la loi, plus la pénalité financière est importante. Cette loi a favorisé une accélération du nombre de candidatures lors des élections subséquentes. Néanmoins, afin d'accélérer davantage la représentation des femmes à l'Assemblée nationale, le pays se dote, le 4 août 2014 de la Loi pour l'égalité réelle entre les femmes et les hommes, qui double les pénalités financières prévues aux règles de financement public des partis politiques. Cette nouvelle loi permet une nouvelle accélération de la représentation des femmes dans l'histoire politique de la France.

Ces deux lois favorisant la parité démontrent qu'il est possible d'introduire une mesure incitative dans un mode de scrutin majoritaire uninominal, et d'avoir des résultats sur la représentation des femmes. Dès les élections de 2002, la représentation des femmes a fait des bonds successifs de 2 %, 6 %, 8 % et 12 % lors des quatre élections législatives qui ont suivi l'introduction de ces mesures financières incitatives, faisant passer la représentation des femmes de 10,9 % aux portes de la zone paritaire à 39,5 %. Ce bond d'environ 30 % en 15 ans correspond à une évolution de 2 % par année, ce qui est quatre fois supérieur à l'augmentation annuelle de 0,5 % observée par l'Union interparlementaire à l'échelle mondiale. Sans ces mesures incitatives, la proportion des élues françaises pourrait toujours être inférieure à 20 % en 2020.

Graphique 3 : Évolution du pourcentage de la représentation des femmes en France, 1945-2021

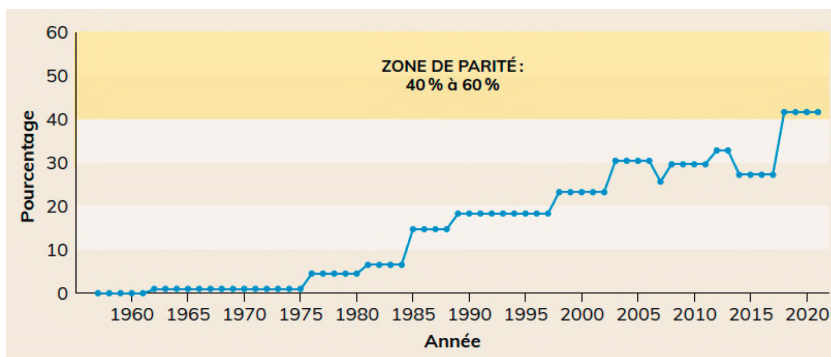


Le Québec

La province du Québec, au sein du Canada, est aussi dotée d'un mode de scrutin uninominal à un tour. Ce cas démontre qu'avec une volonté des partis politiques, même sans mesures contraignantes ou incitatives, il est possible d'augmenter la représentation politique des femmes. Lors des élections générales provinciales de 2018, le Québec a élu 41,6 % de femmes à son Assemblée nationale, un taux historique pour cette province marquée jusqu'alors par des gains et des reculs en cette matière. En effet, jusqu'alors, les données de la représentation des femmes à l'Assemblée nationale du Québec montraient que le taux n'avait progressé que de 2,4 % en 10 ans (de 2003 à 2013) et qu'en 2013, les femmes n'avaient encore jamais occupé le tiers des sièges¹⁷.

Lors de la campagne de 2018, le Québec a cependant assisté à un changement dans l'attitude et les stratégies des partis. Ces derniers ont fait un effort pour présenter davantage de candidatures féminines afin de dégager une image publique positive. Un certain effet d'entraînement entre les partis politiques et le suivi médiatique de cet engagement a mené aux résultats historiques cités précédemment. Les prochaines élections provinciales du Québec, prévues en octobre 2022, permettront de suivre cette évolution à long terme et de savoir si ces résultats sont le début d'une nouvelle ère de parité durable ou une simple parité contextuelle et d'exception.

Graphique 4 : Évolution du pourcentage de la représentation des femmes au Québec, 1957-2021



¹⁷ Élections Québec, *Femme et politique...*, op. cit., p. 1.

L'impact des mesures incitatives

Le portrait dressé sur la représentation des femmes dans les États du RECEF démontre que derrière les moyennes mondiales et continentales de la représentation des femmes se cachent des écarts très importants entre les pays. Et l'évolution mondiale annuelle de 0,5 % est grandement tributaire de l'introduction de mesures incitatives dans certains pays, faisant ainsi progresser plus rapidement la représentation politique des femmes.

En effet, les mesures incitatives permettent de faire augmenter réellement la représentation politique des femmes, comme l'illustrent les exemples du Québec, du Sénégal et de la France, qui ont trois systèmes électoraux totalement différents. D'autres cas, comme le Burkina Faso ou Haïti, démontrent que des mesures incitatives mal ciblées ou non contraignantes ne permettent pas de faire évoluer la représentation des femmes positivement, un peu à l'image des États n'ayant aucune mesure incitative, et ont statistiquement une représentation féminine très en deçà des moyennes des pays ayant de telles mesures.

Par ailleurs, au-delà de ces structures institutionnelles et légales, des facteurs sociologiques, historiques, culturels et autres influencent l'état de la situation dans chaque pays. Les OGE membres du RECEF peuvent jouer un rôle, dans les limites imposées par leur cadre législatif, afin de travailler sur cette situation. De plus, la structure organisationnelle des OGE et la représentation des femmes à l'interne ont un effet sur les dynamiques d'égalité entre les femmes et les hommes tout au long du cycle électoral.

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The Concept of Accessibility – Its Implications for Voters and Candidates

Katharina PABEL

Abstract:

The paper focuses on the implications of the concept of accessibility of the electoral process for voters and candidates. The basis for the reflections are the right to free elections and the respective case-law of the European Court of Human Rights as well as the standards and best practises developed by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR) over the last decades, most notably the Code of Good Practice in Electoral Matters. Reference will also be made to various reports concerning selected issues in this field.

Keywords: *accessibility, electoral process, voters, candidates, Code of Good Practice in Electoral Matters*

I. General remarks

A vital democracy depends on the active participation of its citizens. Therefore, it is in the core interest of any democratic state to foster the citizens' participation, which is primarily exercised through taking part in elections. The right to free elections as guaranteed in Article 3 of Protocol 1 of the European Convention on Human Rights enshrines the individual right to democratic involvement, containing both the right to vote and the right to stand for elections.¹ However, any right requires preconditions and settings to be exercised adequately and effectively. This is especially true for the (active) right to vote and the (passive) right to stand for elections.

It is first and foremost the task of the domestic legislation to define the preconditions and procedure of the voting process in order to enable the citizens to make effective use of their democratic rights. States should take care not to devise overcomplicated legislation. Instead, "electoral laws should be precise, clear and easily understandable for electoral officials, candidates and voters alike".² This is a first and very basic precondition to make the voting process accessible.

It is then up to all authorities and bodies to implement the respective law in a manner that again enables the citizens to make effective use of their right to vote and to stand for elections. Experience shows that it is not enough to have the "perfect" legal framework for the organisation and processing of democratic elections. Well-drafted electoral laws alone are not a guarantee for a democratic election.³ In addition, there does not exist a perfect electoral system which could be applied worldwide.⁴

While legislation is undoubtedly important, we must not underestimate the crucial role of implementation. The implementation of the law in every single election with the mindset of

¹ Christoph Grabenwarter, *European Convention on Human Rights. Commentary* (C.H. Beck, 2014), Protocol 1, Article 3, para. 6.

² Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 15.

³ *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2006)018, para. 9.

⁴ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 245.

supporting the effective use of the democratic rights is at least as important as the legislation itself. All of the election stakeholders must commit themselves to a fair and free election and to implementing the law objectively.⁵ To create and safeguard the accessibility of the electoral process is one crucial aim of both the law and its implementation.

Against this background, I will focus on some implications of the concept of accessibility of the electoral process for voters and candidates. The basis for my reflections are the right to free elections and the respective case-law of the European Court of Human Rights as well as the standards and best practises developed by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR) over the last decades, most notably the Code of Good Practice in Electoral Matters.⁶ Reference will also be made to various reports concerning selected issues in this field.

II. Accessibility for voters

1. The first precondition for the accessibility of the electoral process is granting the right to vote. Article 3 of Protocol 1 guarantees universal suffrage. This principle is of the utmost importance. As the European Court of Human Rights rightly stated: "Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates."⁷ However, this does not mean that there are no legitimate conditions potential voters may be asked to fulfil. Requirements regarding nationality and residence as well as a minimum age are laid down in most countries' legislations and are accepted as inherent limitations to the right to free elections by the European Court of Human Rights. In the majority of member states of the Council of Europe (CoE), the voting age is 18 years or older.⁸ Austria and Malta, for example, have a minimum voting age of 16 for national elections, while other member states are debating whether to also lower the voting age, thereby actively engaging young people.⁹ These limitations are not the focus of this paper but should be mentioned for the sake of the full picture. There is no accessibility without the right to free elections.

2. According to the Code of Good Practice in Electoral Matters, the proper maintenance of electoral registers is not only vital in guaranteeing universal suffrage, but also a precondition for the accessibility of the electoral process for every citizen. Electoral registers must meet a number of conditions to be kept reliable:

- there must be permanent electoral registers;
- there must be regular updates, at least once a year;
- the electoral registers must be published;
- there should be an administrative procedure subject to a judicial control or a judicial procedure enabling citizens not on the register to have their names included;

⁵ *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2006)018, para. 9.

⁶ *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23.

⁷ ECtHR, *Sukhovetsky v. Ukraine*, 13716/02, 28 March 2006, para. 52.

⁸ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 39.

⁹ *Ibidem*, para. 40.

– a procedure of the same kind should make it possible for citizens to have erroneous entries corrected.¹⁰

The exact form of voter registers can vary. In some European countries, population databases serve as a means to compile the list of eligible voters. In contrast, states may also only include voters in case they request it.¹¹

The European Court of Human Rights determined that an active system of voter registration does not in itself amount to a breach of Article 3 of Protocol No. 1.¹² In a case brought by the Georgian Labour party, the Court pointed out the state's wide margin of appreciation with respect to the design of the system of voter registration¹³ and stressed that many other democracies also had a comparable system in place.¹⁴ It is acceptable for voters not to be included automatically on the registers, but only on their request. However, providing accessibility to the electoral process calls for a clear, transparent and simple procedure with adequate time-limits for any voter to be included on the electoral register. Voters also have to be able to ask corrections of their data. In addition, it is crucial that complaints can be brought before courts.¹⁵ In general, the possibility to bring forward complaints exists in all CoE member states, although the exact design differs.¹⁶

3. The guarantee of universal suffrage must correspond to the guarantee of universal accessibility of the electoral process. Every person enjoying the right to vote must be in the position to effectively exercise this right. The voting process should not be too complicated and should be made public and transparent prior to voting day. Information on how to exercise the right to vote should be provided for, and be easily accessible through different channels. Voter education is deemed to be an integral part of the election process. It refers to basic information on elections (*e.g.* date and type of elections) and explanations of electoral procedures (voters registration, voting system, etc.), and usually also addresses the voters' motivation and preparedness to participate fully in the elections. Voter education is particularly central in emerging and new democracies and in situations where new electoral provisions or technologies are being applied for the first time.¹⁷ Special attention should be given to voters exercising their right for the first time. In addition, it is important to focus on persons with disabilities, internally displaced persons and national minorities, where voter education is concerned.¹⁸

With a view to the accessibility of information on the electoral process, the use of languages is crucial. In order to make electoral laws and material accessible to all citizens it is important that these public documents are published in all officially recognised and protected minority languages.¹⁹

¹⁰ *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23, para. I.1.2.

¹¹ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 72.

¹² ECtHR, *Georgian Labour Party v. Georgia*, 9103/04, 8 July 2008.

¹³ *Ibidem*, para. 90.

¹⁴ *Ibidem*, para. 91.

¹⁵ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 77.

¹⁶ *Ibidem*.

¹⁷ *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2006)018, para. 51.

¹⁸ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 34.

¹⁹ *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)023, para. I.3.1.b).

While the main institutions responsible for voter education are the administration bodies, it has been suggested to also involve political parties, non-governmental organisations and the media to achieve a higher impact.²⁰

4. Specific efforts have to be undertaken to improve the accessibility of the electoral process for specific groups in order to guarantee a non-discriminatory access.

One of these groups are disabled persons. Generally speaking, it can be established that the awareness regarding the situation of disabled persons in the electoral process has been improved in the last years. There has been a shift from general declarations to more detailed approaches, concentrating on how best to implement the voting rights of this group.²¹ Thinking of the very concrete accessibility of the polling stations for physically handicapped persons, many measures have been adopted in order to also enable this group of voters, disabled and elderly people, to enter the polling stations. Best practices and check lists had been developed (and applied subsequently) which improved the situation on the ground. Due to the sometimes costly and expensive adaption of buildings, there is still some progress to be made. The accessibility of the electoral process for blind voters is mostly provided for by offering support by other persons – with the side effect of occasional interfering with the right to a secret vote.

What is still an unsolved question is the exercise of the right to vote by mentally disabled persons. According to the European Court of Human Rights an absolute bar on voting for any person under partial guardianship, irrespective of his or her actual faculties, is not in line with Article 3 of Protocol 1. In *Alajos Kiss v. Hungary* the Court addressed this issue in detail.²² The Hungarian Government put forward the argument that the legislature must be allowed to restrict voting rights for those who are not capable of judging the consequences of their decisions and making reasonable decisions. The Court held that while the restriction of the right to vote for persons under guardianship might constitute a legitimate aim, a general ban on voting was not proportionate. Rather it is required that an individualised judicial evaluation must take place. The Court also highlighted that mentally disabled persons constitute a particularly vulnerable group among the population, which leads to a narrowing of the margin of appreciation for states.

This is not an isolated case. The European Economic and Social Committee (EESC) found that in member states of the European Union, we can witness a trend away from general bans towards a more individual evaluation.²³ It should also be mentioned in this context that in 2019, the German Federal Constitutional Court ruled that certain provisions of Germany's electoral law disenfranchising persons under guardianship were contrary to the constitution. A restriction on the right to vote may be constitutional, but only if the respective law meets certain conditions.²⁴

Against this background, the discussion on the accessibility of the voting process for mentally disabled persons still has to be continued.

²⁰ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 36.

²¹ European Economic and Social Committee, *Real rights of persons with disabilities to vote in European Parliament elections. Information report* (2019), SOC/554, para. 3.4.2.

²² ECtHR, *Alajos Kiss v. Hungary*, 38832/06, 20 May 2010, paras. 41–43; see also Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 57.

²³ European Economic and Social Committee, *Real rights of persons with disabilities to vote in European Parliament elections. Information report* (2019), SOC/554, para. 5.2.1.

²⁴ German Federal Constitutional Court, 2 BvC 62/14, 29 January 2019; see also European Economic and Social Committee, *Real rights of persons with disabilities to vote in European Parliament elections. Information report* (2019), SOC/554, para. 5.2.2.

The authorities also have to take specific measures in order to safeguard the accessibility of the electoral process for people living in care homes/nursing homes/hospitals, for prisoners or for people pursuing the military service. States have developed different ways and means to give those groups the opportunity to exercise their right to vote, including commissions established in the institutions concerned or “mobile commissions”. In any case, a fair balance must be found between facilitating the voting process and guaranteeing the secret ballot and the safeguarding against fraud or other irregularities.

Regarding citizens residing abroad, there is no international standard providing for the right to vote. Nor is there any standard providing for the possibility to vote from abroad (rather than by coming back to the country of origin).²⁵ Whether to allow persons residing abroad to vote is a very complex issue.²⁶ This complexity is evidenced by the fact that these citizens are not a homogenous group. On the contrary, some might stay abroad for a very short while, others for a temporary period to study or work, while some persons live abroad permanently.²⁷ There is also the subset of persons living *de facto* abroad, but who are still listed as residents in their original country.²⁸ With a view to this last group, it is essential to counter impersonation and multiple voting by residents who claim to impersonate individuals *de facto* living abroad.²⁹

In 2007, the Venice Commission formulated the essential factors to consider where the voting rights of citizens residing abroad are concerned: “Countries considering arrangements for external voting will have to balance universal suffrage against transparency and security during elections. It is also a matter of costs to what extent large groups can be accommodated.”³⁰ To find the right balance between universality on the one hand and transparency and security on the other is not an easy task.

The European Court of Human Rights, while highlighting the importance of voting rights of persons abroad, has also seen restrictions as justified when they were based on arguments like the following: non-residents may worry less about and have less knowledge about a state’s daily problems or may be less affected by the decisions of political institutions.³¹

The international trend is however favourable to out-of-country voting. In most CoE member states we find provisions relating to out-of-country voting. Among the most recent member states are Hungary, Romania and Greece.³² In *Sitaropoulos and Others v. Greece*, the Court studied 33 CoE member states and found that 29 had implemented procedures permitting casting one’s votes abroad.³³ Yet, the Court did not impose an obligation on states to enable citizens living abroad to cast their vote.³⁴ In *Shindler v. UK* the Court once more stressed the clear trend towards a more inclusive electoral system with a view to non-residents, but argued that “the legislative trends are not sufficient to establish the existence of any common European approach concerning voting

²⁵ *Summary report on voters residing de facto abroad*, CDL-AD(2015)040, para. 11.

²⁶ *Report on out-of-country voting*, CDL-AD(2011)022, para. 5.

²⁷ *Ibidem*, para. 6.

²⁸ *Summary report on voters residing de facto abroad*, CDL-AD(2015)040, para. 1.

²⁹ *Ibidem*, para. 31.

³⁰ *Joint opinion on the 26 February 2007 amendments to the electoral code of the Republic of Armenia*, CDL-AD(2007)023, para. 10.

³¹ *Report on out-of-country voting*, CDL-AD(2011)022, para. 69.

³² Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 52.

³³ *Report on out-of-country voting*, CDL-AD(2011)022, para. 14.

³⁴ ECtHR, *Sitaropoulos and Giakoumopoulos v. Greece*, 42202/07, 15 March 2012, para. 75.

rights of non-residents.”³⁵ The Court acknowledged that the matter should be kept under review, but once more highlighted the margin of appreciation the states possess in this field.³⁶ It has become clear therefore that while there may not be a common approach yet, this is clearly a highly dynamic field of election law.

If out-of-country voting is allowed, it should not remain wishful thinking but the state has to take measures to ensure its effectiveness. Effective measures in favour of voters abroad imply making their registration and the exercise of their right to vote as easy as possible, if necessary by multiplying the number of polling stations and voting methods (including postal, internet and proxy voting).³⁷ However, the risk of electoral fraud should be minimised, which is why the list of documents which serve as identity confirmation should not be very extensive.³⁸

5. The advent of the internet has dramatically altered political life. Voters are able to not only access a wealth of information, but can also share their political opinions with a practically limitless number of people.³⁹ With a view to the accessibility of the voting process, the use of technology can be an effective tool for improvements.

This is especially true for non-residents who can exercise their right to vote from abroad without extensive effort. This is also true for disabled persons who may use any form of technology in order to compensate their physical constraints. For any voter, the use of technology can reduce the efforts necessary to exercise the right to vote (spending time at a specific date, managing distances, etc.). This is the case especially in pandemic times. On the other side, it must be recognised that the use of technologies in the electoral process may cause new problems and challenges. The Venice Commission discussed the use of technology in the electoral process in several opinions.⁴⁰ This is not the place to repeat the details of the opinions. In general, the Committee of Ministers of the Council of Europe has highlighted in its Recommendation on legal, operational and technical standards for e-voting that e-voting shall be as reliable as democratic elections which do not involve the use of electronic means.⁴¹ The Venice Commission has established that a number of issues should be thoroughly considered, should any new technology be introduced in the electoral process, including a risk assessment of the costs, benefits and challenges of introducing such technologies, harmonisation of new provisions with existing data protection laws and standards, but also ensuring trust in the process, necessary check-ups and proper procedures for procurement, public testing and certification of the equipment, contingency planning if the technology fails, sufficient efforts for training electoral staff, and effective awareness-raising among voters and political parties.⁴² It has been suggested that new technologies be introduced gradually in order to

³⁵ ECtHR, *Shindler v. the United Kingdom*, 19840/09, 7 May 2013, para. 115. For a concise critique of both judgments, see David Harris, Michael O’Boyle, Ed Bates & Carla Buckley, *Law of the European Convention on Human Rights* (4th edition, Oxford University Press, 2018), pp. 916–918.

³⁶ ECtHR, *Shindler v. the United Kingdom*, 19840/09, 7 May 2013, para. 115.

³⁷ *Summary report on voters residing de facto abroad*, CDL-AD(2015)040, para. 36.

³⁸ *Ibidem*.

³⁹ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 179.

⁴⁰ For numerous examples, see in particular *Compilation of Venice Commission opinions and reports concerning digital technologies in the electoral process*, CDL-PI(2018)011.

⁴¹ *Recommendation of the Committee of Ministers to member states on legal, operational and technical standards for e-voting*, Rec(2004)11, para. i.

⁴² *Joint opinion on the draft electoral code as of 18 April 2016*, CDL-AD(2016)019-e – Armenia, para. 15.

be able to build confidence in the system and have the possibility to remedy technical issues and guarantee smooth implementation.⁴³

In its 2017 Recommendation to member states on standards for e-voting, the Committee of Ministers included very detailed suggestions with a view to guaranteeing universal suffrage.⁴⁴ The system should not only be easy to understand and use, but also allow persons with disabilities and special needs to cast their vote in an independent manner. The possibility of e-voting can never be the exclusive way of voting if it is not available to everyone. Finally, the Committee of Ministers suggests that voters should be explicitly reminded that they are taking part in a genuine election.⁴⁵ These very concrete suggestions seem very reasonable and should be followed.

III. Accessibility for candidates

1. As with the right to vote, the right to stand for elections is universal. Infringing on this right on the grounds of race, gender, language, religion, ethnic origin, political affiliation, or economic status is therefore not permitted.⁴⁶ However, states may impose some other restrictions on this right and the European Court of Human Rights has pointed out that states enjoy a margin of appreciation. In the Court's view, restrictions on the right to stand for elections are permitted to be stricter than those concerning the right to vote.⁴⁷ The Court explicitly refers to the Code of Good Practice in Electoral Matters when arguing this point.⁴⁸ However, the essence of the rights protected under Article 3 Protocol No. 1 must not be impaired.⁴⁹ In *Tănase v. Moldova* the Court highlighted another important general point. It emphasised that measures which appear to predominately restrict the opposition deserve particular scrutiny.⁵⁰

Turning to the restrictions to the accessibility for candidates in more detail, internationally accepted restrictions may include a minimum age that is higher than the voting age, citizenship and a residency requirement for a certain period before elections.⁵¹

Similarly to the point made already above, there should not be an overall ban on persons with mental disabilities to stand for election. This is an area where a lot of progress has yet to be made, since many countries still withhold the active and passive right to vote for persons under guardianship and trusteeship.⁵²

2. Another restriction concerning the passive right to vote is the requirement to obtain a minimum amount of signatures. The obligation to collect a specific number of signatures is

⁴³ *Ibidem*, para. 66.

⁴⁴ *Recommendation of the Committee of Ministers to member States on standards for e-voting*, Rec(2017)5, Appendix I – E-Voting Standards, paras. I.1.-4.

⁴⁵ *Ibidem*.

⁴⁶ *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2006)018, para. 74.

⁴⁷ ECtHR, *Melnychenko v. Ukraine*, 17707/02, 19 October 2004, para. 57; ECtHR, *Tănase v. Moldova (GC)*, 7/08, 27 April 2010, para. 155; see also Grabenwarter (n 1) para. 13.

⁴⁸ ECtHR, *Melnychenko v. Ukraine*, 17707/02, 19 October 2004, para. 57, referring to *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23, para. I.1.1.d.

⁴⁹ See also Franz Matscher, *Report on the abolition of restrictions on the right to vote in general elections*, CDL-AD(2005)012, para. 82.

⁵⁰ ECtHR, *Tănase v. Moldova (GC)*, 7/08, 27 April 2010, para. 179.

⁵¹ Mirjana Lazarova Trajkovska, *Report on the abolition of restrictions on the right to vote in general elections*, CDL-AD(2005)011, paras. 7–11 and 25–27.

⁵² Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 95.

considered as being generally compatible with the universal right to stand for elections.⁵³ The exact requirement of course varies. There are countries which only require signatures from parties not yet represented in Parliament or independent candidates, but there are also others where the requirement is applied in a non-discriminatory fashion.⁵⁴

The number of necessary signatures should not be too high.⁵⁵ In order to prevent manipulation, the Code of Good Practice in Electoral Matters stipulates that a maximum of one percent signature requirement in relation to the electorate of the level where elections are held should not be exceeded. However, there have been elections where the number was rather high, partly exceeding that laid down in the Code of Good Practice in Electoral Matters.⁵⁶

If there is an obligation in place to collect signatures, it follows that these signatures have to be examined, an often laborious process which might be abused.⁵⁷ With a view to the accessibility of the electoral process for the candidates, the signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample. In all cases candidatures must be validated by the start of the election campaign because late validation places some parties and candidates at a disadvantage in the campaign. It is also advisable to have the possibility to correct any purely formal or minor errors with a view to signature lists.⁵⁸ The law must therefore provide for a possibility to correct merely formal mistakes. The lack of such a possibility was recently criticised with regard to parliamentary and presidential elections.⁵⁹

3. There is another procedure where candidates or parties must pay a deposit, which is only refunded if the candidate or party concerned goes on to win more than a certain percentage of the vote. This procedure is also considered as generally compatible with the universal right to stand for elections. The European Court of Human Rights clearly stated that it was a legitimate aim for a state to confine its elections to candidates who took the process seriously.⁶⁰ However, the amount of the deposit and the number of votes needed for it to be reimbursed should not be excessive.⁶¹ This procedure has the advantage of not having to collect and subsequently check signatures; especially during a pandemic, which makes the collection of signatures very difficult, if not impossible, deposits are a safe alternative.⁶² However, this restriction also favours financial means over political support.⁶³

⁵³ *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2006)018, paras. 74 and 80; Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, paras. 119 and 120.

⁵⁴ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 119.

⁵⁵ ECtHR, *Mihaela Mihai Neagu v. Romania*, 66345/09, 6 March 2014, para. 31; see also Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 119.

⁵⁶ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 120.

⁵⁷ *Ibidem*, para. 124.

⁵⁸ *Ibidem*, para. 125.

⁵⁹ *Ibidem*, para. 125.

⁶⁰ ECtHR, *Sukhovetsky v. Ukraine*, 13716/02, 28 March 2006, para. 62.

⁶¹ *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23, para. I.1.3.9.

⁶² Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 27.

⁶³ *Ibidem*, para. 127.

4. Again, language requirements can hinder the accessibility of the electoral process for candidates. This was the situation in the case of *Podkolzina v. Latvia*, decided by the European Court of Human Rights in 2002.⁶⁴ The applicant had been struck from the list of candidates for parliamentary elections because of her insufficient command of the Latvian language, it being the sole working language of Parliament. The Court considered that the relevant legislation and rules requiring the sufficient command of the official language pursued a legitimate aim. However, the procedure followed by the competent bodies to certify linguistic competence lacked a fundamental guarantee of objectivity and fairness. Therefore, according to the Court, the decision to strike the applicant from the list of candidates amounted to a violation of Article 3 of Protocol 1.⁶⁵ This judgment therefore shows that while language requirements as such are legitimate, they must be applied in a proportionate manner.⁶⁶

IV. The right to an independent appeals process

The principle of universal suffrage does not end with the election itself. The Code of Good Practice holds that every voter and every candidate must have the possibility to challenge a potential failure to comply with the electoral law before an appeal body, although a reasonable quorum concerning the appeals by voters on the election results may be permissible.⁶⁷ With regard to accessibility, the procedure has to be simple. One possibility to help with this is to place at the voters' disposal special appeal forms.⁶⁸ Although appeal procedures should ideally be transparent and easily understandable, a lot still remains to be done in this area. Some countries do not have clear enough procedures where campaign and media-related complaints are concerned or there is ambiguity as to which institution is responsible for the complaint.⁶⁹

While the European Court of Human Rights does not draw on Article 6 of the Convention with regard to election disputes,⁷⁰ the Court also stipulated that there has to be some type of impartial judicial procedure.⁷¹ Although the Code of Good Practice speaks of both courts and electoral commissions as institutions which can take on this task, it recommends that the second level of appeal be a court.⁷² If there is an established tradition for this, Parliament can also serve as a first instance.⁷³

The appeal process is of relevance not only after, but in some cases also before the election takes place. Such instances include complaints about the right to vote and voter registration; but also the candidates may want to bring their complaints before the election takes place. This is the case, for

⁶⁴ ECtHR, *Podkolzina v. Latvia*, 46726/99, 9 April 2002.

⁶⁵ *Ibidem*, para. 38; see also Franz Matscher, *Report on the abolition of restrictions on the right to vote in general elections*, CDL-AD(2005)012, paras. 51–53.

⁶⁶ Franz Matscher, *Report on the abolition of restrictions on the right to vote in general elections*, CDL-AD(2005)012, para. 89.

⁶⁷ *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23, paras. II.3.3.92 and II.3.3.99.

⁶⁸ *Ibidem*, para. II.3.3.96.

⁶⁹ Michael Krennerich, *Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues*, CDL-AD(2020)023, para. 237.

⁷⁰ ECtHR, *Pierre-Bloch v. France*, 120/1996/732/938, 21 October 1997, para. 50.

⁷¹ ECtHR, *Grosaru v. Romania*, 78039/01, 2 March 2010, paras. 56–57; ECtHR, *Mugemangango v. Belgium*, 310/15, 10 July 2020, para. 69; see also Harris, O'Boyle, Bates & Buckley (n 36), pp. 934–935.

⁷² *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, CDL-AD(2002)23, para. II.3.3.93.

⁷³ *Ibidem*, para. II.3.3.94.

example, where the validity of their candidatures, media access or funding are concerned.⁷⁴ Since time is of the essence, appeals proceedings should be kept short, which is particularly important with a view to issues which have to be decided before the election.⁷⁵

V. Conclusion

Improving the accessibility of the electoral process for voters and candidates means bringing the right to free elections according to Article 3 of Protocol 1 to the ground, making it effective and therefore improving the democratic process in a state. This is of utmost importance also in times of crisis.

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⁷⁴ *Ibidem*, para. II.3.3.92.

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The Accessibility, a Theoretical Concept between National Law and European Regulations

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Abstract:

Democracy is based on elections held at regular intervals of time and on the decision of the majority. The European electoral heritage is largely made of international legal norms, as The International Pact on Civil and Political Rights, or The Additional Protocol to the European Convention on Human Rights. All of them are established in the Code of Good Practice in Electoral Matters. An element of criticism of European models for organising electoral processes is related to the financing of political campaigns and parties. In this article we try to underline the idea according to which the election of the democratic governing bodies of states should be a process funded exclusively by the public budget. We will also bring in the discussion one of the themes of reflection that European democracies should begin to discuss, namely the relationship between freedom of expression and the truth of what it is said.

Keywords: *democracy, electoral heritage, electoral processes, accessibility, rule of law*

A. The European heritage regarding the electoral system – on democracy and the rule of law

In order for democracy to be functional, a democratic society is also needed. A democracy is characterised by the fact that the entire authority of the state comes from the people. We bring to your attention here the preamble of the US Constitution. “We the people [...]”. The phrase “we, the people of the United States” is of unique importance. It is thus provided that the power and authority of the federal government¹ of the United States of America does not come from outside entities (such as God, the state, or the king), but from an inside entity, identified as the people of the United States of America. The constitution serves as a contract between the people of the United States, the multitude of states, and the newly created entity: the US federal government².

The following elements can be understood as being basic for all democratic states, **all these six fundamental elements** being in a close interdependence relationship. None of these can exist without the others.

The rule of law. A free democracy, which encourages the participation of all elements of society in the process of forming political will, must be structured in the form of a rule of law. Democracy and the rule of law are an indivisible union. *By the rule of law we mean all the principles and procedures that guarantee the freedom of the individual and his participation in the political life.*

Separation and balance of powers. The parties, and especially the opposition and free public opinion, have the role of controlling in whose hands the power is and to participate in the political life of the society. An effective control and influence of the state power is inconceivable in the absence of state authority. But while, in the case of parties and public opinion, the process of pluralisation rests with the social forces, the way in which state authority is divided is established by the Constitution, the power being distributed among the various courts and institutions, each

¹ *US Law Dictionary*, available at <https://dictionary.law.com>

² Laurence H. Tribe, *American Constitutional Law*, Foundation Press, 2000, ISBN-13: 978-1566627146.

of them independent. This constitutional separation of state competences aims not only at the mutual control of the organs, but also at the transparency of the activities of the state apparatus.

The separation of powers is what fundamentally distinguishes democracy from dictatorship.

Democratic and sovereign parliament. In a democracy, all power comes from the people. The power is usually exercised by elected representatives of the people gathered in parliaments. Their paramount mission is to decide the most important political directions of the state, usually through laws. That is why the Parliament is considered the legislative power. And because the Parliament legitimises itself through the elections in which the people take part directly, it has a privileged position and the right to co-decide regarding the occupation of the available seats in the other state bodies. This is especially true for the government, which, in parliamentary systems, is made up of members of parliament who are accountable to it.

Autonomous government. Everywhere there are human communities, leadership is needed. In modern democracies, the interaction of government with administration is an essential element of the political life. Both levels are considered by citizens as a common part of the leadership of a state. Currently, the government is composed of the members of the Parliament who have the majority seats, and some of them become the ministers. Even when – see the case of the USA – the executive, the president, is directly elected by the population, the Parliament retains its function of a control body. Therefore, the American presidential system is just a variation on the theme of the government with limited powers and appointed for a fixed period of time.

Parliamentary political opposition. Because in modern parliamentary democracies the government is most often supported by the parliamentary majority, the function of control is not shared between Parliament and the government, but between the government and the opposition, *i.e.* between the parliamentary majority and minority. By institutionalising the opposition, freedom is guaranteed, putting a barrier in the way of human nature and especially of the strong, little resistant to temptations. This barrier will prevent them from turning freedom into anarchy or despotism³. The opposition thus becomes a function of the political leadership, which is expressed in England for example, through state funding of the opposition leader as well as by the name given to it – “Her Majesty’s Opposition”. The institutionalisation of the limits imposed on political power within the parliamentary regime by the creation of an opposition was rightly considered “one of the happiest inventions in the rather poor inventory of political institutions”⁴.

Free and fair elections. Democracy is based on elections held at regular intervals of time and on the decision of the majority. The elected representatives then make decisions on behalf of the entire people, even the electoral minority. The electoral legislation of a state stipulates how the elections should work and how the seats in the Parliament are distributed according to the votes cast. This legislation differs from country to country and has a considerable influence on the structure of government and on the party system. However, all democratic countries have in common the fact that the right to run the society is temporarily limited.

Therefore, elections must take place at regular intervals. The people must change their government peacefully when they are not satisfied with its achievements. But not all elections are democratic. With regard to elections in a democratic system, there are certain criteria that must be met, which are meant to guarantee the conduct of democratic elections. We will attempt

³ Besson Waldemar, Jasper Gotthard, *The basic principle of modern democracy. Constructive elements of a liberal political order* (first edition 1991), edition Verlag J.H.W. Dietz Nachf (paperback), ISBN 978-3-80120163-0.

⁴ Martin Krygier, *Marxism and the Rule of Law: Reflections after the Collapse of Communism*, Law & Social Inquiry, vol. 15, no 4, 1990, pp. 633–663.

to list here some of them, without limiting ourselves only to this, and emphasizing the fact that democratic elections must be **general, equal and free**.

Regarding the way in which European states understand the concepts we have mentioned, we can bring into discussion some legal provisions from fundamental acts of EU Member States as well as the conventions to which they are party, legal provisions that highlight the common understanding at European level of the concept of democracy through voting.

The petrified area of European electoral heritage is largely made up of international legal norms. The relevant rule in the matter in question is set out in Article 25⁵ (b) of the **International Pact on Civil and Political Rights**, which expressly provides for the whole set of principles, with the exception of direct suffrage, which is presumed⁶. At European level, **the common rule is Article 3⁷ of the Additional Protocol to the European Convention on Human Rights**, which expressly provides for the right to regular elections by free and secret ballot. The other principles referred to in **the Code of Good Practice in Electoral Matters**⁸ have been recognized as arising from the jurisprudence⁹. In its decision no. 9267/81 (Case Mathieu-Mohin and Clerfayt v. Belgium), the ECHR ruled that “[...] In relation to the designation of the legislative body, the text (Art. 3 of Protocol no 1) obliges states to hold free elections, at reasonable and secret intervals, without requiring the election of any particular model, such as proportional, uninominal or majority voting, provided that the election result is met to reflect approximately the opinion of the people.” The right to direct elections has also been accepted by the **Strasbourg Court**, at least implicitly¹⁰. However, the constitutional principles common to the whole continent do not only appear in international documents, they are mentioned in detail in national constitutions¹¹. The existence of converging

⁵ “Every citizen has the right and the possibility, without any of the discriminations referred to in art. 2 and without unreasonable restrictions: a) to take part in the management of public affairs, either directly or through freely elected representatives; b) to elect and be elected, in periodic elections, honestly, with universal and equal suffrage and by secret ballot, ensuring the free expression of the will of the voters; c) to have access, in general conditions of equality, to the public positions in his country.”

⁶ See Article 21 of the Universal Declaration of Human Rights, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁷ The right to free elections: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, provided that they ensure the free expression of the opinion of the people regarding the choice of the legislature.”

⁸ Adopted by the European Commission for Democracy through Law at the 52nd Plenary Session (Venice, 18–19 October 2002).

⁹ ECHR, no. 9267/81, Mathieu-Mohin and Clerfayt v. Belgium, 2 March 1987, series A, vol. 113, p. 23; Judgment of Gitanas and Others v. Greece, 1 July 1997, no 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95, *Collection of Decisions and Decisions*, 1997-IV, pp. 12–33.

¹⁰ ECHR, no. 24833/94, Matthews v. The United Kingdom, 18 February 1999, *Collection of judgments and decisions* 1999-I, paragraph 64. The Court finds that the right to vote which is guaranteed to the applicant by Article 3 of Protocol no. 1 must not be curtailed by the conditions to such an extent as to impair their very essence and deprive them of their effectiveness. In the present case, the Court must ensure the existence of a “truly democratic political regime” in the territories to which the Convention applies, and in that context it must take into account not only the strictly legislative powers of a particular body, but also its role in the legislative process as a whole. “[...] The Court has stated in many cases that the Convention is a viable instrument which must be interpreted in the light of the present conditions [see, in particular, Loizidou v. Turkey, judgment of 23 March 1995 (preliminary objections), series A, no 310, pp. 26–27, § 71, with reference cited]. The mere fact that a body was not provided for by the authors of the Convention should not prevent that body from being included in the scope of the Convention. The Court recalls that the words ‘legislative body’ do not necessarily refer only to the national parliament; it should be interpreted according to the constitutional structure of the State concerned.”

¹¹ For example, Article 38.1 of the Romanian Constitution; Articles 68.1 and 69.2 of the Spanish Constitution; Article 8, 36, 37, 38 of the Romanian Constitution.

national laws and practices allows the precise content of the principles from the Code to be identified in the national systems. And that makes Europe's countries compatible and comparable.

B. The concept of accessibility of the electoral system

The Council of Europe was set up with the aim of achieving even closer unification among its members in order to protect the ideals and principles that form the basis of genuine democracy. Since its inception, the Council has sought to adopt rules with legal force in order to define and clarify the notion of "genuine democracy". In this respect, elections have always been the foundation of democratic regimes and therefore a prerequisite for joining the Council of Europe¹².

Failure to respect human rights and democratic principles may lead to the suspension of the accession process, such as the **Case of Belarus**, which held the status of special guest of the Council of Europe between 1992 and 1997.

The Council of Europe, through institutions and bodies such as **The European Court of Human Rights, The Parliamentary Assembly, The European Commission for Democracy through Law (Venice Commission) and The Council for Democratic Elections, The Group of States Against Corruption and The Division for Electoral Assistance**, play a key role in formation of electoral heritage and EU election standards.

Together with these international bodies, civil society organisations can and must contribute to improving European standards and good practices by establishing key links between policy and reality. In this regard, the Declaration of Principles for International Electoral Observers and the Code of Conduct for International Electoral Observers address the fairness of democratic elections as a necessary condition for democratic governance, as they are the engine through which the citizens of a country freely express their will regarding those who will have the legitimacy to govern in their name and their interests.

The organisation of fair democratic elections according to the documents shown is part of the establishment of broader processes of democratic governance. Therefore, while all electoral processes should reflect universal principles for fair democratic elections, they cannot be separated from the political, cultural and historical contexts in which they take place¹³.

The accessibility of the electoral system is manifested by the characteristics highlighted in the previous presentations¹⁴, but also by the perception of the general public regarding the usefulness of such a system.

¹² Parliamentary Assembly report entitled "For more democratic elections" by Jean-Charles Gardetto, quoting the Forum for the Future of Democracy in Kiev: "The aim of the Council of Europe is to ensure a common understanding of all the principles that qualify elections as 'free and fair' in accordance with democratic standards. These standards must be fully applied in all elections in the Council of Europe and in states aspiring to join or establish a privileged relationship with the organisation."

¹³ These documents have been developed through a lengthy process over several years, involving more than 20 international organisations, intergovernmental and non-governmental, concerned with observing elections around the world. The process began unofficially in 2001, then the United Nations Division of Electoral Assistance, the Carter Center, and the National Democratic Institute for International Relations formed a joint service and launched a formal phase of the process in October 2003 at a meeting at the Carter Center in Atlanta. This meeting was followed by another one in September 2004 in Brussels hosted by the European Commission. A current consultative process took place among the participating organisations and resulted in an agreement that was offered to the supporting organisations starting in July 2005.

¹⁴ Katharina Pabel, Professor, Vienna University of Economics and Business, *The concept of accessibility – its implications for voters and candidates*, and Cristian Pîrvulescu, Professor, Faculty of Political Science, Bucharest, *Keep in step with the time. Accessibility of voting and legitimacy of the electoral process in times of crisis*.

The essence of the functioning of a democratic electoral system must not be linked exclusively to excessive theorising and abstraction, a danger which is present especially in the field of academics and professionals from the electoral authorities. In the current technological conditions, where manipulation and misinformation processes are a real and extremely disruptive factor of electoral processes, one of the main efforts of electoral authorities in European countries and beyond must focus on **promoting the need of a democratic electoral system**, these authorities having more and more responsibility in educating the electorate regarding the nature of democracy, of its functioning through free and fair elections.

It is well known that manipulation and misinformation can only be fought by promoting (sometimes insistently) the truth. The truth is made known usually through a good education and training of the electorate both in school and outside of it, throughout life. People must be explained to and must be helped to internalise that a real democracy cannot function without their involvement in education for truth, not only during election campaigns, but also outside them. Because we believe that democracy involves in its essence the conscious participation of the citizens, always having in mind the need for truth in solving the “affairs of the city”. For the citizen of a modern democracy, voting has long been a privilege, after that it becomes a right and now, must become more than a right, voting must be seen as a civic duty. Just as loyalty to the country is a constitutional duty of the citizen of any European state, *mutatis mutandis*, loyalty to the democracy exercised by voting could be a central element of contemporary constitutional democracies in Europe.

C. The principles underlying a European electoral system

The fundamental principles of the European electoral heritage are highlighted by the Guidelines adopted by the Committee on Democracy through Law (Venice Commission) at its 51st plenary session in Venice, Italy, from 5 to 6 July 2002 and assumed at the level of all EU Member States.

At the moment, there are six fundamental principles at European level that define the common values of European states regarding democratic suffrage. These are:

1. **Universal suffrage**, which can be conditioned by age criteria (based on scientific data on the emergence and/or consolidation of judgment), belonging to a particular society (the one in which the electoral process is organised), as well as the transparent way of submitting and processing applications;
2. **Equal suffrage**, which includes equality of vote, as well as equality of electoral power, equal opportunities and non-discrimination based on sex or nationality;
3. **Free suffrage**, which requires the freedom of voters to form an opinion, as well as the fight against electoral fraud;
4. **The secret ballot**, which involves the sanctioning of any contrary conduct;
5. **Direct voting**, practiced for both central and local organs of power;
6. **The periodicity of elections**, maximum every five years. **The ephemeral mandates keep the essence of democracy.**

D. Equality of suffrage – critical considerations

Equal suffrage includes various aspects. An important part concerns equal suffrage, a value shared by all member states of the European Union. On the other hand, this is not enough. In order to speak of the equality of the suffrage, both the equality of the vote and, above all, the equality

of the electoral power and the equality of chance must be ensured. In a strengthened democracy, it is not unimportant to look at forms of electoral discrimination, such as discrimination against women or on ethnic grounds, with reference to national minorities.

An element of criticism of European models for organising electoral processes is related to the financing of election campaigns and parties. In almost all EU member states (some with secular democratic traditions such as France, but also in countries with still fragile democracies, such as Romania), we find investigations of criminal prosecution bodies on potential financial fraud of electoral funds, aspect which raises two types of questions:

1. Given that voting would become a civic duty in a democratic state, would it be more appropriate to exclusively fund publicly all electoral competitors? Is European democracy ready for such an organisation of electoral processes?

2. Under the conditions established, the first question is: is European democracy ready to ensure **EQUAL public funding** for all electoral competitors? Are we able, as a European society based on freedom, truth and the rule of law, to remove inequities in the financing of electoral competitors, at least during election campaigns?

“Money compensates for the lack of volunteers in political activities, and serves, in many of the societies, as a surrogate for the weak connection that political parties have with the citizens. Money is a transferable and convertible resource that helps parties gain public support and preserve their influence in society.¹⁵” The assertion of H.F. Alexander was first published in 1989. After more than 30 years, the political appetite of European citizens is declining, with turnout in European countries being a significant indicator in this regard.

The money in politics is not without scandals related to corruption and the attraction of illicit funds. We have enough examples in this regard, some famous ones such as the “The Formula 1 Business” in Great Britain in 1997, or other related to some presidential elections in France, or the other minor or major corruption scandals that happened in the electoral campaigns, that the press The EU reported in their time.

Another example of inequality concerns equal opportunities for electoral competitors. Here we can discuss the case of Romania. According to art. 18 paragraph 3 of Law 334/2006, as supplemented and amended, the subsidy from the state budget is granted according to the following criteria:

- a) the number of votes received in the general elections for the Chamber of Deputies and the Senate;
- b) the number of votes received in the general elections for the local public administration authorities.

Apparently, this provision seems to create a balance between the political forces relevant to Romanian society. In general, we find the same funding mechanism for political parties throughout Europe. But, on closer inspection, we can make some findings and raise some questions. Among the findings we see that the major beneficiaries of this mechanism, sometimes overwhelmingly, are the big parties, with some tradition in political life, as it creates a vicious circle in funding: one cannot access public resources unless one has received a large number of votes in the previous elections and in order to win a large number of votes, higher expenses are needed for the newer parties in order to promote their message to the electorate. *Mutatis mutandis*, the situation is

¹⁵ Alexander F. Herbert, *Comparative Political Finance in the 1980s*, Cambridge University Press, 1989.

the same as that of a young graduate in the labour market: for access to relevant and well-paid positions, experience in the job is required, but one cannot gain experience in the job because one cannot work in such positions, precisely because one has no experience. Hence the dilemma.

Moreover, during *The Cambridge Analytica* investigation, one of the witnesses revealed a consulting contract concluded between this company and the largest party in Romania, which revealed the services provided by this company in the Romanian electoral process from 2016, electoral process in which this party won the parliamentary elections.

The amounts coming from the state budget for the political parties, according to art. 25 of the respective law may be used in a limited way, for destinations expressly provided by law, including: expenses for press and propaganda; expenses for the production and distribution of commercials; expenditure on the organisation of political activities.

How legitimate, moral or legal does the annual funding provided by law become in relation to the “number of votes received in the general elections for the Chamber of Deputies and the Senate” in this case? How do we relate in these conditions to the principle of the Code of Good Practice in Electoral Matters which shows that the system must ensure equal opportunities for competitors, in terms of election campaign, media coverage of elections, and public funding of parties and election campaigns?

Such situations that can generate such legitimate questions are not only in Romania (remember the “Brexit referendum”) but can be analysed in almost all Western democracies. Therefore, if we consider that democracy by vote is a part of the very existence and functioning of European society, then implicitly we must accept that the electoral system must become part of the solidified body of the democratic state as the “public order” is. Just as the state admits only public funding for the organisation and functioning of national police as a public service of the state, so too the election of the democratic governing bodies of states should be a process funded exclusively by the public budget. And this means eliminating areas of financial influence and public manipulation of any kind, including the PAC.

In conclusion, one of the major problems of access to the electoral system in democratic countries, as we appreciate it, is the need to improve access to public financial resources and greater transparency of private funding of electoral actors, which will generate a higher degree of trust of the electorate in electoral processes.

E. Freedom of suffrage – critical considerations

Freedom of suffrage, as it is well known, presupposes the freedom of voters to form an opinion, the freedom of voters to express their will and the fight against electoral fraud. The meaning of each of these elements is explained in detail in the Code of Good Practice in Electoral Matters adopted by the European Commission for Democracy through Law, so we will not put too much emphasis on the theoretical elements.

We would like to highlight with reference to this fundamental principle one of the themes of reflection that European democracies should begin to discuss, namely the relationship between freedom of expression (a fundamental aspect of democracy as a form of government) and the truth of what it is said. This debate is carried out within the component regarding the voter's freedom to express his/her will. Thus, the question that arises in the current historical stage of European society, with a high degree of technological evolution and easy access to social media communication, is whether the electoral message of competitors can be constrained and, if it is so,

what would be the way to make this possible, in order to prevent the manipulation and in fact the hijacking of the results of an electoral process, as was unfortunately found in the American (2016) and British (2016) electoral practice.

The broader discussion must address the issue of freedom of expression versus the truth of what it is said in the same way that Western democracies approach the dilemma of freedom versus security after 2001. This new discussion at the level of European democracies which are based on voting is all the more necessary after USA's unfortunate experience from November 3rd, 2020 to January 6th, 2021. To what limits can electoral competitors go in the name of freedom of expression during election campaigns and from which point the democratic state authority can intervene and apply corrections, so that the electoral system remains credible and can continue to guarantee that the outcome of electoral processes reflects the state of truth or the real will of the electorate.

This dilemma is a fundamental one, for which European democracies must provide additional resources and electoral authorities must have their social functions wider, especially in the area educating the electorate. European democratic states need to start investing more in their people's education for democracy, because in our view, the only real weapon against manipulation is education for truth. Education is an ongoing and costly process, but the benefits of democracy through voting are great enough for European states not to be reluctant to allocate the resources needed to cultivate this form of government.

F. Conclusions

At the current stage of development, European society is under constant attack against democracy, which occurs both internally and externally.

The internal attack that erodes the confidence of the electorate in the quality and necessity of a democratic system based on regular, equal, direct, secret and freely expressed universal suffrage occurs when social forces appear interested in speculating the imperfections in regulating the organisation or in financing electoral systems, aspects which usually lead to various forms of electoral fraud, or to segregation of certain population categories.

The external attack, which, from our point of view, is a deeper one, with more serious effects and more difficult to counteract, is the attack that Euro-Atlantic democracies are currently facing, being developed through hybrid, manipulative forms of aggression which tend to take advantages on possible weaknesses in democratic systems (such as those shown above, regarding the lack of correlations between freedom of expression and the truth of what it is said). In this way, manipulation within this area which leads to different results than people want becomes possible, as we already see occurring in recent election cycles in countries with deep democratic traditions, such as the US and UK. Universities should be more involved in this area and catalyse the interest of administrative authorities in improving European electoral systems, so that they can be more successful in either increasing the participation of the electorate in electoral processes or in increasing the quality of results in the electoral process.

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Making Elections Accessible in Romania: A Work in Progress

Cristian-Alexandru LEAHU

Accessibility is a rather new concept for the Romanian election practitioners. It was first used in a decision of the Permanent Electoral Authority in 2016 in connection to the access to polling stations of voters with disabilities. It later appeared in the text of the Government Emergency Ordinance no. 29/2019 under the form of an obligation of mayors to guarantee accessibility of polling stations and later was inscribed in several programmatic documents on rights of persons with disabilities. Though the concept of accessibility became an overall objective of the Permanent Electoral Authority, mainly as a reaction to obstacles faced by citizens abroad when trying to exercise their right to vote, due to the COVID-19 pandemic it has quickly covered all stages of the electoral cycle. The scarcity of legal references to the accessibility of elections does not help to fully encompass the grasp of the concept and its pervasive effect on Romanian elections.

The following presentation will focus on the following issues:

- 1) the meaning of accessibility, its current and future place in the Romanian electoral law, and the consequences it entails;
- 2) the work done so far to facilitate accessibility;
- 3) key-entry points to making elections in Romania more accessible.

Concepts are instruments of inquiry and theoretical deduction, but also the necessary elements of electoral norms. The well-known electoral adjectives (universal, equal, direct and secret) play a particular role in electoral law, foremost because of their instrumental nature to democracy. Courts and regulators regularly use these concepts either in their legal reasoning or in enacting positive law.

These observations apply with particular force to the concept of election accessibility. Therefore, before laying any groundwork, we will try to explain its meaning as ever so often, in Romania, new policies and implementation mechanisms are built on misunderstood or insufficiently internalised concepts borrowed from other legal or administrative systems or from international documents.

The accessibility of elections is an abstract concept, difficult to quantify and assess. In this regard, the work of election observers and judges has both an evaluative and a regulatory value; best practices, once identified, are often integrated into the electoral law or serve as a standard for comparison and evaluation of the electoral process. However, in spite of experience and research, the accessibility of elections eludes a unique definition, being understood either as an objective right, a principle, a standard, or all of the above.

My hypothesis is that election accessibility should be analysed as a distinct and progressive concept of electoral law, stemming from the right to free and fair elections and from constitutional principles such as universality and equality of fundamental rights, a concept opposable to legislators, courts and election administrators. Electoral law demands autonomy, both in its study and in its application, as it benefits from a specific and dynamic substance, principles, legislation and scientific language. The emergence of democratically regulated electoral markets and the rise of independent electoral management agencies lead to a new paradigm of elections as a universal service provided to all adult citizens.

One of the most visible facets of the election accessibility principle is that all adult citizens should benefit from the ease of access to all phases of the electoral cycle, tailored to their specific

needs. To that end, as a corollary to the principle of universal and equal suffrage, primary and secondary electoral laws should be constructed and interpreted extensively in such a way that all citizens are provided with the most legitimate possibilities to participate in all phases of the electoral cycle. Also, this perspective entails an obligation of the state to establish universal access by design to its electoral system.

With this in mind, the evolution of the Permanent Electoral Authority was driven by considerations on expanding and improving the ease of access of *consumers* to better *electoral services*. During the years, the Permanent Electoral Authority went from an organisation providing consultancy to the parliament and government on electoral issues to a fully-fledged provider of *election services* to voters, political parties, candidates, election observers, election bureaus, other election stakeholders, researchers, academia, etc.

One of the first projects of the Permanent Electoral Authority, which increased election accessibility, was the Electoral Register, an information system developed to register and allocate voters to a polling station. Since its establishment, the Electoral Register has evolved beyond passive voter registration, enabling voters to easily access their information and to actively register at their secondary place of residence or as out of country voters, either by going to a polling station or by voting by e-mail. During the last elections, online registration mechanisms and procedures were regulated and implemented, all to provide ease of access to out of country voters and to eliminate paper-based procedures, which proved to act as obstacles to voter registration.

Another important project of the Permanent Electoral Authority was the liberalisation of employment in the *electoral market*. This project set up a roster of electoral experts for the polling station bureaus, accessible to all Romanian citizens of voting age, without criminal priors, who passed a universal exam organised by the Permanent Electoral Authority. It replaced a somewhat arbitrary system under which local authorities purportedly could nominate whomever they willed. In practice, the lack of a clear procedure and eligibility requirements linked to professional capacity led to restrictive practices, which hindered free access to official positions in polling stations of electoral bureaus.

Another obstacle removed from the access to the *electoral market* was the generally spread belief in fraud claims regarding illegal and multiple voting or falsification of election results. The lack of trust in the sincerity of elections impeded the will of voters, potential election officials and candidates to access elections, obstructing the competitiveness of the market.

The answer of the Permanent Electoral Authority was the development of the Electronic System for Voting Monitoring and Prevention of Illegal Voting, based on tablets utilised in polling stations by operators designated by the Permanent Electoral Authority. Its main functions are to:

- verify the identity of the voter;
- verify whether citizens have the right to vote, as per the law;
- verify if citizens are registered in the Electoral Register;
- verify if the voter is allocated to another polling station;
- warn about illegal or multiple voting attempts;
- show real-time statistical data on the turnout for each polling station;
- transmit preliminary election results and photographs of the paper protocols with the election results.

Additionally, tablets are used to record (both audio and video) the vote counting procedures done by the members of the polling station election bureau.

Special attention was given to access to polling stations of voters with disabilities and reduced mobility by devising adequate guidelines to be used by the organisers of the polling stations

and by monitoring their implementation. It ensured some progress and raised awareness on the necessity of accessible polling stations for voters with locomotor disabilities.

Expanding voter access was one of the main priorities over the last years of the Permanent Electoral Authority and civil society. Public outcry regarding the lack of access to voters outside the country was decisive in the adoption of legal changes to out-of-country voting procedures, by implementing postal voting, by extending out-of-country voting to two or three days, by allowing voters abroad to sign for receiving their ballots electronically, directly on the tablet used to verify their eligibility to vote. The legal amendments proposed by the Permanent Electoral Authority allowed people in queues to vote until midnight and provided voters an opportunity to download their ballots from a special website to facilitate the process of postal voting. One of the legal changes proposed to the Parliament in 2020 intended to make mobile voting more accessible to voters (a procedure in which a team of two members of the polling station bureau goes to the place where the voter is at with a special ballot box, ballots and a stamp).

Another relevant issue is the ballot access. Legal amendments drafted by the Permanent Electoral Authority were enacted in 2015 to provide electoral competitors reaching a threshold of 3% votes cast with reimbursement of their legal electoral expenditure. Also, the Permanent Electoral Authority proposed legal changes prompted by the pandemic, to reduce the number of required supporting signatures for the candidates and to use electronic signatures. A clear indicator of the impact of the last-mentioned amendments on the access to the ballot is that the number of candidates in the 2020 local and parliamentary elections, during the pandemic, did not decrease compared with the 2016 local and parliamentary elections.

Access to the election observation is another service provided by the Permanent Electoral Authority, which proposed regulations aimed at increasing the autonomy and responsibility of civil society organisations while reducing the administrative burden required by the accreditation of observers.

Elections, which occurred in Romania in 2020, deserved a particular scrutiny as restrictions imposed by the pandemic took a toll on accessibility to election campaigns and to polling stations. Delivering basic services and implementing rules regarding social distancing, disinfection and the use of face masks took precedence. Supplementary services were analysed but ultimately were not provided due to financial and personnel-wise considerations. Mobile voting was also made available to quarantined and isolated voters. However, there were cases where polling station officials would refuse to endanger their health by accompanying the ballot box to these voters.

If anything, 2020 Romanian elections stressed more than ever the need for election reform as vulnerabilities and flaws in accessing the electoral services were aggravated by the COVID-19 crisis. In 2021, as in previous years, these barriers remain. Even the use of technology was not enough to alleviate the distance between specific categories of the electorate and the electoral system.

Overall accessibility to elections is an objective, which should be further pursued by identifying key-entry points to achieve maximum results with available resources. The first item on this agenda could be the simplification of the ballot, as it is the point of convergence of *election consumers* with *providers of political and electoral services*. Going from multi-page to single-page ballots would go a long way to enhancing voter access, especially the access of persons with disabilities, and to simplifying voting and counting procedures, thus encouraging ordinary citizens to access positions in polling stations. It could also lead to the elimination of stamps used now to mark the election preference on the ballot, it would facilitate the organisation of polling stations in places which are out of reach at this time and would allow for better paper quality. Also, rearranging

and condensing ballot information should facilitate a better understanding and identification of the favourite electoral contestant, which in turn could stimulate the participation of political parties and independent candidates. In a nutshell, single-page ballots could have a knock-on effect enabling greater access to elections for all.

Some other key entry points, as identified so far, could be:

- the improvement of the relationship between voters and election authorities before election day: registering on-line to vote at another polling station than the polling station at the place of residence; better access to submission and adjudication of election complaints; registering on-line to vote via a mobile ballot box; better access to information on election bureau activities; the consolidation of the status of electoral experts and IT operators;
- improving the relationship between voters and political parties and candidates: implementing democratic and voter education programs in schools; better regulation regarding registration of political parties and publicity of their leadership and activities; implementing a centralized information system to be used in the collection of support signatures and candidate registration procedures; as mentioned before, steps in that regard have already been taken by amending legislation on local and parliamentary elections to dematerialise candidate registration procedures; granting better access to media to non-parliamentary political parties and to independent candidates;
- introducing at least one alternative voting procedure for voters in the country, within strict parameters, either under the form of postal voting or early-voting;
- modernising polling station locations and election logistics to increase efficiency and accessibility.

As to the internet voting, it is safe to say that no long-term strategy to increase accessibility can remain immune to its promises and allure. However, all past attempts to regulate internet voting, belonging primarily to members of the Parliament, were not adopted because they were perceived as having to address more thoroughly issues such as the secrecy of the vote, the security of the voting system and responses to fraudulent interventions. Internet voting was also seen as giving an improper advantage to some political parties over others, specifically those whose electorate is not well familiar with technology.

Other states' election practices on e-voting cannot be simply replicated in Romania. Any decision regarding the implementation of e-voting should be preceded by large and inclusive debates, research and testing to substantiate future possible policy options and to build consensus on the system that will be used. Introducing e-voting should be a gradual process and technical solutions should be piloted in advance on a limited scale in several election scenarios (*e.g.* either local referendum or local by-elections).

On the same note, I would conclude that besides election organisers, even political parties could strive to increase the accessibility of the services they supply to the electorate, foremost by providing accurate, accessible, comprehensive, and timely information on their activities and candidates.

Evolución de los Procesos Electorales en El Salvador de Cara a los Próximos Comicios Electorales 2024

Dora Esmeralda Martínez de BARAHONA

Resumen:

A partir de la creación del Tribunal Supremo Electoral, desde la Constitución de la Republica de 1983, se generó un desafío democrático en El Salvador, partiendo del 1 de agosto de 1994 se inicia el trabajo de la institución frente a los desafíos y consolidación de elecciones periódicas, cambia la manera de elegir a los funcionarios de elección popular bajo el marco de paz y democracia.

El Parámetro normativo interno en materia electoral salvadoreña es el Código electoral, sin embargo en distintos periodos ha existido cambios jurisprudenciales que generan un panorama distinto en los procesos eleccionarios, a través de las diferentes sentencias de la sala de lo Constitucional y los cambios en legislación secundaria de la Asamblea Legislativa, en lo dispuesto en el Código electoral, la ley de partidos políticos y las disposiciones especiales para la postulación de candidaturas no partidarias.

Palabras clave: paz, desafío, democracia, jurisprudencia, sentencias, legislación

El artículo trata el contexto histórico de la institución, los principales cambios jurisprudenciales en los últimos 15 años, en que consiste los procesos electorales y sus diferentes etapas, el contexto de las elecciones 2021 con sus respectivos cambios en la etapa de pandemia y post pandemia, propuestas de reformas electorales para la implementación de un nuevo proceso electoral y las debidas conclusiones.

Las elecciones en El Salvador se tornarán un poco diferentes no solo por los cambios legales y jurisprudenciales, sino que busca adaptarse a la realidad y contexto que vive el país, generándose además un mayor énfasis en el tema de la equidad social y la inclusión de género. Lo que se busca es que haya mucha más participación de las mujeres en cargos políticos de elección popular, siendo un honor y orgullo el ser la primera mujer en ocupar el cargo de titular en una institución pública de carácter electoral, a partir del 1 de agosto de 2019, con el cargo de Magistrada Presidenta del Tribunal Supremo Electoral de El Salvador, el camino no ha sido fácil, ya que es una institución que a lo largo de su historia, que data ya de treinta y un años, y durante 29 elecciones realizadas, se establece hasta el día de hoy dentro de la institución cambios como infraestructura institucional o aspectos de saneamiento y planificación y mejoras de todo el personal que conforma el TSE de El Salvador logrando así la misión y visión del TSE en los distintos procesos electorales democráticos.

A partir del primer organismo colegiado que integro el TSE, y bajo un marco de conflicto armado, generado por una lucha social, se presentaron dificultades en la celebración de las elecciones de manera pacífica, poniendo en riesgo no solo a los candidatos y candidatas de ese momento sino al personal del tribunal que tenía que desplazarse dentro del territorio nacional, no obstante dicha institución llevo a cabo las elecciones y garantizo que las mismas se llevaran de manera ordenada, democrática y transparente.

Otro escenario importante se llevó a cabo en lo que se denominó “Las Elecciones del siglo” ya que fueron las elecciones post guerra donde participo como partido por primera vez la otra fuerza insurreccional y a la vez en ese mismo evento se desarrollaron las 3 elecciones para presidente y vicepresidente, diputados y consejos municipales, en marzo de 1994, otro aspecto relevante que

las elecciones fue que estas fueron oficialmente observadas por ONUSAL a solicitud del gobierno de El Salvador¹.

Entre los años 1994 y 1999 el Tribunal Supremo Electoral inicio una campana de modernización, lo que se buscaba era modernizar el registro electoral, cambiar el documento que en esa época acreditaba al ciudadano a votar que era el carnet electoral, con una iniciativa de hacer un solo documento de identificación que sustituiría al carnet antes mencionado, y la implementación de una nueva legislación electoral que garantizaría la participación de todos los contendientes en las elecciones.

A partir del 2000 se sustituyó el carnet electoral por el Documento Único de Identidad, para las elecciones del año 2004, con esto se unifico la información por medio del Registro Nacional de Personas Naturales (RNPN), quienes se alimentan de los registros de las alcaldías y otras entidades, y con ello alimenta el padrón electoral que es utilizado en las elecciones y que contiene solo las personas aptas para votar.

Se avanzó con la implementación del Voto Residencial, que a pesar de haberse mantenido durante muchos años en discusión dentro de la agenda nacional no habla alcanzado ningún resultado político. Y no es sino hasta las elecciones del año 2006, en que el país obtiene los primeros resultados concretos con la realización de un inédito Plan Piloto de Voto Residencial en 7 municipios del país. Este ejercicio pauto la ampliación de este plan a 23 municipios en las elecciones del año 2009 que incluyo un departamento completo, como fue el departamento de Cuscatlán, con lo que se creó la experiencia institucional acumulada que permitió la proyección de posibilidades reales de avanzar en el proceso de instaurar en El Salvador, el sistema de voto residencial.

La Auditoría Integral al Registro Electoral es otro de los logros históricos, fundamental para la pureza y la credibilidad de los procesos electorales en el país. Haber abierto el Registro Electoral Salvadoreño al escrutinio riguroso de la Organización de los Estados Americanos (OEA), desde las fuentes de origen como son las alcaldías municipales, el órgano judicial, la Dirección General de Migración y Extranjería (DGME) y el Registro Nacional de las Personas Naturales (RNPN).

En el periodo 2009-2014, la Institución continuo por la ruta del fortalecimiento e incidencia a nivel nacional, habiéndose alcanzados logros importantes entre ellos:

- El Voto Residencial que en las elecciones del 2012 cubrió 185 municipios del país equivalentes al 70% del territorio nacional, y en las elecciones del 2014, El Salvador tuvo el sistema de voto residencial instaurado en todo el país lo que significó un salto de calidad para el sistema electoral salvadoreño.

- Las reformas del sistema electoral provenientes de las sentencias de la sala de lo constitucional como fueron la participación de candidaturas no partidarias y la votación por listas cerradas desbloqueadas en 2012 (Institucionalidad 61-2009 y 57-2011) con papeletas de votación con fotografías, significaron retos importantes para el TSE que a la postre supo liderar la ejecución de dichas reformas.

- Se implementó el voto desde el exterior, siendo la primera vez en las elecciones presidenciales del año 2014, fue otro de los cambios sustantivos en el sistema electoral que la institución supo sacar adelante.

- Las gestiones de cooperación internacional acercaron al TSE a organizaciones como el PNUD, OEA, USAID-Democracia Internacional y Unión Europea (UE) de quienes se recibió importantes apoyos.

¹ Tribunal Supremo Electoral, Plan Estratégico Institucional TSE 2020-2024, 2020, El Salvador.

– El TSE a nivel internacional fue anfitrión de la XXXVI conferencia del protocolo del Tikal entre el 25 y el 28 de septiembre del 2012, evento durante el cual asumió la presidencia de dicho organismo; integrando la creación del Consejo de Expertos Electorales de América Latina (CEELA); se realiza la IV Conferencia Latinoamericana de Justicia Electoral con el apoyo de IDEA Internacional el 3 y 4 de septiembre de 2012; se celebra el V encuentro de Magistradas Electorales de Iberoamérica del 19 al 21 de mayo de 2014 con el acompañamiento del PNUD y se logra participar en el proceso de fundación de la Asociación Mundial de Organismos Electorales (AWEB).

– Se creó la Oficina de Información y Respuesta del TSE en cumplimiento a la Ley de Acceso a la Información Pública y se creó la figura Observadores Electorales, nombrados por los partidos políticos contendientes para la transmisión y procesamiento de resultados electorales preliminares de 2014.

– En este periodo también se fortaleció la participación electoral inclusiva y se creó en el TSE la Unidad de Igualdad de Género.

– En el año 2014 el TSE organizó y celebró por primera vez y con éxito las elecciones presidenciales en primera y segunda vuelta, siendo gran avance del proceso democrático salvadoreño.²

Entre las transformaciones del sistema electoral, se fomentó la transparencia y la rendición de cuentas (2014-2019), esta etapa está enmarcada en el periodo de gestión entre el 1 de agosto de 2014 al 31 de julio de 2019, dejando una huella en la historia electoral de El Salvador por la ocurrencia de hechos inéditos que establecieron un antes y un después en la administración de procesos electorales en el país, generados por las resoluciones y sentencias de la Sala de lo Constitucional de la Corte Suprema de Justicia de la época, que no solo dieron continuidad y profundizaron cambios trascendentales en el sistema electoral salvadoreño que debieron ser implementados por el Tribunal Supremo Electoral en el corto plazo, sino que intervinieron la ejecución misma de los procesos electorales que a pesar de ser una injerencia a la Institución electoral siempre acato las resoluciones emanadas no obstante que implica cambios al proceso electoral.

Unos de los grandes desafíos afrontados fue la llegada de una crisis sanitaria provocado por la pandemia del COVID-19, en el año 2019 de cara al inicio y ejecución de un proceso electoral salvadoreño, correspondiente al año 2021, lo que ponía en evidencia el delicado y complicado panorama que tuvo el TSE en materia de organización y ejecución de las elecciones realizadas el 28 de febrero del 2021, dentro de este contexto puede mencionarse aspectos importantes como son la elecciones constitucionales de las actuales magistraturas del TSE por parte de la Asamblea Legislativa la cual tuvo lugar el 30 de julio del 2019, las magistradas y magistrados electos en esa ocasión, asumieron sus funciones a partir del 1 de agosto de ese mismo año.

En el trascurso de cada uno de los periodos de tiempo en el que se logra establecer cambios en materia jurídico electoral que directamente genera cambios en materia del sistema electoral salvadoreño, principalmente en temas jurisprudenciales de los cuales la implementación desde anterior proceso electoral inmediato anterior hasta el actual proceso electoral es importante destacar las figuras jurisprudenciales más relevantes en un periodo de tiempo desde su nacimiento hasta su ejecución desde los últimos 15 años, para poder denotar e identificar la evolución y avance a las elecciones que se avecinan.

La Corte Suprema de Justicia por medio de la Sentencia de inconstitucionalidad 092006 de fecha 25 de noviembre de 2008, se logra establecer uno de los elementos del sistema electoral, el cual es la circunscripción electoral, o el caso de la fórmula electoral que se denota en la

² Tribunal Supremo Electoral, Plan Estratégico Institucional TSE 2020-2024, 2020, El Salvador.

sentencia de inconstitucionalidad 42-2005 de fecha del 07 de noviembre de 2011, o durante la incorporación de jurisprudencia salvadoreña se logra determinar sentencias donde establecen derechos fundamentales en materia electoral como en la sentencia de inconstitucionalidad 08-2014 donde desarrolla supuestos jurídicos de la propaganda electoral o las sentencias 66-2013 y la 39-2016 en donde establece la figura del transfuguismo y su debida prohibición.

Al identificar que la jurisprudencia salvadoreña ha tenido un impacto y avance en materia electoral salvadoreña se puede establecer una relevancia de 4 figuras electorales las cuales son: la incorporación de las candidaturas independientes o no partidarias en el sistema electoral, la figura del voto cruzado como incorporación a las formas de votar a favor del electorado, la ciudadanización y proceso de profesionalización de los Organismos Electorales Temporales y la incorporación de los salvadoreños en el exterior en las elecciones a candidaturas para los concejos municipales y Diputaciones del Parlamento Centroamericano como para la Asamblea Legislativa.

Es de tomar en cuenta como se mencionó en el contexto histórico la ampliación de nuestra jurisprudencia Nacional que por medio de la Sala de lo Constitucional de la Corte Suprema de Justicia directamente relaciona en la sentencia de inconstitucionalidad 61-2009, permite establecer que la figura de las candidaturas independientes ha logrado incorporarse al sistema electoral y jurisprudencia constitucional salvadoreño, esto ha permitido no solo por la contienda de candidatos no partidarios en las últimas elecciones a nivel legislativo, sino la respuesta del electorado en el año 2018 en que un contendiente como candidato no partidario pudiera llegar a la Asamblea Legislativa como Diputado no partidario y representará una posición legislativa dentro del parlamento, el tratamiento legal de la figura de las candidaturas no partidarias fue implementada bajo las disposiciones especiales establecidas en el decreto legislativo n°555 de fecha dieciséis de diciembre del año dos mil diez.

En cuanto al conteo de votos para lograr consignar un escaño por parte del candidato para ser electo como diputado para la asamblea legislativa, es de establecer mediante la sentencia de inconstitucionalidad número 59-2014, un cambio de criterio: „la controversia a resolver radica en determinar si el art. 217.b del Código electoral produce un trato diferenciado o discriminatorio para el acceso al cargo de diputados, al establecer la citada disposición la fórmula del cociente electoral a todos los candidatos de cada partido en su conjunto (por medio de listas o planillas), y exigir la misma fórmula a los candidatos no partidarios, pero de manera individual (sin estar agrupados en listas o planillas)”³.

Desde el inicio de este decreto regulariza la nueva reforma dentro del Código electoral en la implementación del conteo de votos para las candidaturas no partidarias el cual menciona las reformas al Código electoral, en primer lugar, en el art. 161 CE. y la forma de implementación de las planillas de candidaturas de partidos políticos y candidaturas individuales no partidarias, en su literal b.

Otro de los cambios jurisprudenciales es la implementación del voto cruzado que, mediante sentencia de inconstitucionalidad de la Sala de lo Constitucional 46-2014, de fecha 5 de noviembre de 2014, declarándose la inconstitucionalidad de la primera parte del enunciado del inciso 3 del artículo 185; y de la letra c) y la primera parte de la letra d) del artículo 207, ambos artículos del Código electoral; referidos a la prohibición de voto cruzado y la declaratoria de nulidad en los casos en que se empleara esta modalidad.

³ Corte Suprema de Justicia, Sentencia de Proceso de Inconstitucionalidad 59-2014, El Salvador.

Siendo por medio de decreto legislativo 291 de fecha veinticinco de febrero de 2016, la implementación de los cambios de reformas legales, directamente del Código electoral que tengan relación a la figura de la implementación del voto cruzado.

La ciudadanización y profesionalización de los organismos electorales temporales que tiene su inicio en la sentencia 139-2013 en cuanto establece que los Organismos Electorales son una manifestación contralora de la actividad regida por el Tribunal Supremo Electoral, que coadyuvan al cumplimiento de los fines y objetivos de dicha autoridad.

Sus miembros son delegados para el ejercicio independiente de determinadas atribuciones en una circunscripción territorial, sin sujeción a ningún elemento externo que interfiera en sus decisiones o lineamientos de trabajo, asegurando así la imparcialidad requerida en el proceso electoral.

Lo que permite este cambio jurisprudencial es conocer y destacar la presencia de personas no vinculadas a los partidos políticos a representar al organismo electoral superior en grado para las diferentes posiciones dentro de las juntas electorales departamentales y municipales y las juntas receptoras de votos, siendo la referencia principal el art. 38 del Código electoral a velar por esta categoría.

Además, bajo la sentencia 156-2012 se analiza que no establece procedimientos para que los salvadoreños que residan en el exterior y que cumplan con todos estos requisitos para hacer efectivo su derecho al sufragio activo, en las elecciones legislativas y municipales. El CE se limita a establecer los requisitos para poder ejercer el sufragio en base al art. 9 es decir, ser ciudadano salvadoreño y, por tanto, mayor de 18 años, estar inscrito en el registro electoral art. 14 CE, estar en pleno goce de los derechos políticos, identificarse con su Documento Único de Identidad vigente art. 6 CE y, además, aparecer en el correspondiente padrón emitido por el Tribunal Supremo Electoral. Sin embargo, en relación con esto, en la ley especial para el ejercicio del voto desde el exterior en las elecciones presidenciales (LEEVEEP) se regula el voto sufragio activo de los salvadoreños residentes fuera del territorio nacional, pero únicamente para las elecciones de presidente y vicepresidente de la Republica a partir del año 2014, y se omite lo relativo al sufragio en elecciones legislativas y municipales. Esto no cambio con las reformas a la LEEVEEP, que se realizaron mediante Decreto Legislativo n° 355, de 11-IV-2013, publicado en el Diario Oficial n° 80, tomo 399, de 3-V-2013, las cuales se ciñeron a modificar aspectos formales y de plazos del procedimiento para llevar a cabo el voto de los salvadoreños residentes en el exterior⁴.

Previo a estudiar cuales son los aspectos a analizar de los procesos electores se debe explicar en qué consiste el proceso electoral, definiéndose este como parte del estudio de la rama de derecho electoral en donde existe una serie de pasos ordenados o actos concatenados desde una etapa inicial de preparación hasta la etapa de la declaratoria en firme de los resultados.

Estas etapas las podemos interpretar a partir del art. 63 y 64 del Código electoral, además de actores como Dieter Nohlen, tratadista del derecho electoral comparado en América Latina que interpreta que el proceso electoral es parte de los objetos principales de estudio del derecho electoral⁵.

⁴ Corte Suprema de Justicia, Sentencia de Inconstitucionalidad 156-2012, 2016, El Salvador.

⁵ Nohlen, Dieter, *et al.* (comps.), *Tratado de derecho electoral comparado de America Latina*/comps. Dieter Nohlen, Daniel Zovatto, Jesus Orozco, Jose Thompson. – 2a ed. – Mexico: FCE, Institute Interamericano de Derechos Humanos, Universidad de Heidelberg, International IDEA, Tribunal Electoral del Poder Judicial de la Federation, Instituto Federal Electoral, 2007, Mexico.

Cada una de las etapas se componen de tres principales las cuales son: una etapa previa e interna en donde se desarrollan los distintos programas de planificación y creación del denominado calendario electoral, presupuesto y la etapa de toma de decisiones plasmadas en el Plan General de Elecciones (PLAGEL), una segunda etapa el cual consiste en la denomina nuclear que se refiere al periodo de convocatoria e inscripción de las candidaturas y el desarrollo de la propaganda electoral y una etapa final o de cierre que compone la transición de la Jornada electoral o día de elecciones y la entrega de credenciales a los funcionarios que establecen la mayor cantidad de votos en la etapa de escrutinio definitivo.

Para ejemplificar, el PLAGEL 2021 fue el instrumento base para planificación de un evento electoral lleno de retos y se constituyó de 16 programas orientados a tres grandes áreas: la primera relativa a la organización del proceso electoral, dentro de la cual figuran temas como el soporte a la función jurisdiccional del TSE, la organización y funcionamiento de los Organismos Electorales Temporales, Atención a Partidos Políticos y Candidaturas no Partidarias, Acreditaciones, Observación Electoral, Soporte Administrativo, Auditoria Administrativa, Financiera e Informática del proceso electoral, Convenios de Cooperación Interinstitucional, Apoyo a la Administración Superior, Cierre del Registro Electoral y Generación de Padrones. La segunda área enfocada a la atención ciudadana, con los programas de Capacitación Electoral, Información y Consulta Ciudadana, Comunicación Electoral y Plan General de Seguridad Electoral. La tercera área agrupa los programas vinculados específicamente a la ejecución y resultados del evento electoral a celebrar, como el Programa de Organización y Logística Electoral; Transmisión, Procesamiento y Divulgación de los Resultados Electorales Preliminares y Escrutinio Final.

Posterior a eso las nuevas autoridades del TSE tuvieron que aprobar el Calendario Electoral junto al Plan General de Elecciones para los comicios 2021, durante ese proceso de preparación de las elecciones, la Organización Panamericana de la Salud (OPS) notifico el 31 de diciembre de 2019, que la Comisión de la Salud en Wuhan provincia de Hubei China se habla desarrollado muchos casos de Neumonía, causados por un virus llamado Coronavirus, en ese contexto el 10 de enero de 2020 El Salvador inicio la ejecución del Calendario Electoral 2021, en ese mismo mes el Órgano Ejecutivo en el Ramo de Salud decreto como medida preventiva para la salud pública, viendo el avance que tenía a nivel internacional el nuevo coronavirus, fue decretada emergencia sanitaria en todo el territorio nacional a partir del 23 de enero de 2020 por tiempo indefinido.

Cabe destacar dentro del marco de este proceso electoral, que los dos más grandes desafíos como lo fue celebrar elecciones en tiempo de pandemia y la implementación por primera vez en el país del proyecto de tecnología informática en cada junta receptora de votos a nivel nacional, pese a nuestro complejo sistema electoral que incluye el voto por listas abiertas, los escrutinios fueron ágiles y eficientes con resultados preliminares rápidos y certeros, que también fue parte de darle la importancia del trabajo realizado en coordinación con otras instituciones a través de los diferentes convenios de cooperación interinstitucional, dentro de los cuales podemos destacar el firmado con el Ministerio de Salud para la elaboración de un Protocolo de Medidas de Bioseguridad que permitió un desarrollo pleno del evento electoral sin incremento de contagios por COVID-19 durante y después del mismo. Además, se contó con la cooperación de diferentes organismos internacionales que permitieron la implementación de tecnología en mesa para las Juntas Receptoras de Votos, hecho que significo un avance importante en la eficiencia del escrutinio preliminar y por consecuencia en la transmisión de resultados.

El año 2021 fue testigo de un proceso electoral completamente atípico, que quedará marcado en la historia electoral de nuestro país, dado su alto nivel de complejidad y por el contexto inédito en el que fue desarrollado, una coyuntura protagonizada principalmente por una pandemia que afectaría a todas las naciones del mundo y que cambiarla para siempre la historia reciente de la humanidad.

Después de 28 años de ejercicio democrático en el país y de cara a las elecciones, el TSE se vela enfrentado a condiciones sin precedentes, que representaban desafíos importantes para una institución que contaba con la llegada de nuevas autoridades. El primer paso para superar cada uno de estos desafíos, fue la conformación de una Comisión Coordinadora del Proceso Electoral 2021, que dio paso a la activación de un aparato institucional que inicio la etapa de planificación, en la que destacaron la formulación del Calendario Electoral, el Presupuesto Especial Extraordinario para el evento electoral y finalmente el Plan General de Elecciones 2021.

A pesar de lo impactante que era estar viviendo una pandemia y antes del cierre de las actividades; el 5 de marzo de 2020, se obtuvo la aprobación del presupuesto de elecciones 2021, por parte de la Asamblea Legislativa, con el que se iniciaría el Plan General de Elecciones, posterior a eso entre el 13 y 14 de marzo de 2020 se decretó la Ley de Restricciones Temporal de Derechos Constitucionales Concretos para atender la pandemia COVID-19, bajo este contexto y con el escaso tiempo que hubo para completar la etapa de planificación, este se tuvo que ajustar al igual que el presupuesto, para efectos de incorporar medidas sanitarias y de bioseguridad; todo esto tuvo una afectación inmediata al normal desarrollo del proceso electoral en marcha.

A pesar de todos los avances alcanzados en los últimos años, los procesos electorales siguen generando diversos retos y desafíos que surgen a medida que la sociedad salvadoreña experimenta cambios. Para la institución es vital mantenerse a vanguardia en diferentes temáticas que son trascendentales en la búsqueda de un tribunal igualitario e inclusivo para todas y todos.

En referencia al proyecto electoral 2024, actualmente se encuentra la implementación de la etapa preliminar o de planificación, en donde se establece la aprobación del calendario electoral, la realización del presupuesto esencial para este tipo de elección múltiple que se avecina y la elaboración del PLAGEL 2024.

Con la vista puesta en las próximas elecciones, se han impulsado una serie de propuestas de reformas a la legislación electoral, con el objetivo de mejorar los procedimientos administrativos sancionatorios y los criterios para establecer los supuestos jurídicos que dan lugar a infracciones. Dentro de las reformas que se han formulado destacan:

1) La ciudadanización y profesionalización progresiva de los Organismos Electorales Temporales (artículos 92, 97 y 101 Código electoral)

En atención a la sentencia de inconstitucionalidad 139-2013, se establece la necesidad de hacer una ciudadanización y profesionalización de los OET que debe darse progresivamente en razón de la complejidad que supone cada cargo, acomodándose a los avances tecnológicos de los diferentes procesos y la complejidad en el uso de las nuevas tecnologías.

2) Definición y límites de la propaganda electoral (artículo 173 Código electoral)

El artículo 172 determina los plazos en los que se habilita la propaganda electoral, pero no hace una definición específica de lo que debe entenderse como tal. Se ha propuesto agregar un inciso más al artículo 173 que establezca como parte de las prohibiciones realizar actos de propaganda electoral fuera de los períodos que establece el artículo anterior, estableciendo la respectiva sanción y haciendo además una definición de propaganda electoral. Además, se considera una ocasión oportuna para modificar el inciso tercero, con el objetivo de restringir cualquier tipo de propaganda que lesione la moral, el honor o la vida privada de los candidatos y candidatas en razón de su aspecto físico, raza, sexo y/o religión, esto puede significar un avance significativo en la prevención de diferentes actos de violencia política contra grupos poblacionales vulnerables. La violación a esa prohibición deberá ser sancionada y en caso de ser realizada por un candidato o candidata puede sancionarse con la inhabilitación.

3) Principio de paridad y alternancia de género (artículo 38 Ley de Partidos Políticos)

Se propone que en la integración de planillas para cargos de elección popular se deba observar la paridad de género, garantizando la misma proporción entre mujeres y hombres, así como la alternancia de género. Cada partido deberá regular en sus reglamentos de elecciones internas, los criterios que aplicará para dar cumplimiento a la paridad y alternancia de género. Esta medida estaría acompañada de sanciones por incumplimiento con el objetivo de promover la participación política de las mujeres y la igualdad de condiciones en los procesos electorales.

Se busca implementar mecanismos que facilitaran en torno a la inclusión electoral, para garantizar la participación de las mujeres en la política, fomentando la equidad social y la inclusión de género, así como también la prevención de la violencia política contra las mujeres postulantes a cargo de elección popular, creando instructivos para fortalecer a las personas en procesos electorales, capacitándoles sobre sus derechos y fortalezas para participar en puestos de elección popular y buscando apoyo con las diferentes entidades encargadas de velar por las nuevas reformas planteadas frente al Estado.

Esos cambios no solo incidieron en la calidad y transparencia de los eventos electorales, en la participación de más actores políticos, sino también se dieron cambios positivos que permitieron mayor participación tanto de hombres como mujeres; generado del reconocimiento de los derechos civiles y políticos de las mujeres, entre ellos asignando un porcentaje de participación del 30% en las listas de candidatos a cargo de elección popular, y en la actualidad o a futuro lo que se pretende es que la legislación electoral permita la participación del 50% de las mujeres en las elecciones del 2024 y equipáralos a otros países que ya dieron el paso hacia la paridad.

Conclusiones

En síntesis, los procesos electorales son garantías para todos los ciudadanos salvadoreños, el cual por mandato constitucional y jurisprudencial permite la realización del trabajo del máximo organismo en materia electoral para velar por elecciones transparentes y justas en carácter de democracia e igualdad.

Para los comicios del año 2024 se espera uno de los procesos electorales múltiples con la realización en fechas 4 de febrero del año 2024 para la elección de presidente y vicepresidente de la Republica y Diputaciones a la Asamblea Legislativa y el 3 de marzo del año 2024 para la elección a diputaciones al Parlamento Centroamericano y Concejos municipales.

El TSE se encuentra actualmente en la etapa preliminar del proceso electoral 2024 con la idea de implementar no solo el contexto histórico del máximo organismo electoral sino la implementación y la evolución que la institución ha experimentado en su marco normativo electoral y la nueva era digital en las diferentes etapas del proceso electoral.

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Research Concerning the Possibility of Using Electoral Engineering Tools in the Perspective of Organising European Elections Based on Uniform Rules

QUESTIONNAIRE “THE EUROPEAN ELECTORAL SYSTEM. ELECTIONS TO THE EUROPEAN PARLIAMENT”

Daniel DUȚĂ, PhD

The research concerns the possibility of using electoral engineering tools in the perspective of organising European elections based on uniform rules so that the results allow the consolidation of the legitimacy of the European construction.

The data and information collected from experts in the electoral field participating in this structural survey were used for the doctoral research¹ regarding the configuration of a uniform European electoral system.

DEMOGRAPHIC SURVEY QUESTIONS	
Name, surname	
Gender	
Age	
Location	
Education level	

1. NAME OF INSTITUTION/ORGANISATION

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2. LOCATION OF INSTITUTION/ORGANISATION (COUNTRY/CITY)

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3. POSITION IN THE INSTITUTION/ORGANISATION

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¹ The doctoral thesis *Towards a uniform and integrated European electoral system*, 2017, pp. 160–179 related to Appendix no. 28, <https://rei.gov.ro/teze-doctorat>. The editing of the questionnaire and the collection of answers was carried out online, in Romanian and English, between February 2 and March 15, 2017, through the web platform <http://www.isondaje.ro/surveys/>. The respondent's name and surname are confidential.

4. TO WHAT EXTENT ARE YOU INTERESTED IN ... ?

	To a very large extent	To a large extent	To a little extent	To a very little extent	Not at all	NA
Domestic political life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Political life in other EU member states	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The activity carried out by the European Parliament	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Election to the European Parliament	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electoral campaigns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Radio and TV shows on themes related to elections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discussions about elections and social networks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discussions with friends on themes related to elections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. HOW OFTEN DO YOU ... ?

	daily	several times a week	several times a month	only at elections	never	NA
Watch the television news and broadcasts on politics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Listen on the radio to news broadcasts and comments on politics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Read newspapers information and comments on politics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Read on social networks information and comments on politics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. TO WHAT EXTENT ARE YOU INTERESTED IN ... ?

	To a very large extent	To a large extent	To a little extent	To a very little extent	Not at all	NA
Elections to the European Parliament	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. TO WHAT EXTENT DO YOU AGREE WITH THE STATEMENT: IS IT NECESSARY TO CONFIGURE A UNIFORM ELECTORAL SYSTEM OF THE EUROPEAN UNION?

(On a scale from 1 to 7, where 1 strongly disagrees and 7 strongly agrees)

	1	2	3	4	5	6	7	
Strongly disagree	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Strongly agree

8. HOW DO YOU THINK THE LIST OF CANDIDATES OF THE POLITICAL PARTIES SHOULD BE IN THE EP ELECTIONS?

(Multiple answers possible)

- ☐ **OPEN LIST** On the list they vote for, the voters rank the candidates in their order of preference.
- ☐ **SEMI-OPEN LIST** (preferential voting) The political party establishes the order of the candidates on the list, but voters can vote for a candidate they prefer and, in this instance, the candidate can move up on the list on eligible positions.
- ☐ **CLOSED LIST** The order of candidates on the list is established by the party and it is fixed.
- ☐ **SINGLE TRANSFERABLE VOTE** Voters rank candidates in their order of preference, they may include in their "ranking" candidates representing different political parties. All candidates who achieved the electoral quotient are declared elected. If a candidate has exceeded the quotient, the additional votes are divided among the remaining candidates according to the next in rank in terms of the score obtained.
- ☐ Do not know/No answer
- ☐ Other

9. TO WHAT EXTENT DO YOU BELIEVE IT IS NECESSARY TO CONFIGURE A UNIFORM ELECTORAL SYSTEM OF THE EUROPEAN UNION IN TERMS OF ... ?

	To a very large extent	To a large extent	To a little extent	To a very little extent	Not at all	NA
The model of the list of supporters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Threshold	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voter registration by creating a European Electoral Register	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Development of a European Code/Codex on electoral rules and procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The model of the ballot (in the sense of introducing the logos and the names of European political parties, in addition to national ones)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reference day (voting on the same day in all Member States)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The use of electronic/internet voting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. TO WHAT EXTENT DO YOU BELIEVE IT IS NECESSARY TO ...

	To a very large extent	To a large extent	To a little extent	To a very little extent	Not at all	NA
Create a transnational constituency for electing several MEPs from a transnational list	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ensure fair gender representation on the candidates' list	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ensure fair gender representation in the European Parliament (quotas)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Establish a EUROPEAN ELECTORAL AUTHORITY with the role of managing and supervising the EP election and monitoring European party funding and electoral campaign	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. TO WHAT EXTENT DO YOU AGREE WITH THE STATEMENT: IS IT NECESSARY TO EXTEND THE USE OF ELECTRONIC/INTERNET VOTING FOR EP ELECTIONS?

(On a scale from 1 to 7, where 1 strongly disagrees and 7 strongly agrees)

	1	2	3	4	5	6	7	
Strongly disagrees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Strongly agrees

12. DID YOU VOTE IN THE 2014 EP ELECTIONS?

- ☐ Yes
☐ No

13. IF THE ANSWER TO THE PREVIOUS QUESTION IS NO, WHAT IS THE REASON YOU HAVEN'T EXERCISED THE RIGHT TO VOTE IN THE EP ELECTIONS?

(Multiple answers possible)

- ☐ Lack of trust in political parties
☐ Lack of information
☐ Distrust of candidates
☐ Lack of interest in the European elections
☐ Not applicable (in case the answer to question no. 12 was YES)
☐ Other

14. DO YOU CONSIDER THAT VOTING FOR EP ELECTIONS SHOULD BE MANDATORY?

- ☐ Yes
☐ No
☐ Do not know/No answer
☐ Other

15. IF THE ANSWER TO THE PREVIOUS QUESTION IS YES THEN WHAT SANCTION/S DO YOU THINK SHOULD BE IMPOSED FOR ABSENTEEISM?

(Multiple answers possible)

- ☐ Fining
☐ To suspend the right to vote at EP elections for a particular timeframe
☐ An interdiction to occupy a public office for a particular timeframe
☐ Community service
☐ Not applicable (in case the answer to question no. 14 was NO)
☐ I do not know/No answer
☐ Other

16. TO WHAT EXTENT IS VOTING INFLUENCED BY KNOWING ... ?

	extremely	very	moderately	slightly	not at all	NA
Constitutional provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Election rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The type of electoral system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your rights as a voter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Electoral competitors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The political platform of candidates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

17. WHAT DO YOU CONSIDER THE MINIMUM AGE FOR VOTING SHOULD BE IN THE CASE OF EUROPEAN ELECTIONS?

- ☐ 16
- ☐ 18
- ☐ 21
- ☐ Other

18. WHAT SHOULD BE THE MINIMUM AGE FOR CANDIDATES IN EP ELECTIONS?

- ☐ 16
- ☐ 18
- ☐ 21
- ☐ 23
- ☐ 25
- ☐ 30
- ☐ 35
- ☐ Other

19. WHAT IS YOUR PERCEPTION OF THE EU?

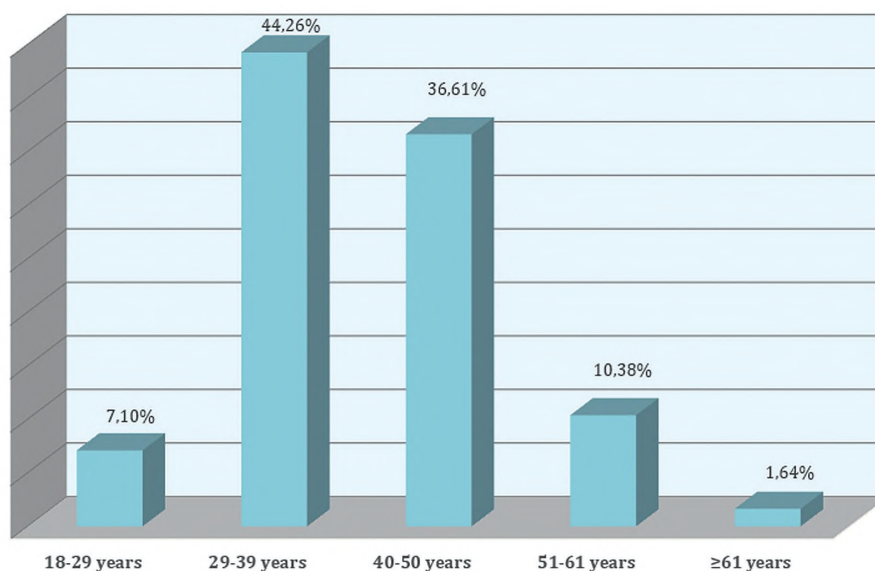
	very negative	negative	positive	very positive	none	NA
My perception about the EU is...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

20. WHAT OTHER ASPECTS DO YOU BELIEVE ARE NECESSARY FOR SETTING UP A UNIFORM EUROPEAN ELECTORAL SYSTEM?

The research sample consisted of 183 experts from the country and abroad who are active in the electoral field but who are not necessarily specialized in the issues raised by the European construction.

Respondents' situation by occupation	No.
President, vice-president or member of a Central Electoral Commission	4
Persons with management positions within a Central Electoral Commission (Head of Department, Director General, Director, Deputy Director, Head of Office)	17
Executive staff within a Central Electoral Commission	143
University teaching staff	7
International expert/consultant in the electoral field	2
Director of the International Training and Research Center in the Electoral Field	1
Other people with some experience in the electoral field (engineer, researcher/journalist, researcher, diplomat electoral expert, cultural center director)	5
President of the NGO, Expert in the electoral field	2
Responsible for Public Policies	1
Director of the International Cooperation Center	1

- Age and gender of respondents -



Interval	Number of people	%	Average age
18-28 years old	13	7.10	40.21 years
29-39 years old	81	44.26	
40-50 years old	67	36.61	
51-61 years old	19	10.38	
>61 years old	3	1.64	
Women	114	62.29	39.78 years
Men	69	37.70	40.92 years

– Education level –

Doctoral/postdoctoral studies	Postgraduate/master's studies	Higher education
16 (8.74%)	40 (21.86%)	127 (69.40%)

The research method used was quantitative, and the instrument used to record respondents' opinions was a self-administered questionnaire with open questions, response matrices, Likert rating scales with six response values, and a grid with one or more allowed answers, the completion lasting about fifteen minutes.

Respondents were informed that personal data regarding name and surname, gender, occupation and education level are confidential. They also had to fill in the fields containing data and information regarding the name and location of the institution/organisation in which they work, the position held in the institution and/or organisation and the department. The first two sets of effective questions (questions no 4.1–4.8 and no 9–12) included in the structure of the questionnaire had the role of testing the basic level of experts' knowledge of domestic and European political life, the activity carried out within the European Parliament, the European parliamentary elections and the electoral campaigns, but also the level of interest shown towards the theme.

Thus, a significant percentage of the respondents are interested to a large extent (49.18%) and to a very large extent (26.78%) in domestic political life.

Respondents are significantly less interested in political life in the European Union member states, with only 8.74 % being interested to a very large extent, 43.72% to a large extent, respectively 35.52% to a small extent.

Regarding the interest in the activity carried out within the European Parliament, 42.62% of the respondents are interested to a large extent, 4.92% to a very large extent and 34.43% to a small extent.

An important share of respondents (39.34%) is very interested in the European Parliament elections, 34.97% to a great extent, respectively 19.13% to a small extent.

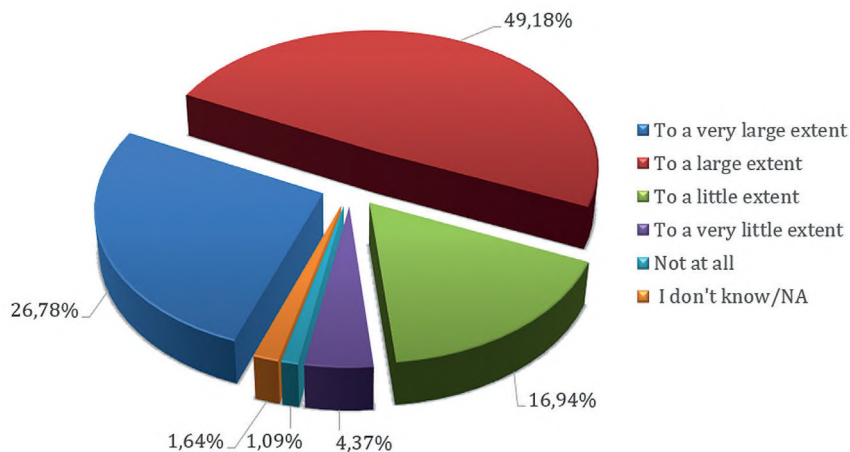
At the same time, a percentage of 47.54% are very interested in election campaigns, while 31.69% are interested. Regarding the interest in radio-TV shows on topics related to elections, 42.62% of the respondents are interested to a large extent, and 26.78% to a very large extent.

A more homogeneous distribution of responses registered the question regarding election-related discussions on social networks, with 30.60% of respondents being a little interested, 23% interested and 16.39% very interested.

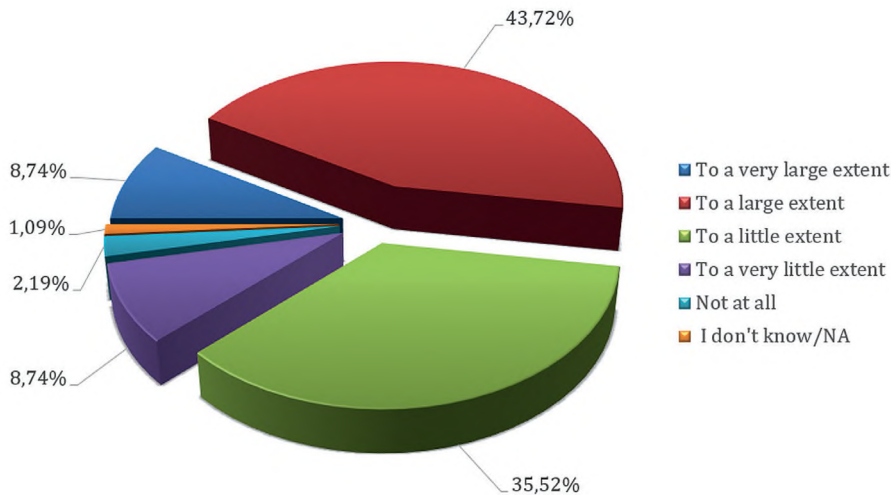
47.54% of respondents are very interested in discussions with friends on topics related to the elections, while 26.78% of respondents show a low interest.

At this stage of the questionnaire, it can be seen that the respondents have a considerable level of knowledge and interest regarding political life and European parliamentary elections.

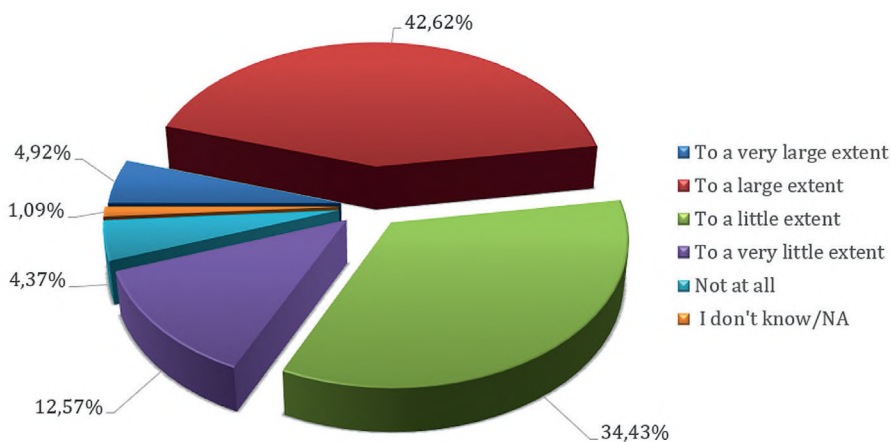
Question: 4.1. To what extent are you interested in domestic political life?

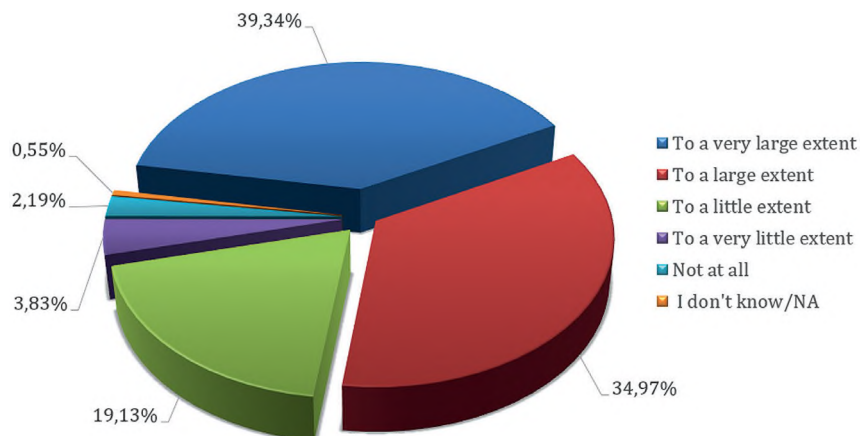
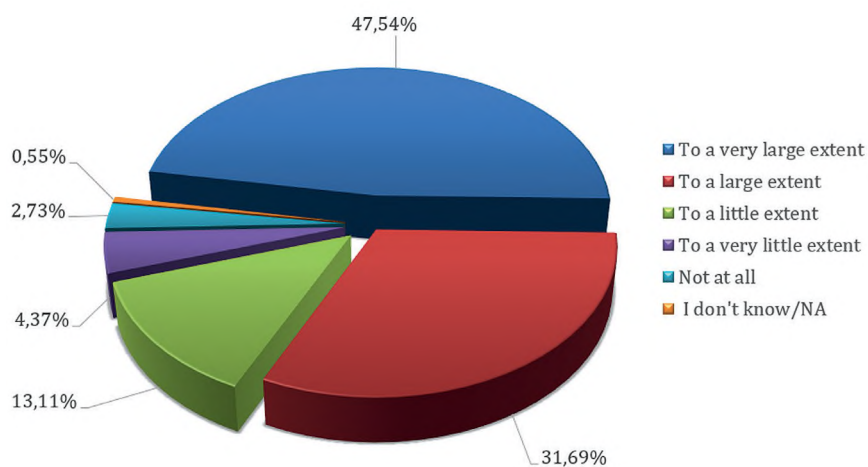
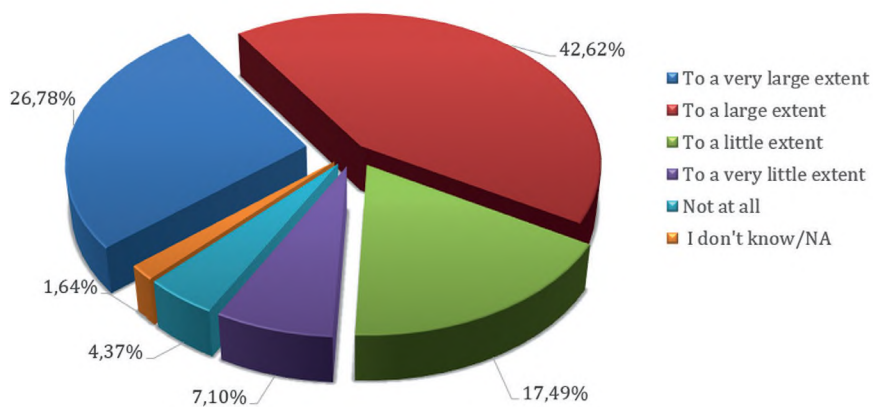


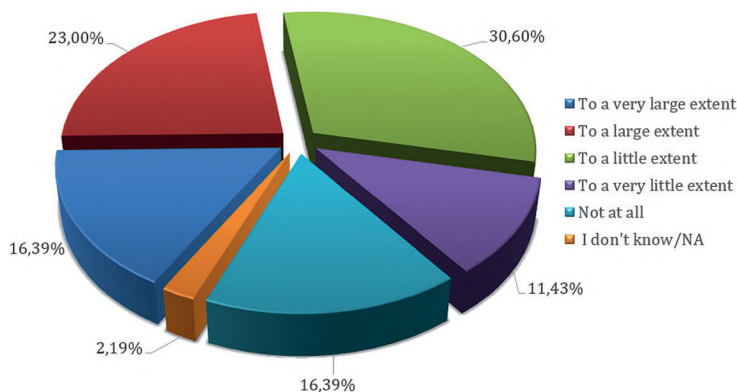
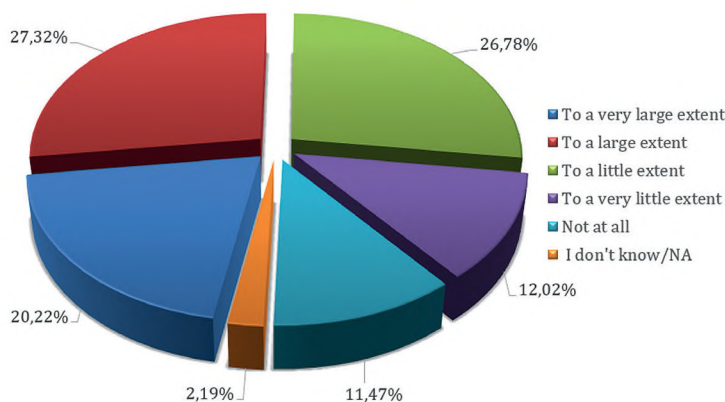
Question: 4.2. To what extent are you interested in political life in other EU member states?



Question: 4.3. To what extent are you interested in the activity carried out within the European Parliament?

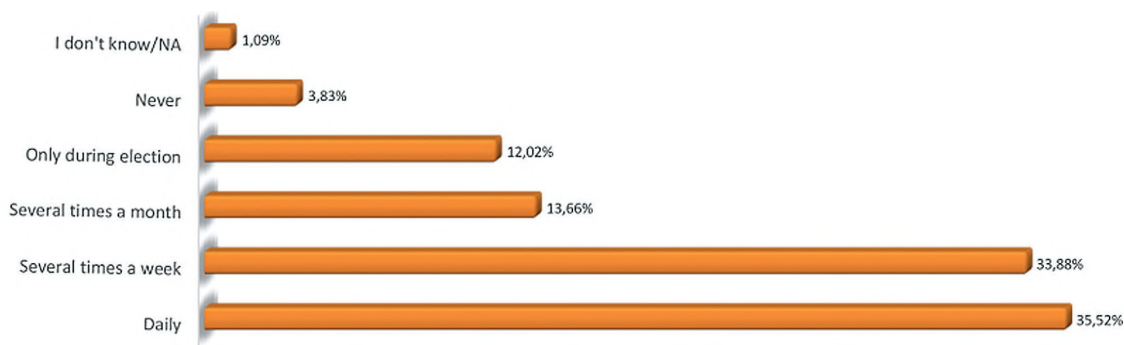


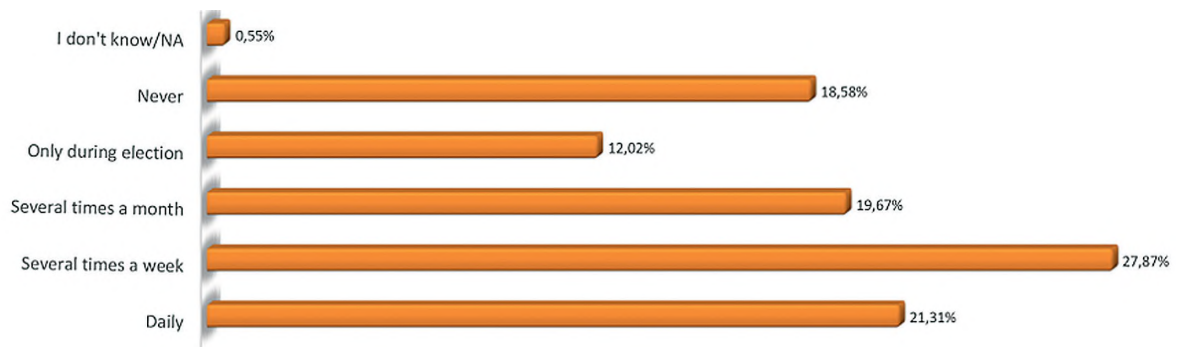
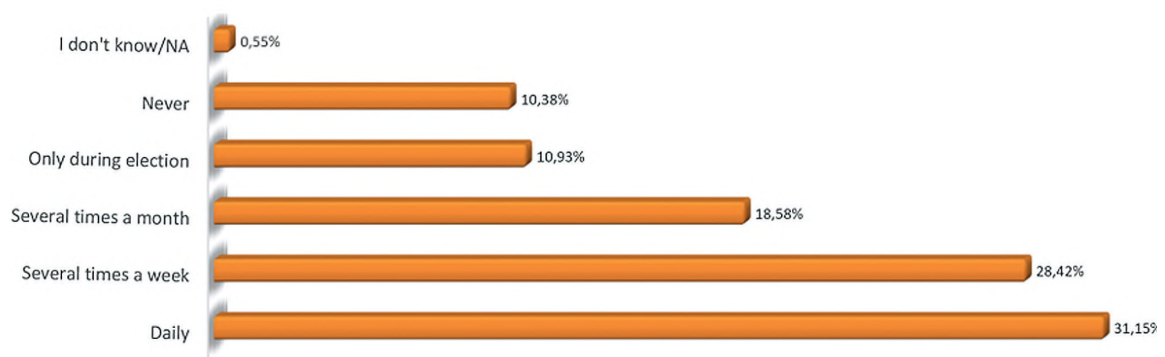
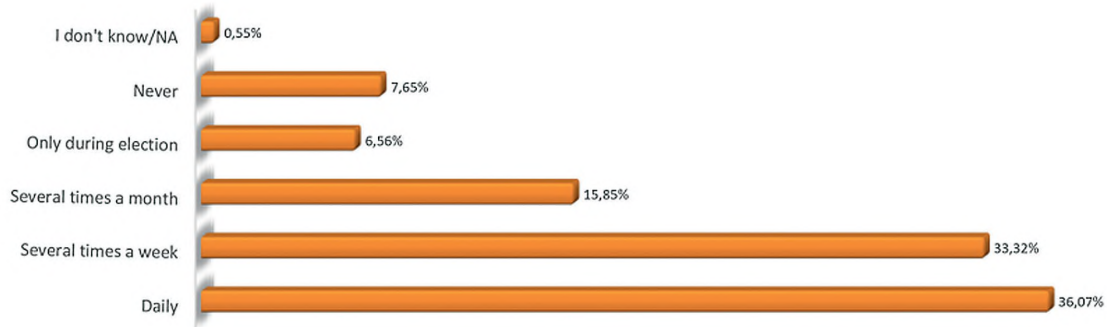
Question: 4.4. To what extent are you interested in the European Parliament elections?**Question: 4.5. To what extent are you interested in election campaigns?****Question: 4.6. To what extent are you interested in radio-TV programs on election topics?**

Question: 4.7. How interested are you in election discussions on social media?**Question: 4.8. To what extent are you interested in discussions with friends about election-related topics?**

Regarding the method of information about political life and elections, 35.52% of respondents watch TV daily, respectively 33.88% several times a week.

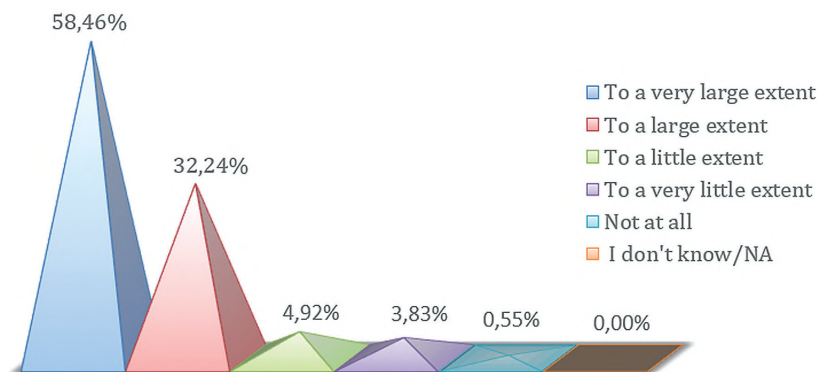
A smaller percentage, 21.31%, listen to the news and political commentary on the radio daily, respectively 27.87% several times a week. 31.15% read daily information and political comments from newspapers, respectively 36.07% on the Internet.

Question: 5.1. How often do you watch the news? And political shows on TV?

Question: 5.2. How often do you listen to news broadcasts and political comments on the radio?**Question: 5.3. How often do you read information and political comments in newspapers?****Question: 5.4. How often do you read information and political comments on the Internet?**

A question that gathered a more homogeneous distribution of answers is the one regarding participation in the European parliamentary elections, with no less than 90.7% of the respondents being interested to a very large extent (58.46%) or to a large extent (32.24%).

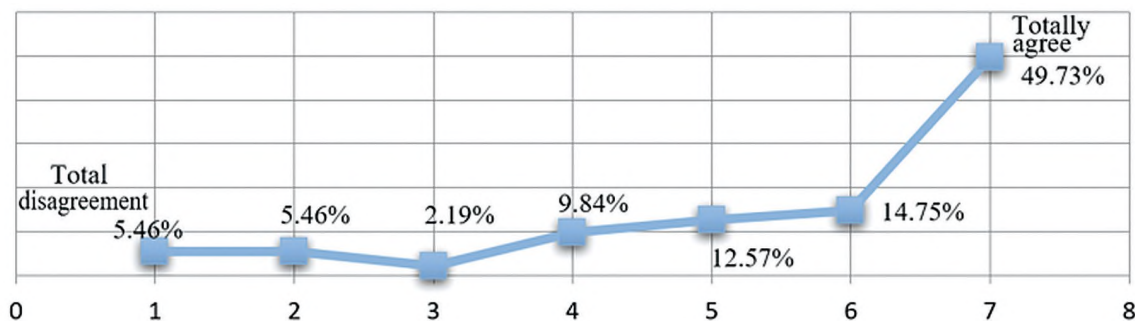
Question: 6. To what extent are you interested in participating in the European Parliament elections?



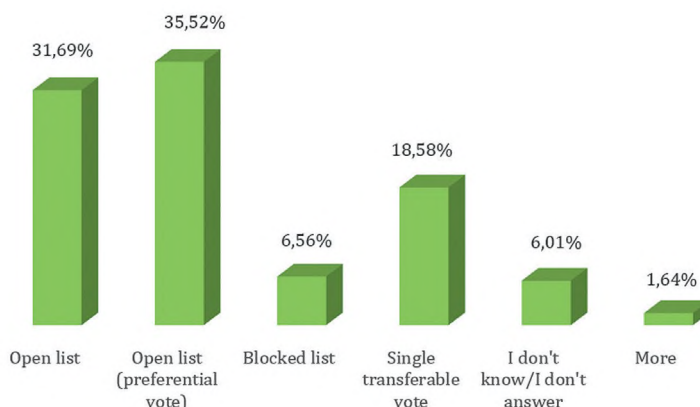
The questionnaire continues with a series of questions focused on elements of electoral engineering through which I try to extract the opinion of experts regarding the instruments that can modify or influence the electoral process at the European level in the sense of improving the way of conducting and centralising the results, increasing the participation, strengthening European democracy and the legitimacy of representatives in the European Parliament.

In this sense, to the question of whether it is necessary to set up a uniform electoral system at the level of the European Union, 86.89% of the respondents agree, 49.73% of these expressing a total agreement.

Question: 7. To what extent do you agree with the statement: is it necessary to set up a uniform electoral system at the level of the European Union?

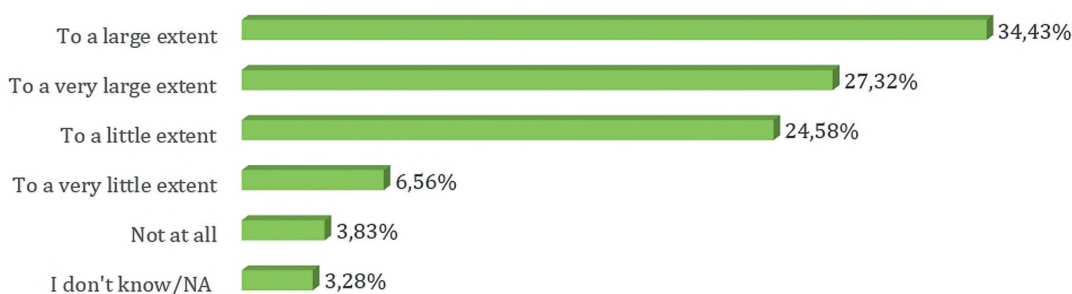


Another essential element for the configuration of an electoral system is the type of list of candidates proposed by the political formations, which can be open, blocked, semi-open (preferential vote), single transferable vote, etc. A large part of the respondents (67.21%) opt for the open list (31.69%) or the preferential vote (35.52%) but also take into account the single transferable vote. This denotes the fact that they favour a variant in which the voter can express his preference by making a "correction" on how the party ranked the candidates on the list. This option can be of interest including to the internal electoral process, as both voters and non-governmental organisations are in the first steps regarding the adoption of electoral legislation for the election of members from Romania to the European Parliament.

Question: 8. How do you think the list of candidates proposed by the political parties should be?

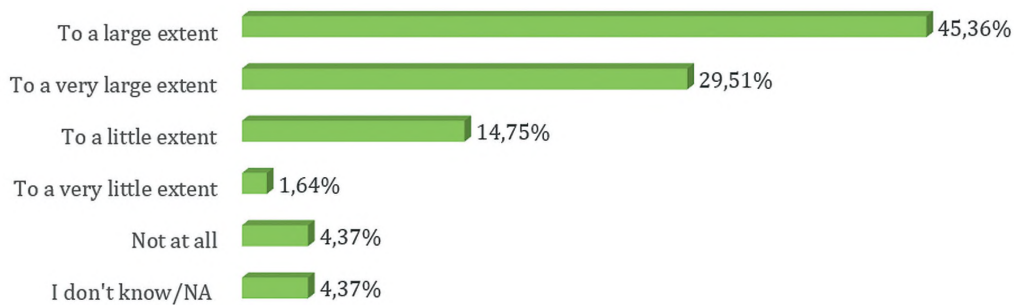
LIST TYPE	(%)
OPEN LIST – Voters place candidates on the ballot list in order of their preferences	31.69
OPEN LIST (preferential vote) – The party determines the order of candidates on the list, but voters can vote for a preferred candidate who can thus “go up” on the list, in the eligible places.	35.52
BLOCKED LIST – The order of candidates on the ballots is fixed, as it is established by the party; in this case, the party is voted	6.56
SINGLE TRANSFERABLE VOTE – Voters rank the candidates in order of preference, being able to include, in their own “ranking”, candidates representing different parties (from different electoral lists). All candidates who have reached the Electoral Coefficient are declared elected. If a candidate exceeded the Coefficient, the additional votes are divided among the rest of the candidates according to the following scores.	18.58
I don't know/I don't answer	6.01
More	1.64

Another important aspect that requires harmonisation at the level of procedures is that of the list of supporters (model, number of supporters, etc.). In this respect respondents greatly appreciate the need for standardisation, 34.43% to a large extent and 27.32% to a very large extent.

Question: 9.1. To what extent do you consider it necessary to standardise the European electoral system, especially regarding the model of the list of supporters?

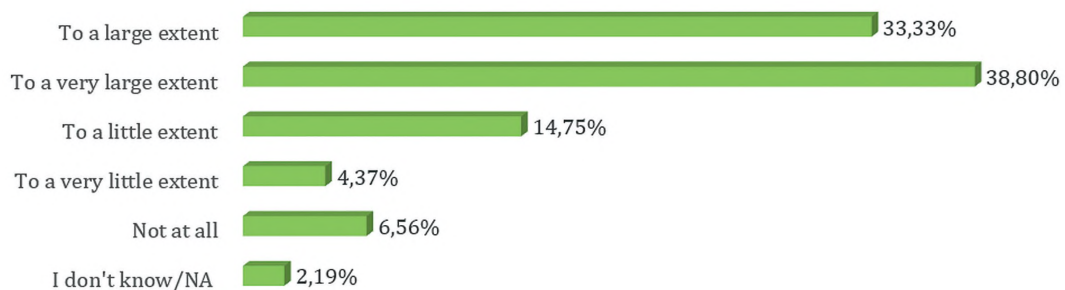
A particularly important topic in the framework of establishing a uniform European electoral system is the electoral threshold, which can contribute to the homogenisation of the party system, especially in the perspective of ensuring stable and efficient governance. On the other hand, the electoral threshold must also be analysed from the perspective of the analysis regarding access to the European Parliament of Eurosceptic, extremist or anti-European political forces. Regarding this aspect, we simulated the 2014 elections by using several electoral thresholds, and obtained interesting results. In the questionnaire, 74.87% of the respondents consider it necessary to establish a uniform electoral threshold (or the lack thereof) at the level of all member states.

Question: 9.2. To what extent do you consider it necessary to standardise the European electoral system, especially regarding the electoral threshold?



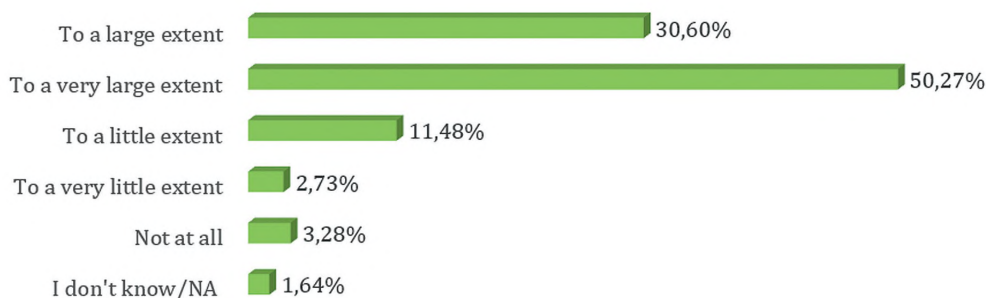
One of the essential electoral operations for the organisation of the electoral process is voter registration. This is especially necessary to establish the electoral lists, but it is also particularly important for other activities such as the prevention of multiple voting, or for the establishment of policies and strategies for informing voters. At this moment, the member states have very different ways of registering voters, depending on the type and method of the document with which the citizens are identified. Many of the member states have reservations regarding the design and use of a unique identification code, which makes it particularly difficult to exchange information on voters registered on the lists of a different state than the one of origin. On the other hand, there are problems generated by the way of acquiring the citizenship of one or more member states. The creation of an Electoral Register-type tool, practically a database containing information about citizens with the right to vote, is essential for the organisation of elections based on uniform procedures. Most respondents consider the existence of such an instrument necessary (38.80% to a very large extent, respectively 33.33% to a large extent).

Question: 9.3. To what extent do you consider it necessary to standardise the European electoral system, especially concerning voter registration in the form of a European Electoral Register?



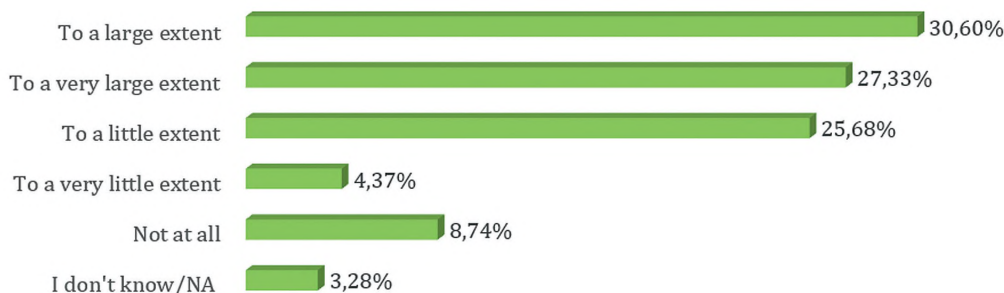
The configuration of a uniform and integrated electoral system cannot be achieved without a unitary regulation of the electoral norms. In addition to the core of the electoral system represented by the way of transforming votes into mandates, there is a multitude of aspects that require unitary regulation. More than half of the respondents (80.87%) consider it necessary to a large and very large extent to create a European Electoral Code/Codex that includes electoral rules and procedures.

Question: 9.4. To what extent do you consider it necessary to standardise the European electoral system, especially concerning the creation of a European Electoral Code/Codex that includes electoral rules and procedures?



One of the main subjects of the European electoral reform, the way of drawing up the ballot paper, was considered to ensure the visibility of European political parties but also to facilitate the provision of correct information to the electorate regarding the affiliation of national parties to European political parties. In this sense, the standardisation of the ballot paper model (in the sense of introducing the logos and names of the European political parties, in addition to the national ones) was considered necessary to a large extent by 30.60% of the respondents and, to a very large extent by 27.32%.

Question: 9.5. To what extent do you consider it necessary to standardise the European electoral system, especially concerning the ballot paper model (in the sense of introducing the logos and names of the European political parties, in addition to the national ones)?

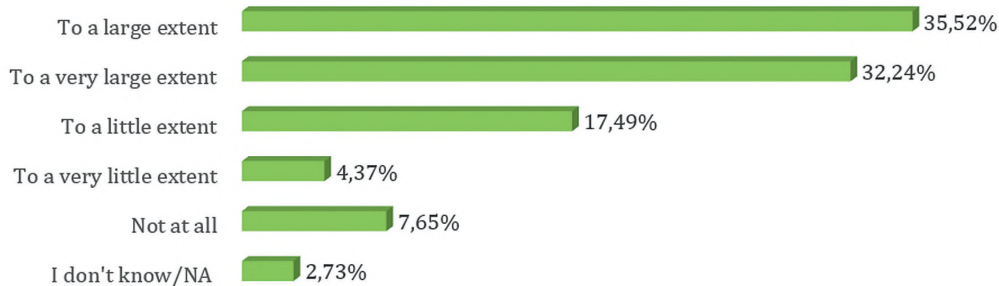


The fact that the reference day differs between the member states, and the elections being held over a period of three days create a series of difficulties in terms of establishing and calculating the deadlines, but especially in terms of the date on which the centralisation of votes and the distribution of votes are carried out in a unitary manner in mandates, there may be the premises of some strategies to influence the results.

In the sense of the above-mentioned, 67.76% of the respondents appreciate that it is necessary, to a large and very large extent, to establish a single reference day for holding the elections.

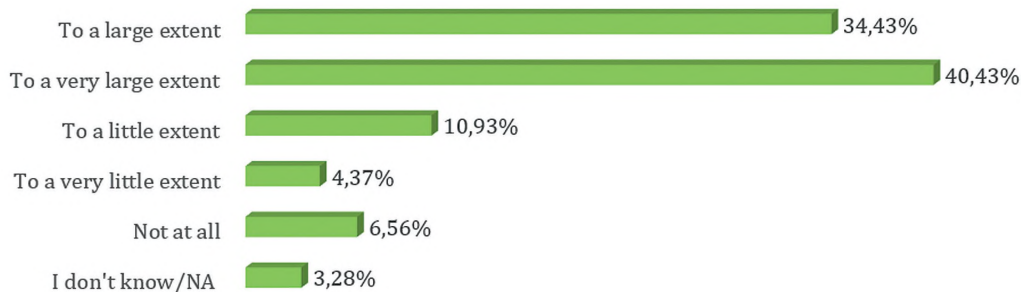
Another option, not necessarily utopian, is to fix a voting period for all member states lasting 2–3 days so that citizens have the necessary time to vote according to their schedule, either on a working day or on the weekend.

Question: 9.6. To what extent do you consider it necessary to standardise the European electoral system, especially concerning the reference day (the same voting day in all member states)?

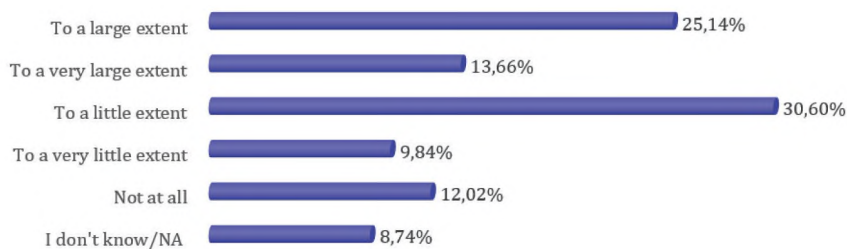


Regarding another topic of great interest in recent years, namely the use of electronic/Internet voting, 74.87% of the experts interviewed consider that it is necessary to a large and very large extent to introduce electronic means of voting. It can be stated that the percentage could be considerably higher if the increase of vulnerabilities in computer systems was not so obvious in the last period. However, the question is not if this way it will be used, but when, of course without leaving aside the classic way of exercising the vote in the polling station.

Question: 9.7. To what extent do you consider it necessary to standardise the European electoral system, especially regarding the use of electronic/Internet voting?

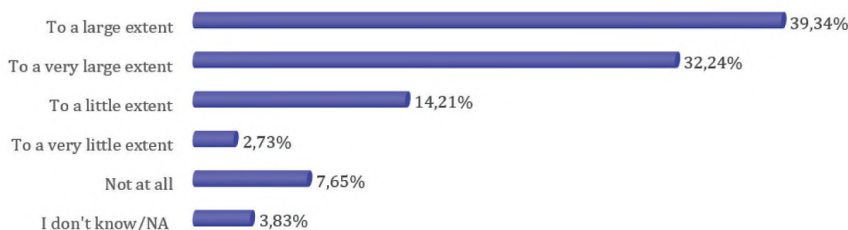


Question: 10.1. To what extent do you consider it necessary to create a transnational constituency for the several deputies from a transnational list?

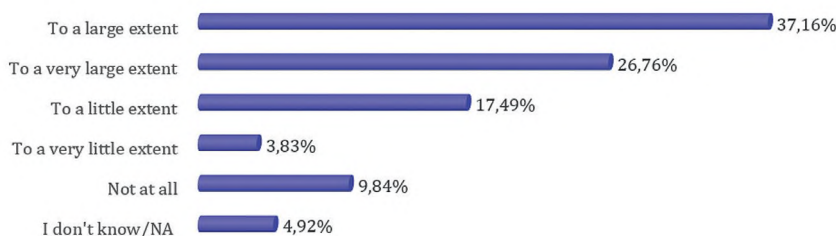


Experts' respondents think that it is necessary to a large and very large extent to ensure a fair gender representation on the lists of candidates for the European elections (72.13%), but also within the European Parliament (63.94%).

Question: 10.2. To what extent do you consider it necessary to ensure a fair gender representation on the lists of candidates?

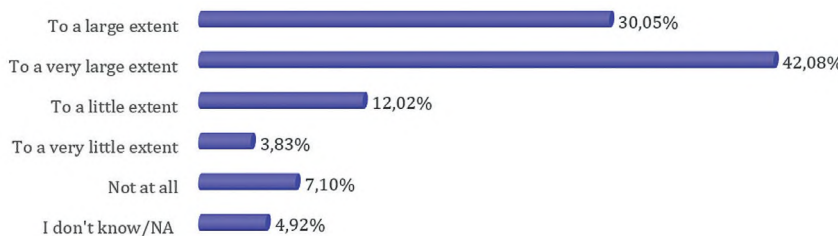


Question: 10.3. To what extent do you consider it necessary to ensure a fair gender representation in the European Parliament?



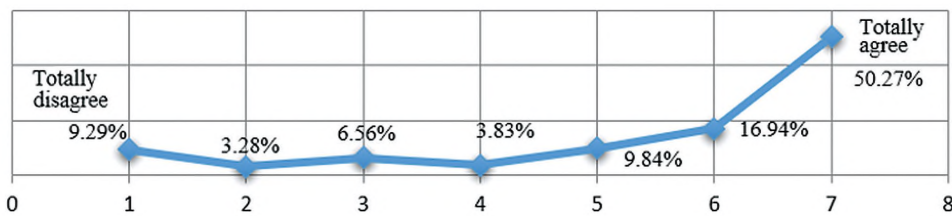
To one of the basic questions of the questionnaire, namely whether the respondents consider it necessary to establish a European Electoral Authority to manage and supervise the European parliamentary elections and control of the financing of European parties, the answers were somewhat surprising considering the percentage of those who answered affirmatively, namely 42.08% consider the establishment of a European electoral management body very necessary, 30.05% to a large extent and 12.02% to a small extent. It is possible that the favourable response was influenced by the positive experience of the Permanent Electoral Authority, which in a relatively short period managed to modify the way the electoral process is organised professionally.

Question: 10.4. To what extent do you consider it necessary to establish a EUROPEAN ELECTORAL AUTHORITY to manage and supervise the European parliamentary elections and control the financing of European parties?

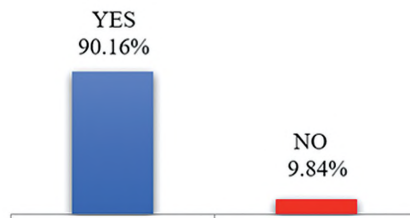


Similar to the answer to question 9.7., most respondents express their agreement for the expansion of the use of electronic/Internet voting in the European parliamentary elections.

Question: 11. To what extent do you agree with the statement: is it necessary to expand the use of electronic/Internet voting in European parliamentary elections?

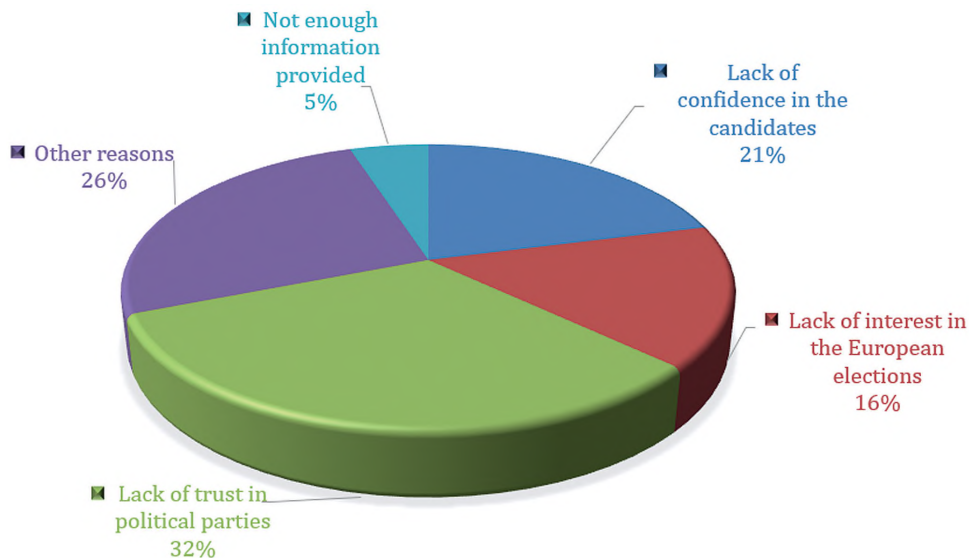


Question: 12. Did you vote in the elections to the European Parliament in May 2014?



A low percentage of experts (9.84%) did not exercise their right to vote in the elections for the European Parliament in May 2014, especially as a result of a lack of trust in the parties (33%) or in the candidates (22%), but also as a result of various impediments (at work or abroad on the reference day) (26%).

Question: 13. If the answer to the above question is NO, what are the reasons why you did not exercise your right to choose?

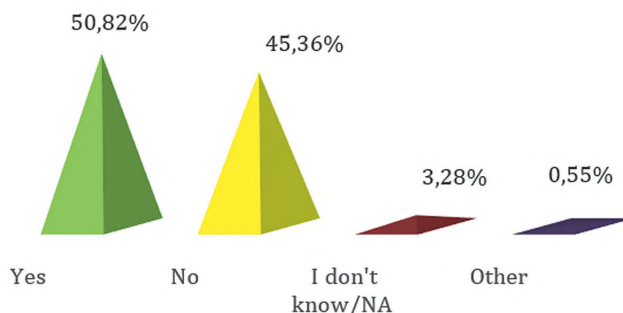


One of the possible solutions for increasing the presence, as well as for increasing the representativeness and legitimacy of elected officials, is the introduction of compulsory voting.

Viewed by many with distrust, mandatory voting comes with a paradigm shift, in the sense that voting would no longer represent only a right but also an obligation and the voter would be seen as performing a public function, the function of a citizen.

Currently, in the European Union, four countries have compulsory voting (Belgium, Cyprus, Greece, and Luxembourg). Somewhat surprisingly, more than half of the experts (50.82%) are in favour of introducing mandatory voting.

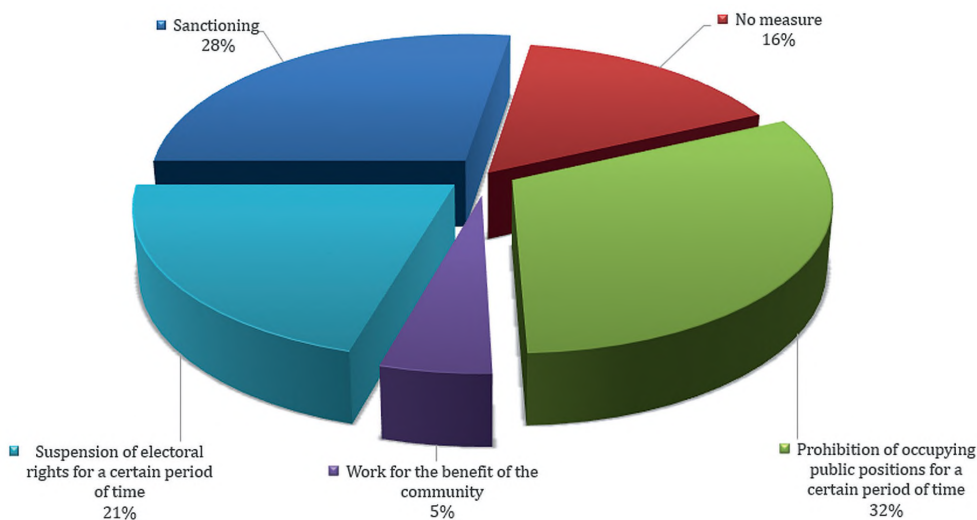
Question: 14. Do you consider it necessary to introduce mandatory voting?

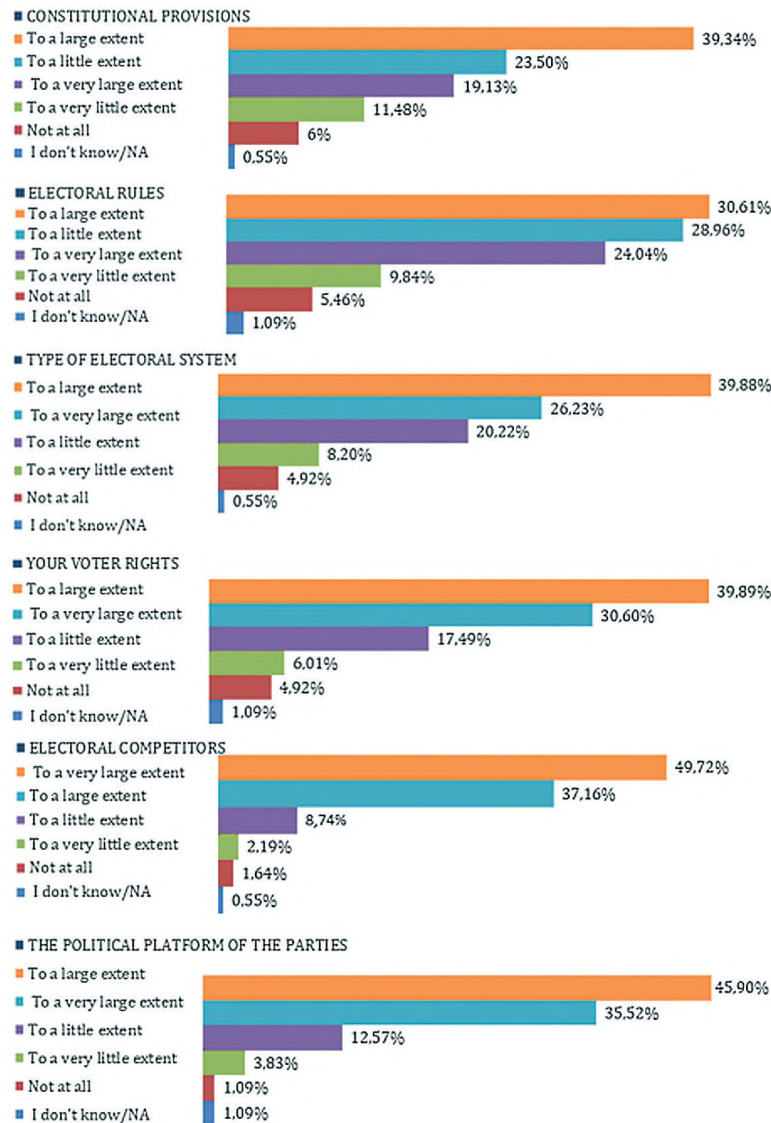


The introduction of mandatory voting raises another issue, namely, whether failure to vote should be sanctioned and if so, what could this sanction be.

The answer options offered were balanced, 36% of respondents consider that failure to vote should not be sanctioned, 28% opt for sanctioning with a fine, 24% for the temporary suspension of electoral rights, and 9% for the establishment of a temporary ban on the occupation of certain public functions.

Question: 15. If the answer to question 14 is YES, what do you think the penalties for not voting should be?

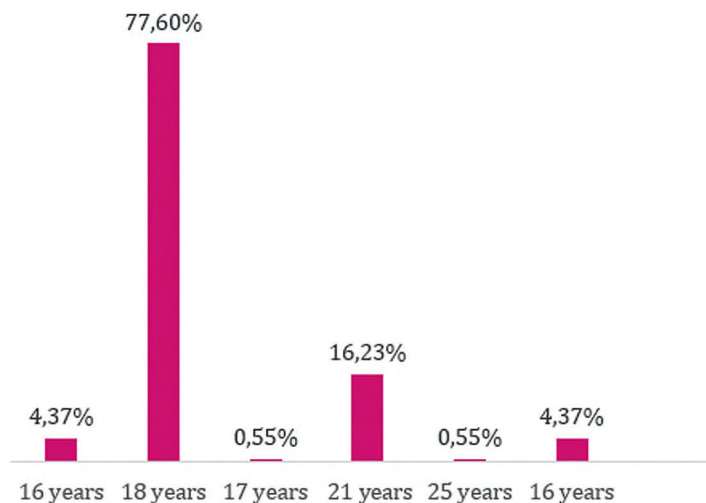


Question: 16. To what extent is the exercise of the right to vote influenced by knowledge?

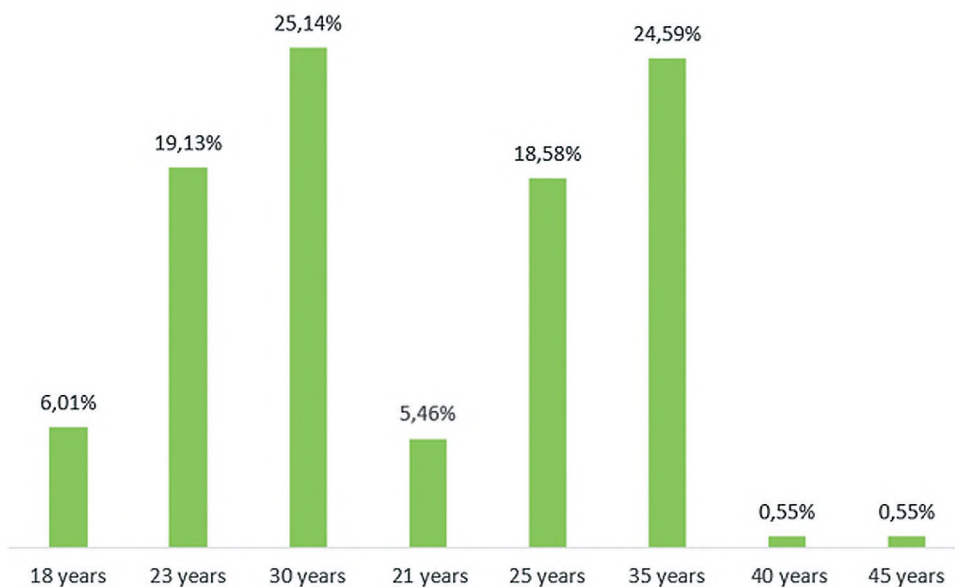
Electoral experts questioned on a series of elements that could affect the way of exercising the right to vote consider that the vote can be influenced to a large and very large extent by the knowledge (or lack of knowledge!) of the electoral competitors (86.89%), of their political platform (81.42%), the voters' rights (70.49%), the type of electoral system (66.12%), the electoral rules (55.04%) and the constitutional provisions (58.47%). Regarding the optimal age for exercising electoral rights, at which the citizen could make rational decisions, with maturity and without being influenced, the respondents consider with an overwhelming percentage (77.60%) that young people should exercise their right to vote since they turn 18.

Regarding the age from which a citizen would have the right to run for a representative position, the opinions were much more diverse, especially opting for an age at which a person, as a rule, has gained significant life and professional experience (25.14% opted for the age of 30, 24.59% for 35).

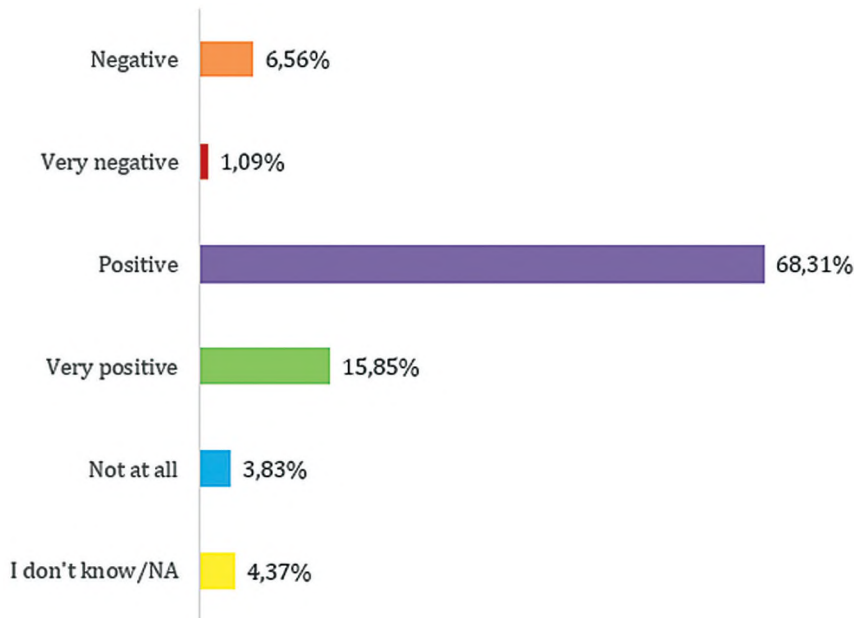
Question: 17. What do you consider to be the minimum age to participate (vote) in the European Parliament elections?



Question: 18. What do you consider to be the minimum age to be able to run for the European Parliament elections?



Perception of the European Union is a balanced one, in the sense that, although the share of those who have a positive perception is 68.31%, those who categorise it as very positive is only 15.85%, which I interpret to mean that the expectations from the European Union are particularly high, and the direction towards which it is heading is not exactly the desired one.

Question: 19. What is your perception of the European Union?**Question: 20. What other aspects do you believe are necessary for setting up a uniform European electoral system?**

The conclusions that emerge from the answers to the last question can also be kept for the general conclusions because it can be unequivocally stated that most of the experts in the electoral field who answered the questionnaire “The European electoral system. Elections to the European Parliament” note the need to configure a uniform and integrated European electoral system, the need to implement a whole set of tools that would allow the organisation of elections to the European Parliament based on common electoral rules and procedures.

In addition to all this, the role of a European Electoral Authority, especially in terms of informing voters, can be decisive in the configuration of the European public space. However, as it follows from the simulations regarding the electoral formulas, the instruments with which we can adjust the quality and correctness of the elections are not always sufficient, it being necessary to clarify without equivocation the type of political system towards which united Europe tends, its dismantling cannot be taken into account because we cannot estimate at this moment the negative impact on the national states.

For this reason, I believe that the Union must evolve from a polyform system to a clearly defined political system. The international context and the path so far require the identification of the finality of the European political construction.

In other words, it is no longer important to find out what type of entity the European Union represents, an international political organisation or a political system between a federation and confederation, but what exactly it becomes so that the states that make it up face together the challenges of a not too distant future. At the same time, the role of the electoral system can be essential to the extent that it finds solutions that combine the representation of citizens with that of states.

Electronic Voting Machines to Replace Manual Processes in Elections

K. M. Nurul HUDA

Abstract:

Electronic Voting Machines (EVMs) are an alternative way to the manual process of elections. The manual process encourages illegal human interference in elections. Voting using a manual process thus fails in terms of fair elections in many countries. The new democracies are most affected. Consolidated democracies do not have many irregularities at present because their past story is different. Even though both are showing interest in using EVMs despite some opposition. The technology-based EVM reduces manual control in elections thus stopping unfairness. Discussion on EVM's functionality shows its effectiveness in replacing the manual process. The EVM can serve any democratic country better in its respective perspectives. The use of EVM in elections is essential for phasing out of the manual process.

Keywords: manual voting, biometric enrolment, mock voting on EVMs, cost-effective

Introduction

The manual system has lost its way to fair elections in many countries. It provides candidates and parties with scopes of wrongdoing during the polls. It is rampant in new democracies. Consolidated democracies suffered from similar kinds of anomalies in the past. It took centuries under conventional legal instruments to reach certain standards. Most new democracies were subject to colonial rules when the light of democracy was shown in the western world. Consequently, the importance of fair elections could not grow among the citizens. As a result, they do not behave fair when the election is held under the manual process. They try to win the votes by means of illegal practices. This article attempts to discuss how the manual process causes unfairness in polls and ways of resolving it.

The Electronic Voting Machine (EVM) is a new technological system. Systematic voter education and staff training are essential for making it functional. The EVM cannot be tampered with. It is set offline and thus cannot be hacked. It is more cost-effective. The irregularities found in the manual process can be eliminated by the use of EVMs in elections.

The EVM, however, is not a welcoming solution for all players. Some people like them, while others are critical, even though EVMs have successfully replaced manual voting in a number of large democratic countries. Consolidated democracies are still swinging back and forth. Many of them though are inclined to use EVMs for swiftness and accuracy.

About EVM

The EVM is a technological and digitalized device appropriate for managing elections without manual interference. It is used for recording votes electronically without paper and pencil. It is comprised of a control unit and a balloting unit. The control unit can store the results of a poll in memory as long as required. These units are joined together by a cable, not through the Internet. They are therefore set offline with no chance of being hacked.

The EVM does not have any unique model. They are different in different countries. The requirements of certifications and auditing for confirming compliance are therefore different. An independent Advisory Committee comprised of national-level professionals having sufficient technological knowledge does it in Bangladesh.

Historical background

The manual process dominated elections since the Bill of Rights was approved in 1689. The polls entered the mechanical system in the 1890s. The Lever Voting Machine, a mechanical device, was used in Lockport, New York, USA in 1892. It was based on a push-button machine patented by Anthony Beranek of Chicago in 1881. It was used to record votes without paper. It was the first attempt to let machines take over manual jobs in elections. By the 1930s it was adopted across the USA.

The lever voting machines were commonly used from the beginning of the 19th century in the USA. The authorities were looking for alternative technologies. The machines were replaced by computer-tabulated punched cards in the 1960s and direct-recording electronic voting machines in the 1990s. Gradually, electronic voting systems started phasing out the manual process. Digitalization and Information Communication Technology (ICT) started influencing the system to minimize human interference in elections early in this century. India replaced the manual process in an election with EVMs for the first time in history in 1982. The road to using EVMs in elections is starting to gain ground.

Opposition

No new initiative is free from criticism – this also applies to EVMs. The liking and disliking of EVM caused some to survive while others took a departure from them. The EVMs implementation has had good results in elections of Bangladesh, Brazil, India, and others encountering hosts of opposition. On the other hand, though EVMs were used at one point or were piloted they did not remain a voting method in cases such as Germany, the Netherlands, and other countries. The chance of them coming back to the electoral processes of these countries is not excluded though.

Some political activists, members of civil society, and others keep opposing the use of EVM. Some of them have raised the issue in Parliament, others have sued cases in higher courts. The rest make statements in the press or engage in heated debates on TV programs against it. For instance, Brazil survived allegations against the use of EVMs by the Parliament. Conversely, the Dutch government abandoned it through a parliamentary procedure. Opposition groups often appear in higher courts against EVMs. The court favoured the use of EVMs in India for example while the German court sided with the complainants. The Bangladesh Election Commission (BEC) is also facing opposition seemingly with no tangible evidence. It remains in the doldrums of heated statements and debates.

The opposition regarding the use of EVMs sometimes has culminated in a state of sabotage. About 50,000 EVMs went up in flames in Venezuela. The Chief of the National Electoral Council, Ms. Lucena, stated in an interview with the BBC that “Nothing is being ruled out.”¹ She further added that operators were attacked, vehicles and EVMs were burned, and death threats were made before the elections of 2017.

¹ BBC, *Venezuela fire: Thousands of voting machines burned*, 2020, available at <https://www.bbc.com/news/world-latin-america-51800316>

The musclemen reportedly damaged EVMs in some polling centres in the West Bengal (India) Legislative Assembly elections of 2021. They also did it in several local government elections in Bangladesh. As mentioned the intention of these people was to rig the votes, but the use of EVMs prevented them to do any misdeeds in the process of voting. Being outraged with the EVMs they damaged them.

Consolidated democracies

The democratic countries can be grouped into two categories: consolidated democracies and new democracies for the purpose of discussing the issues under the topic. The first group may comprise Germany, the Netherlands, and the United Kingdom, and the second group Bangladesh, Brazil, and India as examples.

The first group is democratically, politically, technologically, and socially advanced with high social values. They have better track records in nurturing and improving elections' standards. They normally do not cause harm in the process of fair elections. They were, however, not free from unfair elections in the past.

Corruptions in British elections

The first group does not have many malpractices in elections at present. Even then, they indulged in high-level election anomalies in the past. The election environment of England in the 1880s can be cited as an example. England is claimed to be the mother of parliamentary democracy. Despite it, election-related corruption went out of control in England in the 1880s. Rix² states in a conference paper that voters and non-voters alike were in a festive mood during the election days for pocketing the money, eating, and drinking. The poor voters were transported to polling stations and even provided with refreshments at the candidate's expense.

The British government was trying to improve the poll time anomalies. They passed the Corrupt Practices Prevention Act of 1883, the Election Petitions Act of 1868, the Secret Ballot Act of 1872, and more for holding free and fair elections. The passing of these laws did not have an instant impact on the corrupt practice in elections. It took more than 200 years to reach an acceptable stage. Their elections are not free from fraudulency even today. The Electoral Commission reports that 595 cases of alleged electoral fraud were investigated by the police in the election of 2019. Of these, four led to a conviction and two individuals were given a police caution.

New democracies

The second group could not belong and grow in an environment of democracy. They have a long history of being ruled by colonial masters and other dictators. Citizens of these countries were denied the freedom of choosing their representatives in government. They could not enjoy the essence of democracy and elections till freedom was ushered after the end of World War II. Up to that point they had no idea if the terminology of democracy was to elect their representatives or a tool for further oppression.

This has stunted the growth of political leadership in these countries for running governments even after independence. Most governments of these countries were taken over by "weak political leaders, ambitious military personnel, and intelligent civil bureaucrats" after independence. The

² Kathryn Rix, *Corruption at elections in Britain in the 19th century*, 2019, available at <https://victoriancommons.wordpress.com/2019/02/26/corruption-at-elections-in-britain-in-the-19th-century>

military dictators took advantage of this situation. They illegally seized many civilian governments of newly independent countries through coups. Despite these situations, whenever some windows of democracy were found open, they were shattered through irregularities in the manual process of elections. Thus democracies further lost the opportunity to flourish. Consequently, qualitative democracy could not yet grow on par with international standards in these countries.

The same legacy kept the countries plunged into illiteracy, poverty, inaccessibility to modern science and technology, and poor social and physical infrastructure. It might have been a factor for people developing unruly and different behaviour. They are locked into deadly violence during elections which leads to situations that very often go beyond the control of law and order enforcement agencies and elections then turn into funerals.

The unabated strategy the contestants follow is to win elections by any means necessary, even causing bloodshed. A comic situation, elections in these countries are controlled by two MPs. MPs do not stand here for Members of Parliament but Muscle Power and Money Power! Vote rigging, intimidation, results manipulation, staffing of ballot boxes, and illegal influence of candidates of the political parties in power become the captions of media during elections. The alleged involvement of some polling officers and members of law and order enforcing agencies to work in favour or against some candidates³ further deteriorates the election environment in some instances. Human interference in the manual process is seen as responsible for plundering fair elections.

The areas of conflicts, violence, and other irregularities under manual voting are:

- a. supporters' candidates threaten genuine voters to abstain from voting because their votes were cast by others,
- b. "ghost voters" cast votes of absentees,
- c. voting before the start of casting votes,
- d. fake voters cast votes illegally,
- e. musclemen occupy booths for rigging votes,
- f. musclemen snatch ballot papers in order to stuff them in ballot boxes,
- g. musclemen snatch poll materials from polling staff on the way to them being transported to the Returning Officer which is responsible for the conduct of election from his constituency,
- h. dispute caused by counting of votes,
- i. manipulation of result, and
- j. more.

The EVM does not allow manual intervention in any area of the above list. Elections can thus be peaceful with no violence and loss of lives and properties.

The requirements for using EVM in the two groups of countries are not the same. The first group is concerned mostly with transparency, security, cost-effectiveness in terms of saving man-hours, and results from manipulations. The second group needs to control the anomalies under manual voting. Both groups consider minimising manpower, man-hours, and costs in elections. The EVM can address the different concerns of both groups.

EVM user countries

In 2022 Wikipedia has a list of 31 EVM user countries. They have varying successes and failures in the elections under EVM. Some critics very often question transparency and security in the polls

³ Engineer Khurram Dastgir Khan, *The EVM heist*, 2021, available at <https://www.thenews.com.pk/print/896848-the-EVMs-heist>

under EVM. They cite examples of abandoning EVMs in the first group of countries. But the two groups of countries cannot be weighed on the same scale if considered from their socio-political status.

The use of EVMs and their impact on elections in a few countries of both groups are discussed.

Germany

A fair journey to elections being conducted with the use of EVMs came to a break in Germany by denying popular consensus. The EVM was introduced in Germany in 1998. An article starts by saying that the trial period of using EVM for the elections was largely successful⁴. Political representative people accepted EVM. The entire European Parliament used EVMs for the election in 1999. About two million voters, with no opposition, cast votes under this system in general elections by 2005.

At this juncture of public acceptance, only two voters filed a case before the German Constitutional Court against the use of EVM. They alleged that the use of EVM in the elections was unconstitutional. The court held:

“The voters themselves must be able to understand without detailed knowledge of computer technology whether their votes cast are recorded in an unadulterated manner as the basis of vote counting, or at any rate as the basis of a later recount.”

People largely accepted EVMs in the elections. Again, Germans cannot lack computer knowledge at any length. Seemingly, the judgment did not reflect the perception of citizens about the use of EVM.

Anyway, the Court does not rule out the use of EVM in the future. It further held:

“The legislature is not prevented from using electronic voting machines in elections if the possibility of a reliable examination of correctness, which is constitutionally prescribed, is safeguarded.”

They can go back to EVM in the future by meeting the constitutional requirements.

The Netherlands

The Netherlands is an early adopter of e-voting. The Electoral Council of the Netherlands “was fascinated by the mechanical voting machines used in the United States” in the 1960s⁵. They used the machines in the provincial elections of 1966. The Dutch government replaced the mechanical voting machine with EVM and used them in the 1990s. The EVM appeared popular with no public or political debate.

At this stage of success, some computer experts lodged a campaign under the banner “We do not Trust Voting Computers” in 2006. Both the Parliament and the government acted to investigate the campaign.

The government constituted two Commissions for finding out the reasons for such complaints in 2006⁶. The Commission recommended that “voting by paper ballot would be the most appropriate method”. Accordingly, the government abandoned EVM and returned to using the manual process in electoral processes in 2007.

⁴ NDI, *Re-evaluation of the Use of Electronic Voting in the Netherlands*, 2022, available at <https://www.ndi.org/e-voting-guide/examples/re-evaluation-of-e-voting-netherlands>

⁵ Ben Goldsmith, Holly Ruthrauff, “Case Study Report on Electronic Voting in the Netherlands”, in Ben Goldsmith, Holly Ruthrauff, *Implementing and Overseeing Electronic Voting and Counting Technologies*, 2013, p. 259, available at https://www.ndi.org/sites/default/files/Implementing_and_Overseeing_Electronic_Voting_and_Counting_Technologies.pdf

⁶ NDI, *Re-evaluation of the Use of Electronic Voting in the Netherlands*, available at <https://www.ndi.org/e-voting-guide/examples/re-evaluation-of-e-voting-netherlands>

Perhaps the 2007 Dutch government took a hasty decision without carefully examining the pros and cons of the allegations. The “campaign” launched sometime in 2006 and ended in 2007 with the vanishing of a system that was in place for more than forty years, in less than one year! This short time might not be enough for a meticulous examination of facts before taking a decision against EVMs.

The Netherlands has begun contemplating the use of EVM in elections again. The government constituted the Van Beek Commission in 2013⁷. This Commission “took a second look at the possibilities of using electronic equipment in the election process”.

Others are optimistic by saying: “Eventually the voting machine is going to be there...” Jeroen van den Hurk, the former director of VDL Industrial Modules, who worked with Smartmatic and Eurotempest expresses optimism in an interview: “One day, the voting machine is going to be used in the Netherlands.” He claimed “the results of the elections are transparent. It is verifiable because they can easily check it, they save money, so it becomes more economical. All in all, there are only advantages.”

Loeber states that after the municipal elections of 2010 the issue of reintroducing e-voting has resurfaced⁸. She argued that hand counting is inaccurate and takes a lot of time and energy. In December 2013, nearly all political parties in Parliament were in favour of using e-voting again. They further argued that the daily life of people of the Netherlands involved using computers and IC&T. The voting process should no longer depend on “old-fashioned” paper ballots but rather rely on modern technology for accurate, swift, and credible polls. Modern technology cannot be less authentic for maintaining secrecy, integrity, and accuracy if programmed and customized properly.

United Kingdom

The United Kingdom started working on introducing electronic voting at the beginning of the 2000s. They brought about changes in existing legal instruments to fit electronic voting. They piloted field tests by electronic voting in local government elections of 2000, 2002, and 2003⁹. Electronic voting has gained “widespread political support, seen as both a cost-saving measure and a possible way of boosting turnout in an era of declining voter representation”.

United States of America

Electronic voting practices existed longer in the USA than in other countries¹⁰. The EVMs were used in 675 counties in the USA in 2004. The Florida Congressional Elections in 2006 have made the system debatable. The authority now has to work much for bringing it to the trust of stakeholders.

Bangladesh

Biometric voter enrolment has opened the doors to the use of EVM in elections in Bangladesh. The Bangladesh Election Commission (BEC) started using technology in elections since 1990s. The BEC ventured into an attempt to make enrolment of voters with photographs to address false personification around 1994. It continued up to 1996 with a failure. Nevertheless, this was the

⁷ Skye Putters, *One day, the voting machine is going to be used in the Netherlands*, 2021, available at <https://innovationorigins.com/en/in-the-end-the-voting-machine-is-going-to-be-used-in-the-netherlands>

⁸ Leontine Loeber, *E-voting in the Netherlands; past, current, future?*, 2014, available at https://www.researchgate.net/publication/301547849_E-voting_in_the_Netherlands_past_current_future

⁹ Alex Hern, “Should Britain introduce electronic voting”, *The Guardian*, 2015, available at <https://www.theguardian.com/technology/2015/feb/26/should-britain-introduce-electronic-voting>

¹⁰ Gloria Lin, Nicole Espinoza, *Electronic Voting*, 2007, available at https://cs.stanford.edu/people/eroberts/cs181/projects/2006-07/electronic-voting/index_files/page0004.html

opportunity for digital voter enrolment in subsequent years. The BEC went for a well-prepared program for making biometric vote enrolment with photographs in 2005. They completed it by 2008. It was the threshold for using EVM in elections in Bangladesh.

The BEC started using EVM in a few municipal elections on an experimental basis in 2010. Unfortunately, it was abandoned on its way to success. The incumbent BEC did not continue it. As a result, it remained dormant from 2012 to 2017.

The subsequent BEC, however, took fresh initiatives to bring back EVM in elections with an improved version. They were aware that the introduction of EVM in elections needed careful attention. They went through comprehensive planning, budgetary provisions, and legal support for fielding EVM. It followed the recommendations of the Advisory Committee. It also held dialogues with political parties, members of civil society, professionals, and other stakeholders. It evaluated the recommendations for setting EVM to elections free from human interference.

The BEC availed every opportunity of using EVMs in some parliamentary elections and widely in local government elections. They used EVMs in six constituencies in parliamentary elections for the first time in 2018. Thereafter, they used EVMs in sixteen by-elections of the Parliament. They have also used EVMs in about 850 local government elections including in big cities. The BEC has decided to use EVMs in 150 constituencies out of 300 in parliamentary elections due at the end of 2023¹¹.

Brazil

NDI¹² highlights the background of introducing EVM in Brazil. Brazilians adopted EVM in order to remove the “endemic fraud in the paper tabulation process”. The polling staff involved in the tabulation of votes were mostly from government-controlled offices. The lengthy process of tabulation, engagement of hundreds of thousands of polling staff across the vast country, and complex communication infrastructure made it difficult for the election authority to control possible malpractices. The EVMs as an alternative system of conducting elections have removed different areas of manual control where fraud and manipulation were likely to happen.

Brazil started testing EVM in elections in the 1990s. The EVM was used in elections, as a test case, in Santa Catarina in 1996. It was successful. Thereafter it was used in the national elections of 1998. It followed the elections of 2000, 2002, 2004, and 2006 and went on with no interruption. Brazil is regarded as an example “with a thriving electronic voting system”.

Brazil has maintained a relatively trouble-free experience with EVM. Brazilian polls have also influenced neighbouring countries into adopting the system in their elections. Paraguay and Ecuador have already shown interest to import EVM from Brazil.

Polls under EVM become critical with nearing the time of elections. The authority does not ignore them but tries to settle whatever they consider necessary. It has thus stepped into its 12th version in 25 years following adjusting requirements.

India

Quraishi states “the Commission has been steadily moving away from a manual process toward electronic technology, which has brought greater efficiency in the electoral process.”¹³ The

¹¹ Mohiuddin Alamgir, Rashidul Hasan, “EVM use in 150 seat max”, The Daily Star, 2022, available at <https://www.thedailystar.net/news/bangladesh/politics/news/evm-use-150-seats-max-3101596>

¹² Ben Goldsmith, Holly Ruthrauff, “Case study report on Brazil electronic voting, 1996 to present”, in Ben Goldsmith, Holly Ruthrauff, *op. cit.*, 2013, p. 236, available at https://www.ndi.org/sites/default/files/Implementing_and_Overseeing_Electronic_Voting_and_Counting_Technologies.pdf

¹³ S. Y. Quraishi, *An undocumented wonder*, Rupa Publications India Pvt. Ltd, New Delhi, 2019.

Election Commission of India (ECI) introduced a kind of electronic device in 1977 for recording votes that recorded no known errors. Since then it moved towards making elections free from human interventions. The ECI came up with Microsoft-based voting equipment in 1981. It was the basis of setting EVM in Indian elections. The ECI used their homemade EVMs in a by-election of a Legislative Assembly Constituency of Kerala in 1982.

The ECI switched fully to EVMs for the parliamentary elections in 2004. Its success followed other parliamentary and Legislative Assembly elections, and by-elections in the whole country with using EVMs in 2009, 2014, 2019, and thereafter. About 912 million eligible voters were registered in the parliamentary elections of India in 2019. More than 67% of voters stand at about 615 millions who accepted voting by using EVMs. The use of EVM in the elections remained not within the Indian periphery. More countries are using EVMs in elections either national or local or both.

Functions

The incorporation of technical features in EVM depends on the design and programming of manufacturing companies to serve the demand of countries. This is why the functionalities of EVMs differ from country to country. But the rule of thumb regarding the use of EVMs is similar. The Bangladesh Machine Tools Factory has designed and developed EVMs for BEC. The major functions of EVMs used by the BEC are discussed.

Customization

The customization is the preservation of booth-wise particulars of voters, polling personnel, and candidates done before the day of elections. Their particulars are downloaded from a central database of about 120 million voters. These are then customized through Audit Card, Polling Card, and Secured Digital (SD) Card. The audit card holds information about polling booths and polling officials. It also stores the PIN and password of EVM. The polling card stores voter information about who cast votes in the respective polling booth. It also preserves data of votes cast during the poll. The SD card preserves a voter list of the voting centre and information about polling personnel and candidates. The polling officials use these cards in the management of polls. These are so customised that an EVM can be used exclusively by the voters of a booth. The system leaves no opportunity for casting false votes by intruders. The EVM is then set in the process of voting.

Process of voting under EVMs

The polling officers set EVMs in a prescribed manner at an early hour on the day of voting. They show candidates or agents present a zero count of a vote on EVM and print out a copy before starting of voting. The casting of votes starts from the time programmed in EVM and runs uninterrupted up to the time of closure. The EVM does not receive any votes before the time of start and after the closure of polls.

A monitor is set with the control unit of EVMs for verification of voter identity. It displays the particulars of each voter with a biometric photograph. The polling officer, agents of candidates, and the voter himself can verify the photograph and information on the monitor. They make sure that there is no false representation.

A polling officer electronically verifies the identity of a voter with the control unit of EVM. A voter impresses any finger on, inserts the smart NID card, types the number of the card, or enters the number of the voter list in the control unit. After the voter is verified the polling officer electronically transmits the ballot to the ballot unit kept inside a secret compartment. The voter

sees the names of candidates, symbols, and serials displayed on it. The voter presses the white button next to the candidate's name and symbol he/she wishes to vote for, then the green button to complete the voting process. The voter hears a voice in Bangla ((আপনার ভোট সম্পন্ন হয়েছে/-) – “your casting of the vote is complete”. If any voter tries to cast vote for the second time, the screen shows in Bangla (আপনি ইতিপূর্বে ভোট প্রদান করেছেন) -XXXX – “you have already cast a vote”. The counting of votes starts upon the closure of the polls.

Counting of votes

The counting of votes by EVM in the elections is unique and interesting in Bangladesh. The Presiding Officer (PO) responsible for managing polls in a polling centre proceeds with the counting of votes.

The polling officers close polls and booths at a set time by inserting passwords and using finger impressions. They disconnect the control unit from the ballot unit and carry it to the PO in a room designated for counting votes. The PO enters the audit card into each control unit and prints the result individually. He then closes all control units. He reopens any of the closed control units using finger impression, PIN, or password and inserts the audit card into it. The PO now electronically prints the results of all booths of a polling centre in minutes and announces it on the spot. He sees that contesting candidates, election agents, polling agents, observers, and members of the media observe the process of counting.¹⁴

The PO gives a certified copy of the statement of vote counts and ballot paper accounts to candidates or agents present. The candidates can know the results in the first hour of the completion of casting votes through cell phones and digital facilities. They do not have to spend days in tension and uncertainty for knowing who the winner was.

The PO then carries the poll materials and the result sheet to the Returning Officer (RO), responsible for managing the polls in the constituencies of a district. The RO consolidates results upon receiving them from constituencies and makes them public on the same day of elections. It is termed unofficial results. The RO submits them to the BEC. The BEC consolidates the results of all constituencies of the country. They publish the names of the winners in the government gazette in a day or two. It then becomes official. The EVM published election results as quick as possible.

The manual counting system is a time-consuming exercise with risks of miscounting and errors. It takes even a whole night to finish the count in complex elections with many candidates. The votes under EVMs can automatically be counted and printed accurately through Voter's Verifiable Digital Auditable Trail (VVDAT).

Voter's Verifiable Digital Auditable Trail

The BEC has incorporated VVDAT within EVMs. It maintains a digital audit trail instead of a paper audit trail. As mentioned earlier the ballot unit displays names and symbols of candidates for a voter to see before casting the vote. He chooses who to vote for and then the ballot paper slip is displayed on the ballot unit for a while. The voter can see that he or she has voted for the chosen candidate. The VVDAT also stores voting information chronologically in the audit card. It can digitally store information in memory chips and save without any loss. The BEC retains the chips for one year, if not otherwise stated by the Higher Court¹⁵. The VVDAT can retrieve data and

¹⁴ RPO, *The Representation of the People Order, 1972*, Chapter III, Article 36, Government Printing Press, Tejgaon, Dhaka, 1972.

¹⁵ *Ibidem*.

information from memory chips as and when required for recounting or otherwise. With these facts in mind, no question of transparency in voting under EVM can arise.

Voter education and training

The BEC considers citizens as the ultimate custodians of EVM. They work systematically to build trust and confidence among them on the benefit of EVM. They arrange seminars, workshops, discussions, and demonstrations for making EVM understandable to citizens in terms of how to cast votes and count them.

They go for voter education, training, publicity, change of legal instruments, and reform that suit using EVMs in the polls. The BEC has systematically trained hundreds of thousands of persons capable of managing elections with EVM. They are employees of different local government and semi-government offices. The BEC deploys these persons for managing polling centres and booths on Election Day.

As a part of voter education, the BEC arranges practical training with EVMs. They arrange mock voting with voters at every polling centre before the day of the elections. The experienced persons conduct these events for educating the voters on the use of EVM and the process of casting votes. The voters take the opportunity to know the simple technicality of casting his/her vote with the EVM.

The BEC distributes leaflets containing flowcharts with images of different segments of EVM to make voters understand the system. They hang posters at and around each polling centre for voters to have a glance at EVMs and the process of voting before they enter the booths. They show the voting steps on digital display boards. They post a short message to voters on their cell phones about the importance of voting using EVMs and the process of voting. They also publish instructions in local newspapers days before elections. This is how the BEC educates voters about casting votes and trains polling personnel for managing the polls under EVM.

Each polling centre is brought under surveillance of a control room set at the office of BEC on the day of elections. A Virtual Private Network of BEC is instrumented with relevant software to monitor the voting and counting of votes.

Costs-effectiveness and acceptability

The costs with the use of EVM for elections remain questionable. A reliable cost-effectiveness analysis on EVM is not yet done. Some analysts, however, believe in the evidence that the use of EVM in voting and counting would reduce costs over a certain period.

The BEC often shows that about 75% of the total elections budget goes to the law and order controlling agencies in paying their allowances. The BEC deploys the army, militia, different sections of the police, and other armed personnel in large numbers for controlling law and order situations during elections. They are supposed to control different irregularities. The irregularities cannot happen in the polls under EVM. As a result, the deployment of forces can be marginalized. The expenditure for printing ballot papers and other forms required under the manual process can be saved. The consolidation of the poll result, and making it public are done on the day of the elections. The saving of man hours by quicker delivery of results also contributes to cost-effectiveness. These are a few areas where expenditure in the elections under EVMs can be reduced.

NID¹⁶ found that the casting of votes and counting of votes under EVM was easy and accurate in elections in Germany from 1998 to 2005. The election management body found the system cost-effective because it reduced the number of polling stations and staff in each polling station.

Goldsmith and Ruthrauff state that experiments and applications of mechanical and electronic devices in elections in the Netherlands have passed nearly half of a century¹⁷. The elections under EVMs reduced mistakes, employment of polling staff, and time of counting votes.

The ECI claims that EVM has reduced costs in the management of elections in India.

Success

Bangladesh has conducted several parliamentary elections and a large number of local government elections using EVMs. All elections where EVMs were used were peaceful. It triggered no clashes and violence; because EVM does not allow coercive elections. It was successful because voters found it free from human interference and the results were delivered quickly with no chance of manipulation. The BEC staff and polling officers are enthusiastic and comfortable managing the polls with EVM.

Hern¹⁸ states that the world's biggest democracies – Brazil, India, and the Philippines – are using EVMs in the elections with varying success. Its use substantiates curbing muscle power, manipulations of results, stuffing of ballot boxes, identification, and other vices. India and Brazil have used EVMs in all constituencies successively.

The citizens of Brazil have largely accepted EVM in elections, particularly due to the fact that it “speeds the count tremendously”. The vote count under the manual process of the presidential elections of 1989 required nine days. The same took 12 hours in the general elections of 2002 with using EVMs. The citizens claim that the use of EVMs makes fraud, manipulating, and vote rigging impossible. They do not have much opposition to using EVM in the polls. Brazil, the largest democracy in Latin America, is comfortable with it. This is how the country has spent more than three decades using EVMs and kept retaining a high degree of trust and confidence of the citizens.

Conclusion

Human interference is unavoidable in the manual process of elections. It is the root of unfair elections, which is widespread in new democracies. The application of conventional legal frameworks would not succeed to bring it to a standard level even in the far future. An election is a tool for forming a government by the people. People do not like the malfunctions of this tool under a manual process. Many countries, therefore, have opted for EVMs as an appropriate solution. The elections using EVMs can be managed without manual interference, they are thus free from malfunctioning.

People cannot afford the lengthy and lazy time to see the results of elections as well. The parties in elections get results by using EVM within hours after the closing of the polls. The same elections

¹⁶ NDI, *Re-evaluation of the Use of Electronic Voting in the Netherlands*, available at <https://www.ndi.org/e-voting-guide/examples/re-evaluation-of-e-voting-netherlands>

¹⁷ Ben Goldsmith, Holly Ruthrauff, “Case Study Report on Electronic Voting in the Netherlands”, in Ben Goldsmith, Holly Ruthrauff, *op. cit.*, 2013, available at https://www.ndi.org/sites/default/files/Implementing_and_Overseeing_Electronic_Voting_and_Counting_Technologies.pdf

¹⁸ Alex Hern, “Should Britain introduce electronic voting”, *The Guardian*, 2015, available at <https://www.theguardian.com/technology/2015/feb/26/should-britain-introduce-electronic-voting>

using the manual process take days, even weeks. The EVM provides them with swiftness, accuracy, man-hour saving, and certainly credible elections.

The “technology-mad world” would not leave the conduct of elections at the cradle of time-consuming and erratic manual processes forever. Science and technology have taken over the massive manual work of day-to-day life. Digitalization and IC&T have brought the universe of information under ten fingers. Elections can last no more using an obsolete manual process. The EVM is the solution to solving election anomalies.

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Independence of Electoral Management Bodies in the Light of Political Crisis (from the Perspective of the Arab Environment)

Dr. Emad AL-SAYEH

Abstract:

Independence is the source from which EMBs get the ability to deal with and address political crisis, supporting their neutrality, regardless of the degree of political polarisation, and this will reflect the confidence and satisfaction of all parties of the crisis.

Keywords: *independence, EMBs, political crisis, Arab countries*

Most of Arab countries are characterised by low levels of stability due to the prevailing political conflicts which have hindered their democracy transition, producing a complex hybrid political system: democratic in terms of form, but dictatorial in terms of content. There are many factors behind this situation, but the most important factor is the “geopolitical” nature of the area, which was classified as one of the most vital areas in the history of human civilisation.

These factors have many and varied influences that affect the political environment and its democratic institutions. Thus, it is essential to consider this environment, its components and the approaches of practicing democracy in it; then to judge the efficiency of these systems in achieving political stability in their countries.

What matters in this regard is to what extent the current democratic structure (the concerned institutions and bodies responsible for providing the necessary democratic environment, in the framework of a set of principles and standards that are invoked within that structure) is strong enough to address conflicts of seizing power among competing parties. And also to address the political crises that may threaten the democratic systems in Arab countries in which the advanced power seizing conflicts have negative impacts on the democratic institutions, especially if those institutions are fragile and lacking the means by which they can be protected from those crises.

The democratic institutions must be protected from political conflicts, by issuing the relative laws and legislations based on the principles and standards that protect those institutions from being involved in any political conflicts; preventing any attempts, carried out by some parties, which believe that the democratic process is against their interests, therefore they try to involve the democratic institutions into the conflicts in order to destroy their credibility, disabling them to achieve their objectives.

Electoral Management Bodies (EMBs), of all forms, are the most prominent democratic institutions in charge of managing and implementing elections or referendums; they are the only bridge that elected persons go through to take over one of the responsibilities or tasks in the management of state affairs. That is what makes this “bridge” the focus of ambitions of all those who seek power; thus making EMBs vulnerable to political conflicts, and an easy target for strong parties of big political influence. Therefore, in order to avoid such confrontation, EMBs have to work hard to gain the trust of all political parties, since trust is an important factor in communication

with all political parties, and it is the main point upon which they will deal with elections results. So, maintaining high levels of confidence during political crisis is the main goal of EMBs.

However, these levels of confidence can only be achieved if EMBs are really independent. "Independence" provides a wider space to avoid any negative consequences that may result from the developments of political crisis. At the same time, independence can provide the necessary protection to deal directly with the political parties so as not to enable any of them to influence EMBs' decisions.

Here, we can review, for example, some of the factors that can put EMBs at the centre of political conflicts, explaining how independence of EMBs can help to minimise the effects, as follows:

- 1. Legislation and electoral laws:** usually, EMBs find themselves involved inside the circle of political pressure because of the wide powers, granted to them by electoral laws, related to some sensitive issues concerning the implementation of electoral processes, including identification and delineation of electoral constituencies, or the exclusion of one of the candidates of prominent parties in highly competitive constituencies, where votes are very crucial, due to violating some of the organisational and procedural provisions, issuing of strict regulations concerning the financing of electoral campaigns, and other things that can put EMBs in direct confrontation with the strong parties trying to hold power. Here, independence can play an important role, enabling EMBs to deal with the risks of these powers through their unrestricted ability to develop procedures to ensure the creation of a sort of balance without provoking any of the competing parties, or giving them a chance to unify their positions against EMBs decisions. Taking into account the provisions of the electoral law on the one hand, and considerations of implementation on the other hand, especially if we know that the relevant parties (in most cases) are the same parties who developed the electoral law through their presence in the Parliament, they will be keen to monitor EMBs during the implementation of the provisions of that law.
- 2. Decision-making background:** usually EMBs are managed by Boards or Committees which issue the related decisions. Those Boards consist of some commissioners who represent different and various parties and categories of the society. Those commissioners usually are affiliated to different parties, ideologies or regions. That produces different points of views towards the developments of the situation outside EMBs. That will be reflected on the functional, behavioural and nature of relationship among the commissioners or members of their committees, and then it will be reflected on the effectiveness of the decisions taken. In the end, the political conflict will be transferred to EMBs, influencing their ability to manage and implement electoral processes in accordance with the principles and international standards. Therefore, independence of EMBs imposes the need to form independent boards or committees of EMBs that consist of professional and independent (technocrats) members who do not have any party or political affiliation; since EMBs independence depends primarily on the independence of the decision-making at the senior levels of EMBs.
- 3. Administrative structures and the mandate of powers:** most EMBs seek to have a presence in all constituencies through their branches or offices which will implement electoral processes. And because of the strong competition among candidates of different parties, or because of rejecting some provisions of the electoral law concerning the delineation of constituencies' boundaries and the distribution of seats, conflicts emerge within some of those constituencies, affecting the electoral administrative offices and their ability to implement the procedures and instructions issued by the general administrations of EMBs. As a result, some officials of these offices may get involved in these conflicts, giving

their affiliations and regional considerations a greater priority than that of EMBs decisions. In the best scenario, some officials may be impartial and leave the matter to EMBs boards. This phenomenon is one of the most serious threats facing the implementation of electoral processes; but it can be addressed by giving a great deal of independence and powers to the electoral offices, so that officials of these offices feel that they have the ability to deal with the situation and challenges that may put some obstacles and prevent the implementation of electoral processes.

In fact, independence is a relative situation whose level increases or decreases in accordance with the variables of the internal and external environment, surrounding EMBs, including:

- **The nature of the surrounding political environment:** in “real” democratic environments, where there is stability and peaceful devolution of power, multi-party system, the right to engage in political work and monitoring it, the right to be a candidate and a voter and other political rights, such environment is the best surrounding one for the work of EMBs, because it provides them with high levels of independence, since the strength of EMBs depends not only on their decisions and procedures based on the electoral law, but also on the nature of the existing political system. There are many examples in the Arab region, where independence of EMBs is at the lowest level because democracy is practised in theory only.
- **To what extent EMBs depend on state institutions:** political crisis may arise between the legislative and executive bodies in the state, influencing various state institutions, and among them is the EMB. The negative impacts depend on the extent at which the EMB is related to both bodies. In some cases where the EMB is strongly related to and following the state, its independence is decreased greatly and often has its performance influenced by the outcomes of the crisis. Further, in bureaucratic regimes, EMBs are restricted by some regulations and procedures that decrease their independence because of the conflict between the legislative and executive authorities concerning the concept and applications of independence, and because of the advantages EMBs may enjoy as a special institution that receives special care; the matter that executive authorities try to avoid as they want to deal with all state institutions the same way using standard regulations and procedures, away from any complications that may require any special procedures, demanded by other institutions which could use them inappropriately; bearing in mind that “independence” is the demand of many state institutions, not only EMBs.
- **Real Practices:** The practical experience has shown that independence is, in fact, a real practice, not just a text in the law of the establishment of EMBs. Many of legislations mention, in their first articles, the independence of EMBs, but that is not supported by other texts confirming clearly that EMBs have the right to take the appropriate decisions for the implementation of electoral processes, away from the restrictions of the executive authorities, the influence of the legislative authority and the complexity of the judiciary system, which makes “independence” subject to the extent of the real practice of it by EMBs; and this, in turn, depends on the attitudes and positions taken by the leadership of EMBs.

Under a strong and influential leadership, which has no political ambitions, and which stands at the same distance from all conflicting parties, EMBs will certainly be keen to work independently, because independence will make them neutral and protect them against any negative effects. But if EMBs’ leaderships have political ambitions and future aspirations, generated by the relationships with some legislative and executive actors during the duration of their mission as EMBs leadership, or because of the strength of the polarisation caused by the interactions of political crisis, then EMBs leaderships may adopt some approaches that may affect their independence trying to show

loyalty to some parties. As a result, EMBs independence and impartiality will decrease and a lot of doubts will arise around them. Therefore they will lose the trust of political parties.

Concluding what is mentioned above; independence is the source from which EMBs get the ability to deal with and address political crisis, supporting their neutrality, regardless of the degree of political polarisation, and this will reflect the confidence and satisfaction of all parties of the crisis.

Moreover, independence is not just a text in the law, it is a real practice EMBs must be keen to stick to and use to strengthen and protect themselves against the impacts of political crisis.

In light of the Arab political environment, we call upon all specialists, lawmakers, human rights activists and all those supporting the reform theory rather than revolutions, we call upon them to radically reform electoral processes, starting from demanding the establishment of real and fully independent EMBs up to enabling all citizens to exercise their right to vote, one of the most important political rights for Arab citizens.

**The Intervention of Mr João Manuel Rosa de Almeida,
Member of the National Electoral Commission of Portugal,
at the International Conference “The 2022 Legislation
and the Reform of the Portuguese Electoral System”**

– Panel “Voting in times of pandemic: solutions and omissions” –
Lusíada University, May 25, 2022

João Manuel Rosa de Almeida

The first question is, as it so happens, interesting. Pandemic, a local referendum in Chaves. I call it interesting because in the end, only twenty per cent of the voters participated, and no groups were constituted for clarification and debate.

The first problem of the National Electoral Commission was: How the groups were constituted?

No one took measures regarding these issues, and what circulated and remained in the air was that contact between people was forbidden.

In order to constitute the groups, it was necessary to collect signatures, collect identification elements, go door to door, and bring people together and it was all forbidden. Therefore, we had to intervene and say that it could not be forbidden, otherwise, there would be no referendum. Therefore, that was the first intervention that we had, on a point that was forgotten in all this.

It was followed immediately by the election in the Azores, with a much more consistent intervention on the problem of the electoral campaign, the clarification of voters and the intervention of the candidates.

The basic idea was that no gatherings were allowed, everything was prohibited. We argued that no, that the right to manifest, the right of meeting and freedom of expression were rights that were not totally at risk, that they could be exercised and should be exercised with the appropriate precautions, but exercised, and that this was essential to the electoral process and for an informed vote of the voters.

Therefore, this subject and the impact of the pandemic on the truth of the election, which goes beyond the problem of abstention and the adherence of the voters, in my ignorance, because it is ignorance, is relatively poorly thought about although it is, I think, also an essential issue.

To be transparent and clear, an election has to count on the capacity of those running to make their proposals known to the voters. In addition, the distortion introduced by the maximization of clarification through the media has not adequately been reflected until today.

With the regime we have of journalistic coverage of electoral campaigns, it has not had a direct expression; at least it has not given the same opportunity to all candidates to express themselves freely. All these are serious problems, and this problem is all the more serious if there are greater difficulties in direct contact.

Regarding the legislative process, we have always expressed our concern that the rules of the game are being legislated at the start of the game, or when the game is ongoing. There is no point in talking about elections, even when playing cards, nobody admits to playing football and changes the rules while the game is ongoing.

Of course, there may be emergencies that require it, but this must be absolutely avoided, that is our position. This should be avoided because in an electoral process, legal certainty and security are self-standing values. The need for the entire population, indiscriminately, even those who have

no qualifications whatsoever, to know securely and with certitude what is due to them, what right they have and how they should exercise it, is essential to the process. The process does not have moments that allow the correction of mistakes, or omissions that may occur by changing the rules at a certain moment. The process is so special that it only admits one instance of appeal to the courts and the time limit for appeal is one day.

Therefore, it is incompatible with settling perspectives and interpretations in ordinary courts and having the solution three years later. In fact, three years later the mandate ends. In a process of this nature, legal certainty and security take on a much greater importance than is normal.

People have to enter the election stage knowing exactly what they are going for and how exactly they can express their will. Another important issue that occurred throughout our discussions on this matter was the question of, let us say, the deeper simplification of the exercise of the vote. However, this facilitation is not neutral and is usually unidirectional. I'll give you a concrete example: for instance, the vote of those confined by COVID. It was possible, possible for people with some training and some means, and we saw that there weren't that many, we saw this in relation to the closing of schools, where, for example, it was suddenly discovered that half of the homes in the country had no Internet and people didn't know how to use it. I was surprised there were so many: there was a mechanism and there was an electronic platform for people to register. Those who have access, those who know, could easily do so.

Those who don't have access, those who obviously weren't prevented from registering, but simply had to find one person who agreed to represent him, to make a signed statement for that person to go to the Parish Council, during the hours the Parish Council is open so that the Parish Council could register him in that platform. Now, the access to the exercise of the right of these two people is not equal. There is no inhibition, but there is a distinction.

There are facilities for those who can and difficulties for those who cannot and do not know how to do it. Now, many of these measures, this is an example, have this relatively censorial imprint and I believe that it would be a good reflection to think about it. How far we can go along these paths without distorting the system we have or another system that replaces it, and which has the principle that everyone, regardless of their training, their means and their knowledge, has the right to participate.

Another issue is that the process, by its characteristics and by necessity, has moved towards strengthening the direct intervention of the executive powers in the electoral process and even the judicial process in the electoral process.

These were very difficult things. I believe, and I do not know if I am wrong, that in our system the electoral process is a civic process, not a civil one, but a civic one. It is a process in which citizens organize themselves to administer the election with the support and back up of the State. It is not by chance that the polling stations are not filled with State employees, there is no professionalization. It is no coincidence that the tabulation assemblies are not professionalized either and it is no coincidence that the National Electoral Commission is constituted of citizens and they are not State employees. They are Agents of the Public Administration when they perform ordinary administrative acts, such as the acquisition of something, a purchase, etc.

Well, so, here, with this, there was a greater intervention. Normally we are used to talking about these matters almost in the abstract, but the fact is that in electoral processes too, the concrete practice is inseparable from the general theory. It is not by chance that in our system the Electoral Law is its own Regulation. It is no accident that it details the procedures and that this cannot be done by anyone else. Only by the Parliament or, in some detailed cases, by delegating, authorising the Government to do so. No one else can do it. Therefore, there is even a recognition at the legal level of the importance of practical procedures that could themselves undermine all the principles

set forth both in the Constitution and in the Laws and the direct intervention of the executive power at the several levels of the electoral process, in the system we have, I would say, is a danger. I can give you an interesting example: at one point, and against our dominant opinion, it was not unanimous; the big “take your pen” issue came up. The first thing we had to say was, “Sorry, if you don’t take your pen, you still vote”. Because the idea that was forming was that anyone who does not have a pen or does not carry a pen does not get a vote.

To us that was more or less absurd. We understood the reasons why, but we thought it didn’t have much substance. What happened in the following of this? What happened as a result of this, was there was practically no parish council president, at least in the countryside, who did not, on Election Day, offer the citizens who were going to vote the parish council propaganda pens, and sometimes even the pens from the previous election propaganda. Therefore, simple things like this can turn into very complex things and what is certain is that the National Electoral Commission was making an enormous effort, placing neutral pens everywhere for citizens to use, and this was lost. A precedent was set exactly the opposite way around. It is very difficult to go back.

I do not want to bore you too much, but I would like to remind you that all this has also brought some negative aspects, some of which we have seen, for example the situation of the vote of those confined at home who had some television reports that squeezed the heart. People were put to vote without the minimum conditions of secrecy. The most diverse situations. It is good to understand that those who are interned in a nursing home are even more restricted than those who are in prison, they are incapable. We have had complaints about people who have been persecuted for wanting to express their political opinion while in a nursing home.

We do not know if it is true or not, or if the Public Prosecutor’s Office has managed to find out anything, but we have had complaints along these lines and, I would say, “There’s no smoke without fire”. If there was one extremely controversial issue, it was always the voting of people who were in nursing homes, in front of the polling station, with successive reports of accompanied voting, beyond the limits provided by the Law and without respect for the will of the voters, to such an extent that in at least one case that I remember, the Constitutional Court annulled a vote.

There was no justification for not having other measures, if any. In our view, what was needed was to adapt the existing procedures through interpretative processes, to make them easier to exercise the vote, and not to create a tailor-made system for the moment, which has sometimes led to ridiculous things being done in a hurry. I will give you an example: when people were urged to vote in advance, it was because we wanted to see if it would ease congestion on voting day and if people would feel more secure.

I don’t know in which elections, but I believe that was in the Legislative and Presidential elections days, people turned out and as Joaquim Morgado said, they turned out in such a way that, in some cases, in urban areas, the media reported it (because everything else was normal and it wasn’t anything new, we understand), there were enormous queues of people waiting for two hours, one hour to be able to vote.

Why? Because the law says that before voting begins at the polling station, the early voting list must be downloaded in the Census roll and the ballot papers must be placed in the ballot boxes. Therefore, the legislator took measures and said that the polling stations would open an hour earlier, but at the following election, at the municipalities, there was no such voting process. There was no need to open an hour earlier. It was useless, people went there an hour earlier and they did not have early voting ballot papers to use. This is not anyone’s incompetence. This is a consequence of the haste in changing the rules of this nature that has to be very clear, very clear, and have to work, otherwise the process itself will be called into question. The two main concerns of the National Electoral Commission, and of Carla Luís, who is still a Member of the Commission, are always first that the process is credible for all and second that no one, as much as possible, be prevented from exercising their rights.

SUMMARIES AND AUTHORS' BIOS

- **Laura Matjošaitytė** – *Targets of Disinformation in Elections*..... 5

Abstract:

Disinformation is usually defined as false, inaccurate, or misleading information designed to cause intentional harm. Within an election context, this includes unreal information intended to affect participation in and the outcome of the elections.

Because disinformation and fake news are widespread in society, they inevitably affect electoral processes and free and fair elections.

These days, fake news is seen as a threat to political legitimacy, democratic institutions, and social cohesion by governments around the globe.

Keywords: *disinformation, fake news, electoral process, EMBs, political parties*

Abstract:

Dezinformarea este, de obicei, definită ca informații false, inexacte sau înșelătoare, concepute pentru a provoca un rău intenționat. În context electoral, aceasta include informații care nu sunt reale, destinate să afecteze participarea la alegeri și rezultatul acestora.

Deoarece dezinformarea și știrile false sunt larg răspândite în societate, acestea afectează în mod inevitabil procesele electorale și alegerile libere și corecte.

În zilele noastre, știrile false sunt văzute ca o amenințare la adresa legitimității politice, a instituțiilor democratice și a coeziunii sociale de către guvernele din întreaga lume.

Cuvinte-cheie: *dezinformare, știri false, proces electoral, EMB, partide politice*

Ms Matjošaitytė graduated with a master's degree in Civil law and a bachelor degree in Law from the Mykolas Romeris University. She is currently a board member of the Lithuanian National Radio and Television. Since June 2017 until 2021 she has been a chairwoman of the Central Electoral Commission of the Republic of Lithuania, and previously a deputy chair since 2013. She served as a member of the Commission since 2012. Between 2016 and 2018 she worked as a lecturer at Mykolas Romeris University and taught Constitutional law. She has been an in-house lawyer since 2007, and an attorney at law between 2015 and 2017. She has published articles on electoral management, election systems.

- **Irena Hadžiabdić** – *International Standards and Participation of National Minorities in Electoral Process in Bosnia and Herzegovina*..... 14

Abstract:

In this paper the author problematizes the gradual development of international protection of members of national minorities, the shortcomings of systemic protection, and low standards in this area. It explains the importance of protecting the rights of national minorities in order to achieve their non-discrimination and their political representation. Through the example of national minorities' participation in previous elections in Bosnia and Herzegovina, their candidacy and insufficient representation in political life, the paper presents all the shortcomings of legal solutions that are certainly not a successful test of democracy. It raises the logical question to what extent these guaranteed seats are actually being misused. The author advocates the review

of legal solutions, in terms of the real popularization of the participation of members of national minorities in political life.

Keywords: *national minorities, guaranteed seats, representation, candidacy, local elections, proportional participation*

Abstract:

În acest articol autoarea analizează problematica dezvoltării treptate în ceea ce privește protecția internațională a membrilor minorităților naționale, deficiențele protecției sistemice și standardele scăzute în acest domeniu. Acesta explică importanța protejării drepturilor minorităților naționale cu scopul nediscriminării și reprezentării lor politice. Prin exemplificarea participării minorităților naționale la alegerile anterioare din Bosnia și Herțegovina, a normelor referitoare la candidatura lor și reprezentarea insuficientă în viața politică, articolul prezintă toate deficiențele soluțiilor legale care cu siguranță nu sunt un test de succes al democrației. În acest context apare întrebarea logică în ce măsură mandatele garantate pentru minoritățile naționale sunt de fapt utilizate abuziv. Autoarea pledează pentru revizuirea soluțiilor legale în ceea ce privește popularizarea reală a participării membrilor minorităților naționale la viața politică.

Cuvinte-cheie: *minorități naționale, mandatele garantate, reprezentare, candidaturi, alegeri locale, participare proporțională*

Dr. Irena Hadžiabdić graduated from the Belgrade Faculty of Law. She holds a M.S. in European Union policy, law and management from Robert Gordon University, Aberdeen and a PhD in juridical science from the Faculty of Law in Zenica. She has spent the past 26 years in the field of election management, first with the Organization for Security and Co-operation in Europe (OSCE), then as executive director of the International Foundation for Electoral Systems (IFES) in Bosnia and Herzegovina (BiH). She was also the executive director of the Association of Election Officials in BiH (AEOBiH). In 2007, she was appointed by the BiH Parliamentary Assembly member of the BiH Central Election Commission (BiH CEC). On April 27, 2016 she was reappointed member of the BiH CEC after the expiration of her first seven-year mandate. She served twice as a president of the BiH CEC (in 2010 and 2017).

She represented the BiH CEC at the Executive Board of the Association of European Election Officials (ACEEEO) and at the Oversight and Audit Committee of the Association of World Election Bodies (AWEB). She has observed and assessed elections in 17 countries with OSCE's Office for Democratic Institutions and Human Rights (OSCE ODIHR), the International Republican Institute (IRI) and the National Democratic Institute (NDI). In 2013, she received an International Electoral Award for outstanding achievements in election management. In 2019 she received person of the year award for public administration in BiH. In 2022 she was awarded IFES Joe C. Baxter award for her contribution and excellence in election administration.

As presenter and lecturer she took part in more than seventy expert conferences and workshops. She is author of two books, seven publications and more than twenty articles on elections and political party financing.

• **Marie-Christine Ross and Simon Mélançon** – *La Représentation Politique des Femmes dans la Francophonie*

26

Abstract:

This study analyzes the political representation of women in the member countries of the Network of francophone electoral bodies (RECEF), a network of the International Organization of La Francophonie. The article analyses factors related to women's political representation in the RECEF states, in particular voting

methods and incentive measures such as different types of quotas, in addition to certain aspects of the legal framework and certain socio-cultural and economic barriers. The article presents three case studies: Senegal, France and Quebec to illustrate the impact of incentive measures on women's political representation in different historical and political contexts.

Keywords: Network of francophone electoral bodies (RECEF), women's political representation, Francophonie, elections, women-men equality

Abstract:

Acest studiu analizează reprezentarea politică a femeilor în țările membre ale Rețelei de Competențe Electorale Francofone (RECEF), o rețea a Organizației Internaționale a Francofoniei. Articolul analizează factorii legați de reprezentarea politică a femeilor în statele RECEF, în special metodele de vot și măsurile de stimulare, cum ar fi diferitele tipuri de cote, pe lângă anumite aspecte ale cadrului legal și anumite bariere socioculturale și economice. În cadrul articolului sunt prezentate trei studii de caz: Senegal, Franța și Quebec pentru a ilustra impactul măsurilor de stimulare asupra reprezentării politice a femeilor în diferite contexte istorice și politice.

Cuvinte-cheie: Rețeaua de Competențe Electorale Francofone (RECEF), reprezentarea politică a femeilor, francofonie, alegeri, egalitate femei-bărbați

Marie-Christine Ross graduated in 2009 from Laval University (Canada) with a master's degree in political science. She is an advisor in international cooperation at Élections Québec and RECEF.

Simon Mélançon graduated in 2005 from Laval University (Canada) with a master's degree in geographic sciences. She is an advisor in international cooperation at Élections Québec and RECEF.

- **Katharina Pabel** – *The Concept of Accessibility – Its Implications for Voters and Candidates* (article presented at the 3rd Scientific Electoral Experts Debates Accessibility of the electoral process organised online by the Permanent Electoral Authority in partnership with the Venice Commission on 16th February 2021)..... 35

Abstract:

The paper focuses on the implications of the concept of accessibility of the electoral process for voters and candidates. The basis for the reflections are the right to free elections and the respective case-law of the European Court of Human Rights as well as the standards and best practises developed by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR) over the last decades, most notably the Code of Good Practice in Electoral Matters. Reference will also be made to various reports concerning selected issues in this field.

Keywords: accessibility, electoral process, voters, candidates, Code of Good Practice in Electoral Matters

Abstract:

Lucrarea vizează implicațiile conceptului de accesibilitate a procesului electoral pentru alegători și candidați. La baza reflecțiilor se află dreptul la alegeri libere și jurisprudența respectivă a Curții Europene a Drepturilor Omului, precum și standardele și bunele practici dezvoltate de Comisia de la Veneția și Biroul OSCE pentru Instituții Democratice și Drepturile Omului (ODIHR) din ultimele decenii, în special Codul de bune practici în materie electorală. De asemenea, se va face referire la diferite rapoarte referitoare la problemele selectate din acest domeniu.

Cuvinte-cheie: accesibilitate, proces electoral, alegători, candidați, Codul de bune practici în materie electorală

Katharina Pabel studied Law at the University of Bonn from 1988. She passed the state legal exams in 1993 and 1997. She has a PhD in Law from the Rheinische Friedrich Wilhelms University of Bonn, Germany (2001). In 2009 she received her habilitation with *venia legendi* "Öffentliches Recht, Rechtsvergleichung, Staatskirchenrecht" at University of Economics and Business Administration, Vienna (Austria).

Between 2010 and 2020 she was a Professor of Public Law at the University of Linz, Austria and between 2015 and 2019 she also occupied the position of Dean at the Faculty of Law of the University of Linz. Since March 2020 she is a Professor of Public Law and International Law at the University of Economics and Business Administration, Vienna, Austria.

- **Bogdan Nicolae Țonea** – *The Accessibility, a Theoretical Concept between National Law and European Regulations (article presented at the 3rd Scientific Electoral Experts Debates Accessibility of the electoral process organised online by the Permanent Electoral Authority in partnership with the Venice Commission on 16th February 2021)* 46

Abstract:

Democracy is based on elections held at regular intervals of time and on the decision of the majority. The European electoral heritage is largely made of international legal norms, as The International Pact on Civil and Political Rights, or The Additional Protocol to the European Convention on Human Rights. All of them are established in the Code of Good Practice in Electoral Matters. An element of criticism of European models for organising electoral processes is related to the financing of political campaigns and parties. In this article we try to underline the idea according to which the election of the democratic governing bodies of states should be a process funded exclusively by the public budget. We will also bring in the discussion one of the themes of reflection that European democracies should begin to discuss, namely the relationship between freedom of expression and the truth of what it is said.

Keywords: *democracy, electoral heritage, electoral processes, accessibility, rule of law*

Abstract:

Democrația se bazează pe alegeri organizate la intervale regulate de timp și pe decizia majorității. Patrimoniul electoral european este format în mare parte din norme juridice internaționale, precum Pactul internațional privind drepturile civile și politice sau Protocolul adițional la Convenția Europeană a Drepturilor Omului. Toate sunt înscrise în Codul de bune practici în materie electorală. Un element de critică la adresa modelelor europene de organizare a proceselor electorale este legat de finanțarea campaniilor și a partidelor politice. În acest articol voi sublinia ideea conform căreia alegerea organelor democratice de conducere ale statelor ar trebui să fie un proces finanțat exclusiv din bugetul public. Voi aduce în discuție și una dintre temele de reflecție pe care democrațiile europene ar trebui să înceapă să le discute, și anume relația dintre libertatea de exprimare și adevărul a ceea ce se spune.

Cuvinte-cheie: *democrație, patrimoniu electoral, procese electorale, accesibilitate, domnia legii*

Bogdan Nicolae Țonea has a PhD in Law from the "Lucian Blaga" University in Sibiu, in 2005, with a thesis on "Representation of legal entities in civil legal act". For his thesis he was awarded the distinction "cum laudae".

He is a Professor of Constitutional Law at the Faculty of Legal and Administrative Science from the "Alexandru Ioan Cuza" Police Academy, Bucharest, with a career of over 20 years in university education.

Mr Țonea published 9 books (as author or co-author) and a significant number of articles, in various indexed law journals, and he participated in several national and international conferences and also research projects.

- **Cristian-Alexandru Leahu** – *Making Elections Accessible in Romania: A Work in Progress (article presented at the 3rd Scientific Electoral Experts Debates Accessibility of the electoral process organised online by the Permanent Electoral Authority in partnership with the Venice Commission on 16th February 2021)*..... 55

Cristian-Alexandru Leahu graduated the Faculty of Law, “Alexandru Ioan Cuza” University, Iași, Romania, in 2002. In addition to this degree, he has completed a postgraduate diploma in private and public international law and a master in public sector management.

He has been serving as a legal expert for the Permanent Electoral Authority since 2004 and later became the head of Department of Legislation, Election Dispute Resolution, Liaison with the Parliament and the European Union. During election years he has been a coordinator in the Central Electoral Bureau in several areas, such as the activities of elaborating and drafting the draft decisions and decrees of the Central Electoral Bureau, its correspondence, as well as any other acts of the Central Electoral Bureau, carried out by the auxiliary technical staff, the activity of the technical auxiliary personnel of the Central Electoral Bureau, etc. He has also worked for the United Nations Development Programme in electoral assistance.

He has extensive experience in drafting electoral laws and regulations as well as in election administration and electoral disputes resolution. He is a BRIDGE semi-accredited facilitator, author and co-author of various articles and research papers on electoral issues.

- **Dora Esmeralda Martínez de Barahona** – *Evolución de los Procesos Electorales en El Salvador de Cara a los Próximos Comicios Electorales 2024*..... 59

Abstract:

Since the creation of the Supreme Electoral Court, first established by the Constitution of the Republic of 1983, a democratic challenge appeared in El Salvador, hence since August 1, 1994, begun the work of the institution against challenges and on the consolidation of periodic elections, changing in terms of electing elected officials under the framework of peace and democracy.

The internal normative framework in Salvadoran electoral matters is the Electoral Code, however in different periods there have been jurisprudential changes that generate a different panorama in the electoral processes, through the different sentences of the Constitutional Chamber and the changes in secondary legislation of the Legislative Assembly, in the provisions of the electoral code, the law of political parties and the special provisions for the nomination of non-partisan candidacies.

Keywords: *peace, challenges, democracy, jurisprudence, sentences, legislation*

Abstract:

De la crearea Tribunalului Electoral Suprem, prin Constituția Republicii din 1983, o provocare democratică a apărut în El Salvador, astfel, din 1 august 1994, instituția își începe activitatea împotriva provocărilor și în ceea ce privește consolidarea alegerilor periodice, precum și modificarea modului de alegere a oficialilor într-un context de pace și democrație.

Cadrul normativ intern în materie electorală salvadoreană este Codul electoral, totuși, în diferite perioade, au avut loc modificări jurisprudțiale care au creat un context diferit în procesele electorale, prin diferitele sentințe ale Curții Constituționale și modificările din legislația secundară aduse de Adunarea Legislativă, în

ceea ce privește unele prevederi din Codul electoral, legea partidelor politice și unele prevederi speciale privind desemnarea candidaturilor nepartizane.

Cuvinte-cheie: pace, provocări, democrație, jurisprudență, sentințe, legislație

Dora Esmeralda Martinez de Barahona graduated with a bachelor degree in Law studies from the University of Salvador in 2003 and a master's degree in Criminal Law in 2011. She is a lawyer and since 2019 the Magistrate President of the Supreme Electoral Tribunal of El Salvador. Previously she has been Assistant Prosecutor and Electoral Prosecutor Delegate of the Attorney General of the Republic of El Salvador.

- **Daniel Duță** – *Research Concerning the Possibility of Using Electoral Engineering Tools in the Perspective of Organising European Elections Based on Uniform Rules* 67

Daniel Duță graduated with a bachelor degree in Law from the Faculty of Law, University of Bucharest in 2002. In 2018 he obtained his doctorate in Political Science from the National School of Political Science and Public Administration. Mr Duță is the director general of the Electoral Logistics Department of the Permanent Electoral Authority since 2019 and previously he has been a director in the Electoral Management Department (formerly Electoral Management, Monitoring and Logistics Department and Electoral Logistics Department) since 2007. Some of his main activities include: monitoring logistics and funds for the organisation and conduct of elections, managing the “National Registry of the polling stations”, the Electoral Experts Body and the evidence of the computer operators, drafting studies and proposals aimed for improving the organisation and conduct of elections. He also participated as a member of electoral bureaus, including the electoral bureau for the Romanians abroad and the electoral bureau for the Municipality of Bucharest. He participated in international and national scientific conferences and has published a number of papers on electoral systems and European elections.

- **K. M. Nurul Huda** – *Electronic Voting Machines to Replace Manual Processes in Elections* 90

Abstract:

Electronic Voting Machines (EVMs) are an alternative way to the manual process of elections. The manual process encourages illegal human interference in elections. Voting using a manual process thus fails in terms of fair elections in many countries. The new democracies are most affected. Consolidated democracies do not have many irregularities at present because their past story is different. Even though both are showing interest in using EVMs despite some opposition. The technology-based EVM reduces manual control in elections thus stopping unfairness. Discussion on EVM's functionality shows its effectiveness in replacing the manual process. The EVM can serve any democratic country better in its respective perspectives. The use of EVM in elections is essential for phasing out of the manual process.

Keywords: manual voting, biometric enrolment, mock voting on EVMs, cost-effective

Abstract:

Mașinile electronice de vot (EVM) reprezintă o modalitate alternativă la procesul manual utilizat în mod tradițional în alegeri. Procesul manual încurajează amestecul uman ilegal în alegeri. Prin urmare, votul prin intermediul unui proces manual eșuează în ceea ce privește desfășurarea alegerilor într-un mod corect în multe țări. Noile democrații sunt cele mai afectate. Democrațiile consolidate nu au multe nereguli în prezent, deoarece trecutul lor este diferit. Chiar dacă ambele își manifestă interesul în utilizarea EVM-urilor, în ciuda opoziției. EVM bazat pe tehnologie reduce controlul manual în alegeri, oprind astfel inechitatea. Discuția

asupra funcționalității EVM arată eficiența acesteia în înlocuirea procesului manual. EVM poate servi mai bine oricărei țări democratice în proiectele sale viitoare. Utilizarea EVM în alegeri este esențială pentru eliminarea treptată a procesului manual.

Cuvinte-cheie: vot manual, înscriere biometrică, vot simulat pe EVM-uri, rentabil

K. M. Nurul Huda has a Master in Statistics with Honours from the University of Dhaka, Bangladesh, and Certificate Course from the University of Manchester, UK. He has been the Chief Election Commissioner of Bangladesh (2017-2022) and the Secretary to the Government of Bangladesh. He also served as joint Secretary of the Ministry of Environment and Forests and additional Secretary to the Secretariat of Bangladeshi Parliament. Mr Huda is a contributor of about 80 articles and conference papers in English published in different local newspapers, international journals, and conference proceedings, and a research book titled *Municipal Solid Wastage Management: Bangladesh Perspective*, published by Academic Press and Publishers Libraries, Dhaka in 2008.

- **Emad al-Sayeh** – *Independence of Electoral Management Bodies in the Light of Political Crisis (from the Perspective of the Arab Environment)* 102

Abstract:

Independence is the source from which EMBs get the ability to deal with and address political crisis, supporting their neutrality, regardless of the degree of political polarisation, and this will reflect the confidence and satisfaction of all parties of the crisis.

Keywords: independence, EMBs, political crisis, Arab countries

Abstract:

Independența reprezintă sursa din care organismele de management electoral (EMBs) capătă abilitatea de a face față și de a aborda criza politică, susținând neutralitatea acestora, indiferent de gradul de polarizare politică, iar aceasta va reflecta încrederea și satisfacția tuturor părților implicate în criză.

Cuvinte-cheie: independență, EMB, criză politică, țări arabe

Dr. Emad al-Sayeh graduated the Cairo University. He is the chairman of the High National Elections Commission of Libya since 2012.

- **João Manuel Rosa de Almeida** – *The Intervention of Mr João Manuel Rosa de Almeida, Member of the National Electoral Commission of Portugal, at the International Conference “The 2022 Legislation and the Reform of the Portuguese Electoral System”* 106

João Manuel Rosa de Almeida has a degree in Philosophy from the Coimbra University, Portugal. He is a retired public servant after almost 40 years in the position. For 20 years the functions he held have included dealing with electoral processes at the local and metropolitan levels, running pilot projects and driving the implementation of technological solutions such as traditional data management or GIS projects.

He was elected by the Parliament as a member of the National Electoral Commission in Portugal, in March 2003, and was reelected successively until now.

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REVISTA ROMÂNĂ DE STUDII ELECTORALE

Revista Română de Studii Electorale este o publicație bianuală de studii, cercetări și analize cu tematică electorală. Autoritatea Electorală Permanentă a inițiat editarea acestei reviste cu scopul de a crea o platformă de dezbatere a subiectelor referitoare la reglementarea și administrarea proceselor electorale.

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Referințe bibliografice:

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• **Workshops/conferences:** P. Paczolay, "The Principle of Stability of Electoral Law", workshop on Codification of the Electoral Law, an event organised by the Permanent Electoral Authority in cooperation with the Venice Commission, Bucharest, 19-20 October 2015.

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